



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Ocean Service
1305 East West Highway
Silver Spring, Maryland 20910

February 22, 2023

Kitty Simonds
Executive Director
Western Pacific Regional Fishery Management Council
1164 Bishop Street, Suite 1400
Honolulu, HI 96813

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Dear Ms. Simonds:

This letter responds to the Western Pacific Regional Fishery Management Council's (Council) final action taken at the December 2022 Council meeting, recommending fishing regulations for the Papahānaumokuākea Monument Expansion Area (MEA). Coordination with the Council under section 304(a)(5) of the National Marine Sanctuaries Act (NMSA), 16 U.S.C. § 1434(a)(5), for the proposal to designate marine portions of Papahānaumokuākea Marine National Monument (Monument) as a national marine sanctuary, which began in November 2021, has been a critical step in the proposed sanctuary designation process. I would like to thank the Council for its time and effort in this matter. This letter provides the Council with notice regarding the conclusion of its role in the NMSA 304(a)(5) process and notice that the final action taken at the December 2022 meeting, in part, does not fulfill the purposes and policies of the NMSA and the goals and objectives of the proposed designation.

NOAA made this finding by evaluating the Council's action relative to Presidential Proclamations 8031, 8112, and 9478 specific to the Monument, as well as the purposes and policies of the NMSA and the goals and objectives of the proposed national marine sanctuary. At this time, and as required by the NMSA, NOAA will begin to develop its own regulations to fulfill the purposes and policies of the NMSA and the goals and objectives of the proposed designation. Should the Council choose to reconsider this matter at its March 2023 meeting and take action to revise its recommended fishing regulations as specified below, NOAA will consider such a revision as a part of the NMSA 304(a)(5) process **until Friday, April 14, 2023**. NOAA also welcomes input from the Council as a part of any future public comment process associated with the proposed designation. In either case, I offer the following input on key components of the December 2022 action that NOAA finds do not meet the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary.

Position on Council Final Action

NOAA finds that the majority of the Council's final action fulfills the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary designation. However, the



inclusion of the ability to “sell” fish caught pursuant to the Native Hawaiian Subsistence Practices Fishing Permit fails to fulfill the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary designation, as outlined below. While NOAA may authorize subsistence fishing in the MEA under a Native Hawaiian Practices Fishing Permit only where the fish may be traded, bartered, or exchanged *on a small scale within the family or community*, such activities must be sustainable and must not serve as a toehold for prohibited commercial fishing. As such, any Council regulations establishing a MEA permit system would need to include sufficient safeguards to ensure that the resources harvested do not enter commerce.

Specifically, the Council’s final action recommends that:

“Bottomfish [Management Unit Species (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.”

Pursuant to the NMSA section 304(a)(5), NOAA finds that the allowance of “sale” is inconsistent with the following goals and objectives of the proposed sanctuary.

- Goal 4. Partnerships & Constituent Engagement: Pursue, build, and maintain partnerships that generate active and meaningful involvement, with a commitment to incorporate traditional values and stewardship ethics, to strengthen world class conservation, community engagement, constituent support, and connection of people to place.
- Objective 3: Support and maintain existing co-management functions within the Papahānaumokuākea Monument Management Board to ensure unified governance in the spirit of seamless integrated stewardship.
- Objective 5: Manage the sanctuary as a sacred site consistent with Native Hawaiian traditional knowledge, management concepts, and principles articulated within Mai Ka Pō Mai.
- Objective 6: Enhance community engagement and involvement, including engagement of the Indigenous Hawaiian community in the development and execution of management of the sanctuary.

NOAA makes this finding based on the following information. The State of Hawaii representative on the Council voted against the Council’s December 2022 final action on the basis that the inclusion of “sale” under a Native Hawaiian Subsistence Practices Fishing Permit is inconsistent with the state’s constitutional protection of Native Hawaiian traditional and customary rights. While the MEA does not include state waters, the state is a co-managing partner for the Monument and the proposed sanctuary, and accordingly, NOAA believes that the Council’s final action fails to fulfill Objectives 3 and 5 of proposed sanctuary. In addition, the Council has received comments from the Papahānaumokuākea Native Hawaiian Cultural Working Group (CWG), supported by the Office of Hawaiian Affairs, a co-trustee of the Monument, opposing any form of customary exchange (exchange, trade, barter, or sale) or regulations that would allow catch to be brought back to the Main Hawaiian Islands and

consumed outside of the Monument or the MEA. The opposition from members of the Papahānaumokuākea CWG, represents an inconsistency between the Council’s final action and NOAA partner knowledge and expertise regarding Native Hawaiian cultural perspectives and practices. As such, NOAA finds that the Council’s final action is not consistent with the sanctuary’s goal of partnerships that “generate active and meaningful involvement, with a commitment to incorporating traditional values and stewardship ethics”; and the sanctuary’s objectives to “ensure unified governance” of the Papahānaumokuākea Monument Management Board, “manage the sanctuary as a sacred site consistent with Native Hawaiian traditional knowledge, management concepts, and principles,” and “engagement of the Indigenous Hawaiian community in the development and execution of management of the sanctuary” specific to the proposed sanctuary Goal 4 and Objectives 3, 5 and 6.

Should the Council wish to provide to NOAA a revised action **by no later than Friday, April 14, 2023**, the Council is advised to remove any provision that allows for the ability to “sell” fish caught under a Native Hawaiian Subsistence Fishing Practices Permit. The Council is further advised to retain the remaining provisions of the December 2022 action so as not to warrant additional NOAA review at this time. Any revisions the Council wishes to make beyond those associated with the provisions described in this letter may be raised as a part of future public comment processes associated with the sanctuary designation. I sincerely hope that this information is helpful to the Council in its deliberations.

I appreciate the active engagement of the Council throughout this process and look forward to continuing to work with the Council on the proposed sanctuary designation. Please contact Kristina Kekuewa at Kristina.Kekuewa@noaa.gov if you have any questions or require more information.

Sincerely,

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Nicole R. LeBoeuf
Assistant Administrator
for Ocean Services and Coastal Zone
Management

cc: Janet Coit, Assistant Administrator, NOAA Fisheries (NMFS)
Sarah Malloy, Regional Administrator (Acting), NMFS, Pacific Islands Regional Office (PIRO)
Gerry Davis, Assistant Regional Administrator for Habitat Conservation, NMFS, PIRO
Jarad Makaiiau, Assistant Regional Administrator for Sustainable Fisheries, NMFS, PIRO
John Armor, Director, Office of National Marine Sanctuaries (ONMS)
Kristina Kekuewa, Regional Director, ONMS Pacific Islands Region
Eric Roberts, Superintendent (Acting), Papahānaumokuākea Marine National Monument