



Papahānaumokuākea National Marine Sanctuary

Final Environmental Impact Statement: Volume II

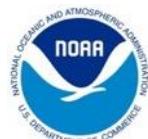


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Cover photos: NOAA diver investigates whaling shipwreck; native fish swim on a coral reef; Hawaiian voyaging canoe sails in Papahānaumokuākea; Hawaiian monk seal and ulua swim over the seafloor. Photos: NOAA

About This Document

This document is the second volume of the Papahānaumokuākea National Marine Sanctuary Final Environmental Impact Statement, and contains the appendices.

The National Oceanic and Atmospheric Administration (NOAA) is proposing to designate the Papahānaumokuākea National Marine Sanctuary to recognize the national significance of the area's biological, cultural, and historical resources and to continue to manage this special place as part of the National Marine Sanctuary System. This final environmental impact statement (EIS) provides detailed information and analysis of a range of reasonable alternatives for the designation of marine portions of Papahānaumokuākea Marine National Monument and the Monument Expansion Area (collectively called the Monument) as a national marine sanctuary. The State of Hawai‘i (State) and NOAA prepared this final EIS in accordance with the Hawai‘i Environmental Policy Act (HEPA, Chapter 343 HRS, HAR Chapter 11-200.1); the National Environmental Policy Act, as amended (NEPA, 42 U.S.C. 4321 *et seq.*); NOAA Administrative Order 216-6A, which describes NOAA requirements, policies, and procedures for implementing NEPA; and the National Marine Sanctuaries Act (NMSA, 16 U.S.C. 1431 *et seq.*), which requires preparation of an environmental impact statement for all sanctuary designations. Because this NEPA process began after September 14, 2020, this EIS relies on the Council on Environmental Quality's (CEQ) 2020 NEPA regulations (40 CFR 1500 *et seq.*). See 40 CFR § 1506.13. The EIS is accompanied by a sanctuary management plan that describes the proposed goals, objectives, strategies, and actions for managing the sanctuary.

NOAA is the lead agency for this proposed action. NOAA's Office of National Marine Sanctuaries (ONMS) is the implementing office for this proposed action. Cooperating agencies include U.S. Fish and Wildlife Service, the State of Hawai‘i, the Department of the Navy, and the Office of Hawaiian Affairs.

A note on terminology: The term Papahānaumokuākea, when used alone, refers to the place, also historically known as the Northwestern Hawaiian Islands, including the land and all waters to 200 nmi from shore. Papahānaumokuākea Marine National Monument or PMNM refers to the area designated as a monument via Presidential Proclamations 8031 and 8112, extending 50 nmi from all islands and emergent lands of the Northwestern Hawaiian Islands. The Papahānaumokuākea Marine National Monument Expansion Area or MEA refers to waters from 50 to 200 nmi designated as a monument in 2016 by Presidential Proclamation 9478. PMNM and the MEA are referred to collectively as the “Monument.” When describing the action alternatives, the term “Outer Sanctuary Zone” is used to describe the area of the sanctuary that is coextensive with the MEA. A glossary of Hawaiian terms and place names is found after Chapter 6.

Most of the islets, atolls, and reefs have both Hawaiian and English names. Names used in this document are (from Southeast to Northwest): Nihoa, Mokumanamana (Necker), Lalo (French Frigate Shoals), ‘Ōnūnui and ‘Ōnuiki (Gardner Pinnacles), Kamokuokamohoali‘i (Maro Reef), Kamole (Laysan Island), Kapou (Lisianski Island), Manawai (Pearl and Hermes Atoll), Kuaihelani (Midway Atoll), and Hōlanikū (Kure Atoll). Other banks, shoals, and seamounts within Papahānaumokuākea may also have Hawaiian and English names.



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Acknowledgements

This document was prepared by NOAA's Office of National Marine Sanctuaries, with assistance from the State of Hawai‘i Department of Land and Natural Resources. A full list of preparers is in Appendix J.

Terms, Abbreviations, and Acronyms

BMP	Best Management Practice
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
CIA	Cultural Impact Assessment
Co-trustees	Term used in this document to refer to the State of Hawai‘i, the U.S. Department of Commerce, the U.S. Department of the Interior, and the Office of Hawaiian Affairs
CWG	Papahānaumokuākea Native Hawaiian Cultural Working Group
CZMA	Coastal Zone Management
DLNR	Hawai‘i Department of Land and Natural Resources
EEZ	Exclusive Economic Zone
EFH	Essential Fish Habitat
EIS	Environmental Impact Statement
ERP	State of Hawai‘i Environmental Review Program
ESA	Endangered Species Act
HAR	Hawaii Administrative Rules
HEPA	Hawaii Environmental Policy Act
HRS	Hawaii Revised Statutes
IMO	International Maritime Organization
MEA	Papahānaumokuākea Marine National Monument Expansion Area
MMB	Monument Management Board
Monument	Term used in this document to refer to the PMNM and MEA collectively
MSA	Magnuson-Stevens Fishery Conservation and Management Act
NCCOS	National Centers for Coastal and Ocean Sciences
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
nmi	nautical miles
NMSA	National Marine Sanctuary Act
NOAA	National Oceanic and Atmospheric Administration
NWHI	Northwestern Hawaiian Islands



NWR	National Wildlife Refuge
NWRSAA	National Wildlife Refuge System Administration Act
OHA	Office of Hawaiian Affairs
OLE	Office of Law Enforcement
ONMS	Office of National Marine Sanctuaries
PMNM	Papahānaumokuākea Marine National Monument (Original Area)
PSSA	Particularly Sensitive Sea Area
RAC	Reserve Advisory Council
Reserve	Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve
SHPD	State of Hawai‘i Historic Preservation Division
SMCA	Sunken Military Craft Act
State	State of Hawai‘i
USFWS	U.S. Fish and Wildlife Service
USCG	U.S. Coast Guard
VMS	Vessel Monitoring System
WPRFMC	Western Pacific Regional Fishery Management Council

Appendix A: Papahānaumokuākea National Marine Sanctuary Final Management Plan



A Hawaiian voyaging canoe travels through Papahānaumokuākea. Photo: NOAA

Section 1: Foundations

Foundational Statement

Hanohano Nā ‘Āina Kūpuna: Honoring Papahānaumokuākea Kūpuna (Ancestral) Islands



Figure 1. Kānaka ‘Ōiwi have deep historical connections to all the islands, atolls, shoals, coral reefs, and submerged seamounts, as well as the ocean waters that surround them in Papahānaumokuākea. While the islands themselves were focal points for travel, the ocean and open waters were equally important and carry a multitude of values. Image: Brad Ka’aleleo Wong

E Kanaloa Haunawela
 Kanaloa ke ala ma‘awe ‘ula a ka lā
 Kāne ke ala ‘ula a ka lā
 Kanaloa noho i ka moana nui
 Moana iki, moana o‘o
 I ka i‘a nui, i ka i‘a iki
 I ka manō, i ka niuhi
 I ke koholā, a hohonu
 ‘O ke kai hohonu a he‘
 ‘O ke kai uli a palaoa
 ‘O ke kai kea a honu
 ‘O ka hou ka‘i lōloa
 Ola ke kino walewale o Haunawela
 ‘O nā ‘au walu a Kanaloa
 I pa‘a i ka maka
 I ka maka walu a Kanaloa, Ola!
 Lana i ke kai, lana i ka honua
 Lana i ka houpo a Kanaloa
 I ka Mokupāpapa
 Ka papa kaha kua kea o Lono
 ‘O Lono ka pao
 Ola i ke au a Kanaloa

Kanaloa of the depths of intensity
 Kanaloa of the west sky, the rising sun
 Kāne of the east sky, the rising sun
 Kanaloa residing in the great sea
 Small sea, mottled sea
 In the big fish, in the small fish
 In the shark, in the tiger shark
 In the whale, of the depths
 The depths and transcending
 The dark depths of the sperm whale
 White sea of turtles
 The wrasse parade in a long line
 The spawning cycle of the ocean is prolific
 The eight currents of Kanaloa
 The source is stable
 The numerous consciousness of Kanaloa, lives!
 It floats in the sea, it drifts upon the land
 It intermingles in the energy force of Kanaloa
 Out to the low laying islands
 The low laying coral islands of Lono
 Lono is the bridge
 Life to the realm of Kanaloa
 (Kanaka‘ole et al., 2017)

Mai ka puka ‘ana o ka lā i Ha‘eha‘e a hiki loa i ka welo ‘ana o ka lā i Hōlanikū, kāhiko ho‘owewehi ‘ia kākou a pau i ka lei aloha o ka pae moku o Kanaloa. Hanohano nō ‘o Papahānaumokuākea, he ‘āina akua nō ho‘i ia o ko Hawai‘i Pae ‘Āina. ‘O Wākea ke kāne, a ‘o Papahānaumoku ka wahine. Noho pū lāua a hānau ‘ia maila ia mau ‘āina kūpuna mai loko a‘e o ka moana nui kūlipolipo i puka a‘e ai, a e hiki mai ana nō i kekahi wā e ho‘i hou ana ia mau moku lē‘ia i loko o ka ‘ōpū moana kai hohonu. Mau loa nō ka pilina pa‘a o nā Kānaka ‘Ōiwi i loko o ke ka‘ā o ka mo‘okū‘auhau i ke au o Kanaloa, nā mokupuni, nā moku ‘āina, me nā moku pāpapa, a me nā akua me nā ‘aumākua ma nā ‘ano kino mea ola like ‘ole i Moananuiākea. Kahu a mālama kākou o ke au nei i ia pilina ko‘iko‘i ma luna ho‘i o ka ‘ike kūpuna ma o ka hana kūpono ‘ana, ke mele ‘ana, ke a‘o ‘ana, ka noi‘i ‘ana, a me ka ho‘ōla ‘ana i ia mau moku kūpuna. Mai iō kikilo mai nō, hā‘ena‘ena ka lamakū o ka ‘ike kūli‘u o ka po‘e hulu kūpuna i ahi koli ai iā kākou, he ahi pio ‘ole ia e ‘ā no‘ao wenawena loa nei. Alu like nō ho‘i kākou ma lalo o ia ahi pio ‘ole, a na ia po‘e kūpuna nō e ho‘okele alaka‘i mau nei iā kākou a pau i ke alahula o ka ‘imi na‘auao i kēia ao mālamalama. I ka wā ma mua, ka wā ma hope. I ko kākou mālama ‘ana i nā moku kūpuna o ka pō, mālama pū ‘ia nō nā mokupuni o ke ao, pēlā nō e ola mau ai ‘o Papahānaumokuākea a ma ka pae moku holo‘oko‘a i nā makamaka ola o ko mua me ko hope, a mau loa aku nō.

From the rising of the sun at Ha‘eha‘e on Hawai‘i Island to the setting of the sun at Hōlanikū (Kure Atoll) at the northwestern extent of Hawai‘i, the love of the land is abundant, greetings to you all. Papahānaumokuākea is honored as a sacred realm of the gods to Kānaka ‘Ōiwi (Native Hawaiians). Papahānaumoku birthed these ancestral islands from the ocean through a union with Wākea. Papahānaumokuākea represents deep cosmological and spiritual relationships connected to pō (primordial darkness), a realm where ancestral spirits return to islands that were once birthed from the deep ocean. There are living genealogies and relationships between Kānaka ‘Ōiwi and the realm of Kanaloa (ocean deity), the many islands of Papahānaumokuākea, and the akua (ancestral gods) and ‘aumākua (ancestral guardians) represented by the diverse forms of life residing within this vast ocean area, Moananuiākea. These relationships are tended to and perpetuated in a variety of ways as part of a collective journey to care for these kūpuna (ancestral) islands. Since the beginning, the torch of expansive ancestral knowledge and connection has been passed down over generations by hulu kūpuna (esteemed elders) and it continues to burn intensely, lighting the path forward. The kūpuna will continue to lead and navigate the path well-traveled, continuing to seek knowledge as an ancestral practice. The past will guide the future. The undying flame guides us on the path towards the ancestral islands in pō as an extension of the way we mālama (take care of) the places in ao (realm of the living).

