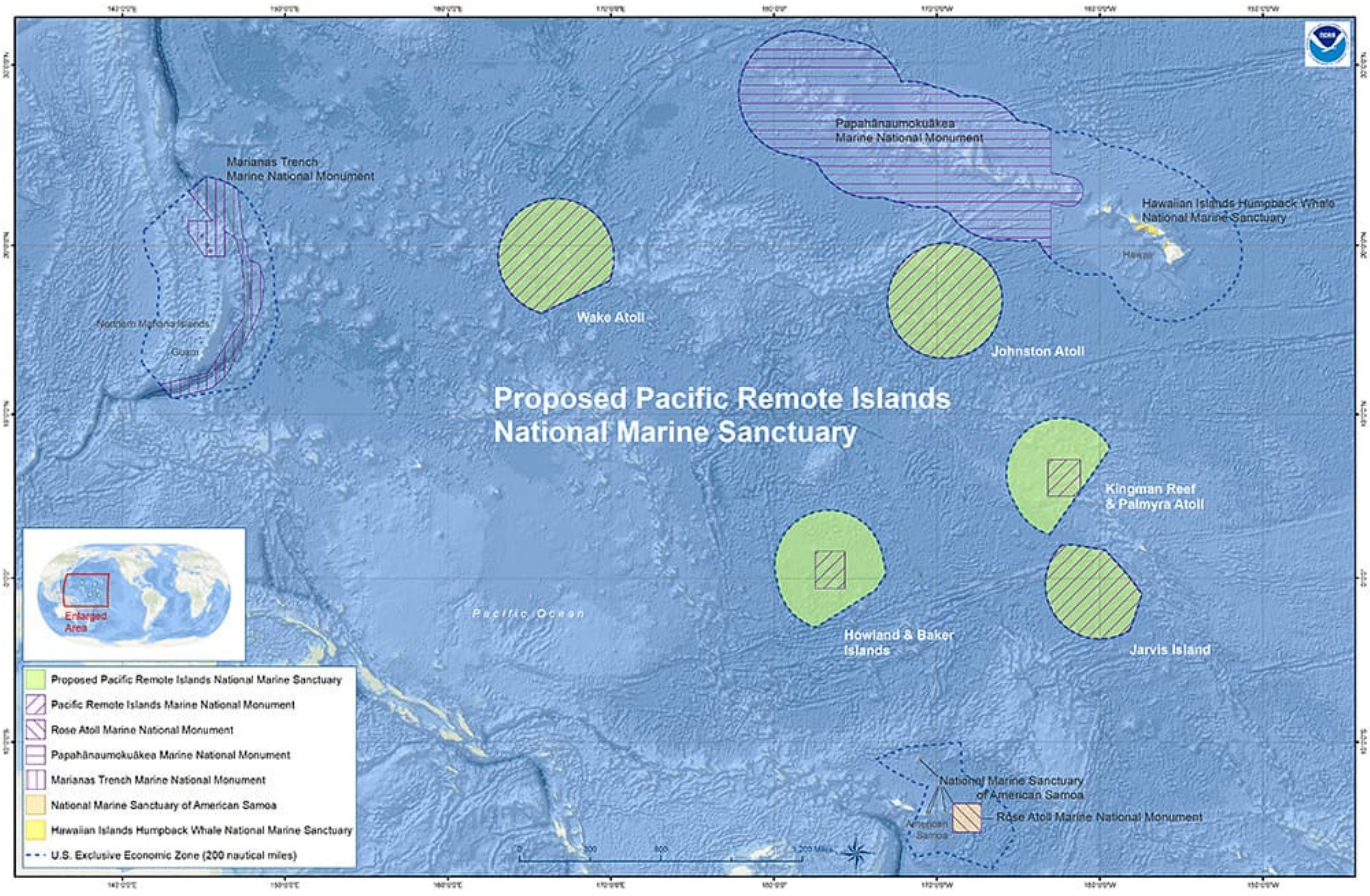
Proposed Pacific Remote Islands National Marine Sanctuary

Fishing Regulations Options Paper



Map of the Proposed Pacific Remote Islands National Marine Sanctuary
Credit: NOAA

Prepared by Western Pacific Regional Fishery Management Council
December 2023

Summary

In 2009, President George W. Bush through Presidential Proclamation 8336 designated the Pacific Remote Islands of Baker, Howland, Jarvis and Wake Islands, Johnston and Palmyra Atolls, and Kingman Reef as a Marine National Monument through the Antiquities Act. The Pacific Remote Islands Marine National Monument (PRIMNM) encompassed 490,343 square miles and included the waters from 0-50 nm. The PRIMNM included prohibitions on commercial fishing but allowed for non-commercial and charter fishing. In 2014, President Barrack Obama, under this same authority (Presidential Proclamation 9173), expanded the PRIMNM to include all waters out to the 200 nm outer limit of the U.S. EEZ around Wake, Johnston, and Jarvis while leaving in place the 50 nm boundary for the other islands. In March 2023, President Joe Biden directed the Secretary of Commerce to consider making the monument and additional areas within the U.S. EEZ a national marine sanctuary.

As part of the sanctuary designation process under the National Marine Sanctuaries Act, section 304(a)(5) requires the appropriate fishery management council be given the opportunity to prepare draft regulations for fishing within the EEZ. NOAA has identified that proposed fishing management actions are necessary, and provided the Western Pacific Regional Fishery Management Council a package of materials intended to help the Council make a determination of what would best fulfill the sanctuary goals and objectives. The Council may decide to prepare draft fishing regulations and recommendations, determine that regulations are not necessary, or decline to make a determination with respect to the need for recommendations.

At its 196th meeting, the Council preliminarily found that the existing fishing regulations under the current management structure may already meet the goals and objectives of the proposed sanctuary. Fisheries operating in the PRI are managed under the Council's Pacific Remote Islands Area Fishery Ecosystem Plan (PRIA FEP) and Pacific Pelagics FEP. Along with specific regulations for the PRIMNM, the regulations encapsulated in 50 CFR 665 provide for fisheries management in the PRIA.

The purpose of this document is to provide the Council with the information needed to make a final decision on whether existing fishing regulations are sufficient to meet the proposed sanctuary's goals and objectives or if additional regulations will need to be developed. There is a need for the Council to make a decision by December 20, 2023 in order to meet the NMSA consultation deadline.

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Acronym List

EO	Executive Order
FEP	Fishery Ecosystem Plan
NMFS	National Marine Fisheries Service/NOAA Fisheries
NOAA	National Oceanic and Atmospheric Administration
ONMS	Office of National Marine Sanctuaries
PIFSC	NMFS Pacific Islands Fisheries Science Center
PIRO	NMFS Pacific Islands Regional Office
PRI	Pacific Remote Islands (in regards to the sanctuary)
PRIA	Pacific Remote Island Areas (in regards to the FEP)
PRIMNM	Pacific Remote Islands Marine National Monument
USFWS	US Fish and Wildlife Service
WPRFMC or Council	Western Pacific Regional Fishery Management Council

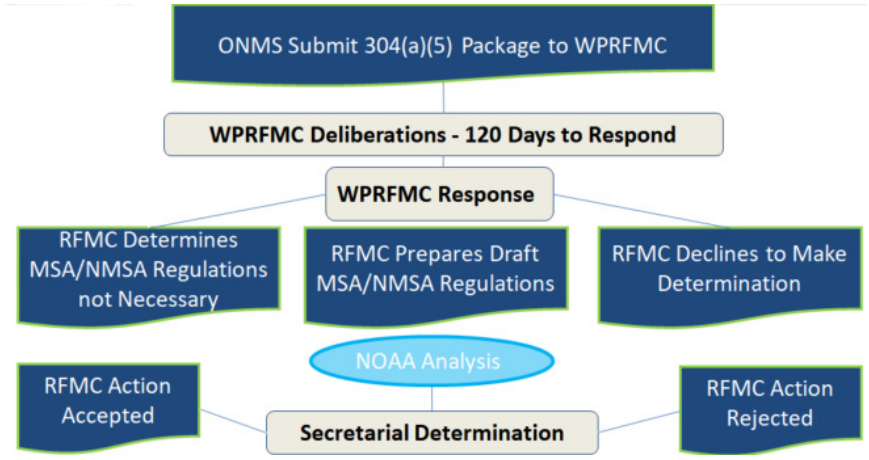
Introduction and Background

In 2009, President George W. Bush through Presidential Proclamation 8336 designated the Pacific Remote Islands of Baker, Howland, Jarvis and Wake Islands, Johnston and Palmyra Atolls, and Kingman Reef as a Marine National Monument through the Antiquities Act. The Pacific Remote Islands Marine National Monument (PRIMNM) encompassed 490,343 square miles and included the waters from 0-50 nm. The PRIMNM included prohibitions on commercial fishing but allowed for non-commercial and charter fishing. In 2014, President Barrack Obama, under this same authority (Presidential Proclamation 9173), expanded the PRIMNM to include all waters out to the 200 nm outer limit of the U.S. EEZ around Wake, Johnston, and Jarvis while leaving in place the 50 nm wide rectangular boundary for the other islands. In March 2023, President Joe Biden directed the Secretary of Commerce to consider making the monument and additional areas within the U.S. EEZ a national marine sanctuary.

On June 23, 2023, the National Oceanic and Atmospheric Administration's (NOAA) Office of National Marine Sanctuaries (ONMS) initiated the formal National Marine Sanctuaries Act (NMSA) consultation with the Western Pacific Regional Fishery Management Council (Council) referencing their intent to initiate the process to consider designating marine portions of the PRIMNM and the submerged lands and waters surrounding the Pacific Remote Islands to the full extent of the U.S. EEZ as a national marine sanctuary (88 FR 23624, April 18, 2023). The ONMS provided a letter to the Council with an opportunity to prepare draft fishing regulations for the proposed sanctuary as required by section 304(a)(5) of the NMSA. The Council's decision is guided by the Magnuson Stevens Fishery Conservation and Management Act (MSA) and national standards but the proposed fishing regulations would also be measured against the existing Presidential Proclamation 8336, the NMSA, and the goals and objectives of the proposed sanctuary (see Appendix A).

In order to fulfill the Council's obligations under section 304(a)(5) of the NMSA, the Council may choose one of three options:

1. Recommend draft fishing regulations for the proposed sanctuary;
2. Recommend that fishing regulations are not necessary; or
3. Choose not to act (at all or in a timely manner).



The purpose of this document is to provide the Council with the information needed to make a decision on whether draft fishing regulations are necessary and if they are, should the Council develop those regulations; and if yes, what regulations will need to be developed. There is a need for the Council to make a decision by December 20, 2023 in order to meet the NMSA consultation deadline.

NOAA believes the current regulations for the Pacific Remote Islands Marine National Monument (50 C.F.R. § 665, subparts E and H, see Appendix B), if applied to the full extent of the proposed sanctuary, would be consistent with the goals and objectives of the proposed sanctuary. Therefore, if the Council chooses to prepare draft fishing regulations, it may wish to consider a recommendation to extend these fishing regulations to the full spatial extent of the proposed sanctuary.

This action is intended to fulfill the Council's obligation under the NMSA as noted above. Should the Council recommend draft fishing regulations for the proposed sanctuary, the development of MSA regulations would proceed under the existing Council process for developing an amendment to its Pacific Remote Island Areas Fishery Ecosystem Plan (FEP). The process would commence at a future meeting and along a timeline that meets the needs of the sanctuary designation process. Should there be extenuating circumstances wherein the proposed sanctuary requires an additional look at fishery regulations; the Council may be requested by NOAA to review its recommendation for fishing regulations at that time.

Management Area and Fisheries Regulatory Landscape

The Council makes recommendations for fishing regulations in the U.S. Exclusive Economic Zone around the Pacific Remote Island Areas (PRIA). The management area around the PRIA can be broken down into two different management zones (see Table 1). These areas have different agencies responsible for management and allow different types of fishing.

The waters from 0-12 nmi around Baker, Howland, and Jarvis Islands, as well as Kingman Reef and Palmyra Atoll are a part of the U.S. Fish and Wildlife Service National Wildlife Refuge system. For these same areas, fishery-related activities seaward from 12 nm to 50 nm are managed by the Council and NOAA.

At Johnston and Wake Atolls, the land areas are under the jurisdiction of the U.S. Air Force with waters from 0-12 nm a part of the USFWS National Wildlife Refuge system. Fishery-related activities from 12 nm to 50 nm are managed by the Council and NOAA.

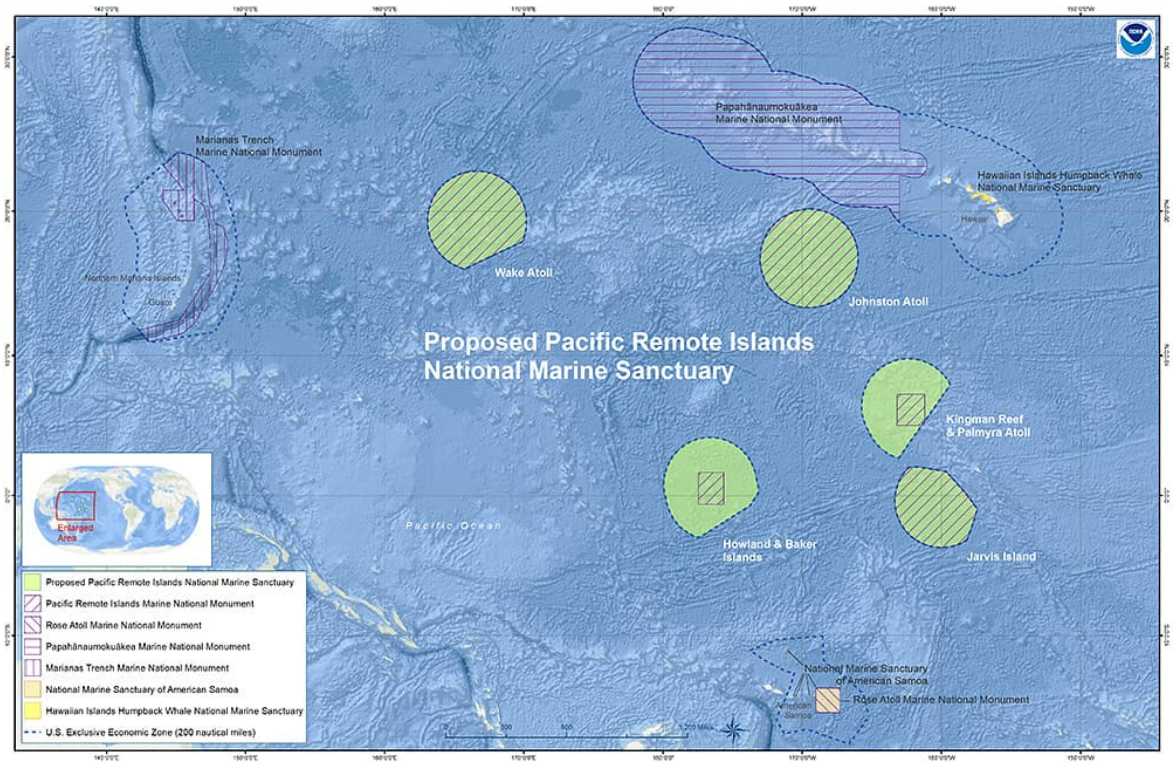


Figure 1: Map of the Pacific Remote Island Areas
Credit: NOAA

Table 1: Types of Fishing Allowed by Management Area in the PRIA

Offshore Area	Management Area	Type of Fishing Allowed
0-12 nm	USFWS National Wildlife Refuge	Non-commercial and recreational charter fishing
0-50 nm	Pacific Remote Islands Marine National Monument around all islands	Non-commercial and recreational charter fishing
50-200 nm	Pacific Remote Islands Marine National Monument around Jarvis Island, Wake Island, and Johnston Atoll	Non-commercial and recreational charter fishing
50-200 nm	Non-monument area around Palmyra Atoll, Kingman Reef, and Howland and Baker Islands	Commercial fishing, non-commercial fishing

Existing Fishing Regulations
Within the PRIMNM, commercial fishing is prohibited within the monument. Permits for scientific exploration and research purposes may be allowed by the Secretaries of Interior and Commerce. Non-commercial fishing for PRIA FEP MUS is allowed by federal permit (50 CFR 665, subpart H) outside of 12 miles and customary exchange of fish is prohibited. Recreational

charter fishing is also allowed by federal permit with no sale or exchange of fish caught by a charter.
Under the USFWS National Wildlife Refuge in waters from 0-12 nm, fishing regulations are the same as the PRIMNM with non-commercial and recreational charter fishing allowed by permit.

The Council has had fishing regulations for the Pacific Remote Island Areas (PRIA) through its original Fishery Management Plans (FMPs) for bottomfish, crustaceans, precious corals, coral reef ecosystem, and pelagics. With the development of place-based Fishery Ecosystem Plans (FEPs), these regulations were consolidated into one FEP for the PRIA. The PRIA FEP (50 CFR 665, subpart E) provides regulations for fishing in the non-monument areas from 50-200 nm around Palmyra Atoll, Kingman Reef, and Howland and Baker Islands. The PRIA FEP regulations can be found in Appendix B. Regulations include federal fishing permits and reporting; prohibited gears such as poisons, explosives, or bottom trawling and bottom set gillnets; and area restrictions such as no-take marine protected areas landward from the 50 fathom curve at Jarvis, Howland, and Baker Islands, and Kingman Reef.

Fishing for pelagic species such as tunas and billfish are managed under the Pacific Pelagics FEP (50 CFR 665, subpart F). Fishing regulations specifically for the PRIA include area restrictions (no-take MPAs), federal permits for pelagic troll and handline, longline, and squid fishing, and vessel size restrictions.

Fisheries Status
The annual Stock Assessment and Fishery Evaluation (SAFE) report drafted by the Archipelagic Plan Team summarizes annual fishery performance looking at trends in catch, effort and catch rates. The PRIA FEP annual SAFE report does not contain fully developed fishery performance or data integration due to the absence of consistent fisheries data. There were no bottomfish permits issued in 2021, a decrease from four permits issued in 2018 and 2019. Similarly, there were no lobster or deepwater shrimp permits issued in 2021, with no permits being issued since 2009 for lobster and 2010 for shrimp. Due to lack of permits, there are no data from federal logbooks.

