



Options for Cost Recovery in the Monument Expansion Area of the Northwestern Hawaiian Islands

March 6, 2023

Introduction and Background

On August 31, 2016, President Obama issued Presidential Proclamation 9478, which established the Papahānaumokuākea Marine National Monument Expansion (81 FR 60227). The Monument Expansion Area (MEA) is adjacent to the PMNM, and includes all waters and submerged lands seaward of the PMNM out to the seaward extent of the U.S. exclusive economic zone (EEZ) surrounding the NWHI west of 163° West Longitude. The proclamation provides the Secretary of Commerce, through NOAA, and the Secretary of the Interior, through the USFWS, with shared responsibility for management of activities and species within the MEA under their respective authorities.

Proclamation 9478 directs the Secretaries of Commerce and the Interior to prohibit commercial fishing in the MEA but also allows for a broader range of non-commercial fishing activities. It authorizes the Secretary of Commerce to permit and regulate within the MEA, Native Hawaiian practices, including exercise of traditional, customary, cultural, subsistence, spiritual, and religious practices within the MEA; and Non-commercial fishing, provided that the fish harvested, either in whole or in part, cannot enter commerce through sale, barter, or trade, and that the resource is managed sustainably.

Previous Recommendation and Potential for Council Action

In accordance with the provisions set forth in Presidential Proclamations 9478, the Council took action at its 194th meeting to prohibit commercial fishing and allow for sustainable non-commercial fishing and Native Hawaiian fishing practices in the MEA, including bringing back resources to the Main Hawaiian Islands (MHI). At that meeting, the Council:

Recommended amending the Hawaii and Pelagic Fishery Ecosystem Plan (FEP) to prohibit commercial fishing and allow for sustainable non-commercial fishing and Native Hawaiian subsistence fishing practices in the Monument Expansion Area (MEA), including bringing back resources to the Main Hawaiian Islands (MHI). Fishing regulations would include:

- **Commercial Fishing Prohibition**: Commercial fishing as defined in 50 CFR 665 – Western Pacific Fisheries would be prohibited in the MEA.
- **Allowable Species**: Only Hawaii bottomfish management unit species (MUS) as defined at [50 CFR 665.201](#) and western Pacific pelagic MUS as defined at [50 CFR 665.800](#) would be allowed to be caught in the MEA. Fishing for all other Hawaii FEP MUS and Hawaii FEP ecosystem component species (ECS), as defined in [50 CFR 665 - Subpart C, Hawaii Fisheries](#) would be prohibited.
- **Allowable Gear Types**: Only handline, hook and line, rod and reel and spear as authorized at [50 CFR 600.725 – General Prohibitions](#) would be allowed to be

used to catch bottomfish MUS and pelagic MUS in the MEA. All other gear types, including longline, bottom set longline, trawl and poisons would be prohibited from use in the MEA.