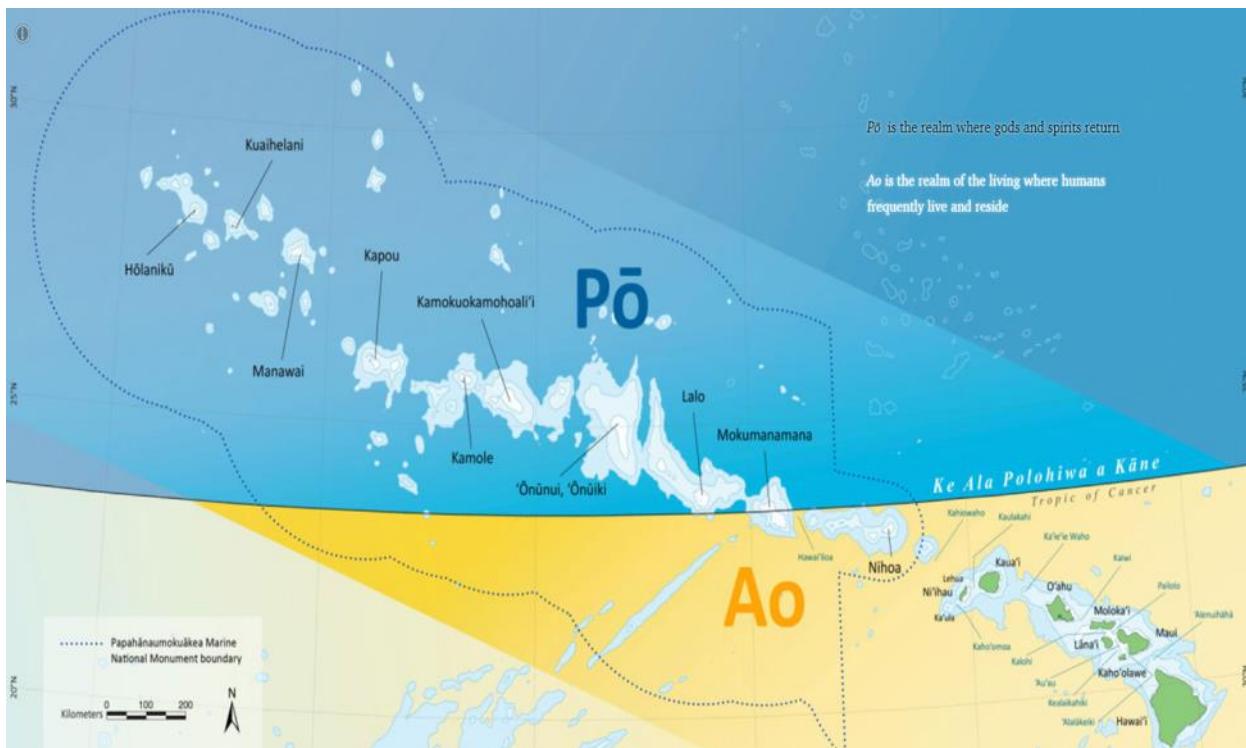


Figure 2. Map of the Hawaiian universe from the eastern edge to the northwestern extent of the Hawaiian Archipelago. Image: NOAA

Hulu kūpuna have strongly advocated for the long-term lasting protection of Papahānaumokuākea, and navigated us towards a shared vision and a collective journey of caring for this sacred place: “I ka wā ma mua, ka wā ma hope,” meaning looking to the past to guide the future (Kame‘eleihiwa, 1992). In moving forward with a proposed sanctuary designation, we seek to honor their legacy and build upon their foundation, so that Papahānaumokuākea will continue to thrive in perpetuity for many more generations to come. The proposed sanctuary designation aims to provide additional protection to this ‘Āina Akua (realm of the gods/ancestors), without diminishing any existing protections.

Core Values

Core values reflect shared foundational beliefs that influence the proposed sanctuary’s work. We have identified the following as our most important values:

Kuleana/Responsibility

- Strive for excellence as public stewards
- Be proactive and anticipate program needs to ensure the success and support of team members
- Act with aloha to sustain healthy working relationships

Mālama/Stewardship

- Protect Papahānaumokuākea for future generations and honor kūpuna

- Bring the place to the people in ways that spark curiosity and cultivate a sense of purpose that will, in turn, compel them to care for the places that sustain them and inspire them to deepen their cultural, scientific, and/or resource management expertise
- Build connections and collaborate with diverse partnerships to encourage stewardship of global ocean resources

Pono/Integrity

- Be accountable, honest, and transparent in all our work
- Communicate effectively and articulate expectations
- Enable and empower each other to do excellent work
- Be inclusive
- Respect difference and diversity

‘Imi ‘ike/Exploration

- Collaborate and utilize multiple knowledge systems and innovative technologies to pursue research, discovery, and exploration
- Ensure research has integrity and informs management needs
- Communicate a sense of wonder through the stories we tell about Papahānaumokuākea

About This Document

Management plans are specific planning and management documents required for all national marine sanctuaries. They identify immediate, mid-range, and long-range opportunities, and outline future activities. A management plan describes resource protection, research, education, and outreach programs that guide sanctuary operations; defines how a sanctuary should best protect its resources, including through innovative management strategies, enforcement, and surveillance activities; and describes sanctuary regulations if appropriate.

This plan would chart the course for the sanctuary over the next five to seven years. The plan reflects an integrated approach to management, both from a nature-culture integration perspective, also known as a biocultural perspective, and from a co-management perspective. Papahānaumokuākea Marine National Monument (PMNM) refers to the area designated as a monument via Presidential Proclamations 8031 and 8112. The Papahānaumokuākea Marine National Monument Expansion Area (MEA) refers to waters from 50 to 200 nmi designated as a monument in 2016 by Presidential Proclamation 9478. Both PMNM and the MEA are managed together by four co-trustees: the Department of Commerce through NOAA, the Department of Interior through the U.S. Fish and Wildlife Service (USFWS), the State of Hawai‘i through the Department of Land and Natural Resources, and the Office of Hawaiian Affairs. These organizations are collectively committed to realizing the mission of Papahānaumokuākea. Advantages of cooperative management, as delineated in the 2006 and 2017 co-trustee memorandum of agreements, include a joint management plan and a joint permitting system. The 2017 memorandum of agreement also recognizes the potential designation of a future national marine sanctuary in the marine portions of the Monument, and the co-managers agreement that a sanctuary designation would not terminate or otherwise amend the way the Monument is currently co-managed. Other advantages of cooperative management include

resource sharing for capacity-building, formal and informal research partnerships, and structured opportunities for involvement such as in outreach and education.

Sanctuary management would supplement and complement, rather than supplant, the existing co-management regime of Papahānaumokuākea. Cooperative projects will be pursued with co-managing agencies that allow for ease in sharing resources and in-kind assistance and support, as appropriate. There is currently a comprehensive monument management plan for PMNM (Papahānaumokuākea Marine National Monument, 2008), which will be updated in the future to include the MEA that was established in 2016 separately under a different presidential proclamation. The core elements (vision, mission, guiding principles, and goals) for the monument plan update were developed in 2022 through a coordinated process among the monument's co-managing agencies.

As described below in Section 3, this plan was designed to integrate with the existing monument co-management. To ensure consistency of protections between the sanctuary and the overarching monument, the monument management plan components were utilized for this sanctuary management plan. In other words, the core elements of the sanctuary management plan and the future monument management plan update are one and the same. Additionally, while the sanctuary management plan functions as a primary guidance document for NOAA's Office of National Marine Sanctuaries (ONMS), the strategies in this plan also will be incorporated into the future Monument Management Plan update, along with strategies and other plan requirements of the other Papahānaumokuākea co-trustees. This sanctuary management plan is focused on the range of actions that would be undertaken by ONMS, building upon the strategies already being implemented by ONMS for the monument.

In writing this sanctuary management plan, the kua, or backbone, to the approach was to start with a focus on the Hawaiian concept of aloha ʻāina. The Mai Ka Pō Mai Native Hawaiian guidance document was instrumental in developing the pōhaku niho, or foundational stones, for the plan. Content from other key documents, such as the *2008 Papahānaumokuākea Marine National Monument Management Plan* and *2020 State of Papahānaumokuākea Marine National Monument Report*, also substantially influenced this plan.

Aloha 'Āina: A Hawaiian Environmental Ethic

"Hawaiian well-being is tied first and foremost to a strong sense of cultural identity that links people to their homeland. At the core of this profound connection is the deep and enduring sentiment of aloha 'āina, or love for the land. Aloha 'āina represents our most basic and fundamental expression of the Hawaiian experience. The 'āina sustains our identity, continuity, and well-being as a people. It embodies the tangible and intangible values of our culture that have developed and evolved over generations of experiences of our ancestors." (Kikiloi, 2010)

"He Ali'i Ka 'Āina, He Kauwā Ke Kanaka—Land is a Chief, Man is a Servant." (Pukui and Varez, 1983) This 'ōlelo no'eau (wise proverb) depicts the relationship that Kānaka Maoli have with land, emphasizing that land is not viewed as a commodity, but rather a chief, or one who protects and provides for its people. For the land to provide sustenance and shelter to the people, it needs to be tended to and cared for properly, a responsibility that Kānaka recognize and reciprocate. This 'ōlelo no'eau emphasizes the foundational Hawaiian worldview of aloha 'āina and further defines this ideology beyond a love for the land, but rather a reciprocal relationship in which 'āina and kānaka depend on one another to live—and ultimately to thrive.

Section 2: Purpose of the Management Plan

Strategic Guidance for Sanctuary Management

Primarily under the auspices of NOAA's Office of National Marine Sanctuaries, the purpose of the plan is to provide strategic guidance for the sanctuary's work. The plan conveys the goals and priorities of the sanctuary and describes the strategic actions the sanctuary plans to conduct during the next five to seven years to accomplish them.

Program Guidance

The focal areas of our work are represented under five kūkulu, or pillars of management: resource protection and conservation; research and monitoring; governance and operations; partnerships and constituent engagement; and education, interpretation, and mentoring. Strategies in this plan articulate how the goal for each kūkulu will be achieved, providing guidance for day-to-day management.

Address Climate Change and Other Threats

Although this is not, strictly speaking, a threat-based plan, many of the strategies encompassed in this document indirectly or directly address threats to the sanctuary. As described in the [2020 State of the Papahānaumokuākea Marine National Monument Report](#), we recognize

Papahānaumokuākea as an indicator for ecosystem health for the region, and seek to identify, monitor, and address major threats that include invasive marine species and the many effects global climate change will have on physical, biological, cultural, and historical resources and values. Climate change, in particular, is a prominent theme suffusing our work in research, education, outreach, and constituent engagement. The Papahānaumokuākea climate change science, education, and adaptation priorities identified in the [2020 State of the Papahānaumokuākea Marine National Monument Report](#), the *Pacific Islands Region Research Strategy* (unpublished 2021), and the *Papahānaumokuākea Marine National Monument Education Strategy* (unpublished 2019) were reviewed and have influenced this plan.

Operationalize an Integrated Approach to Management

The sanctuary management plan serves as an important mechanism for weaving together knowledge systems in the service of management. This integration is a priority identified in the sanctuary's vision, mission, and guiding principles, which are consistent with the vision, mission, and guiding principles of the Monument.

Cooperative and Coordinated Management

The sanctuary's vision, mission, and guiding principles mirror those of the Monument. Strategies in this sanctuary plan aim to support and maintain existing co-management functions vis-a-vis the Papahānaumokuākea Monument Management Board, to promote unified governance in the spirit of seamless integrated stewardship.

Section 301 of the National Marine Sanctuaries Act (NMSA), 16 U.S.C. § 1431 calls for the development and implementation of coordinated plans for the protection and management of

nationally significant marine areas with appropriate federal agencies, state and local governments, Native American Tribes and organizations, international organizations, and others; for the creation of models of, and incentives for, ways to conserve and manage these areas, including the application of innovative management techniques; and for cooperation with global programs encouraging conservation of marine resources. Further, Section 311 16 U.S.C. § 1443 allows for the Secretary of Commerce to enter into cooperative agreements, contracts or other agreements with, or make grants to, states, local governments, regional agencies, and others.

Advantages of cooperative management include a joint management plan and a joint permitting system. Other advantages of cooperative management include resource sharing for capacity-building, formal and informal research partnerships, and structured opportunities for involvement such as in outreach and education.

In accordance with NMSA, NOAA and the State of Hawai‘i would co-manage the sanctuary. NOAA may develop a memorandum of agreement with the State to provide greater details of co-management. NOAA and the State may develop additional agreements as necessary that would provide details on execution of sanctuary management, such as activities, programs, and permitting processes. Co-management of the proposed sanctuary with the State of Hawai‘i would not supplant the existing co-management structure of the Monument. NOAA will also manage the sanctuary in partnership with the U.S. Fish and Wildlife Service and the Office of Hawaiian Affairs. NOAA will update the Memorandum of Agreement for Promoting Coordinated Management of Papahānaumokuākea Marine National Monument with the State of Hawai‘i, Department of the Interior/USFWS, and Office of Hawaiian Affairs that reflects the addition of the proposed sanctuary, and specifically addresses how the addition of a sanctuary will supplement and complement, and not supplant, the existing Monument management framework.

Objectives of Sanctuary Designation

The sanctuary designation objectives are reflected in the management plan elements. These objectives reflect NOAA priorities within the process of sanctuary designation, and the broader need for a sanctuary within the National Marine Sanctuary System. The sanctuary objectives guide the formulation of the overall sanctuary designation package, including the sanctuary regulations and management plan.

Sanctuary Designation Objectives

1. Provide long-term lasting protection of Papahānaumokuākea consistent with and reinforcing the provisions outlined in Executive Order 13178, Presidential Proclamations 8031, 8112, 9478, and the regulations at 50 CFR § 404 through the designation of a national marine sanctuary.
2. Augment and strengthen existing protections for Papahānaumokuākea ecosystems, living resources, and cultural and maritime heritage resources through the addition of National Marine Sanctuaries Act regulations.
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.
4. Provide a pu‘uhonua to protect key habitats, vulnerable, endangered and threatened species, and highly mobile marine species that regularly move across the boundaries of Papahānaumokuākea Marine National Monument.
5. Manage the sanctuary as a sacred site consistent with Native Hawaiian traditional knowledge, management concepts, and principles articulated within Mai Ka Pō Mai.
6. Enhance community engagement and involvement, including engagement of the Indigenous Hawaiian community in the development and execution of management of the sanctuary.
7. Enhance resource protection, increase regulatory compliance, ensure enforceability, and provide for consultation through National Marine Sanctuaries Act authorities and regulations.
8. Conduct, support, and promote research, characterization, and long-term monitoring of marine ecosystems and species and cultural and maritime heritage resources

Section 3: Sanctuary Management Plan

Strategic Plan Design

The National Marine Sanctuaries Act requires the preparation of a sanctuary management plan for a proposed national marine sanctuary. This sanctuary management plan responds to the requirements of the NMSA, and in particular, Section 304(a)(2)(C). The plan creates a road map for future actions based on past experience and outcomes. A sanctuary management plan is designed to identify the best and most practical strategies to achieve common goals, while getting the most out of public investment.