Fisheries that are likely to occur in the open areas of the PRIA would mainly be for pelagic species. As many tropical pelagic species (e.g., skipjack tuna) are highly migratory, the fishing fleets targeting them often travel great distances. Although the EEZ waters around Howland and Baker Islands and Kingman Islands, Kingman Reef and Palmyra Atoll are over 1,000 nm away from Honolulu, the Hawaii longline fleet does seasonally fish in those areas. For example, the EEZ around Palmyra is visited by Hawaii-based longline vessels targeting yellowfin tuna. Similarly, the U.S. purse seine fleet also targets pelagic species (primarily skipjack tuna) in the EEZs around some Pacific Remote Island Area (PRIA), specifically, the equatorial areas of Howland, Baker, and Jarvis Islands. The combined amount of fish harvested from these areas from the U.S. purse seine on average is less than five percent of their total annual harvest. Both of the main target species, bigeye and yellowfin tuna, are neither overfished, nor experiencing overfishing, per recent stock assessments by the international fishery organizations.

There is also some non-commercial fishing activity within portions of the PRIA, namely at Wake Island, and Palmyra Atoll. There are no resident populations at Howland Island, Baker Island,

Johnston Atoll, or Jarvis Island, and fishing activity at these locations is likely minimal. At Palmyra Atoll, an island privately owned by The Nature Conservancy, small boats are operated within the lagoon for trolling. There are several craft used for non-commercial fishing at the military base on Wake Island, including two landing craft and two small vessels.

Previous Council Actions

At the Council's 196th meeting in September 2023, the Council preliminarily found that the existing fishing regulations under the current structure may already meet the goals and objectives of the proposed sanctuary. The existing fishing regulations in the PRI are provided in Appendix B.

The Council conducted an analysis of the Council's preliminary findings in relation to the proposed goals and objectives of the sanctuary and the MSA's National Standards. The Council concluded that in general, the existing fisheries management comprehensively protects, conserve, restore, and manage the biodiversity and ecosystems of the proposed sanctuary area (Goal 1 and Objective 1). The MSA was also specifically designed to promote shared stewardship of the marine resources through collaboration and partnerships anchored in meaningful community engagement (Goals 2, 3, and 4, Objectives 2-6). The process used by the Council through the MSA and the existing fishery management process allows for outreach and research as well (Goals 5 and 6, Objectives 7 and 8). The analysis can be found in Appendix C.

Description of Options for Potential Fishing Regulations in the Proposed PRI National Marine Sanctuary

The options presented below provide actions that would meet the purpose and need of this action. The Council may select multiple alternatives to meet the purpose and need of this action.

Option 1: No Action

Under Option 1, the no action alternative, the Council would decline taking action on fishing regulations for the proposed sanctuary. Any potential fishing regulations identified by the sanctuary designation process would then be developed by the ONMS, presumably in coordination with NMFS. Current allowable fishing in the U.S. EEZ from 50-200 nm around Howland, Baker and Jarvis Islands, and Palmyra Atoll may or may not be prohibited, depending upon the results of the sanctuary designation.

Option 2: Status Quo (Preliminarily Preferred)

Under Option 2, existing fishing regulations would be deemed sufficient to meet the goals and objectives of the sanctuary and no further fishing regulations would be required or promulgated. Fishing in the 50-200 nm areas of the EEZ around Howland, Baker, and Jarvis Islands and Palmyra Atoll currently exist for both commercial and non-commercial fishing and is managed under the PRIA and Pelagics FEPs.

Option 3: Develop Additional Fishing Regulations

Under the NMSA and the request from ONMS, the Council may choose to develop additional fishing regulations for the PRI to meet the proposed goals and objectives of the sanctuary.

Additional fishing regulations may include limits on non-commercial and commercial fishing beyond what is currently, or specifically, in place for the PRI. Under Option 3, the Council may choose to place additional limits on fishing according to the sub-options below or recommend other fishing regulations.

Option 3a: Extend existing non-commercial and recreational charter fishing regulations in the PRIMNM to the extent of the EEZ only (i.e. Establish non-commercial fishing permits and reporting)

Under Option 3, current fishing regulations for non-commercial and recreational charter fishing within the PRIMNM would be extended to the 50-200 nm areas of the EEZ around Howland, Baker, and Jarvis Islands and Palmyra Atoll. The PRIMNM non-commercial permitting regulations point to the existing fishing regulations that require permits for fisheries under the PRIA FEP. Therefore the fishing permit already applies to the PRIA both inside and outside the PRIMNM so this alternative would extend that effort. However, recreational charter fishing is a specific permit to the PRIMNM that would also be required for the EEZ area outside of the PRIMNM. Option 3 would also specifically disallow customary exchange in the non-monument, per existing monument regulations.

Option 3b: Limit commercial fishing in non-PRIMNM areas

Under Option 3b, the Council may choose to limit commercial fishing to specific gears and methods (such as pelagic fishing only, non-bottom tending gears, etc.), limit fishing (by providing a control date or controls on effort), and/or limiting catch through catch limits. This option would provide for preserving fishing in the area that may already exist, but also limit fishing from any perceived impacts of unknown fishing.

Option 3c: Extend existing commercial fishing regulations in the PRIMNM to the full extent of the EEZ in the PRI (i.e. Prohibit commercial fishing)

Under Option 3c, existing commercial fishing regulations in the PRIMNM would be extended to the full extent of the EEZ around Howland, Baker, and Jarvis Islands and Palmyra Atoll and all commercial fishing in the PRIA EEZ would be prohibited.

Potential Impacts

Fisheries, Target and Non-target Species

As many tropical pelagic species (e.g., skipjack tuna) are highly migratory, the fishing fleets targeting them often travel great distances. Although the EEZ waters around Howland and Baker Islands, Kingman Reef and Palmyra Atoll are over 1000 nm away from Honolulu, the Hawaii longline fleet does seasonally fish in those areas. For example, the EEZ around Palmyra is visited by Hawaii-based longline vessels targeting yellowfin tuna. Similarly, the U.S. purse seine fleet also targets pelagic species (primarily skipjack tuna) in the EEZs around equatorial areas of the PRIA, including Howland, Baker, and Jarvis Islands. The combined amount of fish harvested from these areas from the U.S. purse seine on average is less than five percent of their total annual harvest [1].

[1] WPRFMC. 2023. 2022 Pelagic Annual Stock Assessment and Fishery Evaluation Report

Federal permits are required to fish for certain MUS in federal waters around the PRIA. The number of federal permit holders in the FEP fisheries of the PRIA had been steady up until 2020 (see Table 2).[2] Since 202, NMFS has not issued any permits. Hawaii Longline Limited Entry and American Samoa Longline Limited Entry federal permits also allow for fishing within the PRIA outside of the PRIMNM. However, landing in the PRIA or elsewhere outside of their permit would require a Western Pacific General Longline permit.

Table 2: Number of permits in PRIA fisheries 2013-2022

PRIA Fisheries	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Bottomfish	2	2	1	1	1	4	4	0	0	0
Lobster	0	0	0	0	0	0	0	0	0	0
Shrimp	0	0	0	0	0	0	0	0	0	0
Troll and Handline	6	9	5	3	3	8	2	0	0	0

Source: NMFS unpublished data

Option 2 would be expected to continue the current fishing pressure, which is very low and concentrated on longline and purse seine fishing. Primary target species in these fisheries have stock assessments that have generated MSY of which catch from the PRIA is just a small fraction of that total. Fishing pressure could be limited under Option 3, ranging from continued fishing pressure with non-commercial fishing permits to prohibition of existing fisheries with nearly all of the existing fishers being affected. The stocks currently being targeted are unlikely to be affected by a complete prohibition on commercial fishing as those stocks are highly migratory and would likely be caught elsewhere in the area outside of the sanctuary. Fishing pressure would not decrease and be transferred to a different area or to foreign fleets. The impacts on the fishery would be negative with existing fishers having to compete on the high seas with foreign countries.

Protected Species and Habitat

Troll and handline fisheries operate at depths of less than 3 m, purse seine fisheries operate up to 200 m in depth, and longline fisheries operate up to 400-500 m in depth. In contrast, the waters open to fishing around Howland and Baker Islands, Palmyra Atoll, and Kingman Reef in 50-200 m, the depth ranges from 2,300 m to greater than 5,000 m. Even at its deepest activity, the permitted fisheries operate relatively shallow and are not a threat to the bottom resources. Fishing does not operate on or near habitat areas that are of concern to the sanctuary and monument such as coral reefs, as those areas are already protected within the 0-50 nm areas of the PRIMNM.

Under Options 2 and 3a, the impacts to protected species from longline and purse seine vessels would continue as expected and as authorized pursuant to the Incidental Take Statement contained in the current NMFS' Biological Opinion on the deep-set longline fishery. Longline vessels would continue to be required to adhere to all seabird, sea turtle, and other protected species mitigation and avoidance measures currently in effect for deep-set longline fishing

[2] WPRFMC. 2023. 2022 PRIA Annual Stock Assessment and Fishery Evaluation Report

activities. The impacts to protected species from any existing non-commercial fisheries would be negligible with zero permits issued for non-commercial fishing since 2020 and permittee are required to adhere to all seabird, sea turtle, and other protected species mitigation and avoidance measures currently in effect and all regulations that apply under the ESA, MMBA, MBTA and other applicable law. Option 3b may allow for increased restrictions on fishing that could further minimize any potential protected species impact depending on the approach chosen by the Council, but because interactions are low, it is unlikely that adding limits on gears, effort or catch would provide substantial additional benefits to protected species. Options 1 and 3c do not provide the opportunity to collect any additional information on protected species interactions that would be useful in management of the stocks in the Pacific. Options 2, 3a, and 3b would allow for additional information to be collected on potential protected species interactions or bycatch through federal permitting regulations.

Because pelagic fishing gears do not come into contact with the seabed, no impacts on marine habitat are anticipated under Options 2 and 3a. Potential impacts from bottom-tending gears could be addressed through Option 3b, though no impacts have been identified to date in the PRIA. Research in Hawaii found that impacts to benthic habitat from bottomfish fishing gear was negligible. Also, because of the depth in most of the 50-200 nm areas of the EEZ, bottomfish fishing is unlikely to occur. Existing non-commercial fisheries under the no-action alternative would continue without additional management, but any impacts are expected to be negligible. Options 1 and 3c would not provide for additional information on habitat. Options 2, 3a and 3b provide a means to collect information on fishing and impacts in the PRIA.

Under the Option 3c that prohibits commercial fishing, the impacts to protected species would be unknown. Impacts to protected species in the PRIA would be eliminated for that area but the existing fishing effort would be then transferred to another area. However, the existing U.S. fisheries would continue as expected and as authorized pursuant to the Incidental Take Statement contained in the current NMFS' Biological Opinion on the deep-set longline fishery. These fisheries would continue to be required to adhere to all seabird, sea turtle, and other protected species mitigation and avoidance measures currently in effect for deep-set longline fishing activities. Protected species (marine turtles, seabirds, marine mammals, etc.) are not confined to the PRIA and impacts from fisheries may continue to occur outside of the PRIA. The extent to which that increases or decreases due to the prohibition of fishing inside the PRIA can only be measured post-closure. Because the existing fishery gears do not come into contact with the seabed, no beneficial or adverse impacts on marine habitat are anticipated under this option. If non-commercial bottomfish fishing were to occur, there could be impacts from any bottom-tending gear, however, because of the depth in most of the open areas of the PRIA, bottomfish fishing is unlikely to occur and any impacts are expected to be negligible.

Permitting non-commercial fishing would continue to provide a means to collect information on any non-commercial fishing conducted in the PRIA. Options 3a and 3b would provide for additional information on non-commercial and recreational charter fisheries allowing for analysis of potential impacts to the habitat.

Fishing Communities

Under the no action (Option 1) and status quo option (Option 2), fishery participants would continue to be impacted by factors such as weather, catchability, fuel prices, among others. However, current commercial fishing levels are low and there have been no non-commercial or recreational charter permits issued for the PRIA in the last three years. The Hawaii-based longline fishing fleet itself is managed by a limited-entry system that caps participation, but all of the permitted vessels could, in theory, fish in the PRIA and present competition for longline-caught species such as Bigeye Tuna and Swordfish if they also have a general longline fishing permit.

Under Option 3c, fishery participants would continue to be impacted by factors such as weather and catchability outside of the PRIA, but may experience increased impacts by other factors such as fuel prices. This is due to having to travel a greater distance, which may in turn affect fish prices. Secondary impacts of closing commercial fishing would impact businesses that rely on those fish such as the StarKist tuna cannery in American Samoa and smaller businesses that may receive fish from the U.S. fishing vessels. Tertiary impacts of a potential loss of the cannery would have much higher impacts to the community in American Samoa. An economic analysis of contributions of fisheries to American Samoa suggest that U.S. commercial fisheries provide significant contributions to American Samoa and its communities through direct, indirect and induced effects[3]. The study's results show that the economic contribution of fisheries to American Samoa through the cannery accounts for hundreds of millions of dollars and thousands of jobs. Catch and effort may be made up outside of the PRIA, but it is unknown if that will happen at this time and the impacts from expected increased costs for fuel due to increased distances is also unknown. Additionally, there are indications that climate change will increasingly alter stock distribution in the future, making the availability of fishing areas, like the PRIA, important to provide fisheries options.

Under Options 2, 3a and 3b that permit fishing, fishery participants would continue to face the burden of applying for permits, paying the fee, and providing reports/logbooks on their fishing catch and effort. However, this does not difference from the no action option, so no effect is anticipated. Fishing rules and regulations may also provide a baseline of information that causes further increased burden through future management measures. Implementing permits with reporting would have little direct impact on fishing communities, but may provide additional information for future social, economic, and cultural analyses.

[3] Hing Ling Chan. 2023. Economic Contributions of U.S. Commercial Fisheries in American Samoa. U.S. Dept. of Commerce, NOAA Technical Memorandum NMFS-PIFSC-151, 35 p. doi:10.25923/x904-a830

Appendix A: NMSA and Proposed Sanctuary Goals and Objectives

National Marine Sanctuaries Act
Title 16, Chapter 32, Sections 1431 et seq. USC, as amended by Public Law 106-513, November 2000

PROCEDURES FOR DESIGNATION AND IMPLEMENTATION SEC 304(a)(5) FISHING REGULATIONS

The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to prepare draft regulations for fishing within the Exclusive Economic Zone as the Council may deem necessary to implement the proposed designation. Draft regulations prepared by the Council, or a Council determination that regulations are not necessary pursuant to this paragraph, shall be accepted and issued as proposed regulations by the Secretary unless the Secretary finds that the Council's action fails to fulfill the purposes and policies of this chapter and the goals and objectives of the proposed designation. In preparing the draft regulations, a Regional Fishery Management Council shall use as guidance the national standards of section 302(a) of the Magnuson-Stevens Act (16 U.S.C. 1851) to the extent that the standards are consistent and compatible with the goals and objectives of the proposed designation. The Secretary shall prepare the fishing regulations, if the Council declines to make a determination with respect to the need for regulations, makes a determination which is rejected by the Secretary, or fails to prepare the draft regulations in a timely manner. Any amendments to the fishing regulations shall be drafted, approved and issued in the same manner as the original regulations. The Secretary shall also cooperate with other appropriate fishery management authorities with rights or responsibilities within a proposed sanctuary at the earliest practicable stage in drafting any sanctuary fishing regulations.

Proposed Pacific Remote Islands National Marine Sanctuary Goals

- Goal 1: Conservation & Resource Protection
  Comprehensively protect, conserve, restore, and manage the marine biodiversity and ecosystems of the proposed Pacific Remote Islands national marine sanctuary, along with their associated ecosystem services, historic sites, and cultural heritage.

- Goal 2. Governance
  Ensure the effective, integrated management and shared stewardship of the proposed Pacific Remote Islands national marine sanctuary.

- Goal 3. Partnerships
  Pursue, build, and maintain collaborative domestic and international partnerships that generate active and meaningful community engagement.

- Goal 4. Indigenous and Local Community Engagement
  Engage and involve Indigenous and local community members from the start and throughout to continuously incorporate indigenous and local knowledge, cultural values, and stewardship ethics to best inform management efforts and abilities to protect, conserve, and steward the Pacific Remote Islands.

- Goal 5. Research & Monitoring
  Support, promote, conduct, and coordinate research and monitoring that brings together multiple forms of knowledge to increase understanding of the proposed Pacific Remote Islands national marine sanctuary's cultural and natural resources, and thereby improves decision-making and management.

- Goal 6. Education, Outreach & Interpretation
  Inspire current and future generations to collaboratively preserve, protect, and manage the proposed Pacific Remote Islands national marine sanctuary's natural, cultural, and historic resources through excellence in education, outreach and interpretation.

Proposed Pacific Remote Islands National Marine Sanctuary Objectives

- Objective 1: Establish comprehensive and lasting levels of protection for the significant natural and cultural resources of the Pacific Remote Islands to the full extent of the United States Exclusive Economic Zone.

- Objective 2: Uphold and complement the existing management of the Pacific Remote Islands Marine National Monument as outlined in Presidential Proclamations 8336 and 9173.

- Objective 3: Provide the necessary policy, programs, structure, and processes to govern the proposed Pacific Remote Islands national marine sanctuary.

- Objective 4: Coordinate with other federal agencies and fully use all applicable authorities in order to cooperatively, efficiently, and effectively manage the resources of the proposed Pacific Remote Islands national marine sanctuary for current and future generations.

- Objective 5: Enhance community engagement and involvement, including engagement of Indigenous Pacific Island communities, to support the management of the proposed Pacific Remote Islands national marine sanctuary.

- Objective 6: Honor and celebrate the distinct ancestral, historical, cultural, and maritime heritage connections to the Pacific Remote Islands and the surrounding open-ocean waters and recognize the importance of Indigenous knowledge, language, stories, and cultural connections between lands, waters, and peoples.

- Objective 7: Conduct, support, and promote research, characterization, and long-term monitoring of marine biodiversity and ecosystems and cultural and maritime heritage resources.

- Objective 8: Enhance greater public understanding of sanctuary resources to promote and encourage appreciation and stewardship of cultural and natural resources.