- Catch Limits: Establish a preliminary annual catch limit for bottomfish MUS at 350,000 lbs. and pelagic MUS at 180,000 lbs. for the MEA. NMFS and the Council would monitor catches from within the original monument authorized by NOAA, and in the MEA authorized by NMFS towards this limit. As an accountability measure (AM), if NMFS forecasts the limit would be reached NMFS would prohibit all fishing in the MEA for the remainder of the fishing year.
- NMFS and the Council will annually report fishery performance (e.g., number of permits issued, catch and effort information, etc.) in the annual Hawaii FEP and Pelagics FEP Stock Assessment and Fisheries Evaluation (SAFE) Reports. NMFS and the Council will also evaluate fishery performance after an appropriate time not to exceed 5 years from the effective date of the fishery regulations and will continue to conduct evaluations as necessary in order to ensure the resources are managed sustainably. Such evaluations will take into consideration the best scientific information available and evaluate whether additional specific actions are necessary for the proper care and management of monument objects, including fishery resources, consistent with Proclamation 9478.
- Non-Commercial Fishing Permit and Reporting: Any person engaging in non-commercial fishing in the MEA must obtain a MEA non-commercial fishing permit and comply with reporting and record keeping requirements codified at [50 CFR 665.14 – Reporting and Recordkeeping](#), as required for all Magnuson-Stevens Act permits issued by NMFS.
- Disposition of Non-Commercial Catch: Bottomfish MUS and pelagic MUS legally caught by an individual holding a valid MEA non-commercial fishing permit may be brought back to the MHI for consumption, including community sharing. However, fish caught from within the MEA under this permit cannot enter commerce through sale, barter, or trade and may not recoup costs associated with the trip to the MEA.
- Native Hawaiian Subsistence Practices Fishing Permit and Reporting: Any person engaging in Native Hawaiian subsistence practices must obtain a Native Hawaiian Subsistence Practices Fishing Permit and comply with reporting and record keeping requirements codified at [50 CFR 665.14 – Reporting and Recordkeeping](#), as required for all Magnuson-Stevens Act permits issued by NMFS. In addition, under this alternative, there would be specific permit review and issuance processes for a Native Hawaiian Subsistence Practices Fishing Permit.
- An applicant for a Native Hawaiian Subsistence Practices Permit must complete and submit an application to NMFS that includes, but is not limited to a statement describing the objectives of the fishing activity for which a permit is needed, including a general description of the expected disposition of the resources harvested under the permit.
 - If an application contains all of the required information, NMFS will forward copies of the application to the Council, the U.S. Fish and Wildlife Service (USFWS), the Office of the National Marine Sanctuaries

(ONMS), the Office of Hawaiian Affairs (OHA), and the Chair of the Hawaii Department of Land and Natural Resources (DLNR). The Council may consult with its advisory bodies to provide comments on the application.

- Following receipt of a complete application, NMFS will consult with the Council through its Executive Director, and the USFWS, ONMS, OHA, and the Chair of the Hawaii DLNR concerning the permit application and will receive their recommendations for approval or disapproval of the application.
- Disposition of Native Hawaiian Subsistence Practices Catch: Bottomfish MUS and Pelagic MUS legally caught by an individual holding a valid MEA Native Hawaiian Subsistence Practices fishing permit may bring catch back to the main Hawaiian Islands for consumption, including customary exchange. Additionally, permittees may sell, barter or trade catch to recoup costs associated with the trip to the MEA, not to exceed the actual direct costs associated with the trip, subject to the limit below. Direct costs include costs of supplies such as bait, fuel or ice needed for the trip, but do not include purchase, berthing, or maintenance of vessels or other costs external to the trip. This restriction ensures that the activity is not for commercial purposes.
- NMFS and the Council would limit the total value of catch traded, bartered or sold not to exceed the cost for fuel and ice, and other trip costs to make a trip from the main Hawaiian Islands to the MEA and in no case exceed \$15,000 per trip. A permittee would also be required to document and report to NMFS, the direct costs associated with each trip conducted to the MEA and the amount and value of any catch that is sold, bartered or traded.
- Trip Mixing: To ensure fish caught from inside the MEA for non-commercial and Native Hawaiian practices are not commingled with fish caught commercially seaward of the MEA, NMFS and the Council would prohibit any person from fishing both inside and outside the MEA on the same trip. Similarly, to ensure fish caught inside the original monument area for sustenance purposes are not commingled with fish caught in the MEA for non-commercial and Native Hawaiian practices and sharing in the MHI, NMFS and the Council would prohibit any person from engaging in both non-commercial fishing inside and outside the MEA as well as sustenance fishing in the original monument area on the same trip. However, sustenance fishing in the original monument and MEA on the same trip shall not be prohibited.
- Observer and VMS Requirements: All fishing vessels must carry an activated and functioning NOAA-provided VMS unit on board at all times whenever the vessel is in the Monument, and an observer if directed to do so by NMFS.
- Notification: Permit holders must notify NMFS prior to making any fishing trip to the MEA so NMFS may place a VMS unit and/or an observer on board as directed. Additionally, permit holders must contact NMFS at least 24 hours before landing any catch harvested under an MEA permit, and report the port and the approximate date and time at which the catch will be landed.