As previously noted, this sanctuary management plan's content was generally informed by several existing documents, notably the Mai Ka Pō Mai guidance document that inspired our goals and sought to integrate nature and culture seamlessly and the foundational *2008 Papahānaumokuākea Marine National Monument Management Plan*, along with the *Papahānaumokuākea Climate Change Vulnerability Assessment*, the *2020 State of Papahānaumokuākea Marine National Monument Report*, the *Papahānaumokuākea Natural Resources Science Plan 2011-2015*, and other management documents.

The core elements and framework for the sanctuary management plan were designed in coordination with the monument's co-trustees, in order to ensure concurrence of plans between the sanctuary and the overarching monument. The core elements of this sanctuary management plan—vision, mission, principles, and goals—are the same as those that have been developed by the co-trustees for the future monument management plan update.

The sanctuary management plan's framework is based upon Mai Ka Pō Mai and the goals of the future updated monument management plan. It consists of five jointly developed kūkulu (pillars of management) that are equivalent to action plan categories. These kūkulu are resource protection and conservation; research and monitoring; governance and operations; partnerships and constituent engagement; and education, interpretation, and mentoring. Additionally, the sanctuary management plan and the future monument management plan both will have a strategic scope and focus, incorporating high level strategies to be undertaken by the co-trustees. Many of the strategies found in this sanctuary management plan are already being implemented by ONMS for the monument, and they will be merged with and, if needed, further refined within the updated monument management plan when completed.

Vision, Mission, Guiding Principles, and Goals

The vision, mission, principles, and goals for the sanctuary management plan were developed through a collaborative process with the monument's co-managing agencies in a series of monument management plan workshops held in 2020–2021.

Vision: ‘Āina Momona – Place of Abundance

Our vision for Papahānaumokuākea is a birthplace of rich ocean diversity where a living story of creation, exploration, and valor is remembered and shared throughout Hawai‘i and the world. People value the monument as a place of regeneration and renewal—a place of hope where an abundance of species thrive to nourish our minds and bodies and stir our ancient need for wild places where man is just one part of a whole. Papahānaumokuākea awakens a truth that most have forgotten—that we need a healthy ocean for our well-being. It reminds everyone that nature and culture are one and the traditional and conventional, spiritual, and scientific have learned to coexist. Papahānaumokuākea inspires us to care passionately for all nature and to learn to mālama—to care for each other.

Mission

Carry out seamless integrated management to ensure ecological integrity and achieve strong, long-term protection and perpetuation of Northwestern Hawaiian Islands ecosystems, Native Hawaiian culture, and heritage resources for current and future generations.

Guiding Principles for the Management Plan

The following set of principles was developed by the Papahānaumokuākea Marine National Monument co-trustees to guide management interactions. They refer to the way in which the co-management works.

1. **Cultivate Connection:** We encourage the development of meaningful, long-term relationships between people and place, in order to cultivate Aloha ‘āina (see definition).
2. **Knowledge:** Expand our knowledge of Papahānaumokuākea through both Hawaiian and other methods, understandings, and perspectives to holistically care for this place.
3. **Governance:** Management of Papahānaumokuākea resources is accomplished by PMNM co-trustees working together, demonstrating how collaborative partnerships can create synergy and increase management success.
4. **Education:** Education and outreach that inspires understanding of the nature, culture, and history of Papahānaumokuākea is essential to connect people and communities to place.
5. **Carefulness:** We practice adaptive management to protect and conserve Papahānaumokuākea and err on the side of doing no harm when there is uncertainty about the impacts of an activity.
6. **Partnership:** We foster collaborative partnerships to empower communities and encourage ownership among stakeholders in the stewardship of Papahānaumokuākea.

Goals for the Management Plan

Goals were developed for each kūkulu, or pillar of management, for the sanctuary management plan. These goals were also developed by the PMNM co-trustees.

Management Plan Goals

Goal 1. Resource Protection and Conservation

Ensure the long-term viability and resilience of Papahānaumokuākea by protecting, preserving, enhancing, and restoring its cultural, maritime heritage, and natural resources, with a focus on ocean and island health and human well-being.

Goal 2. Research and Monitoring

Support, promote, conduct, and coordinate research and monitoring, incorporating multiple forms of knowledge to increase understanding of Papahānaumokuākea cultural, maritime heritage, and natural resources, and to improve management decisions.

Goal 3. Governance and Operations

Provide the necessary policy, programs, structure, and processes to ensure effective, integrated management and fulfill the kuleana of shared stewardship for Papahānaumokuākea.

Goal 4. Partnerships and 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.

Goal 5. Education, Mentoring, and Interpretation

Inspire current and future generations to mālama Papahānaumokuākea cultural, maritime heritage, and biological resources through excellence in education and mentorship.

Sanctuary Management Kūkulu

Each of the following five kūkulu (pillars of management) sections begins with an overarching goal and a brief description, followed by a set of strategies which collectively address management needs for the sanctuary for the next five to seven years. The strategies were developed by the Office of National Marine Sanctuaries staff through a process that entailed a comprehensive review of planning documents (previous monument management plans and condition/status reports; NOAA plans; and the Mai Ka Pō Mai guidance document), followed by a synthesis and update of relevant content. Many of the strategies in this sanctuary plan are currently being implemented.

Kūkulu 1. Resource Protection and Conservation

Goal

Ensure the long-term viability and resilience of Papahānaumokuākea by protecting, preserving, enhancing, and restoring its cultural, maritime heritage, and natural resources, with a focus on ocean and island health and human well-being.

Description

HO'OMANA. This kūkulu honors Papahānaumokuākea through resource protection actions that preserve, strengthen, and restore living pilina, or relationships, and weaving Kānaka 'Ōiwi (Native Hawaiian) knowledge systems, values, and practices together with other knowledge systems and approaches in caring for this sacred biocultural seascape. Actions entail processes and protocols that acknowledge, safeguard, and promote the biocultural health of Papahānaumokuākea, and by extension, promote the health of the entire Hawai'i Pae 'Āina (Hawaiian Archipelago). This integrative approach weaves together our co-management guiding principles and cooperative conservation initiatives. To support biocultural conservation and restoration work, we strive to grow a collective kuleana, affirming respect and reciprocity for the place and our partners. The Mai Ka Pō Mai guidance document defines kuleana as a "...fundamental lineal and/or personal responsibility, which, in turn, conveys rights and privileges based on relationships to place and practices." We also seek to, wherever possible, incorporate training opportunities for Kānaka 'Ōiwi and others, to build diverse expertise in areas such as ecological/ecosystem monitoring, invasive species control, and maritime skills.

Strategies

Strategy 1.1. Resource Protection Framework: Actively work and advocate inside the ecosystem protection framework established for the monument, to minimize risks and damages to sanctuary resources.

Strategy 1.2. Resource Protection Tools and Technologies: Safeguard sanctuary resources by seeking out and developing new tools and technologies to protect resources from both anthropogenic and natural threats, including invasive species.

Strategy 1.3. Resource Protection Coordination: Coordinate with, and provide guidance for, permittees to increase awareness and implementation of resource protection, including a respectful and appropriate code of conduct, in all activities.

Strategy 1.4. Permitting Program: Monitor permit activity in the sanctuary in coordination with the monument permitting system, to mālama ‘āina and to mitigate potential cumulative effects.

Strategy 1.5. Native Hawaiian Resource Protection and Conservation: Develop and implement biocultural resource protection mechanisms and programs that weave in Native Hawaiian culture as a system of knowledge, values, and practices.

Strategy 1.6. Maritime Heritage Resource Threat Assessment: Assess threats to the wide range of maritime heritage resources, including climate impacts, and address appropriate conservation activities.

Strategy 1.7. Maritime Heritage Resource Coordination: Coordinate intra- and interagency efforts to protect and conserve the wide range of maritime heritage resources.

Strategy 1.8. Emergency Response: Coordinate, plan, assist, and lead, where applicable, interagency emergency response activities in order to respond to, mitigate, evaluate, and/or restore impacts of natural, cultural, and maritime heritage resource damages and/or events.

Strategy 1.9. Enforcement: Work with the existing interagency Law Enforcement Coordination Team to enhance communication and coordination among enforcement personnel in order to facilitate responses to incidents, uphold sanctuary regulations and policies, and enforce compliance with regulations, laws, and permit requirements through surveillance, vessel monitoring system tracking, and relevant technology.

Kūkulu 2. Research and Monitoring

Goal

Support, promote, conduct, and coordinate research and monitoring, incorporating multiple forms of knowledge to increase understanding of Papahānaumokuākea cultural, maritime heritage, and natural resources, and to improve management decisions.

Description

Hō‘ike. “A‘ohe pau ka ‘ike i ka hālau ho‘okahi. Not all knowledge is learned from one school.” (Pukui & Varez, 1983).

Hō‘ike focuses on weaving knowledge systems through research and monitoring activities that expand our collective knowledge base and inform Papahānaumokuākea management actions. ‘Ike means knowledge, but it also refers to sensing, experiencing, and understanding. Hō‘ike is about applying knowledge systems and demonstrating knowledge and expertise in a given area. Papahānaumokuākea continues to be an abundant source of knowledge where multiple traditions of Indigenous inquiry and environmental expertise are perpetuated and integrated with Western knowledge systems, inquiry, and approaches. References to these traditional processes, including different ways of observing the living world, can be found in countless oli, mo‘olelo, ka‘ao, and genealogies passed down from generation to generation.

It is important to honor the unique contributions of Kānaka ‘Ōiwi knowledge systems through meaningful inclusivity and engagement of Kānaka ‘Ōiwi practitioners, researchers, and community members in multi-disciplinary research partnerships. By weaving together multiple knowledge systems and employing multiple research approaches and multi-disciplinary methods, we more holistically analyze and understand the linkages and connectivity within the biocultural seascape of Papahānaumokuākea.

Strategies

Strategy 2.1. Marine Ecosystem Characterization: Map, inventory, and characterize marine ecosystems and key habitats.

Strategy 2.2. Marine Ecosystem Monitoring: Coordinate and engage in surveillance to monitor existing resources and potential threats affecting them, in order to understand ecosystem function and facilitate proactive management.

Strategy 2.3. Marine Ecosystem Monitoring Technologies: Incorporate new technologies to address the limitation of access and facilitate monitoring activities in the extensive marine areas surrounding each island and atoll.

Strategy 2.4. Marine Ecosystem Research: Conduct and coordinate research of marine ecosystems and habitats.

Strategy 2.5. Marine Ecosystem Community Research: Develop community monitoring and citizen science research, and associated educational and mentorship opportunities that can be applied across the pae ‘āina.

Strategy 2.6. Native Hawaiian/Cultural Research Program: Support, facilitate, and conduct Kānaka ‘Ōiwi (Native Hawaiian) access and research.

Strategy 2.7. Native Hawaiian/Cultural Integration: Weave together multiple knowledge systems, values, and practices, and employ multi-disciplinary methods, in science and research.

Strategy 2.8. Native Hawaiian/Cultural Capacity Building: Develop and support research initiatives that focus on next-generation capacity building for leadership succession of Kānaka ‘Ōiwi (Native Hawaiian) and Pacific Islanders.

Strategy 2.9. Maritime Heritage Research and Monitoring: Compile documentation relevant to the maritime cultural landscape, inventory and characterize heritage sites, and monitor the wide range of maritime heritage resources

Strategy 2.10. Socioeconomic Research and Monitoring: Conduct and support socioeconomic research and monitoring in the sanctuary.

Kūkulu 3. Governance and Operations

Goal

Provide the necessary policy, programs, structure, and processes to ensure effective, integrated management and fulfill the kuleana of shared stewardship for the sanctuary.

Description

HO‘OKU‘I. Ho‘oku‘i describes a joining or stitching together of various parts to create a larger whole. For voyagers, certain stars that pass directly over specific islands were considered their ho‘oku‘i, their guiding star, such as the star Hōkūle‘a for Hawai‘i. This definition describes the role that ONMS plays as a uniting, connecting, and integrating force for certain activities within Papahānaumokuākea. Operations are carried out by multiple programs and structures that all come together to administer the site’s finances, policy, permitting, exploration, resource protection, research and monitoring, education, outreach, and partnership-building. Many initiatives involve cross-program collaboration. Guided by the principles and examples of pono practices from Mai Ka Pō Mai, the Office of National Marine Sanctuaries’ governance and operations will contribute toward the broader co-management of Papahānaumokuākea.

Strategies

Strategy 3.1. Cooperative Management: Conduct cooperative, coordinated management with the Papahānaumokuākea Marine National Monument co-trustees for the proposed national marine sanctuary.

Strategy 3.2. Culturally Integrated Management Approach: Continue to conduct and improve programs and initiatives to increase internal cultural capacity and proficiency.

Strategy 3.3. Central Operations Planning: Conduct and coordinate annual site operations planning, budgeting, and implementation.

Strategy 3.4. Central Operations Capacity: Assess and enhance human resources and organizational capacity.

Strategy 3.5. Central Operations Assets: Conduct and coordinate the management of field equipment, vessels, vehicles, accountable property, and other assets.

Strategy 3.6. Integrated and Inclusive Management: Integrate diversity, equity, inclusion, and accessibility into our business practices and organizational culture to increase the diversity of our workforce and create a more inclusive work environment where everyone feels valued, is treated fairly, and experiences a true sense of belonging.