Appendix B: Existing PRIA Fishing Regulations
Note: The following is provided under 50 CFR 665, subpart E-Pacific Remote Island Area Fisheries

Subpart E—Pacific Remote Island Area Fisheries
§ 665.598 Management area.
The PRIA fishery management area is the EEZ seaward of Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, and Wake Island, Pacific Remote Island Areas with the inner boundary a line coterminous with the seaward boundaries of the above atolls, reefs and islands PRIA and the outer boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is coterminous with adjacent international maritime boundaries.

§ 665.599 Area restrictions.
Except as provided in § 665.934, fishing is prohibited in all no-take MPAs. The following U.S. EEZ waters are no-take MPAs: Landward of the 50 fathom curve at Jarvis, Howland, and Baker Islands, and Kingman Reef; as depicted on National Ocean Survey Chart Numbers 83116 and 83153.

[78 FR 33003, June 3, 2013]
§ 665.600 PRIA bottomfish fisheries. [Reserved]

§ 665.601 Definitions.
As used in §§ 665.600 through 665.619:
PRIA bottomfish fishing permit means the permit required by § 665.603 to use a vessel to fish for PRIA bottomfish MUS in the EEZ around the PRIA, or to land bottomfish MUS shoreward of the outer boundary of the EEZ around the PRIA, with the exception of EEZ waters around Midway Atoll.

PRIA bottomfish management unit species (PRIA bottomfish MUS) means the following fish:

Common name	Scientific name
(1) Silver jaw jobfish	*Aphareus rutilans.*
(2) Giant trevally	*Caranx ignobilis.*
(3) Black jack	*Caranx lugubris.*
(4) Blacktip grouper	*Epinephelus fasciatus.*
(5) Sea bass	*Hyporthodus quernus.*
(6) Red snapper	*Etelis carbunculus.*
(7) Longtail snapper	*Etelis coruscans.*
(8) Redgill emperor	*Lethrinus rubrioperculatus.*
(9) Yellowtail snapper	*Pristipomoides auricilla.*
(10) Pink snapper	*Pristipomoides filamentosus.*
(11) Pink snapper	*Pristipomoides seiboldii.*
(12) Lunartail, lyretail grouper	*Variola louti.*

[75 FR 2205, Jan. 14, 2010, as amended at 84 FR 29397, June 24, 2019]
§ 665.602 [Reserved]

§ 665.603 Permits.
(a) ***Applicability.*** PRIA. The owner of any vessel used to fish for, land, or transship PRIA bottomfish MUS shoreward of the outer boundary of the PRIA subarea must have a permit issued under this section, and the permit must be registered for use with that vessel.
(b) ***Submission.*** An application for a permit required under this section must be submitted to PIRO as described in § 665.13.

§ 665.604 Prohibitions.
In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.16, it is unlawful for any person to do any of the following:
(a) Fish for PRIA bottomfish MUS using gear prohibited under § 665.605.
(b) Fish for, or retain on board a vessel, PRIA bottomfish MUS in the PRIA without the appropriate permit registered for use with that vessel issued under § 665.13.
(c) Falsify or fail to make or file all reports of PRIA bottomfish MUS landings taken in the PRIA, containing all data in the exact manner, as specified in § 665.14(b).

§ 665.605 Gear restrictions.
(a) ***Bottom trawls and bottom set gillnets.*** Fishing for PRIA bottomfish MUS with bottom trawls and bottom set gillnets is prohibited.
(b) ***Possession of gear.*** Possession of a bottom trawl and bottom set gillnet by any vessel having a permit under § 665.603 or otherwise established to be fishing for PRIA bottomfish MUS in the PRIA fishery management area is prohibited.
(c) ***Poisons and explosives.*** The possession or use of any poisons, explosives, or intoxicating substances for the purpose of harvesting PRIA bottomfish is prohibited.

§ 665.606 At-sea observer coverage.
All fishing vessels subject to §§ 665.600 through 665.606 must carry an observer when directed to do so by the Regional Administrator.

§§ 665.607-665.619 [Reserved]

§ 665.620 PRIA coral reef ecosystem fisheries. [Reserved]

§ 665.621 Definitions.
As used in §§ 665.620 through 665.639:
PRIA coral reef ecosystem management unit species (PRIA coral reef ecosystem MUS) means all of the Currently Harvested Coral Reef Taxa and Potentially Harvested Coral Reef Taxa listed in this section and which spend the majority of their non-pelagic (post-settlement) life stages within waters less than or equal to 50 fathoms in total depth.

PRIA Currently Harvested Coral Reef Taxa:

Family name	English common name	Scientific name
Acanthuridae (Surgeonfishes)	orange-spot surgeonfish	*Acanthurus olivaceus.*
	yellowfin surgeonfish	*Acanthurus xanthopterus.*
	convict tang	*Acanthurus triostegus.*
	eye-striped surgeonfish	*Acanthurus dussumieri.*
	blue-lined surgeon	*Acanthurus nigroris.*
	Whitebar surgeonfish	*Acanthurus leucopareius.*
	blue-banded surgeonfish	*Acanthurus lineatus.*
	blackstreak surgeonfish	*Acanthurus nigricauda.*
	whitecheek surgeonfish	*Acanthurus nigricans.*
	white-spotted surgeonfish	*Acanthurus guttatus.*
	Ringtail surgeonfish	*Acanthurus blochii.*
	brown surgeonfish	*Acanthurus nigrofuscus.*
	yellow-eyed surgeonfish	*Ctenochaetus strigosus.*
	striped bristletooth	*Ctenochaetus striatus.*
	twospot bristletooth	*Ctenochaetus binotatus.*
	Yellow tang	*Zebrasoma flavescens.*
	bluespine unicornfish	*Naso unicornus.*
	orangespine unicornfish	*Naso lituratus.*
	black tongue unicornfish	*Naso hexacanthus.*
	bignose unicornfish	*Naso vlamingii.*
	whitemargin unicornfish	*Naso annulatus.*
	spotted unicornfish	*Naso brevirostris.*
Labridae (Wrasses)	Napoleon wrasse	*Cheilinus undulatus.*
	Triple-tail wrasse	*Cheilinus trilobatus.*
	Floral wrasse	*Cheilinus chlorourus.*
	ring-tailed wrasse	*Oxycheilinus unifasciatus.*
	bandcheek wrasse	*Oxycheilinus diagrammus.*
	Barred thicklip	*Hemigymnus fasciatus.*
	three-spot wrasse	*Halichoeres trimaculatus.*
	red ribbon wrasse	*Thalassoma quinquevittatum.*
	Sunset wrasse	*Thalassoma lutescens.*
Mullidae (Goatfishes)	Yellow goatfish	*Mulloidichthys.* spp.
	Orange goatfish	*Mulloidichthys pfleugeri.*
	yellowstripe goatfish	*Mulloidichthys flavolineatus.*
	Banded goatfish	*Parupeneus.* spp.

Family name	English common name	Scientific name
Mullidae (Goatfishes)	dash-dot goatfish	*Parupeneus barberinus.*
	yellowsaddle goatfish	*Parupeneus cyclostomas.*
	multi-barred goatfish	*Parupeneus multifaciatus.*
	bantail goatfish	*Upeneus arge.*
Mugilidae (Mullets)	fringelip mullet	*Crenimugil crenilabis.*
	engel's mullet	*Moolgarda engeli.*
	false mullet	*Neomyxus leuciscus.*
Muraenidae (Moray eels)	yellowmargin moray eel	*Gymnothorax flavimarginatus.*
	giant moray eel	*Gymnothorax javanicus.*
	undulated moray eel	*Gymnothorax undulatus.*
Octopodidae	Octopus	*Octopus cyanea.*
	Octopus	*Octopus ornatus.*
Pricanthidae (Bigeye)	Glasseye	*Heteropriacanthus cruentatus.*
Scaridae (Parrotfishes)	Humphead parrotfish	*Bolbometopon muricatum.*
	parrotfish	*Scarus.* spp.
	pacific longnose parrotfish	*Hipposcarus longiceps.*
	stareye parrotfish	*Calotomus carolinus.*
Scombridae	Dogtooth tuna	*Gymnosarda unicolor.*
Sphyraenidae (Barracuda)	great barracuda	*Sphyraena barracuda.*

PRIA Potentially Harvested Coral Reef Taxa:

English common name	Scientific name
wrasses (Those species not listed as CHCRT)	Labridae.
sharks (Those species not listed as CHCRT)	Carcharhinidae, Sphyrnidae.
rays and skates	Myliobatidae, Mobulidae.
groupers (Those species not listed as CHCRT or as BMUS)	Serrandiae.
jacks and scads (Those species not listed as CHCRT or as BMUS)	Carangidae.
solderfishes and squirrelfishes (Those species not listed as CHCRT)	Holocentridae.
goatfishes (Those species not listed as CHCRT)	Mullidae.
Batfishes	Ephippidae.
Sweetlips	Haemulidae.
Remoras	Echeneidae.
Tilefishes	Malacanthidae.
Dottybacks	Pseudochromidae.
Prettyfins	Plesiopidae.
surgeonfishes (Those species not listed as CHCRT)	Acanthuridae.

English common name	Scientific name
emperors (Those species not listed as CHCRT or as BMUS)	Lethrinidae.
Herrings	Clupeidae.
Gobies	Gobiidae.
snappers (Those species not listed as CHCRT or as BMUS)	Lutjanidae.
trigger fishes (Those species not listed as CHCRT)	Balistidae.
rabbitfishes (Those species not listed as CHCRT)	Siganidae.
eels (Those species not listed as CHCRT)	Muraenidae, Chlopsidae, Congridae, Ophichthidae.
Cardinalfishes	Apogonidae.
moorish idols	Zanclidae.
butterfly fishes	Chaetodontidae.
Angelfishes	Pomacanthidae.
Damselfishes	Pomacentridae.
Scorpionfishes	Scorpaenidae.
Blennies	Blenniidae.
barracudas (Those species not listed as CHCRT)	Sphyraenidae.
Sandperches	Pinguipedidae.
rudderfishes (Those species not listed as CHCRT)	Kyphosidae.
Fusiliers	Caesionidae.
hawkfishes (Those species not listed as CHCRT)	Cirrhitidae.
Frogfishes	Antennariidae.
pipefishes, seahorses	Syngnathidae.
flounders, soles	Bothidae.
Trunkfishes	Ostraciidae.
puffer fishes, porcupine fishes	Tetradontidae.
Trumpetfish	*Aulostomus chinensis.*
Cornetfish	*Fistularia commersoni.*
blue corals	Heliopora.
organpipe corals	Tubipora.
ahermatypic corals	Azooxanthellates.
mushroom corals	Fungiidae.
small and large coral polyps	
fire corals	Millepora.
soft corals, gorgonians	
Anemones	Actinaria.
soft zoanthid corals	Zoanthinaria.

English common name	Scientific name
	Hydrozoans, Bryzoans.
sea squirts	Tunicates.
sea cucumbers and sea urchins	Echinoderms.
Those species not listed as CHCRT	Mollusca.
sea snails	Gastropoda.
	Trochus.
sea slugs	Opistobranchs.
black lipped pearl oyster	*Pinctada margaritifera.*
giant clam	Tridacnidae.
other clams	Other Bivalves.
	Cephalopods.
lobsters, shrimps/mantis shrimps, true crabs and hermit crabs (Those species not listed as CMUS)	Crustaceans.
Sponges	Porifera.
lace corals	Stylasteridae.
hydroid corals	Solanderidae.
segmented worms	Annelids.
Seaweed	Algae.
Live rock.	

All other PRIA coral reef ecosystem MUS that are marine plants, invertebrates, and fishes that are not listed in the PRIA CHCRT table or are not PRIA bottomfish, crustacean, precious coral, or western Pacific pelagic MUS.

§ 665.622 [Reserved]

§ 665.623 Relation to other laws.

To ensure consistency between the management regimes of different Federal agencies with shared management responsibilities of fishery resources within the PRIA fishery management area, fishing for PRIA coral reef ecosystem MUS is not allowed within the boundary of a National Wildlife Refuge unless specifically authorized by the USFWS, regardless of whether that refuge was established by action of the President or the Secretary of the Interior.

§ 665.624 Permits and fees.

(a) ***Applicability.*** Unless otherwise specified in this subpart, § 665.13 applies to coral reef ecosystem permits.

(1) ***Special permit.*** Any person of the United States fishing for, taking or retaining PRIA coral reef ecosystem MUS must have a special permit if they, or a vessel which they operate, is used to fish for any:

(i) [Reserved]

(ii) PRIA Potentially Harvested Coral Reef Taxa in the PRIA coral reef ecosystem management area; or

(iii) PRIA Coral reef ecosystem MUS in the PRIA coral reef ecosystem management area with any gear not specifically allowed in this subpart.

(2) ***Transshipment permit.*** A receiving vessel must be registered for use with a transshipment permit if that vessel is used in the PRIA coral reef ecosystem management area to land or transship PRIA PHCRT, or any PRIA coral reef ecosystem MUS harvested within low-use MPAs.

(3) ***Exceptions.*** The following persons are not required to have a permit under this section:

(i) Any person issued a permit to fish under any FEP who incidentally catches PRIA coral reef ecosystem MUS while fishing for bottomfish MUS, crustacean MUS, western Pacific pelagic MUS, precious coral, or seamount groundfish.

(ii) Any person fishing for PRIA CHCRT outside of an MPA, who does not retain any incidentally caught PRIA PHCRT.

(iii) Any person collecting marine organisms for scientific research as described in § 665.17, or § 600.745 of this chapter.

(b) ***Validity.*** Each permit will be valid for fishing only in the fishery management area specified on the permit.

(c) ***General requirements.*** General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits are contained in § 665.13.

(d) ***Special permit.*** The Regional Administrator shall issue a special permit in accordance with the criteria and procedures specified in this section.

(1) ***Application.*** An applicant for a special or transshipment permit issued under this section must complete and submit to the Regional Administrator a Special Coral Reef Ecosystem Fishing Permit Application Form issued by NMFS. Information in the application form must include, but is not limited to, a statement describing the objectives of the fishing activity for which a special permit is needed, including a general description of the expected disposition of the resources harvested under the permit (*i.e.,* stored live, fresh, frozen, preserved; sold for food, ornamental, research, or other use; and a description of the planned fishing operation, including location of fishing and gear operation, amount and species (directed and incidental) expected to be harvested and estimated habitat and protected species impacts).

(2) ***Incomplete applications.*** The Regional Administrator may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected and completed in writing.

(3) ***Issuance.***

(i) If an application contains all of the required information, the Regional Administrator will forward copies of the application within 30 days to the Council, the USCG, the fishery management agency of the affected state, and other interested parties who have identified themselves to the Council, and the USFWS.

(ii) Within 60 days following receipt of a complete application, the Regional Administrator will consult with the Council through its Executive Director, USFWS, and the Director of the affected state fishery management agency concerning the permit application and will receive their recommendations for approval or disapproval of the application based on:

(A) Information provided by the applicant;

(B) The current domestic annual harvesting and processing capacity of the directed and incidental species for which a special permit is being requested;

(C) The current status of resources to be harvested in relation to the overfishing definition in the FEP;

(D) Estimated ecosystem, habitat, and protected species impacts of the proposed activity; and

(E) Other biological and ecological information relevant to the proposal. The applicant will be provided with an opportunity to appear in support of the application.

(iii) Following a review of the Council's recommendation and supporting rationale, the Regional Administrator may:

(A) Concur with the Council's recommendation and, after finding that it is consistent with the goals and objectives of the FEP, the national standards, the Endangered Species Act, and other applicable laws, approve or deny a special permit; or

(B) Reject the Council's recommendation, in which case, written reasons will be provided by the Regional Administrator to the Council for the rejection.

(iv) If the Regional Administrator does not receive a recommendation from the Council within 60 days of Council receipt of the permit application, the Regional Administrator can make a determination of approval or denial independently.

(v) Within 30 working days after the consultation in paragraph (d)(3)(ii) of this section, or as soon as practicable thereafter, NMFS will notify the applicant in writing of the decision to grant or deny the special permit and, if denied, the reasons for the denial. Grounds for denial of a special permit include the following:

(A) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application.

(B) According to the best scientific information available, the directed or incidental catch in the season or location specified under the permit would detrimentally affect any coral reef resource or coral reef ecosystem in a significant way, including, but not limited to issues related to, spawning grounds or seasons, protected species interactions, EFH, and habitat areas of particular concern (HAPC).

(C) Issuance of the special permit would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose.

(D) The method or amount of harvest in the season and/or location stated on the permit is considered inappropriate based on previous human or natural impacts in the given area.

(E) NMFS has determined that the maximum number of permits for a given area in a given season has been reached and allocating additional permits in the same area would be detrimental to the resource.

(F) The activity proposed under the special permit would create a significant enforcement problem.

(vi) The Regional Administrator may attach conditions to the special permit, if it is granted, consistent with the management objectives of the FEP, including but not limited to:

(A) The maximum amount of each resource that can be harvested and landed during the term of the special permit, including trip limits, where appropriate.

(B) The times and places where fishing may be conducted.

(C) The type, size, and amount of gear which may be used by each vessel operated under the special permit.

(D) Data reporting requirements.

(E) Such other conditions as may be necessary to ensure compliance with the purposes of the special permit consistent with the objectives of the FEP.

(4) Appeals of permit actions.

(i) Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or a permit holder may appeal the granting, denial, conditioning, or suspension of their permit or a permit affecting their interests to the Regional Administrator. In order to be considered by the Regional Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the original action(s) by the Regional Administrator. The appellant may request an informal hearing on the appeal.

(ii) Upon receipt of an appeal authorized by this section, the Regional Administrator will notify the permit applicant, or permit holder as appropriate, and will request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Regional Administrator will rule on the appeal in accordance with the permit eligibility criteria set forth in this section and the FEP, as appropriate, based upon information relative to the application on file at NMFS and the Council and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other considerations as deemed appropriate. The Regional Administrator will notify all interested persons of the decision, and the reasons therefor, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(iii) If a hearing is requested, or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing in the Federal Register. Such a hearing shall normally be held no later than 30 days following publication of the notice in the Federal Register, unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant (if different), and, at the discretion of the hearing officer, other interested parties, may appear personally and/or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Regional Administrator.

(iv) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Administrator shall notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The

Regional Administrator's action constitutes final action for the agency for the purposes of the Administrative Procedure Act.

