



**Western
Pacific
Regional
Fishery
Management
Council**

January 19, 2024

Kristina Kekuewa
Pacific Islands Regional Director
NOAA Office of National Marine Sanctuaries
1845 Wasp Blvd.,
Honolulu, Hawaii 96818

Dear Ms. Kekuewa:

The Western Pacific Fishery Management Council (“Council”) hereby submits the following response pursuant to National Marine Sanctuaries Act (“NMSA”) Section 304(a)(5) to the NOAA Office of National Marine Sanctuaries’ (“ONMS”) request for draft fishing regulations and supplement thereto dated June 23, 2023, and November 17, 2023, respectively. ONMS makes this Section 304(a)(5) request regarding the Pacific Remote Islands Coalition’s nomination to designate approximately 770,000 square nautical miles of marine waters and associated benthic habitat as a national marine sanctuary in the Central Pacific Ocean. The areas in question represent the area from the shore to the extent of the U.S. Exclusive Economic Zone around seven separate United States Pacific Remote Islands: Howland, Baker, Wake, and Jarvis Islands; Palmyra and Johnston Atoll; and Kingman Reef.

After careful consideration through its advisory processes and at two separate meetings, the Council recommends that fishing regulations within any proposed sanctuary area remain the same as they are. As ONMS’ letters instruct, the Council supports this recommendation with a detailed, attached analysis considering the proposed sanctuary’s goals and objectives, the NMSA’s purposes and policies, the Magnuson-Stevens Fishery Conservation and Management Act’s (“MSA”) National Standards, Presidential Proclamations 8336 and 9173, and President Biden’s March 24, 2023, Memorandum on Conserving the Natural and Cultural Heritage of the Pacific Remote Islands.

In reaching its recommendation, the Council recognized that status quo fishing regulations in the nomination area already include extensive, most-often prohibitive, fishery conservation and management measures, incorporating elements of three separate legal and management regimes. First, the seven landforms in question, and marine areas within twelve nautical miles of these landforms, are national wildlife refuges. Refuge regulations prohibit fishing in these areas, subject to U.S. Fish and Wildlife Service authority to allow non-commercial fishing in consultation with the National Marine Fisheries Service and the Council.

The national marine monument regime represents the second layer of conservation and management within the nomination boundaries. Under Presidential Proclamation 8336, the area from mean low-water seaward to 50 nautical miles around Baker and Howland Islands, Palmyra Atoll, and Kingman Reef are marine national monuments. Commercial fishing is prohibited, but certain limited recreational and non-commercial fishing activities are permitted in the monuments. And, thirdly, under Presidential Proclamations 8336 and 9173, the areas from mean low-water seaward to the extent of the EEZ around Wake and Jarvis Islands and Johnston Atoll are marine national monuments, subject to the above-referenced prohibitions and limitations. In practical effect, fishing has been eliminated from the monument areas.

Due to the monument restrictions, the only active fisheries within the PRIA are pelagic longlining and purse seining for highly migratory skipjack, yellowfin, and bigeye tunas. Notably, neither fishery interacts with the bottom. They occur in the area from 50 nautical miles to the EEZ's extent around Howland and Baker Islands, Palmyra Atoll, and Kingman Reef (the "adjacent areas"). Contrary to the Presidential Memorandum's passing observation that these Howland, Baker, Palmyra and Kingman adjacent areas "remain unprotected," the Council has conserved and managed fisheries in these adjacent areas since the late 1970's, soon after Congress enacted the MSA. Since 2009, these areas have been subject to ecosystem-based fishery management plans, principally, the Fishery Ecosystem Plan for Pacific Pelagic Fisheries of the Western Pacific Region ("Pelagic FEP"). And, in the unlikely (given the adjacent areas' remoteness) event fishing for bottomfish, crustaceans, precious corals, or coral reef ecosystem species may someday occur in these areas, the strict and comprehensive Fishery Ecosystem Plan for the Pacific Remote Islands Areas ("PRIA FEP") would apply. The attachment details the wide range of measures contained in 50 C.F.R. Part 665, subparts E & F and 50 C.F.R. Part 300, subpart O.

