



**Western
Pacific
Regional
Fishery
Management
Council**

March 22, 2022

John Armor
Director
Office of National Marine Sanctuaries
National Ocean Service
1305 East-West Highway
Silver Spring, MD 20910

Dear John,

Thank you for your November 19, 2021 letter transmitting the National Marine Sanctuaries Act (NMSA) 304(a)(5) package and request for fishing regulations in the proposed national marine sanctuary for the Northwestern Hawaiian Islands. The Western Pacific Regional Fishery Management Council met virtually on March 22-24, 2022 and discussed the Council's options for developing fishing regulations in the proposed sanctuary. After discussion and comments, **the Council agreed to develop fishing regulations for the proposed NWHI sanctuary and directed staff to respond to the Office of National Marine Sanctuaries 304(a)(5) package request with preliminarily preferred options for permitting and reporting requirements for commercial (outside current monument boundaries), non-commercial, Native Hawaiian practices, and research fishing in the sanctuary boundaries.**

The Council was concerned that the boundaries for the sanctuary are unknown at this time and that sanctuary fishing regulations could extend beyond the current Papahānaumokuākea and Monument Expansion Area boundaries. This is reflected in the Council's proposed fishing regulations that include commercial fishing permits for areas outside of the current monument boundaries but within the proposed sanctuary. Also included are opportunities for non-commercial fishing, fishing for research, and native Hawaiian fishing practices. Please see the summary of fishing recommendations and preliminary draft fishing regulations enclosed.

The Council will also be working in parallel to develop fishing alternatives for the NWHI area in the Exclusive Economic Zone through an amendment to the Hawaii Archipelago Fishery Ecosystem Plan in accordance with Presidential Proclamation 9478 as well as the NMSA 304(a)(5) request. We hope that these efforts to develop sanctuary regulations and Magnuson-Stevens Act regulations will be seamless and provide minimal impact on the fishing community in Hawaii. If you have any questions or concerns, please contact me at the Council Office at (808) 522-8220.

Sincerely

Kitty M. Simonds
Executive Director

Encl: (1) Summary of fishing regulations
(2) Preliminary draft fishing regulations

cc: Kristina Kekuewa, Regional Director-Pacific Islands Region



WESTERN
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Summary of Recommendations for Fishing Regulations in the Proposed NWHI National Marine Sanctuary

March 25, 2022

Council Decision

Under the National Marine Sanctuaries Act, Section 304(a)(5) provides an opportunity for regional fishery management councils to develop fishing regulations for a proposed national marine sanctuary. The request for fishing regulations for a proposed NWHI National Marine Sanctuary was provided on November 19, 2021 in a letter from the Office of National Marine Sanctuaries (ONMS) to the Western Pacific Regional Fishery Management Council (Council). The following fishing regulations were agreed to by the Council at its 190th Meeting held on March 22-25, 2022.

These recommendations pertain to the proposed NWHI National Marine Sanctuary only. The Council will consider separate fishing regulations under the Hawaii Archipelago Fishery Ecosystem Plan at a later date and in concert with sanctuary designation activities.

Due to the unknown nature of the proposed sanctuary boundaries, the Council provided recommendations for potential areas within the proposed sanctuary. Should the proposed sanctuary remain within the boundaries of Papahānaumokuākea and the Monument Expansion Area, fishing regulations outside those boundaries would not be necessary.

Proposed Fishing Regulations

The following are recommendations for fishing regulations in the proposed NWHI national marine sanctuary:

Commercial Fishing

- Commercial Fishing is prohibited from 0-200 miles within the Papahānaumokuākea Marine National Monument and Monument Expansion Area.
- Commercial Fishing is allowed by Federal permits with logbook reporting requirements in areas OUTSIDE of Papahānaumokuākea Marine National Monument but within any sanctuary boundaries

Non-commercial Fishing

- Non-commercial fishing is defined as fishing that does not meet the definition of commercial fishing in the Magnuson-Stevens Fishery Conservation and Management Act, and includes, but is not limited to, sustenance, subsistence, traditional indigenous, and recreational fishing (50 CFR 665.12).
- Non-commercial fishing is allowed by Federal permits with logbook reporting requirements in all areas of the NWHI national marine sanctuary.
- Research fishing is included in the definition of non-commercial fishing and shall be allowed in the sanctuary by federal permits with logbook reporting requirements.

Native Hawaiian Practices

- Fishing for Native Hawaiian practices is included in the definition of non-commercial fishing (as defined in 50 CFR 665.12) and shall be allowed by Federal permits with logbook reporting requirements in all areas of the NWHI national marine sanctuary.
- Customary Exchange, the non-market exchange of marine resources between fishermen and community residents for goods, and/or services for cultural, social, or religious reasons, shall be allowed by Federal permits with logbook reporting requirements in all areas of the NWHI national marine sanctuary. The inclusion of cost recovery through monetary reimbursements and other means for actual trip expenses, including but not limited to ice, bait, fuel, or food, that may be necessary to participate in fisheries in the western Pacific should be discussed in public for its appropriateness within the proposed sanctuary.

Preliminary Draft Fishing Regulations

Note: These proposed regulations may create regulatory uncertainty with respect to the applicability of existing NWHI bottomfish and NWHI lobster and precious coral permits. Regulatory clarity would be needed during the Council process for amending the Hawaii FEP.

*Changes highlighted in yellow

1. The authority for 50 CFR part 665 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 665.12, add the definition of “Northwestern Hawaiian Islands Monument Expansion Area” in alphabetical order to read as follows:

§ 665.12 Definitions

* * *

Northwestern Hawaiian Islands Monument Expansion Area means area 50-200 nm of the EEZ around the Northwestern Hawaiian Islands

3. In § 665.13, revise paragraphs (f)(2) and add paragraph (f)(2)(xiv); to read as follows:

§ 665.13 Permits and fees

* * * * *

(f) Fees.