(5) The Regional Administrator may, for good cause, extend any time limit prescribed in this section for a period not to exceed 30 days, either upon his or her own motion or upon written request from the Council, appellant or applicant stating the reason(s) therefore.

[75 FR 2205, Jan. 14, 2010, as amended at 78 FR 33003, June 3, 2013]

§ 665.625 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, it is unlawful for any person to do any of the following:

(a) [Reserved]

(b) Fish for, take, or retain any PRIA coral reef ecosystem MUS species:

(1) That is determined overfished with subsequent rulemaking by the Regional Administrator.

(2) By means of gear or methods prohibited under § 665.627.

(3) [Reserved]

(4) In violation of any permit issued under §§ 665.13 or 665.624.

(c) Fish for, take, or retain any wild live rock or live hard coral except under a valid special permit for scientific research, aquaculture seed stock collection or traditional and ceremonial purposes by indigenous people.

[75 FR 2205, Jan. 14, 2010, as amended at 78 FR 33003, June 3, 2013]

§ 665.626 Notifications.

Any special permit holder subject to the requirements of this subpart must contact the appropriate NMFS enforcement agent in American Samoa, Guam, or Hawaii at least 24 hours before landing any PRIA coral reef ecosystem MUS unit species harvested under a special permit, and report the port and the approximate date and time at which the catch will be landed.

§ 665.627 Allowable gear and gear restrictions.

(a) Coral reef ecosystem MUS may be taken only with the following allowable gear and methods:

(1) Hand harvest;

(2) Spear;

(3) Slurp gun;

(4) Hand net/dip net;

(5) Hoop net for Kona crab;

(6) Throw net;

(7) Barrier net;

(8) Surround/purse net that is attended at all times;

(9) Hook-and-line (includes handline (powered or not), rod-and-reel, and trolling);

(10) Crab and fish traps with vessel ID number affixed; and

(11) Remote-operating vehicles/submersibles.

(b) PRIA coral reef ecosystem MUS may not be taken by means of poisons, explosives, or intoxicating substances. Possession or use of these materials by any permit holder under this subpart who is established to be fishing for coral reef ecosystem MUS in the management area is prohibited.

(c) PRIA coral reef ecosystem MUS may not be taken by means of spearfishing with SCUBA at night (from 6 p.m. to 6 a.m.) in the U.S. EEZ waters around Howland Island, Baker Island, Jarvis Island, Wake Island, Kingman Reef, Johnston Atoll and Palmyra Atoll.
(d) Existing FEP fisheries shall follow the allowable gear and methods outlined in their respective plans.
(e) Any person who intends to fish with new gear not included in this section must describe the new gear and its method of deployment in the special permit application. A decision on the permissibility of this gear type will be made by the Regional Administrator after consultation with the Council and the director of the affected state fishery management agency.

§ 665.628 Gear identification.
(a) The vessel number must be affixed to all fish and crab traps on board the vessel or deployed in the water by any vessel or person holding a permit under §§ 665.13 or 665.624 or that is otherwise established to be fishing for PRIA coral reef ecosystem MUS in the PRIA fishery management area.
(b) ***Enforcement action.***
(1) Traps not marked in compliance with paragraph (a) of this section and found deployed in the PRIA fishery management area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.
(2) Unattended surround nets or bait seine nets found deployed in the coral reef ecosystem management area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.
§§ 665.629-665.639 [Reserved]
§ 665.640 PRIA crustacean fisheries. [Reserved]

§ 665.641 Definitions.
As used in §§ 665.640 through 665.659:
Crustacean Permit Area 4 (Permit Area 4) means the EEZ around Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, and Wake Island.
PRIA crustacean fishing permit means the permit required by § 665.642 to use a vessel to fish for PRIA crustacean MUS in the PRIA fishery management area, or to land crustacean MUS shoreward of the outer boundary of the PRIA fishery management area.
PRIA crustacean management unit species means the following crustaceans:

English common name	Scientific name
Spiny lobster	*Panulirus marginatus, Panulirus penicillatus.*
Slipper lobster	Scyllaridae.
Kona crab	*Ranina ranina.*
Deepwater shrimp	*Heterocarpus.* spp.

§ 665.642 Permits.
(a) ***Applicability.***
(1) The owner of any vessel used to fish for lobster in Permit Area 4 must have a permit issued for that vessel.

(2) The owner of any vessel used to fish for deepwater shrimp in Crustacean Permit Area 4 must have a permit issued for that vessel.

(b) ***General requirements.*** General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits issued under this section, as applicable, are contained in § 665.13.

(c) ***Application.*** An application for a permit required under this section will be submitted to PIRO as described in § 665.13. If the application for a limited access permit is submitted on behalf of a partnership or corporation, the application must be accompanied by a supplementary information sheet obtained from PIRO and contain the names and mailing addresses of all partners or shareholders and their respective percentage of ownership in the partnership or corporation.

§ 665.643 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, it is unlawful for any person in Crustacean Permit Area 4 to fish for, take, or retain deepwater shrimp without a permit issued under § 665.642.

§ 665.644 Notifications.

(a) The operator of any vessel subject to the requirements of this subpart must:

(1) Report, not less than 24 hours, but not more than 36 hours, before landing, the port, the approximate date and the approximate time at which spiny and slipper lobsters will be landed.

(2) Report, not less than 6 hours and not more than 12 hours before offloading, the location and time that offloading of spiny and slipper lobsters will begin.

(b) The Regional Administrator will notify permit holders of any change in the reporting method and schedule required in paragraphs (a)(1) and (2) of this section at least 30 days prior to the opening of the fishing season.

§ 665.645 At-sea observer coverage.

All fishing vessels subject to §§ 665.640 through 665.645 and subpart A of this part must carry an observer when requested to do so by the Regional Administrator.

§§ 665.646-665.659 [Reserved]

§ 665.660 PRIA precious coral fisheries. [Reserved]

§ 665.661 Definitions.

As used in §§ 665.660 through 665.669:

PRIA precious coral management unit species (PRIA precious coral MUS) means any coral of the genus *Corallium* in addition to the following species of corals:

English common name	**Scientific name**
Pink coral (also known as red coral)	*Corallium secundum, Corallium regale, Corallium laauense.*
Gold coral	*Gerardia* spp., *Callogorgia gilberti, Narella* spp., *Calyptrophora* spp.

English common name	Scientific name
Bamboo coral	*Lepidisis olapa, Acanella* spp.
Black coral	*Antipathes dichotoma, Antipathes grandis, Antipathes ulex.*

PRIA precious coral permit area means the area encompassing the precious coral beds within the EEZ around the PRIA. Each bed is designated by a permit area code and assigned to one of the following four categories:

(1) Established beds. [*Reserved*]

(2) Conditional beds. [*Reserved*]

(3) Refugia. [*Reserved*]

(4) Exploratory Area. Permit Area X–P–PI includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll and Wake Island.

§ 665.662 Permits.

(a) Any vessel of the United States fishing for, taking, or retaining PRIA precious coral MUS in any PRIA precious coral permit area must have a permit issued under § 665.13.

(b) Each permit will be valid for fishing only in the permit area specified on the permit. Precious Coral Permit Areas are defined in § 665.661.

(c) No more than one permit will be valid for any one vessel at any one time.

(d) No more than one permit will be valid for any one person at any one time.

(e) The holder of a valid permit to fish one permit area may obtain a permit to fish another permit area only upon surrendering to the Regional Administrator any current permit for the precious coral fishery issued under § 665.13.

(f) General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits for the precious coral fishery are contained in § 665.13.

§ 665.663 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and in § 665.15, it is unlawful for any person to:

(a) Use any vessel to fish for, take, retain, possess or land PRIA precious coral MUS in any precious coral permit area, unless a permit has been issued for that vessel and area as specified in § 665.13 and that permit is on board the vessel.

(b) Fish for, take, or retain any species of PRIA precious coral MUS in any precious coral permit area:

(1) By means of gear or methods prohibited by § 665.664.

(2) In refugia specified in § 665.661.

(3) In a bed for which the quota specified in § 665.667 has been attained.

(4) In violation of any permit issued under §§ 665.13 or 665.17.

(5) In a bed that has been closed pursuant to §§ 665.666 or 665.669.

(c) Take and retain, possess, or land any live pink coral or live black coral from any precious coral permit area that is less than the minimum height specified in § 665.665 unless:

(1) A valid EFP was issued under § 665.17 for the vessel and the vessel was operating under the terms of the permit; or

(2) The coral originated outside coral beds listed in this paragraph, and this can be demonstrated through receipts of purchase, invoices, or other documentation.

§ 665.664 Gear restrictions.

Only selective gear may be used to harvest coral from any precious coral permit area.

§ 665.665 Size restrictions.

The height of a live coral specimen shall be determined by a straight line measurement taken from its base to its most distal extremity. The stem diameter of a living coral specimen shall be determined by measuring the greatest diameter of the stem at a point no less than 1 inch (2.54 cm) from the top surface of the living holdfast.

(a) Live pink coral harvested from any precious coral permit area must have attained a minimum height of 10 inches (25.4 cm).

(b) ***Black coral.*** Live black coral harvested from any precious coral permit area must have attained either a minimum stem diameter of 1 inch (2.54 cm), or a minimum height of 48 inches (122 cm).

§ 665.666 Closures.

(a) If the Regional Administrator determines that the harvest quota for any coral bed will be reached prior to the end of the fishing year, NMFS shall publish a notice to that effect in the Federal Register and shall use other means to notify permit holders. Any such notice must indicate the reason for the closure, the bed being closed, and the effective date of the closure.

(b) A closure is also effective for a permit holder upon the permit holder's actual harvest of the applicable quota.

§ 665.667 Quotas.

(a) ***General.*** The quotas limiting the amount of precious coral that may be taken in any precious coral permit area during the fishing year are listed in § 665.667(d). Only live coral is counted toward the quota. The accounting period for all quotas begins July 1, 1983.

(b) ***Conditional bed closure.*** A conditional bed will be closed to all nonselective coral harvesting after the quota for one species of coral has been taken.

(c) ***Reserves and reserve release.*** The quotas for exploratory area, X–P–PI, will be held in reserve for harvest by vessels of the United States in the following manner:

(1) At the start of the fishing year, the reserve for the PRIA exploratory area will equal the quota minus the estimated domestic annual harvest for that year.

(2) As soon as practicable after December 31 each year, the Regional Administrator will determine the amount harvested by vessels of the United States between July 1 and December 31 of the year that just ended on December 31.

(3) NMFS will release to TALFF an amount of precious coral for each exploratory area equal to the quota minus two times the amount harvested by vessels of the United States in that July 1-December 31 period.

(4) NMFS will publish in the Federal Register a notification of the Regional Administrator's determination and a summary of the information on which it is based as soon as practicable after the determination is made.

(d) PRIA exploratory permit area, X–P–PI, has an annual quota of 1,000 kg for all precious coral MUS combined with the exception of black corals.

§ 665.668 Seasons.
The fishing year for precious coral begins on July 1 and ends on June 30 the following year.

§ 665.669 Gold coral harvest moratorium.
Fishing for, taking, or retaining any gold coral in any precious coral permit area is prohibited through June 30, 2023.

Subpart H—Pacific Remote Islands Marine National Monument
§ 665.930 Scope and purpose.
The regulations in this subpart codify certain provisions of the Proclamations, and govern the administration of fishing in the Monument.

§ 665.931 Boundaries.
The Monument, including the waters and submerged and emergent lands of Wake, Baker, Howland, and Jarvis Islands, Johnston Atoll, Kingman Reef, and Palmyra Atoll, is defined as follows:
(a) ***Wake Island.*** The Wake Island unit of the Monument includes the waters and submerged and emergent lands around Wake Island to the seaward limit of the U.S. EEZ.
(b) ***Howland and Baker Islands.*** The Howland and Baker Islands units of the Monument include the waters and submerged and emergent lands around Howland and Baker Islands within an area defined by straight lines connecting the following coordinates in the order listed:

ID	W. long.	Lat.
1	177°27′7″	1°39′15″ N.
2	175°38′32″	1°39′15″ N.
3	175°38′32″	0°38′33″ S.
4	177°27′7″	0°38′33″ S.
1	177°27′7″	1°39′15″ N.

(c) ***Jarvis Island.*** The Jarvis Island unit of the Monument includes the waters and submerged and emergent lands around Jarvis Island to the seaward limit of the U.S. EEZ.
(d) ***Johnston Atoll.*** The Johnston Atoll unit of the Monument includes the waters and submerged and emergent lands around Johnston Atoll to the seaward limit of the U.S. EEZ.
(e) ***Kingman Reef and Palmyra Atoll.*** The Kingman Reef and Palmyra Atoll units of the Monument include the waters and submerged and emergent lands around Kingman Reef and Palmyra Atoll within an area defined by straight lines connecting the following coordinates in the order listed:

ID	W. long.	N. lat.
1	163°11′16″	7°14′38″
2	161°12′3″	7°14′38″
3	161°12′3″	5°20′23″
4	161°25′22″	5°1′34″
5	163°11′16″	5°1′34″
1	163°11′16″	7°14′38″

§ 665.932 Definitions.

The following definitions are used in this subpart:

Management unit species or MUS means the Pacific Remote Island Areas management unit species as defined in §§ 665.601, 665.621, 665.641, and 665.661, and the pelagic management unit species as defined in § 665.800.

Monument means the waters and submerged and emergent lands of the Pacific Remote Islands Marine National Monument and the Pacific Remote Islands Marine National Monument Expansion, as defined in § 665.931.

Proclamations means Presidential Proclamation 8336 of January 6, 2009, "Establishment of the Pacific Remote Islands Marine National Monument," and Presidential Proclamation 9173 of September 29, 2014, "Pacific Remote Islands Marine National Monument Expansion."

§ 665.933 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, and § 665.15 and subparts E and F of this part, the following activities are prohibited in the Monument and, thus, unlawful for a person to conduct or cause to be conducted.

(a) Commercial fishing in the Monument.

(b) Non-commercial fishing in the Monument, except as authorized under permit and pursuant to the procedures and criteria established in § 665.935.

(c) Transferring a permit in violation of § 665.935(d).

(d) Commercial fishing outside the Monument and non-commercial fishing within the Monument on the same trip in violation of § 665.934(c).

(e) Non-commercial fishing within 12 nm of emergent land within the Monument, unless authorized by the U.S. Fish & Wildlife Service, in consultation with NMFS and the Council, in violation of § 665.934(d). For the purposes of this subsection, consultation means that the U.S. Fish & Wildlife Service will consult with NMFS, which in turn will consult with the Council.

§ 665.934 Regulated activities.

(a) Commercial fishing is prohibited in the Monument.

(b) Non-commercial fishing is prohibited in the Monument, except under permit and pursuant to the procedures and criteria established in § 665.935 or pursuant to § 665.934(d).

(c) Commercial fishing outside the Monument and non-commercial fishing within the Monument during the same trip is prohibited.

(d) Non-commercial fishing is prohibited within 12 nm of emergent land within the Monument, unless authorized by the U.S. Fish & Wildlife Service, in consultation with NMFS and the Council. For the purposes of this subsection, consultation means that the U.S. Fish & Wildlife Service will consult with NMFS, which in turn will consult with the Council.

§ 665.935 Fishing permit procedures and criteria.

(a) ***Non-commercial fishing*** —

(1) ***Applicability.*** Except as provided in section 665.934(d), a vessel that is used to non-commercially fish for, take, retain, or possess MUS in the Monument must be registered for use with a permit issued pursuant to §§ 665.603, 665.624, 665.642, 665.662, 665.801(f), or 665.801(g).

(2) ***Terms and conditions.*** Customary exchange of fish harvested in the Monument is prohibited.

(b) ***Pacific Remote Islands Monument recreational charter permit*** —

(1) ***Applicability.*** Except as provided in § 665.934(d), both the owner and operator of a vessel that is chartered to recreationally fish for, take, retain, or possess MUS in the Monument must have a permit issued under this section, and the permit must be registered for use with that vessel. Charter boat customers are not required to obtain a permit.

(2) ***Terms and conditions.***

(i) The sale or exchange through barter or trade of fish caught by a charter boat fishing in the Monument is prohibited.

(ii) Customary exchange of fish harvested under a Monument recreational charter permit is prohibited.

(c) ***Application.*** An application for a permit required under this section must be submitted to PIRO as described in § 665.13.

(d) ***Transfer.*** A permit issued under this section is not transferrable.

(e) ***Reporting and recordkeeping.*** The operator of a vessel subject to the requirements of this section must comply with the terms and conditions described in § 665.14.

§ 665.936 International law.

The regulations in this subpart 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.

Appendix C: Analysis of Existing Fishing Regulations against the Proposed Goals and Objectives and National Standards

Proposed Pacific Remote Islands National Marine Sanctuary Goals

Goal 1: Conservation and Resource Protection

Comprehensively protect, conserve, restore and manage the marine biodiversity and ecosystems of the proposed Pacific Remote Islands national marine sanctuary, along with their associated ecosystem services, historic sites, and cultural heritage.

Existing U.S. and internationally based fisheries management measures already comprehensively protect, conserve, restore and manage the biodiversity and ecosystems of the proposed PRIA national marine sanctuary area.

It is important to distinguish near-shore and open ocean areas in evaluating conservation measures and their effects. In the near-shore, Council-recommended regulations were designed to conserve and manage its fisheries for bottomfish, crustacean, precious coral and coral reef ecosystem species under the Pacific Remote Islands Ecosystem Management Plan, but national marine monument regulations banning commercial fishing implemented under Proclamation 8336 and set forth at 50 CFR 665.930-665.936 have essentially supplanted the Council's conservation and management regime for these species. In fact, NOAA Fisheries does not specify ACLs for any bottomfish, crustacean, precious coral, or coral reef ecosystem species in the PRIA because of Presidential Proclamation 8336. Nor, moreover, is commercial fishing for Council-managed species, except pelagic species (discussed below), presently expected to occur under current conditions in the non-monument open ocean areas within the EEZ around Howland and Baker Islands, Kingman Reef and Palmyra Atoll that are not closed to commercial fishing under the monument regulations. Thus, the benthic communities central to the nominating petition are not being disturbed, and are protected from fishing.