Moreover, regulation of fishing for highly migratory tuna species in the adjacent areas is not entirely domestic; tuna harvest levels are set Pacific basin-wide, with individual country allocations, based on recommendations of the Western & Central Pacific Fisheries Commission. WCPFC conservation and management allows these highly migratory stocks to be managed as a unit, consistent with the best scientific information available and the requirements of domestic and international law.

As your November 17, 2023, letter requests, the attached rationale explains, one-by-one, how these existing fishing regulations are consistent with the proposed sanctuary's goals and objectives, as well as the NMSA's purposes and policies. In summary, these goals and objectives, as amended, can be distilled to three overarching elements: (1) comprehensive conservation and management of sanctuary resources and protection of sanctuary ecosystem services; (2) integrated management; and (3) cultural connectivity. The existing regime provides for all three.

More specifically, the attached rationale explains how both the monument proclamations and the sanctuary nomination seek, in connection with the tuna species in particular, to protect the ecosystem services that high-trophic level species provide by pursuing forage fish to the surface where they can be prey for seabirds. For highly migratory Pacific tuna species, managing fishing throughout these species' range, as is currently done in the adjacent areas, is more effective in conserving and managing these species than the imposition of piecemeal static marine protected areas within bits and pieces of their range. The existing approach is also more consistent with international law governing shared straddling stocks. While monument-based MPAs for near-shore areas may comprehensively protect target species and their associated habitat, the best scientific information available counsels a different approach to ensure comprehensive protection, conservation and management for internationally-managed highly migratory Pacific tuna stocks throughout their range. Also, tuna longline and purse seine fishing does not come into contact with bottom seamounts, corals, or any other benthic habitat or species on which Presidential Proclamations 8336 and 9173 focus.

The existing conservation and management regime is, moreover, a joint international, federal, and multistate endeavor. The MSA created the Council system to provide for a "bottom up" approach to management. The Council is comprised principally of state/territorial officials and regional/local stakeholders. It is broadly representative, especially when our constituent committees and advisory panels are considered. And, as explained above, pelagic fisheries management in the PRI blue water areas of skipjack, yellowfin and bigeye tunas includes basin-wide catch levels, with individual country-by-country allocations set by an international management body. There is simply no way to design a sanctuary management process that is as comprehensive.

The Council process also provides for cultural connectivity, both through our representative processes and additional initiatives developed over the decades to include and honor indigenous fishing practices and traditions. In our Pacific territories, fishing is an important component of the culture for food, economy, and survival. No place is more evident of this than American Samoa, which depends on tunas harvested from the adjacent areas to support its one remaining cannery and its fishing community more generally. NOAA can best ensure cultural connectivity by investing in the programs and partnerships the Council has created over the intervening decades since the MSA was enacted, rather than attempting to develop new sanctuary-specific fisheries processes.

Furthermore, consistent with your November 17 letter, the adjacent areas' fishing regulations are not only compliant with the MSA's National Standards, but were developed with these national standards in mind. As the attached rationale explains, the Pelagic FEP promotes optimum yield of the Pacific tuna species, employs a conservation and management approach that is based on the best scientific information available, assists in managing these highly migratory species throughout their extensive range, minimizes bycatch and its impacts, and protects fishing communities—and particularly underserved fishing communities as that term is used in NOAA Fisheries Equity and Environmental Justice Strategy. To that end, the Council appreciates the September 12-13 workshop held in American Samoa, which highlighted how the tuna fishing in the PRIA is critical to the territory's tuna cannery, its largest employer. As well, the Council recognizes how ONMS's November 17 revision to the sanctuary goals and objectives leaves considerably more room for National Standard Eight to operate than do the original goals and objectives from June 23.

