



**Western
Pacific
Regional
Fishery
Management
Council**

April 14, 2023

Nicole LeBoeuf
Assistant Administrator for Ocean Services and Coastal Zone Management
National Oceanic and Atmospheric Administration
1305 East West Highway
Silver Spring, MD 20910

Dear Ms. LeBoeuf,

The Western Pacific Regional Fishery Management Council (Council), at its 194th meeting held on March 27-28, 2023 in Saipan, CNMI and March 30-31, 2023 in Tumon, Guam, reconsidered fishing regulations for the Monument Expansion Area (MEA) of the Northwestern Hawaiian Islands (NWHI). The Council deliberated on your February 22, 2023 letter and the potential changes to its existing recommendations. After a thorough discussion that included multiple options and the opportunity to have questions answered by the Superintendent of Papahānaumokuākea Marine National Monument, the Council amended its previous recommendations made its 193rd meeting held in Honolulu, Hawaii on December 6-8, 2022, by (1) removing as a provision of the Native Hawaiian Subsistence Practices Fishing Permit cost recovery by sale while leaving barter and trade within the community, (2) removing the previous recommendation to allow cost recovery up to \$15,000 and instead providing applicants the ability to request for limited cost recovery by sale in the permit application process through a statement of need for cost recovery along with expected costs, and (3) providing that such application shall be subject to review and approval/disapproval following an interagency consultation and public review.

The Council stressed the importance of allowing limited cost recovery for Native Hawaiian subsistence fishing practices in the MEA in order for the community to participate in regulated fishing practices under Proclamation 9478. Native Hawaiians are at the top of several socio-economic indicators including the highest rates of poverty, unemployment, negative health conditions, lowest home ownership, etc., among identified ethnic groups in Hawaii. A decision to disallow cost recovery by sale will continue to disenfranchise the Native Hawaiian community. The distance from the main Hawaiian Islands to the MEA requires a large cost for fuel, bait, ice, food and other fishing needs, which would likely prohibit fishers from participating in Native Hawaiian subsistence and traditional fishing practices in the MEA.

Further, the Council believes that limited cost recovery may be conducted on a small scale within the community consistent with Proclamation 9478's prohibition on commercial fishing. We further believe that the Council's recommended prohibition on commercial gear and comprehensive process for applying and approving requests for Native Hawaiian subsistence practice permits will provide effective safeguards against commercial fishing. The Council's recommendation does not approve cost recovery by sale as described in the previous

recommendation from the 193rd Council meeting. Instead, it provides a framework for NMFS to consider the costs associated with each trip through the application process, so that a case-by-case decision may be made after consultation with other partners, including the Council, Office of National Marine Sanctuaries (ONMS), State of Hawaii, US Fish and Wildlife Service, and Office of Hawaiian Affairs. Accordingly, an application for cost recovery by sale would consider the circumstances and objectives of the particular trip, the costs incurred, and the availability of alternate sources of funding. Cost recovery also allows for the disadvantaged communities to participate in cultural and traditional fishing practices by promoting equity amongst fishers as directed by Executive Order 13985 in particular for Asian American, Native Hawaiian and Pacific Island communities as directed in Executive Order 14031.

The Council also acknowledges the comments of an independent cultural working group and their concerns regarding fishing in the NWHI, but the area under consideration is 50-200 nm from the islands that they are concerned about. Other Native Hawaiian groups have commented at the Council's recent public meetings with differing opinions and expressed the desire to fish in the MEA. However, they expressed these wishes in concert with the concern that a journey to the MEA would be financially unattainable given the cost. President Obama's proclamation intended to benefit Native Hawaiians who are not economically in the position to front those costs for a subsistence fishing trip to the MEA. Without some type of opportunity to recover costs, the intention of the Proclamation will not be met.

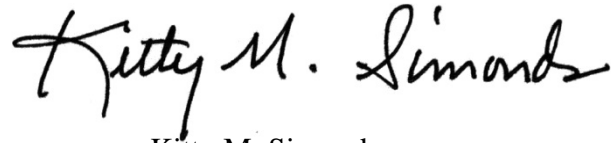
In order to provide equity for Native Hawaiian communities, the Council also recommended that funding be provided to the Western Pacific Community Demonstration Projects Program (CDPP) and Community Development Plans (CDP) under the authority of Section 305(i) of the Magnuson Stevens Act. Funding could then be used to solicit for applications to participate in Native Hawaiian fishing practices in the MEA and submitted in accordance with 67 FR 18512 (April 16, 2002). Because funds may be allocated only if available, cost recovery by sale provides an important additional safeguard. By placing the cost recovery by sale in the permit process itself, NMFS and its monument partner agencies, may consider the availability of CDP funds before determining if cost recovery will be allowed. The use of the CDP and CDPP for this purpose was supported by the State of Hawaii at this meeting.