If fishing for bottomfish, crustacean, precious coral or a coral reef ecosystem species were to someday occur in the non-monument areas within the proposed PRIA sanctuary, Council regulations implementing the Pacific Remote Islands Ecosystem Management Plan[4], including those for PRIA bottomfish fisheries (50 CFR 665.601-665.606), PRIA coral reef ecosystem fisheries (50 CFR 665.621-665.628), PRIA crustacean fisheries (50 CFR 665.641-665.645), and PRIA precious coral fisheries (50 CFR 665.661-665-669), would apply to comprehensively conserve and manage these fisheries, and the marine biodiversity and ecosystem services they provide. In general, these regulations, among other things, establish management unit species; provide for permit requirements; establish allowable and prohibited gear categories; provide for at-sea observer coverage; set size limits and closures; enumerate protected species such as gold coral; and provide for the establishment of conservative annual catch limits.

More specifically, and relevant to protecting benthic habitats, regulations for the PRIA bottomfish fishery prohibit fishing using bottom trawls, bottom set gillnets, poisons, explosives and intoxicating substances, 50 C.F.R. 665.605. Regulations for coral reef ecosystem management unit fish species includes an allowable gear list that does not authorize mobile or

[4] Collectively, 50 C.F.R Part 665, Subpart E.

other gear that would disturb the bottom materially, if at all; and, poisons, explosives and intoxicating substances are prohibited. 50 C.F.R. 665.627. Nor does the Western Pacific crustacean fishery authorize mobile gear. See generally 50 C.F.R. 600.725. Finally, only selective gears (defined in the FMP as ROVs, submersibles, and hand harvest) may be used to harvest precious corals. 50 C.F.R. 665.664. Indeed, the Council and NOAA Fisheries engaged in a detailed rulemaking process in 2002 designed to protect precious coral beds and the surrounding benthic habitat. See 67 Fed. Reg. 11941 (March 18, 2002).

Further, in the open ocean areas, detailed domestic and international regulations conserve and manage fisheries for highly migratory pelagic species within the proposed PRIA national marine sanctuary area, and beyond. As an initial matter, tuna fishing occurs at or near the open ocean's surface,[5] and does not interact with benthic communities, so these activities do not jeopardize the benthic ecosystem or biodiversity.

Pelagic fisheries in non-monument PRIA areas are conserved and managed pursuant to an adaptive, ecosystem-based approach the Council initiated in December 2005 via its Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific Region ("Pelagic FEP"). As the Pelagic FEP explains, at page 1, "The Pacific Pelagic FEP establishes the framework under which the Council will manage fishery resources, and begin the integration and implementation of ecosystem approaches to management of Pacific Pelagic Species." In an effort to adapt, refine, and make the FEP more comprehensive, the Council has amended it seven times, with additional amendments in process.

Under the Pelagic FEP, active commercial longline fisheries in the PRIA in the non-monument areas in the EEZ around Howland and Baker Islands, Kingman Reef, and Palmyra Atoll are managed under 50 CFR Part 665, Subpart F. The U.S. western and central Pacific longline annual catch limit for Pacific bigeye tuna is currently 3,554 metric tons based on an international allocation set by the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the West and Central Pacific Ocean ("WCPFC").

Existing regulations governing the long-line fishery conserve target species, and protect marine biodiversity and ecosystems. Pacific bigeye tuna, the fishery's primary target, is neither overfished, nor is overfishing occurring. Permit, gear marking, record-keeping and at-sea observer systems are in place. Detailed training requirements and gear regulations limit the potential for interactions with protected sea turtles and seabirds. Meanwhile, other regulations help mitigate the impact of any interactions with these species that do occur, such as by prescribing in detail how any incidentally caught turtles and seabirds should be carefully handled and released. Similar rules are in place for oceanic whitetip sharks. Drift gillnetting is prohibited, thus limiting other potential bycatch and incidental catches.

Active commercial purse seine fisheries in the non-monument PRIA are conserved and managed under 50 CFR Part 300, Subpart O. Target tuna species (yellowfin, skipjack and bigeye) are neither overfished, nor is overfishing occurring. Purse seine fishing restrictions, including within the non-monument areas of the proposed PRIA sanctuary, are also set based on a WCPFC

[5] Purse seines are set at the surface and can extend down to 650 feet (200m) in depth according to the vessel, mesh size, and target species involved. Deep-set longlines fish at 300-400 meters, whereas shallow-set longlines fish at 90-100 meters.

allocation of an aggregate number of U.S. purse seine fishing days in the Effort Limit for Purse Seine ("ELAPS") area. The ELAPS area is the area between 20° N Latitude and 20°S Latitude, bounded to the east and west by the Convention Area, and including both the high seas and areas within the US EEZ. The ELAPS area thus includes areas seaward to the EEZ in PRIA areas not closed under the monument regulations. Beginning in 2020, there is a calendar year limit of 1828 U.S. purse seine fishing days in the ELAPS area. 50 CFR 300.223(a)(2). Federal regulations also require compliance with domestic and international permitting requirements, as well as observer mandates, transshipment and net sharing limitations, vessel identification requirements, reporting and record-keeping requirements, mandatory vessel monitoring systems, and other monitoring obligations. Catch retention requirements are in place. Marine biodiversity and ecosystems are also comprehensively protected. Strict limits exist on the use of fish aggregating devices. Applicable regulations also include sea turtle take mitigation requirements, while retention of oceanic whitetip and silky sharks are prohibited.

Since the PRIA monument's expansion in 2014, preliminary data analyses indicate that the purse seine fishery has interacted with a total of only 2 green sea turtles and 22 oceanic white tip sharks. For its part, the longline fishery has interacted with 2 giant manta rays, 3 leatherback sea turtles, 1 olive Ridley sea turtle, 1 Laysan albatross, and 58 oceanic white tip sharks. Furthermore, NOAA Biological Opinions have determined that the U.S. purse seine and long-line fisheries as managed under current regulations do not jeopardize the continued existence of any protected species. That is, these fisheries do not engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers or distribution of that species.[6]

Moreover, tropical tuna species are protected more comprehensively through the existing international management regime than they would be with even the most draconian of measures isolated to the non-monument PRIA open ocean areas. More specifically, a consensus of respected scientific experts on tuna fisheries and population dynamics recognize that large, static marine protected areas would not render benefits to highly-migratory tuna species or the blue water ecosystem, given the migratory nature of these species, coupled with the displacement and movement of tuna fisheries that large, static MPAs cause.

Most notably, Hampton et al (2023)[7] "evaluate[d] the conservation efficacy of an existing MPA, the Phoenix Islands Protected Area (PIPA), and a series of large hypothetical MPAs each constituting approximately 33% of the western and central Pacific Ocean, for two important and contrasting tuna species, skipjack and bigeye tuna." In summary, as the paper's abstract explained: "We found that stock-wide conservation benefits for the PIPA for these species, assuming that total fishing effort is maintained, to be weak to non-existent, and only modest increases in spawning biomass of both species occur within and in the near vicinity of the PIPA

[6] President Biden's March 23, 2023, Memorandum on Conserving the Natural and Cultural Heritage of the Pacific Remote Islands ("Biden Memorandum") makes the claim that the non-monument areas in the EEZ around Howland and Baker Islands, Palmyra Atoll, and Kingman Reef "remain unprotected." As the foregoing discussion explains, however, these areas are protected both through domestic and international fishery management regimes, and have been so since the Council began implementing fishery management plans in the late 1970's and 1980's.

[7] Hampton, J. et al., Limited conservation efficacy of large-scale marine protected areas for Pacific skipjack and bigeye tunas, Frontiers in Marine Science (10 Jan. 2023)

itself." Nor was any efficacy of note (if any) detected in stock-wide spawning stock biomass for the hypothetical MPAs. Tellingly, Hampton (2023) explained:

> Conservation efficacy of MPAs for species such as tropical tunas is limited by their wide larval dispersion and high mobility of later life stages, which spatially dissipate the protective effects of MPAs. Also, displacement of fishing effort from MPAs to areas remaining open can have negative consequences for stocks and fisheries performance in those areas. We conclude that large oceanic MPAs are not likely to be effective frontline management tools for tropical tunas and other species having similar life history characteristics.

In fact, Kiribati has since abolished the PIPA and has allowed commercial fishing to again take place in much of the area, subject to specific limits and conditions.

One analysis of Hampton (2023)[8] notes:

> The study … is the first quantitative assessment of a no-take marine protected area (MPA) on tropical tuna and has implications for many of the world's largest MPAs.

And further, that:

> The authors of Hampton et al. 2023 are a veritable Who's Who of the Pacific tuna research community. Several of the researchers work for the Pacific Community (SPC), an intergovernmental organization of 27 Pacific countries and territories tasked with managing collective resources. They are responsible for performing stock assessments on each Pacific tuna species – no other organization has a better grasp of the state of Pacific tuna than they do. Authors also include a member of Kiribati's Ministry of Fisheries and Marine Resources Development.

A year earlier, Hilborn R. et al. (2022)[9] found that protection of biodiversity using static large closures in open ocean blue water ecosystems is not proven to be more effective than current input/output fishery management controls or any other area-based management tool. The paper's abstract explained, "The high mobility of both target and bycatch species generally reduces the effectiveness of area-based management, and shifting distributions due to climate change suggest that adaptive rather than static approaches will be preferred." In 2020, Gilman et al. found no significant conservation benefit or "spillover effect" in blue water ecosystems from the existing PRIA Marine National Monument.[10]

Pons et al. (2022)[11] reached a similar conclusion when evaluating the effectiveness of large static MPAs to reduce bycatch and protect the ecosystem more generally. The paper used case studies with verifiable data to demonstrate existing fishery management tools and dynamic area-based

[8] https://sustainablefisheries-uw.org/tuna-mpa-pipa/ (last visited November 21, 2023)
[9] Hilborn R. et al., Area-based management of blue water fisheries: Current knowledge and research needs, Fish and Fisheries, 2022. Vol. 23: 492-518.
[10] Gilman E., Ecological responses to blue water MPAs, PLoS One, 15 e0235129.
[11] Pons M., et al, Trade-offs between bycatch and target catches in static versus dynamic fishery closures, Proceedings of the National Academy of Sciences, Vol. 119, No. 4 (2022).

management tools are significantly more effective at protecting biodiversity (including protected species) than large static MPAs.

The Biden Memorandum expresses concern that the non-monument PRIA areas are "spawning and feeding grounds" for skipjack, yellowfin and bigeye tuna. However, according to NOAA Fisheries, these tunas spawn and feed daily as they migrate.[12] Thus, as explained above, the better approach to protecting these tunas as they spawn and feed is to manage the stock as a whole using traditional and adaptive fishery management measures, as the Council, NOAA Fisheries and the WCPFC already do. Further and in general, a static MPA is not needed to protect a fish species if it congregates to feed or spawn in an area during a particular time. Instead, fisheries managers can and do utilize more tailored seasonal measures to protect congregating fish. Additionally, the Biden Memorandum identifies the presence of "multiple apex predators that play a vital role in maintaining ecological balance" in the PRIA non-monument areas. As apex predators themselves, the Pacific tuna species are better protected through traditional fishery management measures implemented through Council, NOAA Fisheries and WCPFC processes. Further, to the extent the Biden Memorandum is addressing predators of tuna, NOAA Fisheries has found that bycatch of oceanic whitetip sharks is low and declining in the longline and purse seine fisheries in the PRIA non-monument areas. Indeed, Council-based conservation and management measures have made great strides in minimizing fishery impacts on protected species and marine biodiversity generally.

Accordingly, the Council has recommended continuation of the holistic, international management approach for the non-monument PRIA areas because existing management is both comprehensive and protective of the wide range of marine resources.

Goal 2: Governance

Ensure the effective integrated management and shared stewardship of the proposed Pacific Remote Islands national marine sanctuary.

The Council's response focuses on fisheries and related ecosystem conservation and management and explains why the Council represents the entity best-suited to provide integrated management of the fishery resources within the non-monument proposed sanctuary areas of the PRIA based on a broadly-inclusive public process. As an initial matter, the Council's principal goal in fisheries management is to achieve optimum yield on a continuing basis. 16 U.S.C. 1851(a)(1). "The determination of OY is a decisional mechanism for resolving the Magnuson-Stevens Act's conservation and management objectives, achieving an FMP's objectives, and balancing the various interests that comprise the greatest overall benefits to the Nation." 50 C.F.R. 600.310(b)(2). OY thus incorporates the concept of shared stewardship.

As explained above, conservation and management of pelagic fishery resources in the non-monument PRIA sanctuary areas is, moreover, an integrated enterprise between NOAA Fisheries, the Council, and the WCPFC and its member countries. These groups work together to ensure comprehensive conservation and management of fishery, protected species, and other

[12] https://www.fisheries.noaa.gov/species/pacific-bigeye-tuna (last visited Dec. 6, 2023); https://www.fisheries.noaa.gov/species/pacific-yellowfin-tuna (last visited Dec. 6, 2023); https://www.fisheries.noaa.gov/species/pacific-skipjack-tuna (last visited Dec. 6, 2023).

PRIA resources affected by commercial and recreational fisheries. In contrast to closing the remaining non-monument portions of the PRI EEZ to pelagic fishing, the WCPFC is seeking to shift fishing away from the high seas and into member states' sovereign waters.[13]

For its part, the Magnuson-Stevens Act regional fishery management council process was specifically designed to promote shared stewardship of the marine resources within a council's jurisdiction. Voting members of a council include the principal state official with marine fishery management responsibility in each constituent state or territory, the regional director of the National Marine Fisheries Service and individuals nominated by respective governors and appointed by the Secretary of Commerce "who, by reason of their occupational or other expertise, scientific expertise or training, are knowledgeable regarding the conservation and management, or the commercial and recreational harvest of the fishery resources of the geographical area concerned." 16 U.S.C. 1852(b)(2)(A). Non-voting council members include representatives of the U.S. Fish and Wildlife Service, the Coast Guard and the State Department. 16 U.S.C. 1852(c).

The Western Pacific Council's "guiding principles" underscore the Council's focus on integrated management. These principles include supporting quality research, promoting an ecosystem approach to conservation and management, conducting education and outreach, recognizing the importance of island cultures and traditional fishing practices, promoting environmentally responsible and sustainable fishing, promoting regional cooperation, and encouraging the development of technologies and methods to achieve the most effective level of monitoring, control and surveillance, and to ensure safety at sea.

Furthermore, Western Pacific Fishery Council fishery conservation and management represents a shared and broadly inclusive pan-Pacific enterprise. Council members hail from Hawaii, American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam. The Council has 13 voting members and three non-voting members. A chair and four indigenous vice chairs (one each from Hawaii, Guam, American Samoa, and the CNMI) are elected annually by Council members. Eight Council members are private citizens. They include a private businessman; a fisherman; representatives from Guam's Fishermen's Cooperative Association, Conservation International, Fresh Island Fish Co., and Hawaiian Islands Land Trust; and a professor of Public Administration and Land Studies who was previously Assistant Majority Leader of the Guam Senate.

A diverse array of Council advisory groups help ensure the Council draws from a wide variety of perspectives and data and information sources in its decision-making. These supporting groups include the Scientific and Statistical Committee (which reviews the scientific and technical information of regional fisheries and provides the Council with scientific advice for science-based management decisions, and is comprised of oceanographers, resource economists, fishery biologists, social-science population modelers, and other relevant experts); an Advisory Panel

[13] Conversely, the Biden Memorandum seeks to "support more abundant fisheries in surrounding areas." To the extent there is any scientific support for a "spill-over" effect from MPAs for Pacific highly migratory tuna species (and, as explained above, the best scientific information does not support such an assertion), promoting better fishing on the high seas runs contrary to WCPFC international objectives. It also would make more tunas available to the fishing fleets of other countries (such as China) that do not observe the same sorts of fishery conservation and management protocols that U.S. fishers must.

(comprised of recreational and commercial fishermen, charter boat operators, buyers, sellers, consumers and others knowledgeable about the fisheries and which includes a Pacific Pelagic Ecosystem sub-panel); a Fishing Industry Advisory Committee (a statutorily-required advisory committee of representatives from all participating Council jurisdictions that hail from industry-related sectors such as fishing, seafood processing, distribution and marketing, fishing tackle and marine service and supply industries); plan teams (teams of scientists, managers, and industry representatives who make species complex-specific recommendations to the Council); and the Regional Ecosystem Advisory Committee (committees from each Council jurisdiction that bring together representatives from the Council, governmental jurisdictions, businesses, and non-governmental organizations with responsibility and interest in land-based and non-fishing activities that potentially affect the marine ecosystem of the relevant archipelago). Other Council bodies include, but are not limited to, the Community Demonstration Project Program Advisory Committee, the Social Science Planning Committee, the Education Committee, the Fisheries Data Collection and Research Committee, and the Non-Commercial Fisheries Advisory Committee. Accordingly, the Council can best ensure that governance of fisheries is shared by all parties with an interest or jurisdiction in the PRI.

As explained above, the international WCPFC establishes catch limits for the highly-migratory tropical tuna species the Council manages under its Fishery Ecosystem Plan for Pelagic Fisheries of the Western Atlantic. For its part, the WCPF Convention draws on many of the provisions of the U.N. Fish Stocks Agreement while, at the same time, reflecting the special political, socio-economic, geographical and environmental considerations of the WCPO region. The WCPF Commission is comprised of representatives from member states, cooperating non-member states, and participating territories. The Commission holds annual meetings, and is supported by four subsidiary bodies, including the Scientific Committee and the Technical and Compliance Committee. Decisions the Commission makes are broadly inclusive. Action is generally taken by consensus, but there also is a "two-chamber system," one each for Pacific Islands Forum Fisheries Agency members and one for non-FFA members. In order for a motion to pass, it must achieve a three-quarters vote in each chamber. The broadly-representative, science-based bodies described above are best suited to conserve and manage non-monument PRIA fisheries in an integrated way, and have developed detailed sets of regulations and requirements to do just that.

Goal 3: Partnerships

Pursue, build, and maintain collaborative domestic and international partnerships that generate active and meaningful community engagement.

The Council and the WCPFC are both participatory bodies that allow for engagement and shared fisheries decision-making by local and international communities. Their detailed process cannot be replicated by sanctuary managers.