Strategy 3.7. Permitting Administration: Promote and facilitate permitted activities consistent with regulated actions that benefit Papahānaumokuākea.

Strategy 3.8. Vessel and Dive Operations: Maintain vessel operational capacity and dive operational capacity to safely and effectively support sanctuary protection, research, and management.

Strategy 3.9. Field Operations: Plan, coordinate, conduct, and support field, scientific, and resource protection projects and missions that integrate management, ensure ecological

integrity, and promote strong, long-term protection and perpetuation of ecosystems, Native Hawaiian culture, and maritime heritage resources.

Strategy 3.10. Communications and Web Administration: Conduct effective communications and web administration to increase awareness of the sanctuary and foster and promote community relations.

Strategy 3.11. Data and Information Management: Effectively manage data to support sanctuary central operations, permitting, research, outreach, and constituent and cultural engagement.

Strategy 3.12. Evaluation to Support Adaptive Management: Conduct and coordinate a targeted tracking and evaluation program for sanctuary management.

Strategy 3.13. Emergency Response Coordination: Conduct, coordinate, and support emergency response for staff and facilities to ensure safety of workplace and workforce.

Kūkulu 4. Partnerships and Constituent Engagement

Goal

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.

Description

HO‘OULU. The word ho‘oulu, which includes the root word ulu (to grow, increase, spread), implies an active engagement and intention to inspire and promote growth. The Hawaiian word for community is kaiāulu. Communities are places of dynamic interactions and relationships that can cultivate abundance, innovation, and ingenuity. Kūkulu Ho‘oulu is grounded in these values of growth and inspiration, with strategies to engage and support diverse communities who care for Papahānaumokuākea.

Strategic partnership-building and constituent engagement are essential to maintain the holistic, multi-faceted relationships to Papahānaumokuākea and perpetuate the legacy of those who have shaped its management. New and existing partnerships serve to expand the collective wealth of skills and knowledge among key entities, including local communities, organizations, and other stakeholders. They create pathways for innovative approaches inclusive of Kānaka ‘Ōiwi perspectives, knowledge systems, values, and practices in our work, including research, management, and education. Partnerships also are instrumental in combining resources to increase training and mentorship opportunities for developing future generations of managers, scholars, and practitioners with a deep understanding of the historical context and holistic understanding of protecting biocultural seascapes and maritime cultural landscapes.

The range of constituent groups and partners is broad and expanding. Indigenous and underserved communities are two important areas where ONMS is currently expanding partnerships and engagement. Several new community partnerships which support marine research and marine resource stewardship are underway.

Strategies

Strategy 4.1. Sanctuary Advisory Council. To ensure consistent advice, transition the existing Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council (RAC) to serve as the Sanctuary Advisory Council. Develop and maintain a Sanctuary Advisory Council and engage working groups, friends groups, and others to support sanctuary programs and initiatives; and continue other initiatives that allow sanctuary constituencies to be more involved in the sanctuary and enhance opportunities for long- term engagement.

Strategy 4.2. Constituency-Building and Engagement: Recruit, engage, and support volunteers, including non-traditional workers and participants in skills-development organizations.

Strategy 4.3. Academic Partnerships: Develop, promote, and maintain partnerships with academic institutions to build upon the opportunities for collaborative research, curriculum development, and mentoring.

Strategy 4.4. Native Hawaiian Partnerships: Grow internal and external processes to create diverse, inclusive, and equitable partnerships that enhance our ability to serve Native Hawaiian, underserved, and underrepresented communities.

Strategy 4.5. Economic Partnerships: Develop and maintain partnerships with tourism associations and the business community to raise awareness about Papahānaumokuākea and ocean resource stewardship.

Partnership Synergies

Among the co-managing partners of Papahānaumokuākea, there are affiliated organizations that directly support or otherwise strengthen NOAA's Office of National Marine Sanctuaries' (ONMS) management. These include the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council that advises ONMS; the Friends of Midway National Wildlife Refuge (NWR) and Friends of the Hawaiian Islands NWR groups that support the U.S. Fish and Wildlife Service; the Papahānaumokuākea Native Hawaiian Cultural Working Group that advises and is supported by the Office of Hawaiian Affairs; and the Kure Atoll Conservatory, which supports the State of Hawai'i Department of Land and Natural Resources. In addition to these, there are numerous other organizations and groups that indirectly support the management of Papahānaumokuākea Marine National Monument. Each brings a special set of skills, view points, values, and support functions to the work that is done by the co-trustees. While the actions in this sanctuary management plan focus exclusively on those groups that advise and support ONMS, there is synergy and cooperation between many of these entities, which will be further delineated in the next Papahānaumokuākea Marine National Monument Management Plan update.

Kūkulu 5. Education, Interpretation, and Mentoring

Goal

Inspire current and future generations to mālama Papahānaumokuākea cultural, maritime heritage, and biological resources through excellence in education and mentorship.

Description

HO‘OLAHA. The word ho‘olaha means to spread out or share. ONMS conducts education and outreach activities to build understanding of the environmental and cultural significance of this special place, and to share information about the important work that is being done in the region. Cultural values and perspectives, along with traditional history and accounts, can help to provide a more complete understanding of Papahānaumokuākea and the importance of protecting its ecosystems and other cultural resources, while also helping to establish a personal relationship to place. Developing culturally-grounded content can make information more accessible and engaging as we strive to increase awareness of Papahānaumokuākea and its traditions. In the end, what is most important is to bring the place to the people in ways that spark curiosity and cultivate a deeper sense of purpose.

ONMS’ premiere interpretive facility, Mokupāpapa Discovery Center, provides vital gathering space to bring Papahānaumokuākea to all audiences, as well as serve as a vibrant community center. In addition, a broad complement of education partnerships and collaborations with other interpretive centers, monument co-trustees, educational institutions, organizations, and businesses has, over time, expanded into a diverse network serving both kama‘āina (locals) and malihini (visitors/tourists) alike. Education and outreach efforts are amplified through collaborations with Kānaka ‘Ōiwi educators and organizations to weave in Kānaka ‘Ōiwi values, knowledge, and place-based connections, providing a holistic understanding of how nature and culture are interwoven. For malihini, this is an important example to increase awareness that Kānaka ‘Ōiwi were the first stewards, and that nature and culture are one and the same. For all audiences, understanding of the cultural context is foundational to cultivating a strong sense of kuleana for each person to actively engage in stewarding the places that care for them.

Strategies

Strategy 5.1. Awareness and Information in Multiple Languages: Conduct programs; develop and disseminate materials in ‘ōlelo Hawai‘i (Hawaiian language), English, and other languages for agencies, kama‘āina (locals), malihini (visitors), and wider audiences; and improve and update tools for understanding the physical, biological, cultural, and historical setting of Papahānaumokuākea.

Strategy 5.2. General Public Outreach: Actively engage in and support the development of National Marine Sanctuary System outreach initiatives, locally, regionally, and globally.

Strategy 5.3. Ocean, Land, Climate, and Conservation Literacy: Conduct and support programs and events in Hawai‘i to teach ocean, land, climate, and conservation literacy through a biocultural lens; and participate in the ocean literacy network.

Strategy 5.4. Native Hawaiian Culture and Heritage Education: Develop and provide educational programs and initiatives that are based on Hawaiian cultural values, concepts, and traditional resource management stewardship.

Strategy 5.5. Native Hawaiian Culture and Heritage Outreach: Provide cultural outreach opportunities to serve the Native Hawaiian community and others over the life of the plan.

Strategy 5.6. Interpretive Centers Partnerships: Actively utilize, and partner with discovery centers, aquariums, and museums to enhance our presence, programs, and partnerships. Conduct events and activities to engage broad audiences, and inspire ocean stewardship.

Strategy 5.7. Mokupāpapa Interpretive Center: Maintain Mokupāpapa Discovery Center as a premiere interpretive center and annually revisit and update strategic priorities and plans for interpretive facilities and partnerships.

Strategy 5.8. Navigating Change – Action-Oriented Conservation and Stewardship Outreach: Highlight Papahānaumokuākea as a model for teaching about conservation and stewardship/mālama, with emphasis on educating to change behavior and build stewardship in communities across the pae‘āina.

Strategy 5.9. Mentoring and Career Pathways: Conduct mentorship programs and events, and build partnerships to engage, inspire, and guide the next generation of conservation professionals.

Strategy 5.10. Global Perspective and World Heritage: Showcase the site to regional and international audiences, and actively participate in regional and international educational partnerships and programs.

Section 4: Success Indicators and Measures

The success of this management plan will be evaluated through a set of representative performance indicators and measures for each of the five kūkulu (pillars of management). These indicators and measures provide a means to track implementation of the management plan. They will also provide supporting data for future sanctuary management plan reviews, as well as sanctuary and monument condition reports of biological, ecological, and maritime and cultural heritage resources.

Table 1. Performance Indicators and Measures

Kūkulu	Indicator	Measures
1. Resource Protection and Conservation	1.a. Effective monitoring and management response is being conducted at sites where likely or actual threats to resources exist, e.g., invasive species, marine debris, trophic shifts, and climate-related impacts. Trend: - = +	<ul style="list-style-type: none"> Threat monitoring programs continued or developed; mitigation programs continued or developed; plans developed. Vessel traffic monitored. Non-native and nuisance species of concern monitored. Number of annual expeditions, surveys, and monitoring efforts tracked. Database of known non-native and/or marine nuisance species is maintained and periodically updated. ONMS participation in regional response planning efforts. Staff maintain required response training.
1. Resource Protection and Conservation	1.b. The condition of habitats and biocultural resources in the sanctuary is assessed, and measures are developed to maintain or improve them. Trend: - = +	<ul style="list-style-type: none"> Annual Permitted Activities Summary reports completed and disseminated. Annual Best Management Practices reviewed. Annual permit database/records reviewed. Periodically evaluate if the condition of sanctuary resources has been maintained or improved, as assessed through a condition report, state of the monument report, or other means.
2. Research and Monitoring	2.a. Area of the sanctuary seafloor where efforts to survey, map, ground truth, characterize, or analyze habitats have been completed. Trend: - = +	<ul style="list-style-type: none"> Amount of area surveyed, mapped, ground truthed, characterized, and/or analyzed. Number of sites surveyed or monitored. Coordination measures implemented.

Kūkulu	Indicator	Measures
2. Research and Monitoring	2.b. Support collaborative and coordinated management through timely sharing of data. Trend: - = +	<ul style="list-style-type: none"> Annual Accomplishments Report developed and disseminated. Annual Permitted Activities Report developed and disseminated. For each research/monitoring effort or data set: 1) date(s) data were collected; 2) efforts/time taken to analyze the data; 3) efforts/time to disseminate the data; 4) data sharing methods; and 5) products generated (e.g., journal publication or other anticipated end products).
3. Governance and Operations	3.a. Resources and organizational capacity are sufficient to implement core operations and priority programs. Trend: - = +	<ul style="list-style-type: none"> Estimated percent of annual program/project implementation or milestones funded. FTE allocations. Staff feedback regarding capacity, program, and project implementation timeliness and impact.
4. Partnerships and Constituent Engagement	4.a. Involve communities and volunteers in sanctuary management issues and ocean conservation. Trend: - = +	<ul style="list-style-type: none"> Attendance at events, public meetings, and events (e.g., open houses, advisory council meetings, Mokupāpapa Discovery Center community events). Volunteer hours in sanctuary-led education, place-based stewardship, and research efforts (e.g., marine monitoring, beach cleanups, cultural monitoring, navigating change). Number of community-focused initiatives. Participation in regional efforts related to diversity, equity, and inclusion. Number of Indigenous engagement strategies and events.
5. Education, Interpretation, and Mentoring	5.a. Effectively interpret and communicate the importance of the sanctuary and its unique resources, and the unique role of NOAA and the sanctuary as a marine resource manager, using Mokupāpapa Discovery Center and a wide variety of media and methods to reach a broad range of audiences. Trend: - = +	<ul style="list-style-type: none"> Social media metrics. Web items generated or updated. Number of classes, students, teachers (by grades, location, etc.). Number of outreach and community events. Number of attendees at events, lectures, webinars, etc. Number of Mokupāpapa Discovery Center visitors. Interpretive exhibits and signage developed or updated. Exhibits properly maintained and delivering content. Newsletter developed and disseminated.

Kūkulu	Indicator	Measures
5. Education, Interpretation, and Mentoring	<p>5.b. Develop and provide inclusive and effective cultural, ocean literacy, and stewardship programs and related education initiatives whose audiences include students, teachers, volunteers, partner organizations, visitors, and tourists.</p> <p>Trend: - = +</p>	<ul style="list-style-type: none"> • Percentage or number of programs or events that involve Indigenous and underserved groups or audiences. • Number of annual mentorship and internship opportunities for Papahānaumokuākea stewardship. • Feedback from teachers and students. • Visitor feedback and survey data on visitor satisfaction. • Staff feedback and information about program improvement.

Section 5: Funding

The National Marine Sanctuaries Act requires NOAA to include an “estimate of the annual cost to the federal government of the proposed designation, including costs of personnel, equipment and facilities, enforcement, research, and public education” (16 U.S.C. § 1434(a)(2)(C)(v)).

NOAA estimates the current annual costs for management of Papahānaumokuākea to be between \$3,250,000 and \$4,820,000 depending on the availability of funding. NOAA anticipates a need for similar levels of funding (adjusted to account for inflation) with sanctuary designation.