Due to the Council's recommendation no longer explicitly allowing "sale" but providing a framework for NMFS to consider cost recovery, the Council believes that the recommendation is consistent with the goals and objectives of the proposed sanctuary. In particular, this framework provides for partnership and constituent engagement (Goal 4) through a consultation process and public review; Supports and maintains existing co-management functions to ensure seamless integrated stewardship (Objective 3) through the inclusion of management partners in the consultation process; Allows for input through the application process to provide Native Hawaiian management concepts and principles (Objective 5); and Enhances community involvement through providing a public review and commenting process and providing opportunities for economically disadvantaged communities to access cultural practices through cost recovery (Objective 6).

The attached document provides the final recommendations for fishing regulations in the Monument Expansion Area of the Northwestern Hawaiian Islands. The Council believes that in the development of the MEA President Obama's Proclamation 9478 intended to allow for sustainable fishing and that any attempt to reduce that opportunity clashes with that intent. If

you have any questions, or if you would like to discuss the Council recommendations further, please give me a call at the Council Office, (808) 522-8220.

Sincerely,

A handwritten signature in black ink that reads "Kitty M. Simonds". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Kitty M. Simonds
Executive Director

cc: Janet Coit, Assistant Administrator, NOAA Fisheries
John Armor, Director, Office of National Marine Sanctuaries
Kristina Kekuwa, Regional Director, ONMS Pacific Islands Region
Sarah Malloy, Acting Regional Administrator, NMFS PIRO
John Gourley, Council Chair

Attachment: WPRFMC recommendation on fishing regulations for the MEA



WESTERN
PACIFIC
REGIONAL
FISHERY
MANAGEMENT
COUNCIL

WPRFMC Recommendations for Fishing Regulations in the Monument Expansion Area

The Council stressed the importance of allowing cost recovery for fishing in the MEA in order for the community to participate in the fishery. Native Hawaiians are at the top of several socio-economic indicators including the highest rates of poverty, unemployment, negative health conditions, lowest home ownership, etc. A decision to disallow cost recovery, including sales will continue to disenfranchise the Native Hawaiian community. The Council believes that limited cost recovery may be conducted on a small scale within the community consistent with Proclamation 9478's prohibition on commercial fishing. We further believe that the Council's recommended prohibition on commercial gear and comprehensive process for applying and approving requests for NH subsistence practice permits will provide effective safeguards against commercial fishing. The distance from the Main Hawaiian Islands to the MEA requires a large cost for fuel, bait, ice, food and other fishing needs may prohibit fishers from participating in Native Hawaiian cultural and traditional fishing practices in the MEA. Cost recovery allows for the disadvantaged communities to participate in cultural and traditional fishing practices by promoting equity amongst fishers as directed by Executive Order 13985 in particular for Asian American, Native Hawaiian and Pacific Island (AANHPI) communities as directed in Executive Order 14031. The Council also acknowledges the comments of an independent cultural working group and that other Native Hawaiian groups have commented at the Council's recent public meetings with a differing opinion.