By law, the fishery management council process is designed to promote public engagement, and, in fact, the Council's process does. The Council convenes several regular meetings per year in each of the council jurisdictions. All meetings are open to the public (except for occasional closed sessions to discuss internal personnel and policy matters) and include remote viewing locations in jurisdictions where the Council is not meeting at the time, as well as being web-streamed. Council members receive detailed briefing materials that are made available to the

public. The Council works from a public agenda, announced in advance. Each fishery management agenda item has several parts. First, a staff person generally provides an overview of the issue or action, and this overview is generally followed by more detailed presentations or reports from the Council advisory panels which meet in advance, often over the course of days. Written and oral public testimony is then taken before the Council takes up an agenda item.

The Council produces annual reports for each of its five Fishery Ecosystem Plans. These reports summarize annual fishery performance and describe several ecosystem considerations including fish biomass estimates, biological indicators, protected species, habitat, climate change and human dimensions. These annual reports are a shared enterprise between the Council, NMFS, the Pacific Islands Fisheries Science Center, the Western Pacific Fisheries Information Network, and the fishery and natural resource management departments of each of the Council's participating jurisdictions.

Finally, on the international front, the Council and NOAA Fisheries work directly with the WCPFC and the Inter-American Tropical Tuna Commission on the conservation and management of highly-migratory tuna species. These regional fisheries management organizations represent the principal means of international partnership and collaboration for the management of highly migratory species and are specifically contemplated and chartered under international law.

Goal 4: Indigenous and Local Community Engagement

Engage and involve Indigenous and local community members from the start and throughout to continuously incorporate indigenous and local knowledge, cultural values, and stewardship ethics to best inform management efforts and abilities to protect, conserve, and steward the Pacific Remote Islands.

The Council has throughout its existence engaged indigenous and local community members in developing and implementing fishery and resource conservation and management efforts. From the beginning, the Council has focused on the participation of indigenous people of the region who have depended on the sea to fulfill their nutritional and other needs for centuries. This intention came out of the recognition that public trusts and privatization have often come at the expense of native traditional rights, customs, and practices. The Council has worked diligently to identify and support the continuation of the unique cultural traditions and practices of each island area, including the Pacific Remote Islands. One example of the Council's efforts is its Indigenous Program. This program is meant to empower native Hawaiians, Samoans, Chamorros, and Carolinians and provide the indigenous communities of the Western Pacific a way to participate in the Council's decision-making process directly and meaningfully. To further facilitate participation and dialog, the Council has established several advisory bodies that meet regularly and provide insight from an indigenous perspective. These official bodies have included the Fishery Rights of Indigenous People (FRIP) Standing Committee, the Community Development Program (CDP) and Community Demonstration Projects Program (CDPP) Advisory Panel; the Indigenous Fishing Communities subpanels of American Samoa, the Norther Mariana Islands, Guam, and Hawai'i Regional Ecosystem Advisory Committees.

The Council has invited and encouraged indigenous and community groups to participate in public meetings, hearings, and to provide comments. The Council has provided outreach materials and public announcements in the region's five official languages: English, Hawaiian, Samoan, Chamorro, and Refaluwasch. The Council has also used translators and cultural experts to address differences. The Council has taken input from these advisory bodies and other indigenous and community groups when developing the Fishery Ecosystem Plan (FEP) for the Pacific Remote Islands. This input, along with data collected from indigenous fishermen, has also resulted in changes to the FEP for the Pacific Remote Islands.

Finally, as detailed below, the Council has set up several education programs that both increase indigenous and community participation in Council efforts while encouraging and promoting indigenous stewardship of natural resources in the region and customs.

Detailed processes exist for American Samoans (and other Pacific Islanders) to communicate indigenous and local knowledge, cultural values, and stewardship ethics within the Council process. As explained above, Council management draws from a wide range of public input, and has significant effects on its constituents' everyday life. For instance, the tuna industry provides 83.8% of American Samoa's private employment and accounts for 99.5% of exports from the territory. The American Samoa population, 85% of which are indigenous Samoans, depends heavily on the tuna cannery in Pago Pago to provide food security for the region. The modern-day, well-managed tropical tuna fishery is part of the fabric of the American Samoa economy and society.

More specifically, fisheries in this open-ocean portion of the proposed sanctuary support the local community and economy on American Samoa by providing a critical supply component to the last tuna cannery left in that territory. Most recently, according to NMFS document PICDR-113363, during calendar year 2022, U.S. flag purse seine vessels based in American Samoa caught 5,889 metric tons of tuna in the U.S. EEZ's of Howland and Baker Islands, Palmyra Atoll, and Kingman Reef, all of it more than 50 miles away from land with no interaction with resident fish stocks. The vast majority of this catch was unloaded and processed in American Samoa. It is the equivalent of 31 million cans of tuna, and provided over 300,000 person-hours of work for American Samoa.

During the Biden Administration, NOAA Fisheries and the Council have expanded on their outreach efforts via their implementation of President Biden's Executive Orders 13985, 14008, 14031, and 14091, each of which mandate federal agency decision-making that will promote the kind of local self-determination the Council process exemplifies. "Executive orders and proclamations are directives or actions by the President. When they are founded on the authority of the President derived from the Constitution or statute, they may have the force and effect of law.... Executive orders are generally directed to, and govern actions by, Government officials and agencies." *See* Staff of House Comm. on Government Operations, 85th Cong., 1st Sess., Executive Orders and Proclamations: A Study of a Use of Presidential Powers (Comm. Print 1957).

First and most fundamentally, Section 3 of E.O. 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, states that each agency shall use "… regulatory functions to enable the agency's mission and service delivery to yield

equitable outcomes for all Americans, including underserved communities." The closure of U.S. waters to commercial fishing has disproportionately focused in the Pacific Islands region, where 96% (by area) of all U.S. marine protected areas have been established. These MPAs have not only been established for vulnerable coral-reef ecosystems but for vast blue-water pelagic environments around Hawaii, American Samoa, CNMI, and the PRI. Indeed, a full 53% of the Council's managed area is already under an MPA. Prior steps in Western Pacific have thus served to move conservation and management of these MPAs outside the Council process and into an administrative agency process that is far less inclusive than the Council's. It is both important – and equitable – to maintain Council management over the remainder of the Council's managed area, including the proposed sanctuary's non-monument areas.

In follow-up E.O. 14091, Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, agencies are required to identify opportunities to advance equity for underserved populations, including indigenous and native American persons. Under E.O. 14091, the Department of Commerce has acknowledged the need for external-facing efforts to empower underserved communities in the economy in its Equity Action Plan. NOAA has made similar statements as part of the NOAA Fisheries Equity and Environmental Justice Strategy (EEJ Strategy), which explains, "[T]erriorial fishing communities (which include American Samoa, Guam, [and] the Commonwealth of the Northern Mariana Islands) … may … be categorized as underserved." Moreover, and "[s]pecific to the fisheries context, underserved communities within fishing communities may include, for example, subsistence fishery participants and their dependents, fishing vessel crews, and fish processor and distribution workers." The Council has been at the forefront of fishery management councils nationwide in implementing NOAA Fisheries' EEJ program, serving as co-chair for the Council Coordinating Committee's EEJ Working Group. CCC is the national body of all eight regional fishery management councils, and the Council has also served as co-chair for the CCC's ESA-MSA Policy Directive Working Group.

Further, on May 28, 2021, President Biden issued E.O. 14031, Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders. E.O. 14031 established a White House initiative on Asian Americans, Native Hawaiians, and Pacific Islanders, as well as a Presidential Advisory Commission, both of which aim to advance equity, justice, and opportunity among these groups. The White House Initiative's work is guided by principles enumerated in E.O. 14031, including mandates to expand economic opportunity for Asian American and Native Hawaiian and Pacific Islander families, by, among other things, advancing opportunities for AA and NHPI entrepreneurs and small businesses, supporting access to jobs and workforce training for AA and NHPI communities, and promoting AA and NHPI participation and success in the private sector. E.O. 14031, Sec. 3(b)(ix). Magnuson-Stevens Act National Standard Eight[14] mandates that the Council promote the sustained participation of Pacific Islands fishing communities; this obligation corresponds directly with E.O. 14031.

Finally, President Biden's March 21, 2023, Memorandum directed the Secretary of Commerce to Consider Expanding Protections for Pacific Remote Islands Which Would Reach the Goal of Conserving 30% of the U.S. Ocean by 2030. This goal of conserving 30% of U.S. lands and waters by 2030 ("30 x 30") was outlined in E.O. 14008 under the American the Beautiful

[14] 16 U.S.C. 1851(a)(8).

Initiative. As explained above, measures within the U.S. Pacific Islands already account for almost the entire national goal for U.S. oceans. Significantly, however, conservation under the 30 x 30 Initiative does not equate with eliminating economic and community benefit from protected areas. Rather, a report issued by the U.S. Departments of Interior, Agriculture and Commerce, and the Council on Environmental Quality to the National Climate Task Force under E.O. 14008, and entitled *Conserving and Restoring America the Beautiful (2021)*, emphasized at page 10, that "the President's challenge specifically emphasizes the notion of 'conservation' of the nation's natural resources (rather than the related but different concept of 'protection' or 'preservation') recognizing that many uses of our lands and waters, including of working lands, can be consistent with the long-term health and sustainability of natural systems."

Equally importantly, at page 12, the inter-agency report emphasized that conservation efforts should be "locally led," and articulated eight principles to ensure local conservation leadership. A full six of these principles are already integral parts of the Council management processes. These principles are as follows:

- Principle 1, Pursue a Collaborative and Inclusive Approach to Conservation, emphasizes "collaboration and consensus-building," which are key building blocks animating Council processes.

- Principle 3, Support Locally Led and Locally Designed Conservation Efforts, recognizes that "[l]ocally and regionally designed approaches can play a key role in conserving resources and be tailored to meet the priorities and needs of local communities and the nation." The Council manages fisheries in a way that provides for sustainable access to resources for Pacific Islands communities, as they exist today. Helping ensure a stable supply of tropical tuna to American Samoa's last remaining cannery is but one example. Further, Principle 3 calls out that, "Conservation and restoration efforts should be regionally balanced," which is emphatically not the case for U.S. creation of no-take marine protected areas, 96% of which are concentrated within the Western Pacific Council's jurisdictional area.

- Principle 4, Honor Tribal Sovereignty and Support the Priorities of Tribal Nations, calls for "[a]dvancing the priorities of … Native Hawaiians and Indigenous leaders, including those related to sustainable … management and the conservation of natural, cultural and historical resources." Especially recognizing "conservation" entails balanced use, the Council is best-positioned to integrate native-based sustainable fisheries efforts.

- Principle 5, Pursue Conservation and Restoration Approaches that Create Jobs and Support Healthy Communities, is geared directly toward supporting fishing communities like that on American Samoa. The Council's role in helping to provide for "[a] healthy ocean … supports vibrant fisheries and working waterfronts," as this Principle seeks.

- Principle 7, Use Science as a Guide, explains that "[c]onservation efforts are more successful and effective when rooted in the best available science and informed by recommendations of top scientists and subject matter experts." As explained above, the top Pacific tuna scientists and experts in the world support an adaptive fishery

management process for these species, consistent with that being implemented by the Council, NOAA Fisheries, and the WCPFC.

- Principle 8, Build on Existing Tools and Strategies with an Emphasis on Flexibility and Adaptive Approaches, is completely congruent with the Council's ecosystem-based fishery conservation and management processes, which are "designed to utilize [new] information as it becomes available and adaptive management will be used to further advance the implementation of ecosystem science and principles."

Goal 5: Research & Monitoring

Support, promote, conduct, and coordinate research and monitoring that brings together multiple forms of knowledge to increase understanding of the proposed Pacific Remote Islands national marine sanctuary's cultural and natural resources, and thereby improves decision-making and management.

Sanctuary managers have no experience in managing, and precious few resources to manage, open ocean ecosystems such as the non-monument areas within the PRIA. Domestic and international fisheries managers possess the time-series of data, analytical ability and resources to conserve and manage the fishery resources within these regions. Council-based fisheries management collects and utilizes, among other things, catch and effort reporting data, biosampling information, and other fisheries-related data. Indeed, tropical tuna species are managed using almost exclusively fishery-dependent data. These data sources are among the richest available for monitoring, assessing and learning about these species and are based on continuing existing fishing and fishery management programs.

Further, the Community Development Program (CDP) and Community Demonstration Project Program (CDPP) exemplify the kinds of Council programs that have been implemented over time to meet this goal while also engaging indigenous communities in the management of the Pacific Remote Islands. The CDP is intended to give Council the regulatory authority to create opportunities for native communities to participate in the fisheries managed by the Council. The CDPP is a grant program that provides funds to indigenous communities for the demonstration of traditional, cultural fishery, fishery management, and fishery conservation projects. The Council successfully funded over fourteen (14) CDPP projects through 2005. NMFS has not provided funding for the CDPP since, but the program remains available to support sanctuary management.

Goal 6: Education, Outreach and Interpretation

Inspire current and future generations to collaboratively preserve, protect, and manage the Pacific Remote Islands national marine sanctuary's natural, cultural and historic resources through excellence in education, outreach and interpretation.

The history of the Pacific Remote Islands reveals their longstanding connection with the indigenous people of Polynesia and Micronesia. The Council has met this goal of inspiring current and future generations by initiating several efforts to educate and promote Hawaiian,

Samoan, and Chamorro cultural practices and knowledge, which in turn are connected to the history of the Pacific Remote Islands.

For example, starting in 2006, the Council has hosted the Hoʻohanahano I Nā Kūpuna Puwalu (Honor Our Ancestors Conference) series to engage the Native Hawaiian communities and help identify indigenous fishery practitioners. This series was instrumental in the passage of state acts which created a system of best practices for resource management based on indigenous knowledge and customs. The Puwalu series has also helped the Council develop the Fisherman Code of Conduct based on wisdom shared by kupuna (elders) and traditional practitioners in Hawai'i. The code has been translated into several languages and distributed throughout Polynesia and Micronesia.

The Council has also developed curricula and materials to raise public awareness about ecosystem-based management. For example, the Council started a Lunar Calendar Project in 2007 for students throughout the region. The lunar cycles are significant to indigenous practices because the phases of the moon traditionally helped regulate activities such as planting and fishing. Fisherman would read the moon to determine the tide and fishing conditions of the next day. The lunar calendar competitions have become so successful that the Council has added art contests on other fisher-related topics with teacher plans on each island every year. This project has been done in collaboration with community groups, schools, local fisherman, and local governmental agencies. These efforts have helped revitalize knowledge of the lunar calendar in Guam, where that knowledge was not as readily available. This culminated with the Traditional Lunar Calendar Workshop, which brought together traditional navigators, fisherman, and cultural experts from throughout the Western Pacific.

The Council has also assisted in the implementation of several scholarship and internship opportunities such as the Fisheries Internship and Student Help (FISH) project. The project started in 2015 and was designed to provide high school students, college students, and new professionals in Hawai'i, American Samoa, Guam, and the CNMI with practice experience in coral reef ecosystems and fisheries management. The Council has also offered summer high school courses in Guam, the CNMI, American Samoa, and Hawai'i.

More broadly, the Magnuson-Stevens Act is designed to ensure American fishing communities' long-term participation in fisheries off their coasts, especially in the Central and Western Pacific. Relevant here, the Act's fundamental "findings" include that, "Pacific Insular Areas contain unique historical, cultural, legal, political, and geographical circumstances which make fisheries resources important in sustaining their economic growth." 16 U.S.C. 1801(a)(10). Accordingly, that same Act prescribes a "policy" of "ensur[ing] that the fishery resources adjacent to a Pacific Insular Area, including resident or migratory stocks within the exclusive economic zone adjacent to such areas, be explored, developed, conserved and managed for the benefit of the people of such area and of the United States." 16 U.S.C. 1801(c)(7). Pacific Insular Area specifically includes Baker and Howland Islands, Kingman Reef, and Palmyra Atoll. 16 U.S.C. 1802(35). Congress added these provisions to the Magnuson-Stevens Act in Pub. L. No. 104-297, The Sustainable Fisheries Act of 1996, well after the most significant amendments to the National Marine Sanctuaries Act were enacted.

Moreover, a sanctuary that contains both MPAs in the monument areas and also managed fishery areas in the non-monument areas provides a greater opportunity for understanding and interpreting the ocean environment. A full 53% of waters under the Council's jurisdiction are already closed to fishing through monument designations. The Council's adaptive and real-time management, and its community-directed processes, can be used by educational and interpretive programs to help people understand 21st Century fisheries management and its benefits. The U.S. has existing tools in place that the Council employs, including the Magnuson-Stevens Act, Endangered Species Act, Marine Mammal Protection Act, Lacey Act, and the National Environmental Policy Act to conserve and manage the fisheries under its jurisdiction. This regime is widely considered the "gold standard" for environmental statutes used to conserve and manage fisheries and mitigate impacts to protected species and habitat.

Managing tuna fisheries under the Magnuson-Stevens Act and existing international frameworks (such as the WCPFC) offers the flexibility to be adaptive, collaborative, incorporate broad community engagement, and meet conservation objectives, rather than, a "set it and forget it" policy of prohibiting fishing that governs the monument areas

Proposed Pacific Remote Islands National Sanctuary Objectives

Objective 1: *Establish comprehensive and lasting levels of protection for the significant natural and cultural resources of the Pacific Remote Islands national marine sanctuary to the full extent of the United States Exclusive Economic Zone.*[15]

The Council has created a management system that provides comprehensive and lasting protections for fisheries resources in the PRIA. Since the 1980s, the Council has managed fisheries throughout the Western Pacific Region, first through separate species-based fishery management plans (FMP) – the Bottomfish and Seamount Groundfish FMP (1986), the Crustaceans FMP (1981), the Precious Corals FMP (1979), the Coral Reef Ecosystems FMP (2001) and the Pelagic FMP (1986). Beginning in the early 2000's, the Council moved towards an ecosystem based approach to fisheries management and restructured its management framework from species-based FMPs to place-based FEPs.