Management plan implementation is inextricably linked to resources. Management of the proposed sanctuary is envisioned to be funded by a mix of federal appropriations, external funding from collaborations with other agencies and organizations, and in-kind/volunteer support and supplies. The federal budget for the proposed sanctuary will be contingent on several factors, including the federal appropriations process, overall operational and construction budgets for ONMS as determined by Congress, and spending priorities determined by ONMS and NOAA. In general, NOAA anticipates the budget to grow over time to meet the needs of sanctuary management. Collaboration with partners, including non-profit organizations, is also anticipated to help implement key programs and activities.

If the proposed sanctuary designation takes effect, NOAA will maintain the essential, existing resources and actions for management, such as maintaining an administrative office and a sanctuary superintendent and supporting the operation of a Sanctuary Advisory Council. NOAA would continue to provide staff support to programmatic priorities, which include all resource protection, research, and education programs as identified above in specific action plans. Another priority reflected in the kūkulu is to maintain a Native Hawaiian cultural program to work closely with Kānaka ‘Ōiwi organizations. NOAA would also work to maintain the sanctuary’s presence through the Mokupāpapa Discovery Center and other site-based interpretive partnerships.

With sanctuary designation, NOAA would be able to enhance or fill gaps in critical programmatic priorities through the NMSA. NOAA would implement the maritime heritage program with mapping, characterization, archaeological documentation, and other activities described in the Papahānaumokuākea Maritime Heritage Research, Education, and Management Plan. Sanctuary status would also allow NOAA to advance joint collaborative projects with Kānaka ‘Ōiwi organizations and others to enhance understanding and conservation of cultural values to advance sanctuary management. Another priority would be to initiate the design, build, and operation of a dedicated research vessel. Once operational, NOAA (and partners) would begin implementing site-specific research and monitoring activities with this vessel.

Glossary and Acronyms

Glossary

Āina momona – Healthy, productive, thriving communities of people and place based on reciprocal pilina (relationships). ‘Āina momona exemplifies a place of abundance, or a place that produces lots of food and is inclusive of the kuleana that people have to a specific place to ensure its health in order to bountifully produce for all.

Āina – Land, ocean, communities; a source of sustenance that feeds one’s physical, mental, emotional, and spiritual well-being.

Ahupua‘a – A division of land, often oriented vertically extending from the uplands and usually includes portions of the sea, that is part of a larger traditional resource management system established by ancient Hawaiians to sustainably utilize the resources throughout the islands.

Aloha ‘āina – A Hawaiian philosophy of love for land and all that which feeds us, representing a most basic and fundamental expression of the Hawaiian experience. A Hawaiian expression of the rights and responsibilities to care for ‘āina as kin.

Biocultural – A dynamic, integrative approach to understanding the links between nature and culture and the interrelationships between humans and the environment (Maffi & Woodley, 2012). Biocultural heritage encompasses Indigenous and local community knowledge innovations and practices that developed within their social-ecological context (Davidson-Hunt et al., 2012). These approaches recognize the existence of multiple worldviews as the foundation for different ways of seeing and different ways of knowing (Chang et al., 2019).

Hawai‘i Pae ‘Āina – Hawaiian Archipelago.

Hō‘ike – To show, to reveal.

Ho‘olaha – To spread out, to share.

Ho‘oku‘i – Zenith; the position directly overhead where the heavens join together.

Ho‘omana – To strengthen cultural and spiritual mana (power).

Ho‘oulu – To inspire, to grow.

Kānaka ‘Ōiwi – Native Hawaiians; an individual who is a descendant of the aboriginal peoples who, prior to 1778, occupied and exercised sovereignty in the Hawaiian Islands, the area that now constitutes the State of Hawai‘i.

Ka‘ao – Histories, stories, and legends. They are often thought of as similar to mo‘olelo, however can be much more fanciful and embellished for storytelling purposes.

Kauhale – Group of houses comprising a Hawaiian home, formerly consisting of men’s eating house, women’s eating house, sleeping house, cook-house, canoe house, etc.

Kūkulu – Supporting pillars of heaven, here used to describe essential focal areas of management.

Kūpuna – Elder(s), ancestor(s).

Kuleana – A Hawaiian value that originates from the traditional practice of stewarding particular areas of land, known as kuleana, that are associated with familial lineages. It requires

lineal and/or personal responsibility, rights, and privileges based on relationships to place and people.

Mai Ka Pō Mai – The 2021 Native Hawaiian guidance document for the management of Papahānaumokuākea Marine National Monument.

Mālama – To care for, to tend to.

Mo‘olelo – Story, history, tradition.

Native Hawaiian Cultural Landscape – Any place in which a relationship, past or present, exists between a spatial area, resource, and an associated group of Indigenous people whose cultural practices, beliefs, and/or identity connects them to that place. A Native Hawaiian cultural landscape is determined by and known to a culturally related group of Indigenous people with relationships to that place (Van Tilburg et al., 2017).

‘Ōlelo Hawai‘i – Native Hawaiian language.

Oli – Traditional Hawaiian chant.

Piko – An umbilical cord, summit, or top of a hill or mountain; crest; crown of the head; crown of the hat made on a frame (pāpale pahu); tip of the ear; end of a rope; border of a land; center, as of a fishpond wall or kōnane board; or place where a stem is attached to the leaf, as of taro.

Pono – Appropriate, moral, righteous, having integrity, ethical, correct, and deemed necessary by traditional standards in Hawaiian.

Ulu – To grow, to multiply.

Wahi Pana – A culturally significant site. Legendary, celebrated places where mo‘olelo, mele, hula connect the history of the place and its multi-layered relationships to the communities and families who are deeply connected to these places.

Acronyms

MEA – Papahānaumokuākea Marine National Monument Expansion Area

NMSA – National Marine Sanctuaries Act

NOAA – National Oceanic and Atmospheric Administration.

ONMS – Office of National Marine Sanctuaries (NOAA)

PMNM – Papahānaumokuākea Marine National Monument

Acknowledgements

The sanctuary designation process was conducted in cooperation with the Papahānaumokuākea Marine National Monument co-trustees: the National Oceanic and Atmospheric Administration, the U.S. Fish and Wildlife Service, State of Hawai‘i, and the Office of Hawaiian Affairs.

In the early stages of the scoping phase, the sanctuary management plan development process was combined with a broader Monument management plan update process. The initial intent was to merge the plans and accompanying NEPA-HEPA processes in order to create an integrated document and process. Eventually the two processes were decoupled. During scoping, the Monument Management Board convened regularly to discuss the management plan development and initial sanctuary proposal. Then through weekly meetings and a series of day-long workshops, the Monument Management Board’s Core Planning Team developed foundational elements (vision, mission, principles, goals) and a framework (5 kūkulu) to provide the basis for both the sanctuary and the monument management plans.

This designation builds upon existing management and programming in the marine portions of Papahānaumokuākea Marine National Monument, by adding the conservation benefits of a national marine sanctuary. Although ONMS has many fundamental responsibilities for managing the sanctuary, many sanctuary activities will be implemented in partnership or consultation with Monument co-trustees and other organizations. ONMS is committed to working closely with the Monument Management Board, Indigenous communities, and the Sanctuary Advisory Council to prioritize the activities in the management plans and create partnerships to help implement them.

The Papahānaumokuākea Marine National Monument Management Board and the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council were essential in the development of this management plan. NOAA acknowledges and thanks its co-managing partners and advisory council members for their individual and collective contributions to this process.

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Appendix A1: Terms of Designation and Proposed Regulations

The Terms of Designation can be found in the Proposed Rule. Refer to the [Papahānaumokuākea sanctuary webpage](#) for a link to the Federal Register Notice to view the proposed Terms of Designation and Proposed Regulations. Should the sanctuary designation be finalized, the final Terms of Designation and a link to the regulations will be added to the sanctuary management plan.

Appendix B:

Field Activities Table and Best Management Practices

As noted in Chapter 3, implementation of the sanctuary management plan would involve conducting the categories of field activities summarized in the table below. Although the exact number, location, and timing of future field activities is not known at this time, Table B.1 provides a rough estimate of the magnitude of possible field activities, based on NOAA's experience with the research and management needs of Papahānaumokuākea.

Table B.1 Summary of estimated field activities in the sanctuary to implement draft management plan

Category of Activity	Estimated Activity Level
Vessel use and maintenance (number of vessels; days at sea/year)	Up to 5 small vessels ; up to 40 feet in length. Up to 90 total vessel days at sea/year for research, monitoring, emergency response, alien species management, and education/outreach.
Scuba diving (dives/year)	Up to 3,000 dives/year between May and October for documentation, collection and monitoring of: species, habitats, and heritage resources; installation/recovery of scientific equipment; and support for sanctuary activities.
Deploying research and monitoring equipment or buoys (deployments/year)	Up to 5 buoy deployments/year for maritime heritage management Up to 20 deployments/year for passive acoustic monitoring Up to 16 deployments/year of small research and monitoring equipment (i.e., weighted markers, moorings for temperature, oxygen, CO ₂ sensors). Deployments range from 3 to 12 months.
Sampling organisms (deployments/year)	Up to 50 deployments/year of sampling equipment (e.g., small beam trawl) for collecting organisms (e.g., algae plankton, fish).
Collecting artifacts for time-sensitive maritime heritage resource protection needs (collections/year)	Up to 1 collection every five years for time-sensitive emergency situations to protect cultural, historical, or archaeological resources from loss, destruction, or injury.
Removing materials (removals/yr)	Up to 4 removals/year of materials (e.g., marine debris and nets, miscellaneous detritus)
Deploying uncrewed aerial systems (UAS)	Up to 20 UAS deployments/year for invasive species, climate change, damage assessments and other research

NOAA would implement the following self-imposed best management practices and standing orders as part of conducting field activities:

Vessel Use and Maintenance

- [BMP001](#) Marine Alien Species Inspection Standards for Maritime Vessels
- [BMP004](#) Best Management Practices (BMPs) for Boat Operations and Diving Activities
- [BMP011](#) Disease and Introduced Species Prevention Protocol for Permitted Activities in the Marine Environment
- [BMO020](#) Best Management Practices (BMPs) to Minimize the Spread of Nuisance Algae

Scuba Diving

- [BMP004](#) Best Management Practices (BMPs) for Boat Operations and Diving Activities
- [BMP011](#) Disease and Introduced Species Prevention Protocol for Permitted Activities in the Marine Environment
- [BMO020](#) Best Management Practices (BMPs) to Minimize the Spread of Nuisance Algae

Deploying Research and Monitoring Equipment or Buoys

- [BMP011](#) Disease and Introduced Species Prevention Protocol for Permitted Activities in the Marine Environment
- [BMO020](#) Best Management Practices (BMPs) to Minimize the Spread of Nuisance Algae

Sampling Organisms

- [BMP006](#) General Storage and Transport Protocols for Collected Samples
- [BMP011](#) Disease and Introduced Species Prevention Protocol for Permitted Activities in the Marine Environment
- [BMO020](#) Best Management Practices (BMPs) to Minimize the Spread of Nuisance Algae

Collecting Artifacts for Time-Sensitive Maritime Heritage Resource Protection Needs

- [BMP017](#) Best Management Practices (BMPs) for Maritime Heritage Sites

Removal of Materials (e.g., marine debris and nets)

- [BMP020](#) Best Management Practices (BMPs) to Minimize the Spread of Nuisance Algae. *Requires a separate biosecurity plan and review for the removal of marine debris from areas with known nuisance algae distributions.*

Deploying uncrewed aerial systems (UAS) for research

- The Monument's Resource Protection Working Group is working on a generalized SOP/BMP for UAS operations.



Appendix C: Compliance with Additional Regulatory Requirements

This section presents the existing additional statutory and regulatory environment of the proposed action and describes the consultation requirements and compliance completed for the proposed action. This section also includes the agencies or persons consulted regarding these requirements.

Between draft and final EIS, Appendix C was updated with consultation information that occurred between March 1, 2024 and the publication of this final EIS. This includes outcomes for the following: National Historic Preservation Act (NHPA) Section 106 consultation; federal consistency review under the Coastal Zone Management Act; compliance with the Marine Mammal Protection Act for field activities, and Endangered Species Act and Essential Fish Habitat consultations. Appendix C1 includes correspondence for all consultations in this appendix. Documentation of the NHPA Section 106 determination process, including consultations, is found in Appendix C. Supplemental information also was added to the section on the Sunken Military Craft Act.

Federal Statutory Consultations

Consultations under the National Marine Sanctuaries Act

Under section 303(b)(2) of the National Marine Sanctuaries Act (NMSA), NOAA is required to conduct a series of consultations with Congress, federal and State agencies, and other interested agencies. Per this requirement, upon publication of this draft EIS, NOAA will send consultation letters with a copy of the draft EIS to the following parties:

- U.S. House of Representatives Natural Resources Committee
- U.S. Senate Committee on Commerce, Science, and Transportation
- Department of Defense
- Department of State
- Department of Transportation
- Department of the Interior

NOAA will also send copies of this draft EIS to the following agencies and organizations, consistent with NEPA requirements for inviting comments (42 U.S.C. 4332; 40 CFR 1503.1):

- Office of Hawaiian Affairs
- State of Hawai‘i
- U.S. Environmental Protection Agency
- U.S. Army Corps of Engineers
- U.S. Fish and Wildlife Service
- Western Pacific Regional Fishery Management Council
- U.S. Coast Guard
- U.S. Department of the Navy

NOAA also consulted with the Western Pacific Regional Fishery Management Council (WPRFMC) as required in accordance with NMSA Section 304(a)(5). Through this consultation, NOAA provided the Council with the opportunity to recommend any draft fishing regulations it deemed necessary to implement the proposed sanctuary designation. NOAA initiated the consultation on [November 19, 2021](#). On [March 22, 2022](#), the WPRFMC agreed to develop fishing regulations for the proposed sanctuary. NOAA participated in six public meetings hosted by the WPRFMC on November 1st, 3rd, 4th, 5th, 8th, and 10th of 2022, which were focused on the development of fishing regulations for the area of the proposed sanctuary that overlaps with the MEA. At its 193rd meeting in December of 2022, the WPRFMC provided a final [recommendation](#). NOAA found that the final recommendation, in part, did not fulfill the purposes and policies of the NMSA and the goals and objectives of the proposed designation ([February 22, 2023](#)). The WPRFMC amended their recommendation during their 194th meeting in March of 2023, and submitted a revised final recommendation to NOAA on [April 14, 2023](#).