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

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

- Catch Limits: Establish a preliminary annual catch limit for bottomfish MUS at 350,000 lbs. and pelagic MUS at 180,000 lbs. for the MEA. NMFS and the Council would monitor catches from within the original monument authorized by NOAA, and in the MEA authorized by NMFS towards this limit. As an accountability measure (AM), if NMFS forecasts the limit would be reached NMFS would prohibit all fishing in the MEA for the remainder of the fishing year.
- NMFS and the Council will annually report fishery performance (e.g., number of permits issued, catch and effort information, etc.) in the annual Hawaii FEP and Pelagics FEP Stock Assessment and Fisheries Evaluation (SAFE) Reports. NMFS and the Council will also evaluate fishery performance after an appropriate time not to exceed 5 years from the effective date of the fishery regulations and will continue to conduct evaluations as necessary in order to ensure the resources are managed sustainably. Such evaluations will take into consideration the best scientific information available and evaluate whether additional specific actions are necessary for the proper care and management of monument objects, including fishery resources, consistent with Proclamation 9478.
- Non-Commercial Fishing Permit and Reporting: Any person engaging in non-commercial fishing in the MEA must obtain a MEA non-commercial fishing permit and comply with reporting and record keeping requirements codified at [50 CFR 665.14 – Reporting and Recordkeeping](#), as required for all Magnuson-Stevens Act permits issued by NMFS.
- Disposition of Non-Commercial Catch: Bottomfish MUS and pelagic MUS legally caught by an individual holding a valid MEA non-commercial fishing permit may be brought back to the MHI for consumption, including community sharing. However, fish caught from within the MEA under this permit cannot enter commerce through sale, barter, or trade and may not recoup costs associated with the trip to the MEA.
- Native Hawaiian Subsistence Practices Fishing Permit Application Process: An applicant for a Native Hawaiian Subsistence Practices Permit must complete and submit an application to NMFS that includes, but is not limited to a statement describing the objectives of the fishing activity for which a permit is needed, including a general description of the expected disposition of the resources harvested under the permit. If cost recovery is requested through sale, the application must include estimated costs for fuel and ice, and other trip costs to make a trip from the main Hawaiian Islands to the MEA along with a statement explaining why cost recovery is necessary for the intended action.
 - If an application contains all of the required information, NMFS will forward copies of the application to the Council, the USFWS, the ONMS, the Office of Hawaiian Affairs (OHA), and the Chair of the Hawaii Department of Land and Natural Resources. The Council may consult with any of its Federal Advisory Committee Act (5 U.S.C. App. 2) exempt advisory bodies established pursuant to Section 302(g) of the Magnuson-Stevens Act to provide comments on the application. NMFS will also make the permit application available for public review for no less than 30 days.
 - Within 30 days following receipt of a complete application, NMFS will consult with the Council through its Executive Director, and the USFWS, NOAA Office of National Marine Sanctuaries (ONMS), Office of Hawaiian Affairs (OHA), and the Chair of the Hawaii Department of Land and Natural Resources (DLNR) concerning the permit application and will receive their recommendations for approval or disapproval of the application.

- Disposition of Native Hawaiian Subsistence Practices Catch: Bottomfish MUS and Pelagic MUS legally caught by an individual holding a valid MEA Native Hawaiian Subsistence Practices fishing permit may bring catch back to the main Hawaiian Islands for consumption, including community sharing, barter and trade. Additionally, permittees may request NMFS consider the ability to recover costs through sale of catch associated with the trip to the MEA.
- Trip Mixing: To ensure fish caught from inside the MEA for non-commercial and Native Hawaiian practices are not commingled with fish caught commercially seaward of the MEA, NMFS and the Council would prohibit any person from fishing both inside and outside the MEA on the same trip. Similarly, to ensure fish caught inside the original monument area for sustenance purposes are not commingled with fish caught in the MEA for non-commercial and Native Hawaiian practices and sharing in the MHI, NMFS and the Council would prohibit any person from engaging in both non-commercial fishing inside and outside the MEA as well as sustenance fishing in the original monument area on the same trip. However, sustenance fishing in the original monument and MEA on the same trip shall not be prohibited.
- Observer and VMS Requirements: All fishing vessels must carry an activated and functioning NOAA-provided VMS unit on board at all times whenever the vessel is in the Monument, and an observer if directed to do so by NMFS.
- Notification: Permit holders must notify NMFS prior to making any fishing trip to the MEA so NMFS may place a VMS unit and/or an observer on board as directed. Additionally, permit holders must contact NMFS at least 24 hours before landing any catch harvested under an MEA permit, and report the port and the approximate date and time at which the catch will be landed.
 - Other Requirements: All fishing vessels must also comply with regulations codified at 50 CFR 665 – Western Pacific Fisheries applicable in the Exclusive Economic Zone (EEZ) comprising the MEA.



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

May 31, 2023

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

Dear Ms. Simonds:

This letter responds to the Western Pacific Regional Fishery Management Council's (Council) final action taken at the 194th Council meeting as detailed in your April 14, 2023 letter to NOAA, amending the Council's prior December 2022 action for the Papahānaumokuākea Monument Expansion Area (MEA).