In 1998, the U.S. Congress had charged the NMFS with the establishment of an Ecosystem Principles Advisory Panel (EPAP) responsible for assessing the extent that ecosystem principles were being used in fisheries management and research, and recommending how to further their use to improve the status and management of marine resources. The EPAP was composed of members of academia, fishery and conservation organizations, and fishery management agencies. The EPAP reached consensus that Fishery Ecosystem Plans (FEPs) should be developed and implemented to manage U.S. fisheries and marine resources.[16] According to the EPAP, an FEP should contain and implement a management framework to control harvests of marine resources on the basis of available information regarding the structure and function of the ecosystem in which such harvests occur. The Food and Agriculture Organization of the United

[15] By letter dated November 17, 2023, the Office of National Marine Sanctuaries announced it had revised Objective 1 to the form in which it is presented above. Under Section 304(a)(5) of the NMSA, these goals and objectives represent the operative expression of Administration policy with which sanctuary management must adhere.
[16] Ecosystem Principles Advisory Panel. 1999. Ecosystem-based fishery management: A Report to Congress. Silver Spring, MD. National Marine Fisheries Service.

Nations provides that the purpose of an ecosystem approach to fisheries "is to plan, develop and manage fisheries in a manner that addresses the multiple needs and desires of societies, without jeopardizing the options for future generations to benefit from a full range of goods and services provided by marine ecosystems."[17] Similarly, NOAA defines an ecosystem approach as "management that is adaptive, specified geographically, takes account of ecosystem knowledge and uncertainties, considers multiple external influences, and strives to balance diverse social objectives". In addition, because of the wide-ranging nature of ecosystems, successful implementation of ecosystem approaches will need to be incremental and collaborative.[18]

Heeding the basic principles, goals, and policies for ecosystem-based management outlined by the EPAP, the Council initiated the development of FEPs for each major ecosystem under its jurisdiction. In so doing the Council recognized that a comprehensive ecosystem approach to fisheries management must be initiated through an incremental, collaborative, and adaptive management process. Accordingly, the Council adopted a multi-step approach to develop and implement FEPs.

Relevant to the PRIA the Council has developed that Fishery Ecosystem Plan for the Pacific Remote Island Areas and the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific, both of which were finalized in 2009. These FEPs, in conjunction with the Council's American Samoa Archipelago, Hawaii Archipelago, and Mariana Archipelago FEPs, replaced the Council's existing Bottomfish and Seamount Groundfish, Coral Reef Ecosystems, Crustaceans, Precious Corals and Pelagic Fishery Management Plans and reorganized their associated regulations into a place-based structure aligned with the FEPs. These FEPs did not themselves establish any new fishery management regulations, but rather created the organizational structure for developing and implementing FEPs that explicitly incorporate community input and local knowledge into the management process. These FEPS have all been amended often, to incorporate new requirements, management techniques, and information. These management regimes have been successful. Council-managed species, demersal and pelagic alike, are neither overfished nor is overfishing occurring. Forms of fishing that are destructive to the bottom are banned, And, bycatch and protected species issues are handled well and proactively.

Further, this first important objective focuses on protection of the proposed sanctuary's "significant resources." For their part, sanctuary proponents explained in their nomination document that, "[p]rotection of the deep-water ecosystem, reefs, and open-ocean seamounts is likely the most important aspect of this nomination." Likewise, the objects reserved in Presidential Proclamation 9137 in the "adjacent areas" around Wake and Jarvis Islands and Johnston Atoll that correspond to the non-monument parts of the proposed sanctuary, were principally the seamounts, corals and associated benthic communities, and the pelagic environment.

By contrast, in both the sanctuary nomination and Proclamation 9137, the pelagic fish species managed under Council-recommended regulations were not identified as an object of specific

[17] Garcia S.M., et al. 2003. The ecosystem approach to fisheries: issues, terminology, principles, institutional foundations, implementation, and outlook. FAO Fisheries Technical Paper, No. 443.
[18] NOAA. 2004. New Priorities for the 21st Century. NOAA's Strategic Plan Updated for FY 2005 – FY 2010.

protection but as an attribute of the overall ecosystem. Specifically, these large marine predators were recognized for their foraging habits, which drive lower-trophic fish toward the surface where they become accessible to seabirds.

The sanctuary governance regime can provide "comprehensive and lasting levels of protection" for the seamounts, corals, and associated benthic communities without eliminating the pelagic fishery from the non-monument proposed sanctuary areas because pelagic fishing does not disturb these seamounts, corals, and associated benthic communities.

Retaining Council-managed pelagic fishing of these tuna species, moreover, will not impair the ecosystem attribute of these fish identified in the sanctuary nomination and Proclamation 9137. Rather, as explained above, sustainably and internationally managing the fishery for these open-ocean highly migratory species provides a comprehensive benefit to these species that static, large marine protected areas do not provide. The Council's regulations thus represent a component of the "comprehensive and lasting" internationally-based WCPFC conservation and management regime.

Moreover, any tuna conservation regime is not comprehensive if it is based on a management zone delimited by EEZ boundaries and not stock characteristics. Under international law, highly migratory stocks are a shared resource, to be managed internationally. Article 7 of the U.N. Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Species recognizes the "biological unity" of, and shared management responsibility for, these stocks, explaining:

> 2. Conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of the straddling fish stocks and highly migratory fish stocks in their entirety. To this end, coastal States and States fishing on the high seas have a duty to cooperate for the purpose of achieving compatible measures in respect of such stocks. In determining compatible conservation and management measures, States shall: * * *
>
> (d) take into account the biological unity and other biological characteristics of the stocks and the relationships between the distribution of the stocks, the fisheries and geographic particularities of the region concerned ****

The U.S. ratified the Straddling Stocks Agreement on June 27, 1996. By ratifying the Straddling Stocks Agreement, the United States thus recognized these highly-migratory species are a common international asset that are managed "with the objective of optimum utilization of such stocks throughout the region both within and beyond the areas under national jurisdiction." *Ibid.*, Art. 7.1(b). Further, as a scientific matter, it is the "biological unity" of the tuna stocks that underpin the findings of Hampton (2023), Hilborn (2022), Gilman (2020), and Pons (2022).

Finally, congruent with recognizing these tropical tuna species as a shared international resource, it is important to incorporate the impact of fishing pressure from outside the proposed sanctuary area on these species in determining what management strategy provides "comprehensive and

lasting levels of protection" for a fishery stock or complex. For instance, a prohibition on commercial fishing of these highly migratory tropical tuna species in the non-monument proposed sanctuary area would not reduce fishing mortality on these species because the prohibition does not change allowable catch levels, but simply displaces fishing effort. Thus, a "lasting and comprehensive" management strategy for these highly migratory species is conservative, comprehensive international management of catch levels, of which the Council's recommended PRIA pelagic fishery management regulations are an integral part. Finally, NOAA Fisheries and the Council have worked for over three decades to reduce blue-water tuna fishing's interactions with, and the impacts of its interactions with, seabirds, protected species and marine mammals. The resulting extensive science-driven program is likewise both lasting and comprehensive.

Objective 2: *Uphold and complement the existing management of the Pacific Remote Islands National Marine Monument as outlined in Presidential Proclamations 8336 and 9173.*

Management of a national marine monument and an adjoining national marine sanctuary need not be congruent because Congress did not seek to achieve the same goals in the Antiquities Act as the National Marine Sanctuaries Act. The Antiquities Act was designed to foreclose most human use and disturbance of a monument's objects. Originally, that Act principally sought to preserve Native American archaeological sites that were being subjected to looting and destruction. Existing marine national monuments have been closed to commercial fishing.

By contrast, the Senate Committee on Commerce, Science and Transportation explained in 2000 in its committee report on S.1482, the National Marine Sanctuaries Amendments Act, that:

> Marine sanctuaries, similar in concept to a national park on land, may protect marine habitats such as coral reefs or preserve cultural or historical assets such as shipwrecks. The primary goal of a marine sanctuary is to preserve, and possibly enhance, the assets of the site while allowing for compatible public and private uses. The extent to which each sanctuary allows or restricts these uses is determined on a site-by-site basis through an open public process. As a general rule, activities like drilling, mining, dredging, dumping waste or removing artifacts are prohibited but shipping, commercial fishing, sport fishing, boating, scuba diving, and marine tourism are generally allowed where practicable.

S.Rep.106-353, 106th Cong., 2d Sess. (July 21, 2000), at 2. Consistent with this legislative history and the overall purposes of federal sanctuary laws, commercial, recreational and subsistence fishing is generally principally managed in national marine sanctuaries by Councils and state marine fisheries agencies, depending on the sanctuary's location.

The same intent is evident in the 1983 House Committee on Merchant Marine and Fisheries report on H.R. 2062, to amend title III of the Marine Protection, Research, and Sanctuaries Act of 1972. In providing for extensive re-writes to, among others, Section 301 (Findings, Purposes, and Policies) and Section 303 (Sanctuary Designation Standards), the House Committee Report explained:

> Coupled with the need to protect special marine areas, the legislative history of title III emphasizes the importance of maximizing human benefit and use as well. During the House floor debate on passage of the original Act, Congressman Hastings Keith (R-Mass.) stated:
>
> > I must admit the word "sanctuaries" carries a misleading connotation. It implies a restriction and permanency not provided for in the title itself. Title III simply provides for an orderly review of the activities on our Continental Shelf. Its purpose is to assure the preservation of our coastal areas and fisheries * * * Title III gives more than mere consideration to both of these compelling national problems. It provides for multiple use of the designated areas.

H.R.Rep. No. 98-187, 98th Cong., 1st. Sess. (May 16, 1983), at 9.

The House Report also reported with approval a 1975 article which appeared in the *Coastal Zone Management Journal* and "analyzed the debate over marine sanctuaries and traced a change in philosophy which highlights the program's potential for protecting nationally significant marine areas for their resource quality, while permitting multiple uses compatible with the purposes of the sanctuary." The article explained:

> The objectives of the legislation were [originally] negative, that is to stop the specific action. However, from the introduction of the first sanctuary bill in 1968 until the passage of the Marine Protection, Research and Sanctuaries Act of 1972, a key conceptual transition took place. This was a reversal from the thrust of earlier bills oriented to preventing actions such as dredging and oil drilling back to the concept that areas of the ocean and coastal waters had values vital to a balanced use of the resources of the ocean which should be protected and restored for their own merits. While this may be a subtle difference, it represents the difference between a negative and positive philosophy.

H.R.Rep.No. 98-187, at 9 (quoting Kifer, "NOAA's Marine Sanctuary Program," 2 *Coastal Zone Management J.* 177 (1975)).

Council regulations uphold the existing management of the PRIA marine national monuments designated by Presidential Proclamations 8336 and 9173. Council regulations protect the monument objects identified in these proclamations (principally, coral reefs, seamounts, and associated benthic communities). *See, e.g.,* 50 C.F.R. 665.605 (fishing for bottomfish management unit species using bottom trawls, bottom set gillnets, and explosives is prohibited) & 665.627 (allowable gear for coral reef ecosystem management unit species does not include bottom trawls or bottom set gillnets, and explosives and intoxicants are prohibited). And, as explained above, pelagic fishing, the only currently active fishery in the non-monument area, uses surface gear, that is, long-lines and purse seines. Council regulations also support the ecosystem attribute (support of seabird foraging) provided by tropical tuna species by managing fishing for these species effectively.

Council pelagic fishing regulations also complement the national monument management regime for Howland and Baker Islands, Kingman Reef and Palmyra Atoll. As explained above in response to Objective 1, these regulations are part of comprehensive international management system that provides the most effective control of these tropical tuna species' fishing mortality. Different management approaches can provide a more comprehensive level of protection in different areas, and thus may complement each other, even if they are not identical. Closures may provide the greatest degree of protection from bottom fisheries in near-shore areas, but they are not the most effective way to manage open-ocean fisheries for shared highly migratory stocks. Therefore, existing international and domestic pelagic fishery measures in the non-monument areas complement the nearer-to-shore commercial bottomfish fishery closures off Howland, Baker, Kingman, and Palmyra, because each management regime represents a comprehensive approach to protect the fishery and ecosystem resources to which it is, respectively, directed.

Objective 3: *Provide the necessary policy, programs, structure and processes to govern the proposed Pacific Remote Islands national marine sanctuary.*

The 2000 amendments to the National Marine Sanctuary Act specifically prescribed that sufficient resources be available to effectively implement a new sanctuary management plan before such as new sanctuary is established. S.Rep.No. 106-353, at 3. It is simply unfathomable to conclude that the sanctuaries program, standing alone, has the resources and knowledge to manage an area as vast and diverse as what is being proposed as a sanctuary. Managing 770,000 square miles, if it is to be accomplished at all, will need to be a joint effort, involving the benefit of a government-wide investment of resources and management approaches and expertise.

The Council has been managing the PRIA since soon after the Magnuson-Stevens Act was first enacted in 1976. As explained above, beginning in the 1980's, the Council managed Western Pacific fisheries through species-based fishery management plans, and then transitioned to a series of place-based Fishery Ecosystem Plans, including the Fishery Ecosystem Plan for the Pacific Remote Islands in 2009, and the Fishery Ecosystem Plan for the Pacific Pelagic Fisheries of the Western Pacific Region in 2009. As were the historic species-specific plans, the fishery ecosystem plans can be, and are, periodically amended to address new legal requirements, modify and refine management approaches, and incorporate new information through an "adaptive" management approach.

Each FEP identifies ten overarching objectives to guide the Council in further implementing ecosystem approaches to management. These objectives, set forth below, are similar in language, intent and tenor to the proposed sanctuary's Goals and Objectives. These FEP objectives include the following;

Objective 1: To maintain biologically diverse and productive marine ecosystems and foster the long-term sustainable use of marine resources in an ecologically and culturally sensitive manner through the use of a science-based ecosystem approach to resource management.

Objective 2: To provide flexible and adaptive management systems that can rapidly address new scientific information and changes in environmental conditions or human use patterns.

Objective 3: To improve public and government awareness and understanding of the marine environment in order to reduce unsustainable human impacts and foster support for responsible stewardship.

Objective 4: To encourage and provide for the sustained and substantive participation of local communities in the exploration, development, conservation, and management of marine resources.

Objective 5: To minimize fishery bycatch and waste to the extent practicable.

Objective 6: To manage and co-manage protected species, protected habitats, and protected areas.

Objective 7: To promote the safety of human life at sea.

Objective 8: To encourage and support appropriate compliance and enforcement with all applicable local and federal fishery regulations.

Objective 9: To increase collaboration with domestic and foreign regional fishery management and other governmental and nongovernmental organizations, communities, and the public at large to successfully manage marine ecosystems.

Objective 10: To improve the quantity and quality of available information to support marine ecosystem management.

The Council's extensive expertise and management approaches should be integrated into management of the proposed PRIA sanctuary. As explained in detail above, Council management under the Magnuson-Stevens Act provides the necessary policies, programs, structure, and processes to govern commercial fisheries in the non-monument areas of the proposed sanctuary.

Objective 4: *Coordinate with other federal agencies and fully use all applicable authorities in order to cooperatively, efficiently, and effectively manage the resources of the proposed Pacific Remote Islands national marine sanctuary for current and future generations.*

In managing marine fisheries within national marine sanctuaries, NOAA Fisheries and the regional fishery management councils coordinate with NOAA's Office of Marine Sanctuaries. The councils themselves include representatives from NOAA Fisheries, U.S. Fish and Wildlife Service, the U.S. Coast Guard, and the State Department. The U.S. Coast Guard and NOAA Office of Law Enforcement monitor the PRIA and enforce fishery regulations. USCG monitors the mandatory vessel monitoring systems (VMS) installed on the U.S. fleet and NOAA OLE conducts dockside inspections. The USCG will provide enforcement at sea and by air with their resources, as well.

As explained above, moreover NOAA Fisheries and the Councils utilize not only the Magnuson-Stevens Act, but also the Endangered Species Act, Marine Mammal Protection Act, Lacey Act, and the National Environmental Policy Act to conserve and manage the fisheries under their jurisdiction.

By law and by practice, moreover, the Council conserves and manages fisheries for the long-term, for future generations. Its principal goal is to "achiev[e] on a continuing basis optimum yield" for each fishery, 16 U.S.C. 1851(a)(1). Indeed, the Council seeks the "sustained participation" of fishing communities for future generations. As explained above, the Sustainable Fisheries Act of 1996 specifically highlighted the need to use Pacific fish stocks for the benefit of territorial communities. U.S.C. 1851(a)(8).

NOAA's National Seafood Strategy is likewise geared toward the long-term, by seeking "to address important national issues such as the resilience of costal fishing communities to stressors like climate change and market disruptions …; the financial viability of the seafood industry; the effects and opportunities of international trade; and the importance of seafood to nutrition, food equity, food security, subsistence fishing, cultural traditions, and Tribal treaty rights." At the same time, the NOAA Fisheries Pacific Islands Geographic Strategic Plan 2020-2023, highlights the need to "[w]ork with partners and stakeholders—including state and territorial agencies, fishermen, and academic and environmental organizations—to understand and mitigate fishery effects on protected species and non-target, associated and dependent species through development and implementation of measures to reduce impacts while maintaining social and economic benefits to fishing communities."

Also relevant to Objective 4 are the series of President Biden's executive orders promoting environmental, economic and social justice for Tribal, minority and historically underprivileged communities under the requirements of E.O.'s 13985, 14013, and 14091. These E.O.'s share the goal of improving prospects and ensuring the kind of participation and cooperation opportunities the Council provides for underserved communities and Pacific Island communities in particular.

Moreover, Western Pacific Council participation opportunities are expanding under this Administration. The Department of Commerce has acknowledged the need for external-facing efforts to empower underserved communities in the economy in its Equity Action Plan implemented under E.O. 14091. NOAA has made similar statements as part of the NOAA Fisheries Equity and Environmental Justice Strategy (EEJ Strategy). As explained above, the EEJ strategy specifically recognizes territorial fishing communities in the Pacific Insular Areas as underserved communities, highlighting in particular fish processors and distribution workers including those in the American Samoa fish processing industry, comprised almost entirely of indigenous Samoans.

NOAA Fisheries EEJ Goals implemented under E.O. 14091 identified as "core objectives," among other things: (1) "[e]nsur[ing] that our policies promote equal opportunities for all and do not create unintended inequities or unequal burdens for underserved communities;" and (2) "[d]istribut[ing] benefits equitably among communities by increasing access to opportunities for underserved communities." It is the Council fishery management process that manages the pelagic fishery in U.S. waters that provides opportunities for the underserved communities in American Samoa.