- **Other Requirements:** All fishing vessels must also comply with regulations codified at 50 CFR 665 – Western Pacific Fisheries applicable in the Exclusive Economic Zone (EEZ) comprising the MEA.

In February 2023, the Council received a letter from the National Ocean Service (NOS) responding to the Council’s recommendations and found that the allowance of “sale” is inconsistent with the goals and objectives of the proposed sanctuary. The findings were based on the State of Hawaii’s objection that sale is inconsistent with the state’s constitutional protection of Native Hawaiian traditional and customary rights. The NOS also received comments that opposed any form of customary exchange or allow catch to be brought back to the Main Hawaiian Islands. They advised to remove the provision that allows for the ability to sell fish caught under a Native Hawaiian Subsistence Fishing Practices Permit to be consistent with the sanctuary goals.

At its 194th meeting, the Council will re-consider the inclusion of “sale” as a method for recouping costs under a Native Hawaiian Subsistence Fishing Practices Permit. The Council will also consider the total value that may be included as a cost, based on additional information on trip costs estimated by NMFS Pacific Islands Fisheries Science Center (PIFSC) as well as fishermen.

Review of Cost Estimates

Utilizing past data collection efforts, the NMFS PIFSC was able to take cost data from a 2003 survey and adjust that data for inflation to 2022 dollars using the Honolulu Consumer Price Index (CPI).¹ Information was collected via survey of Ho‘omaluu and Mau Zone bottomfish fishers that used vessels between 31 and 46 feet with an average fuel capacity of about 1,400 gallons. These vessels spent more time in the further Ho‘omaluu zone (23.6 days) than in the Mau Zone (8.6 days) with more time bottomfish fishing than trolling.

Given this information, PIFSC was able to determine the average costs that would be eligible for recovery under the Council’s recommendation. Table 1 provides the costs both nominal (2003) and inflated for fuel, ice, bait, and food.

¹ Pacific Islands Fisheries Science Center. 2023. Assessment of Potential Costs Associated with Future Monument Expansion Area Fishing Trips. Pacific Islands Fisheries Science Center, PIFSC Internal Report, IR-23-05, 13 p.

Table 1: Summary of average costs for NWHI bottomfish vessels in 2003 for select cost elements (excluding maintenance), inflation-asjusted values in 2022 dollars

	Mau Zone Nominal	Mau Zone 2022	Ho`omalulu Zone Nominal	Ho`omalulu Zone 2022
Fuel				
Per trip	632	1,083	2,130	3649
Per day at sea	114	195	90	154
Per fishing day	164	281	206	353
Ice				
Per trip	143	245	370	634
Per day at sea	26	45	16	27
Per fishing day	37	63	36	62
Bait and chum costs				
Per trip	253	433	819	1403
Per day at sea	46	79	34	58
Per fishing day	66	113	79	135
Provisions, food & water				
Per trip	228	391	874	1497
Per day at sea	41	70	37	63
Per fishing day	59	101	85	146
Supplies				
Per trip	210	360	920	1576
Per day at sea	38	65	39	67
Per fishing day	54	93	89	152
Total Estimated Costs				
Per trip	1,466	2,511	5,113	8,759
Per day at sea	265	454	216	370
Per fishing day	380	651	495	848

^a Values adjusted for inflation from 2003 dollars to 2022 dollars using the Honolulu CPI – all urban consumers multiplier of 1.713, (Adapted from Pan and Griesemer (2006), Table 12)