NOAA finds that, with the exception of the recommendation providing Native Hawaiian Subsistence Practices Fishing Permit applicants the ability to request limited cost recovery by selling their catch, the Council's amended recommendations fulfill the purposes and policies of the National Marine Sanctuaries Act (NMSA) and the goals and objectives of the proposed sanctuary. As detailed in NOAA's February 22, 2023 letter, any recommendation for the allowance of "sale" is inconsistent with the goals and objectives of the proposed sanctuary. Accordingly, NOAA rejects that portion of the Council's recommendation providing Native Hawaiian Subsistence Practices Fishing Permit applicants the ability to request limited cost recovery by selling their catch. This finding concludes the NMSA section 304(a)(5) process for the purpose of the proposed sanctuary designation within Papahānaumokuākea Marine National Monument.

Per the NMSA section 304(a)(5), based on this finding, NOAA will begin to prepare regulations under the Magnuson-Stevens Fishery Conservation and Management Act, for those parts of the Council's recommendations that it has accepted.

Coordination with the Council under the NMSA section 304(a)(5) for the proposal to designate marine portions of Papahānaumokuākea Marine National Monument as a national marine sanctuary has been a critical step in the proposed sanctuary designation process. On behalf of NOAA, I would like to thank the Council for its time and effort in this matter.



Please contact Kristina Kekuwa at Kristina.Kekuwa@noaa.gov if you have any questions or require more information.

Sincerely,



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

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



**Western
Pacific
Regional
Fishery
Management
Council**

February 14, 2024

Nicole LeBoeuf
Assistant Administrator for Ocean Services and Coastal Management
National Oceanic and Atmospheric Administration
1305 East-West Highway
Wilver Spring, MD 20910

Dear Ms. LeBoeuf,

The Western Pacific Regional Fishery Management Council (Council) would like to express its disappointment in NOAA's rejection of part of the recommendation for management in the proposed Northwestern Hawaiian Islands National Marine Sanctuary and Monument Expansion Area. The Council finds that the rationale provided by NOAA does not detail how the Council's recommendation for the review of cost recovery in the application is inconsistent. Instead the response provides arbitrary rationale in the form of commenters that do not have regulatory responsibility over the area and are based on an unfounded need for regulations to be the same everywhere.

First, limited sale should not be considered commercial. The Council believes that limited cost recovery may be conducted on a small scale within the community consistent with Presidential Proclamation 9478's prohibition on commercial fishing. We further believe that the Council's recommended prohibition on commercial gear and comprehensive process for applying for and approving requests for Native Hawaiian subsistence practice permits will provide effective safeguards against commercial fishing. Accordingly, an application for cost recovery by sale would consider the circumstances and objectives of the particular trip, the costs incurred, and the availability of alternate sources of funding.

Second, the State of Hawaii regulations do not apply in the MEA thus fisheries management regulations would have no impact on the state constitution, the same as in other federal fishery regulations. There are many areas where federal and state regulations are inconsistent and that has not stopped fishery management from occurring. While they are a management partner, each agency still exerts authority over its own jurisdiction.

The Council's action supports the state's constitutional authority to protect Native Hawaiian traditional and customary rights by providing an avenue for those traditions and rights to be exercised in the NWHI. NOAA's current decision on the Council's recommendation would not allow for participation due to the high costs involved in fishing the MEA and the low socio-economic status of Native Hawaiians. If anything, the State of Hawaii's vote on this issue is a dereliction of their duty to protect Hawaiians.

While we appreciate the concerns from a single cultural working group, the Council does not agree that all Native Hawaiian viewpoints are represented by the one group. In discussions with other Native Hawaiians, they expressed the desire to fish in the MEA or at least have the opportunity to do so, some of which had previously done so or had family that did. The President issued Executive Orders 13985 and 14031 in particular for Asian American, Native Hawaiian and Pacific Island communities and the Council's action can be seen as a response to provide equity and environmental justice in federal regulations as the EOs require.

Third, the purpose of the National Marine Sanctuaries Act is to maintain biological communities and enhance natural habitats. The type of fishing that would be allowed, even with limited sale, would do this. The disposition of the fish would not have an impact on what a national marine sanctuary is intended to protect. Therefore, the Council's management recommendation meets the purpose of the NMSA.

Lastly, the Council would like to provide specific responses to how its recommendations meet the goals and objectives. NOAA has stated in its letter that the Council's recommendation does not meet these specific goals and objectives and the Council would like to offer a rebuttal to those points:

Goal 4. Partnerships & Constituent Engagement Pursue, build, and maintain partnerships that generate active and meaningful involvement, with a commitment to incorporate traditional values and stewardship ethics, to strengthen world class conservation, community engagement, constituent support, and connection of people to place.