In May of 2023, NOAA accepted the majority of the WPRFMC's recommendation as it fulfilled the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary designation. However, the WPRFMC's recommendation for the disposition of Native Hawaiian Subsistence Practices Fishing catch, providing permit applicants the ability to request limited cost recovery by selling their catch in the permit application process through a statement of need for cost recovery along with expected costs, failed to fulfill the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary designation, and was rejected by NOAA via a decision letter dated [May 31, 2023](#). As NOAA explained in the letter, any recommendation for the allowance of "sale" is inconsistent with the proposed sanctuary's goals and objectives. NOAA Fisheries is preparing proposed regulations under the Magnuson-Stevens Fishery Conservation and Management Act to reflect the outcome of the NMSA Section 304(a)(5) process.

National Historic Preservation Act of 1966 (54 U.S.C. §§ 300101 et seq.) – Section 106 Consultation

Section 106 of the National Historic Preservation Act (NHPA, 54 U.S.C. 306108) requires federal agencies to take into account the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation (AChP) the opportunity to comment with regard to the undertaking. Pursuant to 36 CFR 800.16(l)(1), the term "historic property" means "any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places maintained by the Secretary of the Interior."

NOAA has determined that designation of a national marine sanctuary and related rulemaking for sanctuary-specific regulations meet the definition of an undertaking as defined at 36 CFR 800.16(y). In fulfilling its responsibilities under Section 106 of the NHPA, NOAA initiated consultation with the Hawai'i State Historic Preservation Division through the Hawai'i Cultural Resource Information System on November 21, 2021. ONMS also invited the Advisory Council on Historic Preservation (AChP) to participate on November 21, 2022. NOAA further initiated an effort to identify consulting parties to participate in the Section 106 process through distribution of over 500 letters to individuals, organizations, and families. This included outreach to families with lineal and cultural connections to Papahānaumokuākea, cultural

practitioners, Native Hawaiian Organizations, the fishing community (including subsistence, recreational, and commercial fishers), maritime heritage organizations, government agencies, and others. These letters solicited input regarding the identification of, and potential effects on, historic properties from the proposed sanctuary designation for the purpose of obtaining input for the Section 106 review and to additionally determine their interest in participating as a consulting party. Through this process NOAA identified 31 consulting parties.

NOAA subsequently hosted ten Section 106 consultation meetings with the consulting parties, summarized in Table C.1. Through these consultation meetings NOAA further sought to invite consulting party and public input regarding the identification of, and potential effects on, historic properties from the proposed sanctuary designation. Subsequently, pursuant to 36 CFR 800.4(d)(1) NOAA documented a Finding of No Historic Properties Affected for this undertaking (see Appendix C). The consulting parties have been notified of the finding and the finding was provided to the Hawai‘i State Historic Preservation Division for concurrence on October 25, 2024. The finding is further being made available to the public through publication in this final EIS.

Table C.1. Summary of NHPA Section 106 consultation meetings.

Meeting	Date	Format	Description
1	8/23/2022	Virtual	Orientation meeting for recognized consulting parties
2	10/25/2022	Virtual	Consulting parties meeting with Native Hawaiian Organizations with a focus on cultural resources
3	10/27/2022	In-person	Individual consultation with two lineal descendants of Papahānaumokuākea
4	10/28/2022	Virtual	Consultation with maritime heritage consulting parties
5	10/31/2022	Virtual	Individual consultation with maritime heritage consulting parties
6	1/24/2023	Virtual	Group consultation with Native Hawaiian Organizations and maritime heritage consulting parties
7	3/19/2024	Virtual	Additional consultation made available to all consulting parties following the release of the draft environmental impact statement
8	March 25, 2024	Virtual	Additional consultation made available to all consulting parties following the release of the draft environmental impact statement
9	March 26, 2024	Virtual	Additional consultation made available to all consulting parties following the release of the draft environmental impact statement
10	April 16, 2024	Virtual	Individual consultation with Office of Hawaiian Affairs Chief Advocate and Policy Team

In addition to the consultation activities described above, the State of Hawai‘i Department of Land and Natural Resources (DLNR) conducted a Cultural Impact Assessment (CIA). The State of Hawai‘i CIA is triggered by requirements of the Hawai‘i Environmental Policy Act (HEPA), Hawai‘i Revised Statutes (HRS) §343, and was conducted parallel to the Section 106 process and NEPA review conducted by NOAA. The program is codified under HRS Chapter 6E recognizing the State’s constitutional duty to conserve and develop the historic and cultural property in the State. State Historic Preservation Division (SHPD) review includes identification and inventory of historic properties, evaluation of significance of the properties, determination

of effects to significant properties, and mitigation. Pursuant to HRS § 6E-8 and HAR § 13-275-3, DLNR Department of Aquatic Resources (DAR) submitted a written request to SHPD for an agency determination letter. On June 7, 2024, SHPD concurred with DLNR's determination of no historic properties affected.

A legal analysis was also conducted to support the State's constitutional duties to protect Native Hawaiian traditional and customary practices. Nohopapa Hawai'i created the document *E Ho 'i I Ke Au A Kanaloa* (Nohopapa Hawai'i, 2023) containing the CIA and a legal analysis relating to Native Hawaiian rights and cultural resources.

Sunken Military Craft Act of 2004 (amended 2022)

The Sunken Military Craft Act of 2004 (SMCA; Pub. L. 108-375, Title XIV, sections 1401 to 1408; 10 U.S.C. 113 note) preserves and protects from unauthorized disturbance all sunken military craft that are owned by the United States government, as well as foreign sunken military craft that lie within United States waters, as defined in the SMCA. Thousands of U.S. sunken military craft lie in waters around the world, many accessible to looters, treasure hunters, and others who may cause damage to them. These craft, and their associated contents, represent a collection of non-renewable and significant historical resources that often serve as war graves, carry unexploded ordnance, and contain oil and other hazardous materials. By protecting sunken military craft, the SMCA helps reduce the potential for irreversible harm to these nationally important historical and cultural resources.

Sunken military craft are administered by the respective Secretary concerned pursuant to the SMCA. The Secretary concerned is solely responsible for authorizing disturbance of sunken military craft under the SMCA, specifically for archaeological, historical, or educational purposes, and would consult with NOAA when considering permitting such activities. The Secretary concerned is also responsible for determinations of sunken military craft status and ownership, publicly disclosing the location of sunken military craft, and for determining eligibility and nominating sunken military craft as historic properties to the National Register of Historic Places. Any agreements with foreign sovereigns regarding sunken military craft in U.S. waters are negotiated by the Secretary of Defense, the Secretary of State, and the Secretary of the Navy, according to authorities vested in each by the SMCA. The Secretary concerned, or his or her designee, and NOAA will ensure coordination and foster collaboration on any research, monitoring, and educational activities pertaining to sunken military craft located within the sanctuary system.

The 1942 naval aviation Battle of Midway occurred both at Midway Atoll, as well as at sea some 100–150 nautical miles north of the atoll in the northwestern portion of Papahānaumokuākea. Aircraft carriers from the historic conflict have also been located in the deep ocean, and multiple aircraft and sunken military vessels have been surveyed within the Midway Atoll Special Management Area, as well. Yet, hundreds of aircraft, and several other aircraft carriers and destroyers from the battle, remain to be discovered in Papahānaumokuākea.

Coastal Zone Management Act (16 U.S.C. §§ 1451 et seq.) – Federal Consistency

In 1972, Congress enacted the Coastal Zone Management Act (CZMA; 16 U.S.C. 1456) to encourage coastal states, Great Lake states, and U.S. territories and commonwealths to preserve, protect, develop, and, where possible, to restore or enhance the resources of the nation's coastal zone. Section 307 of the CZMA is known as the "federal consistency" provision. The federal consistency provision requires federal actions (inside or outside a state's coastal zone) that affect any land or water use or natural resource of a state's coastal zone, to be consistent to the maximum extent practicable with the enforceable policies of the State coastal management program.

Section 307 of the CZMA requires federal agencies to consult with a state's coastal management program on potential federal agency activities that affect any land or water use or natural resource of the coastal zone. To comply with this law, NOAA submitted a copy of the proposed rule and supporting documents, including the draft EIS, to the State of Hawai'i Office of Planning and Sustainable Development for evaluation of federal consistency under the CZMA. The EIS provided the backbone of the analysis necessary for that determination. The federal consistency regulations can be reviewed at 15 CFR part 930.

On March 21, 2024, NOAA submitted its federal consistency determination to the Hawai'i Coastal Zone Management Program of the Office of Planning and Sustainable Development. NOAA's analysis found the proposed action would be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the Hawai'i Coastal Zone Management Program. NOAA's federal consistency determination, and the State of Hawai'i May 17, 2024 concurrence letter, are included in Appendix C1.

Endangered Species Act (16 U.S.C. §§ 1531 et seq.) – Section 7 Consultation

The Endangered Species Act (ESA) of 1973, as amended, provides for the conservation of species that are endangered or threatened throughout all or a significant portion of their range, and the conservation of the ecosystems on which they depend. The ESA directs all federal agencies to work to conserve endangered and threatened species and to use their authorities to further the purposes of the act. NOAA Fisheries works with USFWS to manage ESA listed species. Generally, NOAA Fisheries manages marine species, while USFWS manages land and freshwater species.

The ESA requires federal agencies to consult or confer with the USFWS and/or NOAA Fisheries when there is discretionary federal involvement or control over the action. When a federal agency determines that their action "may affect" an ESA-listed species, that agency is required to consult formally with NOAA Fisheries or USFWS, as appropriate (50 CFR § 402.14 (a)). Federal agencies are exempt from this general requirement if they have concluded that an action "may affect, but is not likely to adversely affect" endangered species, threatened species, or designated critical habitat and NOAA Fisheries or the USFWS concurs with that conclusion (50 CFR § 402.14 (b)). This is commonly referred to as "informal consultation." This finding can be made

only if all of the reasonably expected effects of the proposed action will be beneficial, insignificant, or discountable. If NOAA Fisheries or USFWS agrees that the action's effects on ESA-listed species will be beneficial, insignificant, or discountable, they provide a letter of concurrence, which completes informal consultation. When an action agency determines that the action has no effect, no Section 7 consultation is required. Action agencies should document the "no effect" determination in their records with an explanation on why Section 7 consultation is not necessary. The action agency is not required to notify USFWS/NOAA Fisheries or seek their concurrence with a no effect determination; and USFWS/NOAA Fisheries are not obligated to review it, concur with it, or otherwise provide comments on a no effect determination submitted by an action agency.

On March 8, 2024, ONMS determined that the sanctuary designation may affect, but is not likely to adversely affect, ESA-listed species under NOAA Fisheries' jurisdiction, and initiated informal consultation under Section 7(a)(2) of the ESA for the designation with NOAA Fisheries. On April 29, 2024, NOAA Fisheries concurred that designation of the Papahānaumokuākea National Marine Sanctuary may affect, but is not likely to adversely affect ESA listed species and habitats that could be present in the action area.

Those designated and proposed critical habitat and ESA listed species are under NOAA Fisheries jurisdiction are: Hawaiian monk seals (*Neomonachus schauinslandi*), Hawaiian green sea turtles (*Chelonia mydas*), hawksbill sea turtles (*Eretmochelys imbricata*), North Pacific loggerhead sea turtles (*Caretta caretta*), olive ridley sea turtles (*Lepidochelys olivacea*), leatherback sea turtles (*Dermochelys coriacea*), Main Hawaiian Islands false killer whale (*Pseudorca crassidens*), sperm whales (*Physeter macrocephalus*), fin whales (*Balaenoptera physalus*), blue whales (*Balaenoptera musculus*), sei whales (*Balaenoptera borealis*), North Pacific right whales (*Eubalaena japonica*), false killer whale (*Pseudorca crassidens*), oceanic whitetip shark (*Carcharhinus longimanus*), scalloped hammerhead sharks (*Sphyrna lewini*), giant manta rays (*Manta birostris*), the coral species *Acropora globiceps*; and critical habitat for the Hawaiian monk seal, Main Hawaiian Islands insular false killer whale, and proposed critical habitat for *Acropora globiceps*. ONMS' determination memo and NOAA Fisheries' response are included in Appendix C1, below.

On April 30, 2024, ONMS determined that the sanctuary designation would have no effect on ESA-listed species or critical habitats under USFWS jurisdiction. ONMS used the USFWS's Environmental Conservation Online System Information for Planning and Conservation tool to identify species or critical habitat that may be present in the action area. This search identified 15 endangered or threatened species under USFWS jurisdiction and critical habitat for 6 species present in the vicinity of the action area. The ESA listed species include Band-rumped Storm-petrel (*Hydrobates castro*), Hawaiian Petrel, (*Pterodroma sandwichensis*), Newell's Shearwater, (*Puffinus newelli*), Short-tailed Albatross, (*Phoebastria albatrus*), Laysan Duck (*Anas laysanensis*), Laysan Finch (*Telespiza cantans*), Nihoa Finch (*Telespiza ultima*), Nihoa Millerbird (*Acrocephalus familiaris kingi*), Green Sea Turtle (*Chelonia mydas*), *Amaranthus brownii*, *Cyperus pennatiflorus*, Ihi (*Portulaca villosa*), Loulu (*Pritchardia remota*), Popolo (*Solanum nelsonii*), and *Schiedea verticillata*.