In closing, the Council has long shared the Administration's aspirations for conservative fishery management in the Western and Central Pacific based on local needs, inputs, and aspirations. The existing mix of national wildlife refuge, national marine monument, Council, and WCPFC measures best balances all the relevant considerations your June 23 and November 17 letters have asked us to weigh in reaching our recommendation. We look forward to further discussions regarding this important issue. In the meantime, please do not hesitate to reach out to us if you have any questions or require additional information.

Sincerely,



Taulapapa William Sword
Chair



Kitty M. Simonds
Executive Director

cc:

Richard Spinrad, Under Secretary of Commerce, Oceans & Atmosphere NOAA Administrator
Nicole LeBoeuf, Assistant Administrator, NOAA National Ocean Service
Janet Coit, NMFS Assistant Administrator, National Marine Fisheries Service
John Armor, Director, Office of National Marine Sanctuaries
Sara Malloy, Acting Regional Administrator, Pacific Islands Region
Fred Tucher, Chief, NOAA Office of General Counsel, Pacific Islands Region
Adam Dilts, Chief, NOAA Office of General Counsel, Oceans and Coasts
Western Pacific Regional Fishery Management Council Members

Encl:

Attachment 1-WPRFMC Decision Justification
Attachment 2-Ltr to J. Armor Re PRI Sanctuary 12.13.2023

Attachment 1-Western Pacific Regional Fishery Management Council Decision Justification

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, Western Pacific Regional Fishery Management Council (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 Presidential Proclamation 8336¹ 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 Plan², including those for PRIA bottomfish fisheries³, PRIA coral reef ecosystem fisheries⁴, PRIA crustacean fisheries⁵, and PRIA precious coral fisheries⁶, 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

¹ See 50 C.F.R §§ 665.930-665.936.

² Collectively, 50 C.F.R Part 665, Subpart E.

³ 50 C.F.R §§ 665.601-665.606.

⁴ 50 C.F.R §§ 665.621-665.628.

⁵ 50 C.F.R §§ 665.641-665.645.

⁶ 50 C.F.R §§ 665.661-665.669.

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.⁷ Moreover, adverse impacts from hook and line bottomfishing studied off Northwest Hawai'i have been found to be relatively low.⁸ Regulations for coral reef ecosystem management unit fish species includes an allowable gear list that does not authorize mobile or other gear that would disturb the bottom materially, if at all; and poisons, explosives and intoxicating substances are prohibited.⁹ Nor does the Western Pacific crustacean fishery authorize mobile gear.¹⁰ Finally, only selective gears (defined in the FMP as ROVs, submersibles, and hand harvest) may be used to harvest precious corals.¹¹ 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.¹²

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,¹³ 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

⁷ 50 C.F.R. § 665.605.

⁸ Kelley, C., et al., The impacts of bottomfishing on Raita and West St. Rogation Banks in the Northwest Hawaiian Islands, Atoll Research Bulletin, Smithsonian Institution (Feb. 2006).

⁹ 50 C.F.R. § 665.627.

¹⁰ See generally 50 C.F.R. § 600.725.

¹¹ 50 C.F.R. § 665.664.

¹² See 67 Fed. Reg. 11941 (March 18, 2002).

¹³ 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. See <https://protect-us.mimecast.com/s/7v34CPNM8wIMkXkJuzpTC4?domain=fisheries.noaa.gov>; <https://protect-us.mimecast.com/s/GJVNCQWNRxcryPyJSPim5y?domain=fisheries.noaa.gov>; <https://protect-us.mimecast.com/s/tjDVCR6M7yTBzWzyuPVn-H?domain=fisheries.noaa.gov>.

managed under 50 C.F.R 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 C.F.R 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 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.¹⁴ 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.¹⁵ 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.¹⁶ 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 appreciably reduce the likelihood of both the survival and

¹⁴ 50 C.F.R § 300.223(a)(2).

¹⁵ NMFS in prep.