The numbers presented suggest that the Council’s recommendation that cost recovery be capped at \$15,000 may be overvalued. However, authors acknowledge that costs would vary depending on port of origin, vessel size, horsepower, transit speed, weather and sea conditions, as well as type of fishing. Ice, bait, and food expenses would also be dependent upon trip length, hold capacity, and crew. The study also notes that there are likely operational constraints including fuel capacity, a vessel capable of withstanding weather and sea conditions and suggests that a

vessel would need to be at least 30 feet in length with a capacity for about 1,000 gallons of fuel. Diesel and gasoline prices, which nearly or more than doubled since 2003, were approximately \$6.09/gallon and \$5.18/gallon, respectively, which would result in fuel costs for a trip to the MEA at over \$5,000 - \$6,000.

To get the perspective of today’s costs, Council staff interviewed fishermen that have previously fished in the Northwestern Hawaiian Islands bottomfish fishery as well as fishermen that are capable of fishing in the MEA. Table 2 provides a summary of their estimates to fish in areas from Middle Bank, Mau Zone, and the Ho‘omalulu Zone.

Table 2: Fisher Interview Results

Item	Middle Bank Fisher	Mau Zone	Ho‘omalulu Zone
fuel - marine diesel	\$ 855	\$ 2,375	\$ 14,250
Food/Drink	\$ 200	\$ 910	\$ 2,000
Gear	\$ 500	\$ 750	\$ 1,000
Bait	\$ 720	\$ 1,000	\$ 1,800
Ice	\$ 800	\$ 1,000	\$ 1,000
TOTAL	\$ 3,075	\$ 6,035	\$ 20,050

Results from the interviews show that the further away from the Main Hawaiian Islands you go to fish, the larger the expense. Even at the closest fishing area, Middle Bank, costs are going to be at minimum over \$3,000 and at least double that for just entering the nearest part of the MEA (the Mau Zone). If fishers are to fish in areas with known bottomfish habitat in the Ho‘omalulu Zone, the costs are nearly seven times that of Middle Bank and triple to quadruple the Mau Zone costs.

All three fishers noted that the costs are going to be variable and dependent on such things as distance to fish, type of vessel and engine (one vs two motors, diesel vs gasoline, etc.), what method and gears are being employed, and crew size. They all agreed that the vessel has to be at least 30 feet for safety but suggested larger boats in excess of 40-50 feet in order to endure the weather conditions. They said that since there is nowhere to run and hide (i.e. to an island for shelter) the vessel would have to be bigger. Costs could also vary due to fish hold size, whether bait is caught or bought, if the vessel has the ability to produce ice, etc.

Options for Consideration

Due to the variation in the cost estimates and the information collected from fishermen and provided by PIFSC, the Council may consider the following options for cost recovery in the NWHI MEA fishing regulations.

- Option 1: Continue to allow the sale of fish to recover costs under the NH Subsistence Fishing Practices Permit with a limit of \$X.

The recent Council recommendation provided a value of \$15,000 as a maximum amount that may be recovered for costs incurred by NHSFPP holders. The Council may choose to continue to allow the sale and provide a revised limit based on the information provided by PIFSC and Council staff. The limit would be up to the amount allowed and dependent upon true fishing costs identified by the permittee.

- Option 2: Remove the cost recovery from the current recommendation and include the ability to recover costs through sell, barter, or trade under the permit review.

This option would allow for cost recovery but the limit would be determined by the Regional Administrator through the permit review process. This would allow for the variation in cost estimates to be accurately provided by the permittee and a review by the Council, RA and any other parties to ensure that the cost recovery is not of a commercial nature.

- Option 3: Remove “sale” as part of the cost recovery under the NHSFPP

The Council could also remove any ability to sell fish caught in the MEA to recover costs. This is a preferred option by the National Ocean Service who communicated this to the Council in a letter describing the review of the Council’s previous recommendations. Barter and trade would continue to be allowed under the NHSFPP but not for cash or other monetary instruments.