Note that three of the identified seabirds (the Band-rumped Storm-petrel, Hawaiian Petrel, and the Newell's Shearwater) were not listed in the draft EIS. Following additional discussions with the USFWS, this final EIS was amended to include the three species not listed in the draft EIS.

NOAA evaluated the species' habitat requirements, habitat availability within the action area, and the components of the proposed action, and determined the proposed action will have no effect on ESA-listed species or critical habitats under USFWS jurisdiction. These conclusions were based on the following:

- Ten of the species identified are land-based and not found within the action area (six flowering plants and four landbirds).
- The green sea turtle (which was analyzed as part of the ESA consultation with NOAA Fisheries) is under USFWS jurisdiction only when the animal is located on land, outside the proposed sanctuary.
- The remaining four seabirds may occur in portions of the action area; however, no beneficial or adverse impacts were specifically identified for seabirds. Generally, the implementation of a penalty schedule, the ability to implement emergency regulations, and ONMS' damage assessment authority would provide a direct, long-term, moderate beneficial impact to the biological resources based on NOAA's experience with implementing these authorities. However, the proposed sanctuary regulations promulgated under the NMSA would largely be consistent with existing Monument regulations. Only minor changes in the proposed regulations are proposed, to remove discrepancies and gaps in prohibitions, regulated activities, and permitting across PMNM and MEA. The proposed sanctuary designation is not expected to increase the number of annual permits issued, or the level of vessel traffic or person-hours within the action area. The Monument co-trustees already conduct active management for many of these protected species, with potential impacts from specific projects assessed through the Monument permitting system.

A record of the no effect determination was shared with USFWS on April 30, 2024, and USFWS acknowledged receipt of the no effects determination. ONMS' determination memo is included in Appendix C1.

Sanctuary activities that may occur at a later time, within the proposed sanctuary, including issuing permits for specific future activities, are not within the scope of this EIS or the ESA Section 7 determinations made for sanctuary designation. In the event that the sanctuary is designated, through the permit process, ONMS would review these future management activities to ensure that those actions are addressed under ESA, NEPA, and other applicable environmental laws.

Notably, the National Ocean Service (NOS), of which the Office of National Marine Sanctuaries is a part, has completed programmatic Section 7 ESA consultations with NOAA Fisheries and USFWS for NOS's surveying operations, which includes common sanctuary management and permitting actions. These consultations were completed as part of the NOS Surveying Programmatic Environmental Impact Statement (PEIS), which assesses the environmental impacts from many at-sea activities, including vessel operation, autonomous vehicle operation, instrument deployment, and the use of sonars (including multibeam, single beam, sub-bottom

profiler sonars). The NOS Surveying PEIS covers a period of five years, 2023 through 2027. For ESA-listed species that could be located in or near the proposed sanctuary, both NOAA Fisheries and USFWS concurred with the NOS determinations that field activities are “not likely to adversely affect” these species and designated critical habitats.

Should ONMS conduct, permit, or authorize activities that are not addressed in the NOS Surveying PEIS, NOAA would evaluate the impacts on ESA-listed species and habitats from such activities and determine the appropriate means of ESA compliance on a case-by-case basis. In all cases, ONMS would comply with all conservation mitigation measures required under the ESA or other applicable laws.

Marine Mammal Protection Act of 1972 (16 U.S.C. §§ 1361 et seq.)

The Marine Mammal Protection Act (MMPA), as amended, prohibits, with certain exceptions, the “take” of marine mammals in U.S. waters and by U.S. citizens on the high seas, and the importation of marine mammals and marine mammal products into the U.S. The MMPA defines “take” as: “to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal” (16 U.S.C. § 1362(13)). Harassment means any act of pursuit, torment, or annoyance that has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or that has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment) (16 U.S.C. § 1362).

Section 101(a)(5)(A–D) of the MMPA gives NOAA and USFWS the authority to authorize, upon request, the “incidental,” but not intentional, taking, of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing or directed research on marine mammals) within a specified geographic region. The NOAA Fisheries Office of Protected Resources processes applications for incidental takes of small numbers of marine mammals that it is responsible to protect, which are whales, dolphins, porpoises, seals, and sea lions. The USFWS does the same for walrus, manatees, sea otters, and polar bears. Authorization for incidental takes may be granted if NOAA Fisheries or USFWS finds that the taking would be of small numbers, have no more than a “negligible impact” on those marine mammal species or stocks, and not have an “unmitigable adverse impact” on the availability of the species or stock for “subsistence” uses.

Effect Determination for Marine Mammals for the Proposed Action

As indicated in Section 5.3.3 of the EIS, the proposed action would have beneficial impacts on marine mammals under NOAA Fisheries’ jurisdiction. The proposed action would not affect marine mammals under USFWS jurisdiction. Section 4.4.10 describes the marine mammals potentially occurring in the study area, with analyses of potential impacts of the proposed action in Chapter 5. While vessel operations create the possibility for collision with a marine mammal or for temporary disturbance of a marine mammal, no collisions have been reported in the 17 years of Monument management. NOAA requires all permitted vessels to use Best Management Practices described in Appendix B of the EIS, including maintaining awareness, managing vessel speed, and work stoppage protocols.

The contribution of noise to the sanctuary soundscape from conducting sanctuary management and research activities would be minor and temporary, due to the low level of expected future management and research activities in the region. Any acoustics effects on marine mammals from engine noise, movement of equipment through the water, and other underwater sound generated from propulsion machinery or depth sounders would be minor and temporary. Potential impacts from sonar use during sanctuary management actions are anticipated to be limited to temporary behavioral disturbances of marine mammals within the mid- and higher-frequency hearing range (e.g., dolphins, monk seals).

In 2022, NOS prepared a Request for Marine Mammal Protection Act Letter of Authorization for species under NOAA Fisheries jurisdiction related to NOS survey activities. In a response dated August 19, 2024, NOAA Fisheries determined that NOS survey activities were not likely to result in the incidental take of marine mammals under NMFS' jurisdiction (i.e., cetaceans and pinnipeds other than walrus) because they do not have the potential to injure and are not likely to present the potential to disturb marine mammals by causing disruption of behavioral patterns.

Should ONMS conduct, permit, or authorize any future field activities that are not within the NMFS August 2024 “no take” determination, NOAA would evaluate the impacts on marine mammals from such activities on a case-by-case basis and would seek necessary authorizations from NOAA Fisheries prior to conducting the proposed activity.

Migratory Bird Treaty Act (16 U.S.C. §§ 703 et seq.)

The Migratory Bird Treaty Act of 1918 (MBTA) implements the U.S.’ commitment to bilateral treaties, or conventions, with Great Britain, Canada, Japan, Russia, and Mexico for the protection of shared migratory bird resources. The MBTA establishes that it is unlawful to pursue, hunt, take, capture, kill, or sell migratory birds unless authorized by a permit issued by USFWS. Take is defined in regulations as: “pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect” (50 CFR § 10.12). The statute does not discriminate between live or dead birds, and gives full protection to any bird parts including feathers, eggs and nests. The MBTA protects over 800 species of birds that occur in the U.S., and the list of migratory bird species protected by the MBTA is set forth in 50 CFR § 10.13. Of these migratory bird species protected under the MBTA, 21 species of seabirds nest on the islets within the proposed sanctuary, while an additional 47 species of shorebirds may be found transiting, resting, or foraging within the study area. USFWS issues permits for scientific collecting, banding and marking, falconry, raptor propagation, depredation, import, export, taxidermy, waterfowl sale and disposal, and special purposes. USFWS has also developed, and continues to develop, voluntary guidance that helps project proponents reduce incidental take of migratory birds.

MBTA Effects Determination for the Proposed Action

NOAA/ONMS determined that the proposed action would not cause the take of any migratory bird species protected under the MBTA. Section 4.4.9 of the final EIS describes the most common migratory seabird species that may be found transiting, resting, or foraging within the study area, with potential impacts of the proposed action analyzed in Chapter 5. The proposed

action is anticipated to have a minor beneficial impact on migratory birds, through the limitation of fishing activities, while impacts from vessel traffic or other activities in support of the sanctuary management, such as research or educational activities, would be no different than under No Action. Any disturbances that did occur would be negligible and would not rise to the level of take under the MBTA. Should NOAA/ONMS conduct, permit, or authorize any future activities that would cause the take of any species protected under the MBTA, NOAA/ONMS would evaluate the environmental impacts from such activities on a case-by-case basis.

Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §§ 1801 et seq.) – Essential Fish Habitat Consultation

In 1976, Congress passed the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The MSA fosters long-term biological and economic sustainability of the nation's marine fisheries out to 200 nautical miles from shore. Key objectives of the MSA are to prevent overfishing, rebuild overfished stocks, increase long-term economic and social benefits, and ensure a safe and sustainable supply of seafood. The MSA promotes domestic commercial and recreational fishing under sound conservation and management principles and provides for the preparation and implementation, in accordance with national standards, of fishery management plans (FMPs).

The MSA provides its Fishery Management Councils and NOAA Fisheries with authority to identify and designate in the FMP essential fish habitat (EFH) and Habitat Areas of Potential Concern (HAPCs). The MSA defines EFH as “those waters and substrate necessary for fish for spawning, breeding, feeding, or growth to maturity” (MSA § 3(10)). HAPCs are subsets of EFH that exhibit one or more of the following traits: (i) provide important ecological function; (ii) are sensitive to human-induced environmental degradation; (iii) are stressed by development; or (iv) are rare (50 CFR § 600.815(a)(8)).

The consultation requirements of Section 305(b) of the MSA provide that:

- Federal agencies must consult with the Secretary of Commerce on all actions, or proposed actions, authorized, funded, or undertaken by the agency, that may adversely affect EFH;
- The Secretary shall provide recommendations (which may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH) to conserve EFH to federal or state agencies for activities that would adversely affect EFH; and
- The federal action agency must provide a detailed response in writing to NOAA Fisheries and to any regional fishery management council commenting under Section 305(b)(3) of the MSA within 30 days after receiving an EFH conservation recommendation.

“Adverse effect” is defined in the regulations as: “any impact that reduces quality and/or quantity of EFH. Adverse effects may include direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality and/or quantity of EFH. Adverse effects to EFH may result from actions occurring within EFH

or outside of EFH and may include site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions” (50 CFR § 600.910).

The trigger for EFH consultation is a federal action agency’s determination that an action or proposed action, funded, authorized, or undertaken by that agency may adversely affect EFH. If a federal agency makes such a determination, then EFH consultation is required. If a federal action agency determines that an action does not meet the “may adversely affect EFH” test (i.e., the action will not adversely affect EFH), no consultation is required.

The Department of Commerce’s guidelines for implementing the EFH coordination and consultation provisions of the MSA are at 50 CFR §§ 600.905–930. These guidelines provide definitions and procedures for satisfying the EFH consultation requirements, which include the use of existing environmental review processes, general concurrences, programmatic consultations, or individual EFH consultations (i.e., abbreviated, expanded) when an existing process is not available. The EFH guidelines also address coordination with the councils, NOAA Fisheries EFH conservation recommendations to federal and State agencies, and council comments and recommendations to federal and State agencies.

The proposed sanctuary action area is located within EFH for various federally managed fish species within the Fishery Ecosystem Plans for the Hawaiian Archipelago and the Pelagic Fisheries of the Western Pacific. While EFH regulations encourage regional Fishery Management Councils to designate HAPCs within areas identified as EFH to focus conservation priorities on specific habitat areas that play a particularly important role in life cycles of federally managed fish species, no HAPCs are designated in the project area. This may be due to the prohibition of commercial fisheries within the action area. Section 4.3 of this EIS identifies EFH that overlaps with the action area following procedures established by the MSA.

Upon publication of the draft EIS, NOAA/ONMS began consultation with NOAA Fisheries to make an effects determination with regard to the proposed action’s effects on EFH. The EFH consultation was completed March 21, 2024 with the following noted by NOAA Fisheries in its letter of concurrence:

NOAA Fisheries agrees with ONMS that the act of designating the PNMS will not adversely affect EFH; however, as we mention above, future management actions (including issuing permits) may result in impacts to EFH, so ONMS should continue to engage our office for technical assistance or to initiate consultations when necessary.

Should ONMS undertake field activities that may affect EFH, NOAA would evaluate these impacts and determine the appropriate means of MSA-EFH compliance on a case-by-case basis.

Executive Order 12898: Federal Actions to Address Environmental Justice in Minority and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation’s Commitment to Environmental Justice for All

E.O. 12898 and E.O. 14096 direct federal agencies to identify and address disproportionately high and adverse effects of their actions on human health and the environment of communities

with environmental justice concerns. Additionally, federal agencies are directed to better protect overburdened communities from pollution and environmental harms; strengthen engagement with communities and mobilize federal agencies to confront existing and legacy barriers and injustices; promote the latest science, data, and research, including on cumulative impacts; increase accountability and transparency in federal environmental justice policy; and honor and build on the foundation of ongoing environmental justice work. The designation of national marine sanctuaries by NOAA helps to ensure the enhancement of environmental quality for all populations in the United States. The sanctuary designation would not result in disproportionate negative impacts on any communities with environmental justice concerns. In addition, many of the potential impacts from designating the sanctuary would result in long term or permanent beneficial impacts by protecting sanctuary resources, which may have a positive impact on communities by providing employment and educational opportunities, and potentially result in improved ecosystem services. In compliance with E.O. 12898 and E.O. 14096, Section 4.6 of the EIS addresses environmental justice issues. The analysis of environmental justice issues associated with the proposed action are presented in Chapter 5.