¹⁶ NMFS in prep.

recovery of a listed species in the wild by reducing the reproduction, numbers or distribution of that species.¹⁷

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)¹⁸ “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 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)¹⁹ 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.

¹⁷ 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.

¹⁸ 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).

¹⁹ <https://sustainablefisheries-uw.org/tuna-mpa-pipa/> (last visited Nov. 21, 2023).

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)²⁰ 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.²¹

Pons et al. (2022)²² 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 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.²³ 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

²⁰ Hilborn R. et al., Area-based management of blue water fisheries: Current knowledge and research needs, *Fish and Fisheries*. Vol. 23: 492-518 (2022).

²¹ Gilman E. et al, Ecological responses to blue water MPAs, *PLoS One*, 15 e0235129.

²² 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).

²³ <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).

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.²⁴ 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. It also 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 (OY) on a continuing basis.²⁵ "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."²⁶ 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 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.²⁷

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 administrator of the National Marine Fisheries Service and individuals nominated by respective governors and

²⁴ See nn. 15 & 16 above.

²⁵ 16 U.S.C. § 1851(a)(1).

²⁶ 50 C.F.R. § 600.310(b)(2).

²⁷ 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.

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.”²⁸ Non-voting council members include representatives of the U.S. Fish and Wildlife Service, the Coast Guard and the State Department.²⁹

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.³⁰

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 (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

²⁸ 16 U.S.C. § 1852(b)(2)(A).

²⁹ 16 U.S.C. § 1852(c).

³⁰ <https://www.wpcouncil.org/wp-content/uploads/2019/05/Council-Guiding-Principles.pdf> (last visited Jan 18, 2024).

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.³¹

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 WCPFC is comprised of representatives from member states, cooperating non-member states, and participating territories. The WCPFC holds annual meetings, and is supported by four subsidiary bodies, including the Scientific Committee and the Technical and Compliance Committee.³² Decisions the WCPFC makes are broadly inclusive. Action is generally taken by consensus, but there also is a “two-chamber system:” one 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.³³

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.

³¹ See generally <https://www.wpcouncil.org/about-us/> (last visited Jan. 18 2024).

³² See generally <https://www.wcpfc.int/about-wcpfc> (last visited Jan. 18 2024).

³³ https://www.wcpfc.int/system/files/Rules_of_Procedure.pdf (last visited Jan. 18 2024).

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 Northern 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 lives. 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 population of American Samoa, 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.³⁴ Just as it is important to honor cultural heritage, it is important to recognize the well-managed tuna fishery's contribution to American Samoan contemporary culture.

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, 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.³⁵ 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.³⁶

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."³⁷

First and most fundamentally, Section 3 of E.O. 13985³⁸, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, states that each agency shall

³⁴ See American Samoa, The Importance of the Tuna Industry to American Samoa (Sep. 12, 2023) (Powerpoint at slide 3) (presented at PRI Sanctuary Workshop, Pago Pago) (hereinafter, "AS Powerpoint").

³⁵ AS Powerpoint at slide 24, referencing NMFS document PICDR-113363.

³⁶ AS Powerpoint at slide 24.

³⁷ 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).

³⁸ 86 Fed. Reg. 7009 (Jan. 25, 2021).

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.³⁹ 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 52% 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 the follow-up E.O. 14091⁴⁰, 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]erritorial fishing communities (which include American Samoa, Guam, [and] the Commonwealth of the Northern Mariana Islands) ... may ... be categorized as underserved.”⁴¹ 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.”⁴² 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. 14031⁴³, 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

³⁹ Sullivan-Stack, J., et al., A Scientific Synthesis of Marine Protected Areas in the United States: Status and Recommendations, *Frontiers in Marine Science* (May 18 2022).

⁴⁰ 88 Fed. Reg. 10825 (Feb. 16, 2023).