The Council maintains that the best way to build and maintain partnerships is to provide an opportunity for meaningful discussion. By providing an opportunity for disadvantaged Native Hawaiian community members to apply for a permit, the management partners are also provided the opportunity to analyze the fishing activity and provide suggestions or recommendations on how that activity can incorporate traditional values and ethics. This builds partnerships and allows for engagement for both the applicant and the management agencies. A consultation and public review process for a traditional fishing permit provides a framework for partnership and constituent engagement.

Objective 3. Support and maintain existing co-management functions within the Papahānaumokuākea Monument Management Board to ensure unified governance in the spirit of seamless integrated stewardship.

The Council's recommendation supports and maintains those functions of the Monument Management Board by providing a framework for the Monument Management Board, through the National Marine Fisheries Service, to consult on each application. The Board would discuss the circumstances and objectives of the trip, the costs incurred, and the availability of alternate sources of funding. This provides for each monument partner to consider and restrict activities but at the same time allow for disadvantaged communities to participate in cultural and traditional fishing practices in the MEA potentially through

sale or other funding mechanisms available to the management partners. The recommendation also allows for the monument management board to develop the safeguards that ensure that the resources harvested do not enter commerce or serve as a toehold for commercial fishing. In that instance, the onus is on the management partners to provide limitations such as trading, bartering, or exchanging within the family or community, or at what scale may be exchanged. The Council's job is to ensure that the fishing that occurs is sustainable. The management partners, under the Council's recommendation, would have the function of ensuring that the sustainable fishing done for traditional purposes meets the sanctuary/monuments intent.

Objective 5. Manage the sanctuary as a sacred site consistent with Native Hawaiian traditional knowledge, management concepts, and principles articulated within Mai Ka Pō Mai.

The application framework included in the Council's recommendation allows for input that would allow for incorporating Native Hawaiian management concepts and principles. *Mai Ka Pō Mai* is an outstanding document for incorporating Hawaiian principles and concepts into management and the Council welcomes a presentation on how it can help the Council to do the same. However, the purpose and guiding principles presented in this document can be aided by the Council's recommendation by providing opportunities for Native Hawaiian subsistence fishing practices to occur. While the framework presented in the recommendation allows for the discussion and engagement with the Native Hawaiian community, the activity of fishing can help to perpetuate relationships, expand knowledge, an opportunity for practicing Hawaiian culture, empower communities, and provide education and outreach, all guiding principles under the foundational elements of the plan. *Mai Ka Pō Mai* could be operationalized under the Council's recommendation as part of the process of reviewing an application and determining whether limited cost recovery is needed in order for this activity to occur. It may also play a role in determining other sources of funding to support this activity.

Objective 6. Enhance community engagement and involvement, including engagement of the Indigenous Hawaiian community in the development and execution of management of the sanctuary.

The Council's recommendation also allows for greater engagement with the community, including the indigenous Hawaiian community, by providing an opportunity for discussion on potential fishing. While the Council acknowledges the comments of the cultural working group, we have heard from other Native Hawaiians that had a desire to fish in the MEA. The cultural concerns expressed previously were regarding the Council's previous recommendation and not the amended version. The intent of the recommendation was to benefit Native Hawaiians that would like to fish in the MEA but do not have the financial means to do so. Providing an opportunity for that discussion to happen, whether it is allowed or not, would involve and engage Native Hawaiians in managing the sanctuary and Monument.

The Council's intent is to provide opportunities to the indigenous people of Hawaii to practice their culture and tradition in their own homeland. To do so requires resources to ensure that the practitioners are safe and successful. The Council's recommendation does not allow limited sale outright but rather requests NOAA Fisheries to review and consider the hardships of the Native Hawaiian applicant in order to allow subsistence practice in the NWHI. Thank you for your consideration and if you have any questions or concerns, please contact me at the Council Office at (808) 522-8220.

Sincerely,



Kitty Simonds
Executive Director

cc: Richard W. Spinrad, Under Secretary of Commerce for Oceans and Atmosphere, NOAA Administrator
Janet Coit, Assistant Administrator, NOAA Fisheries
Western Pacific Regional Fishery Management Council Members
Office of Hawaiian Affairs