* * *

(2) PIRO will charge a non-refundable processing fee for each application (including transfer and renewal) for each permit listed in paragraphs (f)(2)(i) through (f)(2)(xiii) of this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs incurred in processing the permit. The fee may not exceed such costs. The appropriate fee is specified with each application form and must accompany each application. Failure to pay the fee will preclude the issuance, transfer, or renewal of any of the following permits:

* * *

(xiv) Northwestern Hawaiian Islands non-commercial permit

4. In § 665.14, revise paragraph (b)(1)(i) and (b)(2)(i) to read as follows:

§ 665.14 Reporting and recordkeeping

(b) Fishing record forms

(1) Applicability.

- (i) Paper records. The operator of a fishing vessel subject to the requirements of § 665.124, § 665.142, § 665.162, § 665.203(a)(2), § 665.242, § 665.262, § 665.404, § 665.424, § 665.442, § 665.462, § 665.603, § 665.624, § 665.642, § 665.662, § 665.801, § 665.905, § 665.935, or § 665.965 or § 665.XX or must maintain on board the vessel an accurate and complete record of catch, effort, and other data on paper report forms provided by the Regional Administrator, or electronically as specified and approved by the Regional Administrator, except as required in

paragraph (b)(1)(ii) of this section or as allowed in paragraph (b)(1)(iv) of this section.

* * *

- (iii) Recording. The vessel operator must record on paper or electronically all information specified by the Regional Administrator within 24 hours after the completion of each fishing day. The information recorded must be signed and dated, or otherwise authenticated, in the manner determined by the Regional Administrator, and be submitted or transmitted via an approved method as specified by the Regional Administrator, and as required by this section.

(2) Timeliness of submission.

(i) If fishing was authorized under a permit pursuant to § 665.142, § 665.162, § 665.242, § 665.262, § 665.404, § 665.442, § 665.462, 665.662, ~~or~~ § 665.801, ~~or~~ § 665.XX, and if the logbook information was not submitted to NMFS electronically within 24 hours of the end of each fishing day while the vessel was at sea, the vessel operator must submit the original logbook information for each day of the fishing trip to the Regional Administrator within 72 hours of the end of each fishing trip, except as allowed in paragraph (b)(2)(iii) of this section.

5. In 50 CFR part 665, add subpart J to read as follows:

Subpart J – Northwestern Hawaiian Islands Monument Expansion Area

Sec.

665.970 Scope and purpose. The regulations in this subpart codify certain provisions of the Proclamation, and govern the administration of fishing in the Monument. Nothing in these regulations shall be deemed to diminish or enlarge the jurisdiction of the State of Hawaii.

665.971 Boundaries. The Monument Expansion Area includes the following:

(a) the waters and submerged lands of the area offshore of the Northwestern Hawaiian Islands. The shoreward boundary of the Monument Expansion Area is 50 nm. The seaward boundary of the Monument Expansion Area is 200 nm.

665.972 Definitions. The following definitions are used in this subpart:

Management unit species or MUS means the Hawaii Archipelago management unit species as defined in §665.201, 665.241, and 665.261, and the pelagic management unit species as defined in § 665.800.

Monument Expansion Area means the submerged lands and, where applicable, waters of the NWHI as defined in § 665.971.

Proclamation means Presidential Proclamation 9704 of September 13, 2016, “Monument Expansion Area.”

665.973 Prohibitions. In addition to the general prohibitions specified in § 600.725 of this part, and § 665.15 and subpart D of this chapter, the following activities are prohibited in

the Monument Expansion Area and, thus, unlawful for a person to conduct or cause to be conducted.

- (a) Commercial fishing in violation of §665.974(a).
- (b) Non-commercial fishing, except as authorized under permit and pursuant to the procedures and criteria established in §665.975.
- (c) Transferring a permit in violation of § 665.975(d).
- (d) Commercial fishing outside of the Monument Expansion Area and non-commercial fishing within the Monument Expansion Area on the same trip in violation of § 665.974(c).

665.974. Regulated activities.

- (a) Commercial fishing is prohibited in the Monument Expansion Area
- (b) Non-commercial fishing is prohibited in the Monument Expansion Area, except as authorized under permit and pursuant to the procedures and criteria established in § 665.975.
- (c) Commercial fishing outside the Monument Expansion Area and non-commercial fishing within the Monument Expansion Area during the same trip is prohibited.

665.975 Fishing permit procedures and criteria.

- (a) Northwestern Hawaiian Islands non-commercial permit.
 - (1) Applicability. Both the owner and operator of a vessel used to non-commercially fish for, take, retain, or possess MUS in the Monument Expansion Area must have a permit issued under this section, and the permit must be registered for use with that vessel.
 - (2) Eligibility criteria. A permit issued under this section may be issued only to a community resident of Hawaii.
 - (3) Terms and conditions.
 - (i) Customary exchange of fish harvested within the Monument Expansion Area under a non-commercial permit is allowed, except that customary exchange by fishermen engaged in recreational fishing is prohibited. Customary exchange of fish harvested under a non-commercial fishing permit in the Monument Expansion Area may include family and friends of residents of Hawaii fishing communities.
 - (ii) Monetary reimbursement under customary exchange shall not exceed actual fishing trip expenses related to ice, bait, fuel, or food.

665.976 International law.

These regulations shall be applied in accordance with international law. No restrictions shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law.