⁴¹ NOAA Fisheries Equity and Environmental Justice Strategy, https://media.fisheries.noaa.gov/2022-05/2022-05-NOAAFisheries-EEJ_508.pdf, at 3 [hereinafter, “NOAA EEJ Strategy”] (last visited Jan. 18 2024).

⁴² NOAA EEJ Strategy, at 3.

⁴³ 86 Fed. Reg. 29675 (May 28, 2021).

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, § 3(b)(ix). Magnuson-Stevens Act National Standard Eight⁴⁴ 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 “America the Beautiful 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, entitled *Conserving and Restoring America the Beautiful (2021)*⁴⁵, 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, “[c]onservation 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

⁴⁴ 16 U.S.C. § 1851(a)(8).

⁴⁵ See <https://www.doi.gov/sites/doi.gov/files/report-conserving-and-restoring-america-the-beautiful-2021.pdf> (last visited Jan. 18 2024).

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, these fishing vessels’ physical presence in an extremely remote area supports on-going monitoring and maritime domain awareness. A fishing vessel can report illegal or suspicious activity. In addition, the mere presence of U.S. fishing vessels can deter IUU fishing.

Finally, 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 the Council the regulatory authority to

create opportunities for native communities to participate in the fisheries managed by the 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 the longstanding connection between the Islands and 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 Ho'ohanahano 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."⁴⁶ 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."⁴⁷ The Pacific Insular Area specifically includes Baker and Howland Islands, Kingman Reef, and Palmyra Atoll.⁴⁸ 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 52% 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.*⁴⁹

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

⁴⁶ 16 U.S.C. § 1801(a)(10).

⁴⁷ 16 U.S.C. § 1801(c)(7).

⁴⁸ 16 U.S.C. § 1802(35).

⁴⁹ 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 § 304(a)(5) of the NMSA, these goals and objectives represent the operative expression of Administration policy with which sanctuary management must adhere.

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 2000s, 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.⁵⁰ 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.⁵¹ 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 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.”⁵² 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.⁵³

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 the 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 2009.⁵⁴ These FEPs, in conjunction with the Council’s

⁵⁰ See generally Fishery Ecosystem Plan for Pacific Pelagic Fisheries of the Western Pacific Region, at 18-19 (Sep.24, 2009) (Purpose and Need).

⁵¹ Ecosystem Principles Advisory Panel. 1999. Ecosystem-based fishery management: A Report to Congress. Silver Spring, MD. National Marine Fisheries Service.

⁵² 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.

⁵³ NOAA. 2004. New Priorities for the 21st Century. NOAA’s Strategic Plan Updated for FY 2005 – FY 2010.

⁵⁴ [https://www.wpcouncil.org/fep/WPRFMC%20PRIA%20FEP%20\(2009-09-21\).pdf](https://www.wpcouncil.org/fep/WPRFMC%20PRIA%20FEP%20(2009-09-21).pdf);
[https://www.wpcouncil.org/fep/WPRFMC%20Pelagic%20FEP%20\(2009-09-21\).pdf](https://www.wpcouncil.org/fep/WPRFMC%20Pelagic%20FEP%20(2009-09-21).pdf).

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 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.⁵⁵

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.⁵⁶

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,

⁵⁵ S.Rep.No. 106-353, 106th Cong., 2d Sess. (July 21, 2000), at 2.

⁵⁶ H.R.Rep. No. 98-187, 98th Cong., 1st. Sess. (May 16, 1983), at 9.

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.⁵⁷

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 a new sanctuary is established.⁵⁸ 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.

⁵⁷ H.R.Rep. No. 98-187, at 9 (quoting Kifer, "NOAA's Marine Sanctuary Program," 2 Coastal Zone Management J. 177 (1975)).

⁵⁸ S.Rep.No. 106-353, at 3.

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 1980s, the Council managed Western Pacific fisheries through species-based fishery management plans, and then transitioned to a series of place-based Fishery Ecosystem Plans (FEPs), 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.⁵⁹

⁵⁹ See Pelagic FEP, at 21-22; PRIA FEP at 6-7.

