



January 27, 2025

Taulapapa William Sword
Chair, Western Pacific Fishery Management Council
1164 Bishop St. 1400
Honolulu, HI 96813

Dear Chair Sword:

By this letter, I am providing notification that on January 16, 2025, NOAA Office of National Marine Sanctuaries (ONMS) published final regulations (90 FR 4856) establishing the Papahānaumokuākea National Marine Sanctuary (Sanctuary). Pursuant to section 304(b) of the National Marine Sanctuaries Act (NMSA), the designation and regulations to establish the Sanctuary take effect and become final after the close of a forty-five day review period during a continuous session of Congress, beginning on the publication date of this Federal rulemaking, which would occur not sooner than March 2, 2025. The public can track days of Congressional session at the following website: <https://www.congress.gov/days-in-session>. NOAA will publish an announcement of the effective date of the final regulations in the *Federal Register*.

The final Sanctuary regulations include provisions that are inconsistent with the final recommendation for fishing regulations made by the Western Pacific Fishery Management Council (Council) for the Papahānaumokuākea Marine National Monument Expansion Area (MEA), which is encompassed by the Sanctuary. In accordance with section 304(b)(1)(B) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS is providing notice that the Council's recommendation requires revision in order to be consistent with the purposes and policies of the NMSA and the goals and objectives of the Sanctuary. NMFS provides this notice in the event the Council is preparing to take up the matter again at its next meeting in March 2025.

BACKGROUND

Key events to date include the following:

- On November 19, 2021, ONMS notified the Council of their opportunity pursuant to section 304(a)(5) of the NMSA to prepare draft fishing regulations for the proposed Sanctuary. These fishing regulations would be implemented under the authority of the Magnuson-Stevens Act. Fishing regulations already existed for the portion of the proposed Sanctuary overlapping the original Papahānaumokuākea Marine National Monument, but there were no regulations specific to fishing in the MEA.
- At its 193rd meeting in December 2022, the Council recommended a suite of requirements for fishing in the MEA, including a prohibition on commercial fishing, permits and annual catch limits for non-commercial and Native Hawaiian practices subsistence fishing, and gear restrictions.



- On February 22, 2023, NOAA notified the Council that it accepted the majority of the recommendations, but rejected a provision that would allow for recovery of trip expenses up to \$15,000 through sale of fish caught under a Native Hawaiian Subsistence Practices Fishing Permit. NOAA concluded this provision failed to fulfill the purposes and policies of the NMSA and the draft goals and objectives of the proposed Sanctuary.
- At its 194th meeting in March 2023, the Council revised recommended provisions associated with cost recovery to be based on estimated costs of a planned fishing trip, and further defined the process for review of applications, including the ability for Native Hawaiian subsistence practice fishing permit applicants to request limited cost recovery by selling their catch.
- On May 31, 2023, NOAA rejected the Council’s proposed revision, explaining that allowing applicants to request limited cost recovery is inconsistent with the goals and objectives of the proposed sanctuary, citing the rationale in the February 22, 2023 letter.

The final regulations for the Sanctuary codify provisions with direct bearing on the Council’s recommendation. Specifically, the regulations allow for non-commercial fishing authorized under the Magnuson-Stevens Act as a regulated activity in the MEA or “Outer Sanctuary Zone,” provided that certain requirements are satisfied. These requirements are that fish harvested, either in whole or in part: (1) do not enter commerce through sale, barter, or trade, and that the resource is managed sustainably; and (2) are not intended to be sold and shall not be sold for any purpose, including, but not limited to, cost-recovery.

In considering whether to approve, disapprove, or partially approve a proposed regulation or amendment to a fishery ecosystem plan, section 304 of the Magnuson-Stevens Act requires that the Secretary of Commerce evaluate the proposed measure for consistency with the Magnuson-Stevens Act and other applicable laws. Because NMFS anticipates that the sanctuary regulations will be effective as soon as March 2, 2025 and the Council has scheduled their next meeting later that month, NMFS is notifying the Council in case they would like to consider revising their most recent recommendation to address inconsistencies previously identified by NOAA in partially rejecting the Council’s recommendations.

Sincerely,



Sarah Malloy
Regional Administrator

ATTACHMENTS

Final Sanctuary rule (90 FR 4856, January 16, 2025)
February 22, 2023 letter from NOAA to Council
May 31, 2023 letter from NOAA to Council

cc: Kitty Simonds, Council Executive Director
GC17 – Tucher