NOAA Fisheries also issued a series of "guiding questions" to focus efforts to attain the core EEJ objectives quoted above. Guiding questions for point (1) include: "How can NOAA Fisheries better include equity for underserved communities in policies and internal guidance?" And, "[h]ow can NOAA Fisheries review existing policies and procedures through EEJ lenses so that

they may be refined to achieve more equitable outcomes?" Guiding questions for point (2) ask, "Do NOAA Fisheries' benefits (such as … fisheries allocations …) equitably reach or benefit underserved communities? Consistent with applicable legal authorities, how can we expand the equity in our delivery of benefits?" NOAA Fisheries notes these considerations could include assessment of impacts and benefits to underserved communities and prioritization of actions that benefit or correct a disparity among communities. These questions signal an effort by NOAA to help ensure that Councils do the important work of preserving and creating fisheries opportunities for current and future generations in underserved communities.

Finally, and perhaps most fundamentally, prohibiting commercial fishing in non-monument PRIA areas runs counter to the Administration's whole-of-government Pacific Partnership Strategy. Importantly, rather than advocating for fishing prohibitions, the Pacific Strategy seeks to advance collaborative strategies that maintain and expand U.S. engagement in sustainable fishing and fisheries management.

Objective 5: *Enhance community engagement and involvement, including engagement of Indigenous Pacific Island communities to support management of the proposed Pacific Remote Islands national marine sanctuary.*

NOAA Fisheries EEJ guidelines explain that the need for outreach and equitable engagement requires "highly customized, personalized, consistent, long-term and flexible" engagement. As explained above, at present, monument fishing prohibitions have effectively superseded the Council's Pacific Remote Islands Ecosystem Management Plan by foreclosing fishing opportunities for bottomfish, crustacean, precious coral, or coral reef ecosystem species within the monument jurisdiction. Taking away fishing reduces community involvement in federal conservation and management because there is no longer a need for those regulatory efforts. Indeed, NOAA Fisheries no longer even specifies ACLs for those species.

Further, NOAA Fisheries' EEJ Guidelines explain the agency "can increase coordination and communication with underserved communities through asking the opinion of community members, using these opinions to direct actions, early engagement, prioritizing cultural literacy, addressing communication barriers (e.g., translation), and building communications programs that can adapt to emerging needs of underserved communities." When NOAA's Office of National Marine Sanctuaries undertook sanctuary scoping in American Samoa, it heard loud and clear how critical the tuna canning factory was to the territory's existing infrastructure and long-term economic prospects, and how much residents feared additional losses from removal of Council fishery management from the Howland, Baker, Palmyra, and Kingman adjacent areas. From 1988-2008, 83% of tuna landed from the PRIA was landed in Samoa. From 2009-2014, the annual average was 78%, and from 2015-2021, the annual average was 91%.

A subsequent sanctuary workshop held on September 12-13, 2023, in American Samoa only further confirmed what local residents had explained during sanctuary scoping. In summary, as those in the underserved Samoan fishing community explained, the allegation underlying the sanctuary proposal that no commercial fishing of economic value occurred in the PRIA non-monument areas is simply false. From 1998-2008, retained catch from purse seine fishing in the EEZ's of the PRIA ranged from a low of 642 to a high of 37,480 mt per year. Longline catches ranged from 149-1404 mt. Between 2009 and 2014, following the PRIA marine national

monument's initial establishment, retained catch from purse seine fishing ranged from 418 to 3,779 mt annually, while longline catches ranged from 242-573 mt. From 2015 to present, during the period following President Obama's monument expansion, retained purse seine catch from within the reduced fishing area (Howland and Baker Islands, Kingman Reef, and Palmyra Atoll) has ranged from 1,524 to 5,889 mt, with fishing days ranging from 39 to 131. The two highest years on record have been 2021 and 2022, with 113 and 131 fishing days respectively. In 2021 and 2022, the effort and retained catch in the proposed expansion area was 11% of retained catch annually. (After 2014, longline fishing was effectively displaced.)

Declining harvest opportunities in U.S. waters also negatively impacts U.S. fishing fleet size, and therefore tuna deliveries to American Samoa. Since the PRIA monument expansion in 2015, the U.S. flagged purse seine fleet plummeted from 40 vessels to 12 vessels in 2022. More factors were at play than just the PRIA monument expansion, but NOAA creates incentives for these vessels to reflag at American Samoa's peril. Removing U.S. waters from Council fishery management only limits opportunities for these vessels to operate in CPFC waters without restriction or paying high access fees, and may either dis-incentivize them to operate where they can offload in American Samoa or may force them to re-flag to other nations. Almost 85% of the purse seine vessels offloading in American Samoa are from U.S. flagged vessels, and the reduction in fleet size has resulted in a significant decline in landings to the cannery there. Loss of the cannery would all but eliminate American Samoan community engagement and involvement in the PRIA.

Objective 6: *Honor and celebrate the distinct ancestral, historical, cultural and maritime heritage connections to the Pacific Remote Islands and the surrounding open-ocean waters and recognize the importance of Indigenous knowledge, language, stories, and cultural connections between lands, waters, and peoples.*

As explained above, indigenous communities are well-represented on the Council and in its advisory committees. The Council has made significant efforts, as described above, to integrate indigenous culture and knowledge into its management process. Fishing and bringing to market the fish that is harvested are, themselves, part of the culture and heritage in the Pacific territories, as well. While today's fishing methods may differ from historic methods, fishing still allows these communities an opportunity to maintain their cultural connection to the oceans and their maritime heritage. As explained above, a core Magnuson-Stevens Act congressional Finding is that, "Pacific Insular Areas contain unique historical, cultural, legal, political and geographic circumstances which make fisheries resources important in sustaining their economic growth." 16 U.S.C. 1801(a)(10). On-shore fishery processing and distribution jobs in, for instance, American Samoa, are equally part of the Pacific Islands' cultural and maritime heritage under the Magnuson-Stevens Act and NOAA Fisheries' EEJ Guidelines.

Objective 7: *Conduct, support, and promote research, characterization, and long-term monitoring of marine biodiversity, and ecosystems and cultural and maritime heritage resources.*

As explained above in response to Goal 5, on-going fisheries conservation and management is key to supporting research, characterization, and long-term monitoring of PRIA resources. Fishery management data is also increasingly relevant and sensitive to, for instance, climate monitoring. Indeed, understanding the connections between fish stocks and the changing climate

is a national NOAA priority. The Central and Western Pacific region is large, and NOAA Fisheries is increasingly resource-constrained. Fisheries management provides the means by which data collection and interpretation efforts will continue.

Objective 8: *Enhance greater public understanding of sanctuary resources to promote and encourage appreciation and stewardship of cultural and natural resources.*

As explained above in response to Goals 4, 5, and 6, the Council has been a national leader in undertaking programs to promote public understanding of the Pacific Islands' fisheries, fishing heritage, and fishery management. And, in general, U.S. fisheries conservation and management is science and data-driven, and the best in the world. Furthermore, as explained above, the Council already works to engage the public in understanding and managing tropical tuna fisheries. Indeed, when the Council transitioned from species-based to place-based fishery management plans, the Council "recognize[ed] that a comprehensive ecosystem approach to fisheries management must be initiated through an incremental collaborative, and adaptive management process. … To be successful this will require increased understanding of a range of issues including biological and trophic relationships, ecosystem indicators and models, and ecological effects of non-fishing activities on the marine environment." Fishery Ecosystem Plan for the Pacific Pelagic Fisheries of the Western Pacific Region, at 1 (Sep. 24, 2009). Annual Council processes are undertaken to do just this. For sanctuary management to be informed in the manner Objective 8 describes, fisheries and sanctuary management should be mutually reinforcing, not mutually exclusive.

Purposes and Policies of the National Marine Sanctuaries Act

Section 301(b)(2): *to provide authority for comprehensive and coordinated conservation and management of those marine areas, and activities affecting them, in a manner which complements existing regulatory authorities*

As explained above, the PRIA monument's prohibition on commercial fishing has essentially superseded, not complemented, fishery management. Indeed, NOAA Fisheries no longer even specifies annual catch limits for any bottomfish, crustacean, precious coral, or coral reef ecosystem species in the PRIA because of the monument prohibitions. Fisheries management is not "coordinated" in the monument; rather, it is abandoned.

In 1984, Congress added sanctuary designation standards as Section 303 of the Act. One such standard involves "the manageability of the area, including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities." See NMSA Section 303(b)(1)(F).

In so doing, the Senate Committee on Commerce Science and Transportation explained:

> … Before designating, the Secretary must consider the significance, present and potential uses, conservation and management needs, and the size of the proposed area. It is the Committee's intent that the quality of available Federal and State management capability should be carefully considered by the Secretary in deciding the size of a sanctuary.

> Prior to the 1980 Marine Sanctuary Amendments, designation of several extremely large areas were suggested to the Secretary. One such area was the Bering Straits of Alaska, which encompasses 107,000 square miles. This was viewed as an unrealistic size for effective conservation and management.

S.Rep.No. 98-280, 98th Cong., 1st Sess. (October 26, 1983), at 5.

For its part, the House Committee on Merchant Marine and Fisheries confirmed:

> NOAA has stated in the PDP that it anticipates that the upper end of the sanctuary size spectrum is represented by the Channel Islands National Marine Sanctuary which covers 1,252 square miles. Furthermore, NOAA's proposed final sanctuary regulations provide that sanctuaries will be limited to relatively small, geographically discrete marine areas. The Committee concurs with these policy statements.

H.R.Rep. No. 98-187, at 21.

At 770,000 square miles, the proposed PRIA sanctuary area is fifty times larger than any area previously designated as a sanctuary, nearly five times the size of all U.S. parks combined, and approaches the size of the Louisiana Purchase. It is also in no way discrete but is instead dispersed intermittently across Western Pacific archipelagos. To expect it will be a challenge for NOAA Office of National Marine Sanctuaries to conserve and manage is an understatement. Setting aside whether the designation of such magnitude and dispersion is appropriate, the Office of National Marine Sanctuaries will require support in stewarding this giant area. Up-to-date fisheries conservation and management activities can help to provide the information and enforcement resources that will be needed to ensure adequate federal sanctuary management capability.

Section 301(b)(3): *to maintain the natural biological communities in the national marine sanctuaries, and to protect, and where appropriate, restore and enhance natural habitats, populations, and ecological processes*

Council-managed fisheries achieve these purposes. Tropical tuna fishing in the non-monument area of the sanctuary is subject to extensive national and international conservation and management requirements, and is sustainable. The natural biological communities in the non-monument area of the sanctuary that are unique and fragile are the seamounts, corals and benthic communities associated with them. The surface fishing involved in the long-line and purse seine fisheries in no way disturbs or affects the seamounts and associated benthic communities.

Section 301(b)(4): *to enhance public awareness, understanding, appreciation, and wise and sustainable use of the marine environment, and the natural, historical, cultural, and archeological resources of the National Marine Sanctuary System*

The pelagic fisheries in the proposed sanctuary area outside the PRIA monument are being sustainably and wisely used. The tuna species harvested are neither overfished, nor is overfishing occurring. Council-developed NOAA fisheries regulations for the longline and purse seine fisheries incorporate measures to reduce the potential for incidental catches and takes, and

provide detailed standards to mitigate the effects of any such catches or takes. Moreover, a conservatively managed blue ocean fishery for highly migratory species is preferable as an overall conservation matter to an MPA. The Council has the resources and statutory charge to promote public engagement on fisheries conservation and management.

Section 301(b)(5): *to support, promote, and coordinate scientific research on, and long-term monitoring of, the resources of these marine areas*

The sanctuary program does not itself have the resources or knowledge base to research or monitor the pelagic fisheries resources in the proposed PRIA sanctuary area outside the monument. The fishery resources in these vast areas are best monitored through existing fishery management bodies committed to these resources' on-going conservation and management.

Section 301(b)(6): *to facilitate to the extent compatible with the primary objective of resource protection all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities*

For all the reasons explained herein, PRIA resources, and especially the unique and fragile resources of the seamounts and associated benthic communities, can be protected without sacrificing Council fisheries management. Accordingly, the sanctuary should facilitate, rather than eliminate, this valuable fishing activity.

Section 301(b)(7): *to develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas*

Comprised of federal, state and territorial resources managers, and interested members of the public from Hawaii and participating territories; supported by a scientific and statistical committee, and other advisory panels of public officials and private citizens; and informed by public comment, the Western Pacific Council represents the organization Congress prescribed in the Magnuson-Stevens Act to lead federal fisheries management over U.S. waters in the Central and Western Pacific Ocean. The Council and NOAA Fisheries work with international regional fishery management organizations, such as the WCPFC, to promote the health and resilience of pelagic fishery resources, and the greater West and Central Pacific ecosystem. Localized sanctuary management should complement, not supplant, these established conservation and management bodies.

Section 301(b)(9): *to cooperate with global programs encouraging conservation of marine resources*

Current fisheries management in the non-monument areas of the proposed PRIA sanctuary actively participates and cooperates in international fisheries conservation efforts. In fact, as explained above, the WCPFC is seeking to have member states' fishers operate in their respective countries' EEZs, and not on the high seas. Creating monument-type restrictions in the PRIA non-monument areas would do would have the opposite effect. Thus, current management satisfies this sanctuary purpose.

The Magnuson-Stevens Fishery Conservation and Management Act

The NMSA provides that, "In preparing the draft regulations, a Regional Fishery Management Council shall use as guidance the national standards of section 301(a) of the Magnuson-Stevens Act (16 U.S.C. 1851) to the extent that the standards are consistent and compatible with the goals and objectives of the proposed designation." In providing for Council authority in this regard, the House Committee on Merchant Marine and Fisheries "stress[ed] that the standards which serve as guidelines in the preparation of Fishery Management Plans were included in the FCNA (so in original) to ensure that all fishermen would be treated fairly, that sound scientific data would be used to manage fisheries, and that the councils would have the needed flexibility to manage complex fisheries." H.R.Rep. No. 98-187, at 24-25. The Senate Commerce Committee likewise explained that, "It is the Committee's intent that the Regional Fishery Management Council be given the opportunity to draft the fishing regulations because of their familiarity with the resource base and the fishing activities within the proposed area." S.Rep.No. 98-280, at 6.

The following National Standards are relevant to the PRIA proposed sanctuary designation:

MSA National Standard One, 16 U.S.C. 1851(a)(1):

Conservation and management measures shall prevent overfishing while achieving on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

The Magnuson-Stevens Act defines "optimum yield" based on "provid[ing] the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems" and is "prescribed as such on the basis of maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor." 16 U.S.C. 1802(33).

National Standard One guidelines explain that "in NS1, use of the phrase 'achieving on a continuing basis, the OY from each fishery' means: producing, from each stock, stock complex, or fishery, an amount of catch that is equal to the Council's specified OY; prevents overfishing; maintains the long-term average biomass near or above B_{msy}; and rebuilds overfished stocks and stock complexes …." 50 CFR 600.301€(3)(ii)(B).

There is nothing optimum about effectively eliminating Council management of the entire EEZ of the Pacific Remote Islands complex, especially if NOAA Fisheries follows through on its proposed rule to allocate 558 purse seine fishing days to the US EEZ. As explained above, moreover, creating an MPA throughout the US EEZ for blue water tuna species will not promote additional spill-over catches outside the EEZ. And, even if some benefits were to accrue to the adjoining high seas, any such benefit would not accrue to the United States fishing industry, as National Standard One prescribes, but to fishermen from other nations. Limiting the U.S. fishing industry's opportunity, while seeking to provide greater catches for foreign fishermen, stands the Magnuson-Stevens Act's original intent on its head.

MSA National Standard Two, 16 U.S.C. 1851(a)(2):

Conservation and management measures shall be based on the best scientific information available.

The best scientific information available supports continued Council, NOAA Fisheries, and WCPFC Management of the tropical tuna resource migrating through the non-monument PRIA. National Standard Two Guidelines provide that, "Management decisions should recognize the biological (e.g., overfishing), ecological, sociological, and economic (e.g., loss of fishery benefits) risks associated with the sources of uncertainty and gaps in the scientific information." 50 CFR 600.315(a)(2). Moreover, eliminating such historic and comprehensive management processes does not recognize the sociological and economic risks and uncertainty associated with whether such a draconian measure would provide any commensurate biological or ecological benefit to highly migratory tuna species.

MSA National Standard Three, 16 U.S.C. 1851(a)(3):

To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

The National Standards guidelines for National Standard Three provide for "unity of management," such that, "Cooperation and understanding among entities concerned with the fishery (e.g., Councils, states, Federal Government, international commissions, foreign nations) are vital to effective management. Where management of a fishery involves multiple jurisdictions, coordination among the several entities should be sought …." 50 CFR 600.320(c). Further turning management of shared international fish stocks over to domestic sanctuary managers represents a cloistered approach that is the opposite of the domestic and international coordination for which National Standard Three calls.

MSA National Standard Seven, 16 U.S.C. 1851(a)(7):

Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

Sanctuary fishery management measures duplicate NOAA Fisheries and international fishery management measures in the PRIA monument areas, but this duplication should not extend to any non-monument areas in the proposed sanctuary. Further, as the National Standards Guidelines explain, "supporting analyses … should demonstrate that the benefits of fishery regulation are real and substantial relative to the added research, administrative, and enforcement costs, as well as the costs to the industry of compliance." 50 CFR 600.340(c). As explained above, repeatedly, blue-water MPAs for highly migratory species provide no aggregate conservation benefit.

MSA National Standard Eight, 16 U.S.C. 1851(a)(8):

Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of paragraph (2), in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

NOAA Fisheries' EEJ guidelines for underserved fishing communities, specifically including the fishing community of American Samoa, and the sub-community comprised of fish processing workers on American Samoa, reinforce the importance of National Standard 8. Indeed, as American Samoa representatives have explained, maintaining pelagic tropical tuna fishing in the PRIA non-monument areas pursuant to the detailed and conservation-based Council and WCPFC standards, is necessary for these underserved fishing communities' sustained participation.

Notably, moreover, the National Standards Guidelines for National Standard Eight provide that, "All other things being equal, where two alternatives achieve similar conservation goals, the alternative that provides the greater potential for sustained participation of such communities and minimizes the adverse economic impacts on such communities would be the preferred alternative." 50 CFR 600.345(b)(1). As explained above, MPAs for open-water highly migratory species do not provide for greater conservation goals than a well-managed fishery. Accordingly, a well-managed fishery, such as the U.S. Western and Central pelagic tuna fishery should be the preferred approach.