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. U.S. Coast Guard monitors the mandatory vessel monitoring systems (VMS) installed on the U.S. fleet and NOAA OLE conducts dockside inspections. The U.S. Coast Guard 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.

Further, by law and by practice, 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.⁶⁰ Indeed, the Council seeks the “sustained participation” of fishing communities for future generations.⁶¹ As explained above, the Sustainable Fisheries Act of 1996 specifically highlighted the need to use Pacific fish stocks for the benefit of territorial communities.⁶²

NOAA’s National Seafood Strategy⁶³ is likewise geared toward the long-term, by seeking “to address important national issues such as the resilience of coastal 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

⁶⁰ 16 U.S.C. § 1851(a)(1).

⁶¹ 16 U.S.C. § 1851(a)(8).

⁶² 16 U.S.C. § 1801(c)(7).

⁶³ <https://www.fisheries.noaa.gov/s3/2023-08/2023-07-NOAAFisheries-Natl-Seafood-Strategy-final.pdf> (last visited Jan. 18 2024).

development and implementation of measures to reduce impacts while maintaining social and economic benefits to fishing communities.”⁶⁴

Also relevant to Objective 4 are the series of President Biden’s executive orders that promote 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.”⁶⁵ 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?”⁶⁶ 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?”⁶⁷ 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.

⁶⁴ https://s3.amazonaws.com/media.fisheries.noaa.gov/dam-migration/noaa_pacificislands_spupdate.pdf (last visited Jan. 18 2024).

⁶⁵ NOAA Fisheries EEJ Strategy at Table 1.

⁶⁶ NOAA Fisheries EEJ Strategy at 12.

⁶⁷ NOAA Fisheries EEJ Strategy at 21.

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.”⁶⁸ 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%.⁶⁹

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 metric tons 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

⁶⁸ NOAA Fisheries EEJ Strategy at 18.

⁶⁹ PICDR 113363, Catch and Effort of USA Purse Seine Vessels Inside and Outside the US EEZ (May 31, 2023)

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).⁷⁰

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 13 vessels in 2022.⁷¹ 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 WCPFC 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. The acts of fishing and bringing to market the fish that are harvested are, themselves, part of the culture and heritage in the Pacific territories. 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 congressional finding in the Magnuson-Stevens Act is that, "Pacific Insular Areas contain unique historical, cultural, legal, political and geographic circumstances which make fisheries' resources important in sustaining their economic growth."⁷² 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, ongoing 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

⁷⁰ Catch statistics from NOAA Fisheries Pacific Islands Fisheries Science Center, PRIA and the Pacific, presented at the PRIA Sanctuary Workshop in Pago Pago on September 13, 2023, Powerpoint at slides 10-15.

⁷¹ AS Powerpoint at slide 7.

⁷² 16 U.S.C. § 1801(a)(10).

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 it is 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."⁷³ 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. A different approach—one that does not supersede Council jurisdiction and management—is appropriate for the PRIA non-monument sanctuary areas.

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:

⁷³ Fishery Ecosystem Plan for the Pacific Pelagic Fisheries of the Western Pacific Region, at 1 (Sep. 24, 2009).

... 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.⁷⁴

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.⁷⁵

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.

⁷⁴ S.Rep.No. 98-280, 98th Cong., 1st Sess. (October 26, 1983) at 5.

⁷⁵ H.R.Rep. No. 98-187 at 21.

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 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."⁷⁶ 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."⁷⁷

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."⁷⁸

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"⁷⁹

⁷⁶ H.R.Rep. No. 98-187 at 24-25.

⁷⁷ S.Rep.No. 98-280 at 6.

⁷⁸ 16 U.S.C. § 1802(33).

⁷⁹ 50 C.F.R. § 600.301(e)(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."⁸⁰ Moreover, superseding the Council's 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"⁸¹ 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.

⁸⁰ 50 C.F.R. § 600.315(a)(2).

⁸¹ 50 C.F.R. § 600.320(c).

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.”⁸² 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.

The importance of fishery resources to the communities the Council represents cannot be overstated. Data shows that the people of American Samoa, in particular, rely heavily on fishing that could be affected by the sanctuary designation culturally, economically, and socially.

Continued Council management of the PRIA adjacent area tuna fishery is essential to sustaining the American Samoa fishing community. Under the current measures the Council implements, there are thousands of metric tons of tuna caught in the PRIA each year. There were nearly 6,000 metric tons of tuna caught in 2022 alone.⁸³ These tuna deliveries, and access to U.S. PRIA fishing grounds, are crucial to ensuring continued U.S. flag tuna deliveries to American Samoa, especially in light of other market and regulatory forces which reduce U.S. purse seiners’ incentive to land in that territory.⁸⁴ The cannery in American Samoa processes approximately 100,000 tons of tuna every year. This is the equivalent of approximately 500 million cans of tuna, almost all of which enters the United States market.⁸⁵

Moreover, American Samoa does not so much have a fishing community as a constituent element of its economy, as American Samoa is a fishing community itself. In a June 20 letter to President Biden, Congresswoman Uifa’atali Aumua Coleman Radewagen estimated that American Samoa’s fishing industry makes up about 80% of its local economy. Sanctuary proponents’ claims to the contrary notwithstanding, maintaining the U.S. flag fishing fleet that serves American Samoa is thus important to everyone on the island.

Indeed, the cannery is the largest employer in American Samoa. Its 2631 direct employees comprise fifteen percent (15%) of the total jobs in that territory. The American Samoa Department of Commerce estimates there are also another 2,631 cannery linked jobs. With an

⁸² 50 C.F.R § 600.340(c).

⁸³ See AS Powerpoint at slide 24.

⁸⁴ See, e.g., AS Powerpoint, at slide 4.

⁸⁵ See AS Powerpoint at slide 5.

average annual wage of \$15,000, the American Samoa Department of Commerce estimates that residents directly employed by the cannery and businesses linked to the cannery earn \$78.9 million each year. The American Samoa Department of Commerce estimates that the loss of these jobs would result in a loss of \$3.1 million in employment tax revenue to the local economy.⁸⁶

Any sanctuary management scheme that displaced the Council-managed PRI tuna fishery would devastate American Samoa. Governor Lemanu P.S. Mauga likewise estimated in his own March 30, 2023 letter to President Biden that eliminating commercial fishing would result in the loss of almost 5,000 jobs. This includes the 2,300 residents who are directly employed by the cannery. Governor Mauga also states that the loss of jobs would be exacerbated by a forty percent (40%) increase in shipping and freight costs. The American Samoa Power Authority estimates that the cannery generates over \$7M in revenue per year.⁸⁷ Governor Mauga anticipates that closing the cannery would cause a dramatic increase in electricity costs for residents. “Without access to these traditional fishing grounds, our tuna industry and entire economy will be annihilated,” wrote Governor Mauga.

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 C.F.R. § 600.345(b)(1). As explained in detail above, Council management of the PRI tuna fishery is not merely the conservation equivalent of a static MPA; rather, the best scientific information available reveals Council management of these highly migratory tuna fisheries to be the preferable approach. As Congresswoman Radewagen has written, “The Administration must allow the WPFMC to do their job under the law and manage the waters under its jurisdiction with buy-in from regional actors[.] The Pacific needs proper fishing management instead of outright and unfair fishing bans in our own waters.” Accordingly, a well-managed fishery, such as the U.S. Western and Central pelagic tuna fishery, should be the preferred approach.

⁸⁶ American Samoa Department of Commerce Powerpoint, Economic Impact of PRIA Marine Sanctuary (Sep. 13, 2023) at slides 7-8.

⁸⁷ American Samoa Power Authority Powerpoint (Sep. 12-13, 2023) at Workshop at slide 1.