Paperwork Reduction Act (44 U.S.C. §§ 3501 et seq.)

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., unless that collection of information displays a currently valid OMB control number. NOAA proposes to use an existing collection, Papahānaumokuākea Marine National Monument Permit Applications and Reports for Permits, currently approved under OMB Control Number 0648–0548 in association with this final rule. This information collection is currently used to determine whether to approve or deny a permit application for the Papahānaumokuākea Marine National Monument. Information collected includes such items as the professional qualifications and financial ability of the applicant (as related to the requested activity); the duration of the activity and its effects; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; and the extent to which the conduct of the activity may diminish or enhance the qualities for which the Monument was designated. Some of the information collected may also be used to inform management actions or decision making after a final decision has been made. Additional information regarding this collection of information – including all background materials -- can be found at <https://www.reginfo.gov/public/do/PRAMain> by using the search function to enter either the title of the collection or the OMB Control Number.

NOAA believes designating a national marine sanctuary in the marine portions of the Monument would not result in a significant change to the burden, reporting, recordkeeping, and other compliance requirements. To the extent compliance with sanctuary regulations would impose a burden on persons, including small businesses, NOAA believes this burden would be minimal. NOAA did not receive any comments in response to this determination at the proposed rule stage. Following sanctuary designation, NOAA may elect to re-visit the current collection to determine if additional changes are needed. Should NOAA, in consultation with the Department of Interior, the State of Hawaii, and the Office of Hawaiian Affairs, believe additional changes are needed to better facilitate implementation of sanctuary permitting and reporting, NOAA would publish a 60-day notice announcing potential revisions for public comment before submitting materials to OMB.



Regulatory Flexibility Act (5 U.S.C. §§ 601 et seq.)

The Regulatory Flexibility Act (RFA), as amended and codified at 5 U.S.C. 601 *et seq.*, requires federal agencies to prepare a regulatory flexibility analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking, unless the agency can certify, pursuant to 5 U.S.C. 605, that the action will not have significant economic impact on a substantial number of small entities.

The RFA requires agencies to consider, but not necessarily minimize, the effects of proposed rules on small entities. There are no decision criteria in the RFA. Instead, the goal of the RFA is to inform the agency and public of expected economic effects of the proposed rule and to ensure the agency considers alternatives that minimize the expected economic effects on small entities while meeting applicable goals and objectives. The proposed rule quantifies the potential effects of a national marine sanctuary designation.

The analysis detailed in the proposed rule serves as the factual basis for and supports NOAA's decision to certify that the rule will not have a significant economic impact on a substantial number of small entities. Therefore, no further analysis is needed under the RFA (5 U.S.C. 605(b)).

Executive Order 12866 – Regulatory Impact, 13563 Improving Regulation and Regulatory Review, and 14094: Modernizing Regulatory Review

The Office of Management and Budget (OMB) has determined this rule to be significant under Executive Order 12866, "Regulatory Planning and Review," 58 FR 190 (Oct 4, 1993), as supplemented by Executive Order 14094, "Modernizing Regulatory Review," 88 FR 21879 (April 6, 2023). NOAA prepared an analysis of the potential costs and benefits associated with this action.

State of Hawai'i Statutory Consultations

Hawai'i Historic Preservation Program

The State of Hawai'i Department of Land and Natural Resources, Historic Preservation Division (SHPD) is responsible for the State Historic Preservation Program. The program is codified under HRS Chapter 6E recognizing the State's constitutional duty to conserve and develop the historic and cultural property in the State. SHPD review includes identification and inventory of historic properties, evaluation of significance of the properties, determination of effects to significant properties, and mitigation. Pursuant to HRS § 6E-8 and HAR § 13-275-3, DLNR-Division of Aquatic Resources submitted a written request to SHPD for an agency determination letter of concurrence that no historic properties are affected. On June 7, 2024, SHPD concurred with DAR's determination of no historic properties affected.

As noted above, the State of Hawai'i Cultural Impact Assessment (CIA) and Legal Analysis are triggered by requirements of the Hawai'i Environmental Policy Act (HEPA), Hawaii Revised

Statutes (HRS) §343, and are conducted parallel to the NHPA Section 106 process. The CIA and Legal Analysis are published at the [State's website](#).



Appendix C1: List of Correspondence Related to Consultations for Sanctuary Designation

NMSA 304(a)(5)

- 304(a)(5) Initial letter from NOAA to the Western Pacific Regional Fishery Management Council (11.19.21)
- Western Pacific Regional Fishery Management Council NMSA 304(a)(5) Response Letter (03.22.22)
- 304(a)(5) Response letter from NOAA to the Western Pacific Regional Fishery Management Council (05.26.22)
- Western Pacific Regional Fishery Management Council – 193 Council Meeting NWHI fishing regulations recommendations (12.08.2022)
- 304(a)(5) Response letter from NOAA to the Western Pacific Regional Fishery Management Council (02.22.23)
- Western Pacific Regional Fishery Management Council Final Action (04.14.23)
- NOAA Response letter to Final Action (05.31.23)

Coastal Zone Management Act (16 U.S.C. §§ 1451 *et seq.*)

- Notification from the State of Hawai‘i Office of Planning and Sustainable Development to NOAA (12.01.21)
- NOAA CZMA Consistency Determination Application submitted to the State of Hawai‘i, Office of Planning and Sustainable Development (03.21.24)
- Letter of concurrence from the State of Hawai‘i, Office of Planning and Sustainable Development (05.17.24)

Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*) – Section 7 Consultation and Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §§ 1801 *et seq.*) – Essential Fish Habitat Consultation

- Memo record of determination to NOAA Fisheries (03.08.24)
- ESA consultation response from NOAA Fisheries (04.29.24)
- EFH consultation response from NOAA Fisheries (03.21.24)
- Memo record of determination to USFWS (04.30.24)

National Historic Preservation Act of 1966 (54 U.S.C. §§ 300101 *et seq.*)

- NOAA’s Finding of No Historic Properties Affected for the Proposed Papahānaumokuākea National Marine Sanctuary

NMSA 304(a)(5)



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
Office of National Marine Sanctuaries
1305 East-West Highway
Silver Spring, Maryland 20910

November 19, 2021

ATTN: Taotasi Archie Soliai
Western Pacific Regional Fishery Management Council
1164 Bishop Street, Suite 1400
Honolulu, HI 96813

Dear Chairperson Soliai:

On November 19, 2021, National Oceanic and Atmospheric Administration (NOAA), Office of National Marine Sanctuaries published a notice of intent in the Federal Register to initiate the process to consider designating marine portions of Papahānaumokuākea Marine National Monument as a national marine sanctuary (86 FR 64904). This letter provides the Western Pacific Regional Fishery Management Council (Council) with the opportunity under section 304(a)(5) of the National Marine Sanctuaries Act (NMSA, 16 U.S.C. § 1434(a)(5)) to prepare draft fishing regulations for the proposed sanctuary within Papahānaumokuākea Marine National Monument. While the national standards set forth in section 301(a) of the Magnuson-Stevens Fishery Conservation and Management Act shall serve as guidance to the Council, the goals and objectives of the sanctuary designation (see enclosed), together with the purposes and policies of the National Marine Sanctuaries Act, as well as the existing Presidential Proclamations 8031, 8112, and 9478 specific to Papahānaumokuākea Marine National Monument, are the benchmarks against which the Council's action shall ultimately be measured.

The Council may choose one of three available actions:

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

Draft regulations prepared by the Council shall be accepted and issued as proposed regulations by the Secretary unless the Secretary finds that the Council's action fails to fulfill the purposes and policies of the National Marine Sanctuaries Act and the goals and objectives of the proposed sanctuary designation. The Secretary shall prepare the fishing regulations if the Council declines to make a determination with respect to the need for regulations, makes a determination which is rejected by the Secretary, or fails to prepare the draft regulations in a timely manner. Consistent with the National Marine Sanctuaries Act regulations and to provide adequate time for council meetings, NOAA is providing 120 days to conduct the 304(a)(5) consultation and requests that the Council make its recommendations, and if appropriate, prepare draft fishery regulations no later than March 31, 2022.

The Office of National Marine Sanctuaries has completed an initial review of Proclamations 8031, 8112 and 9478, the current fishing regulations under 50 CFR Part 404, and the goals and objectives for the proposed sanctuary. NOAA believes the Magnuson-Stevens Fishery



Conservation and Management Act is the appropriate statute for managing fishing within the proposed sanctuary.

For the area designated by Proclamation 8031, NOAA believes the current Magnuson-Stevens Fishery Conservation and Management Act regulations under 50 CFR 404 are consistent with both the relevant provisions of Proclamations 8031 and 8112 and the goals and objectives for the proposed sanctuary. However, in order to rely on Magnuson-Stevens Fishery Conservation and Management Act authority for sanctuary purposes within the Monument Expansion Area designated by Proclamation 9478, NOAA recommends the Council propose regulations for the Monument Expansion Area that are consistent with both the fishing provisions of Proclamation 9478, and the goals and objectives of the proposed sanctuary.

In order to provide both long term protection under a proposed national marine sanctuary and primary management under the Magnuson-Stevens Fishery Conservation and Management Act, NOAA may adopt a joint regulatory approach. Under this approach, National Marine Sanctuaries Act and Magnuson-Stevens Fishery Conservation and Management Act regulations would be identical, and as long as the Magnuson-Stevens Fishery Conservation and Management Act regulations remain in effect, the National Marine Sanctuaries Act regulations would not be activated.

NOAA believes this approach would allow the Magnuson-Stevens Fishery Conservation and Management Act to provide the predominant management function for fishing while assuring that NOAA continues to meet its independent obligation under the NMSA to protect sanctuary resources. However, to provide the predominant management function, the Magnuson-Stevens Fishery Conservation and Management Act regulations would have to be in place prior to the national marine sanctuary designation and be accepted by NOAA as consistent with the relevant fishing provisions of Proclamation 9478 and with the goals and objectives of the proposed sanctuary.

In summary, we appreciate the time and effort of the Council on this matter and look forward to receiving periodic updates, and ultimately your response. Please feel free to contact Athline Clark at 808-725-5800 or Athline.Clark@noaa.gov if you have any questions or require more information.

Sincerely,

John Armor
Director

Cc: Kitty Simonds, Executive Director, WPRFMC
Michael Tosatto, Regional Administrator, NMFS-PIRO
Kristina Kekuewa, Regional Director, ONMS-PIR
Athline Clark, Superintendent, PMNM

Enclosures: (1) NMSA 304(a)(5) Regulations
(2) Sanctuary Goals and Objectives

Enclosure (1)

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

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

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



Enclosure (2)

Sanctuary Goals

Goal 1. Resource Protection & Conservation

Ensure the long-term viability and resilience of Papahānaumokuākea by protecting, preserving, enhancing and restoring its cultural and natural resources, with a focus on ocean and island health and human well-being.

Goal 2. Research & Monitoring

Support, promote, conduct, and coordinate research and monitoring, incorporating multiple forms of knowledge to increase understanding of Papahānaumokuākea's cultural and natural resources, and to improve management decisions.

Goal 3. Governance & Operations

Provide the necessary policy, programs, structure, and processes to ensure effective, integrated management and fulfill the kuleana of shared stewardship for Papahānaumokuākea.

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.

Goal 5. Education, Mentoring & Interpretation

Inspire current and future generations to mālama Papahānaumokuākea's cultural and biological resources through excellence in education and mentorship.



Sanctuary Objectives

Objective 1.

Provide long term lasting protection of Papahānaumokuākea consistent with and reinforcing the provisions outlined in Executive Order (EO) 13178, Presidential Proclamations 8031, 8112, 9478, and the regulations at 50 CFR § 404 through the designation of a national marine sanctuary.

Objective 2.

Augment and strengthen existing protections for Papahānaumokuākea ecosystems, living resources, and cultural and maritime heritage resources through the addition of National Marine Sanctuaries Act regulations.

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.

Objective 4.

Provide a pu'uhonua to protect key habitats, vulnerable, endangered and threatened species and highly mobile marine species that regularly move across the boundaries of Papahānaumokuākea.

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.

Objective 6.

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

Objective 7.

Enhance resource protection, increase regulatory compliance, ensure enforceability and provide for consultation through National Marine Sanctuaries Act authorities and regulations.

Objective 8.

Conduct, support and promote research, characterization and long-term monitoring of marine ecosystems and species and cultural and maritime heritage resources.



Western
Pacific
Regional
Fishery
Management
Council

March 22, 2022

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

Dear John,

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

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

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

Sincerely


Kitty M. Simonds
Executive Director

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

cc: Kristina Kekuewa, Regional Director-Pacific Islands Region

A Council Authorized by the Magnuson Fishery Conservation and Management Act of 1976
1164 Bishop St. • Suite 1400 • Honolulu • HI 96813 USA • Tel. (808) 522-8220 • FAX (808) 522-8226 • www.wpcouncil.org



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

March 25, 2022

Council Decision

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

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

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

Proposed Fishing Regulations

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

Commercial Fishing

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



Non-commercial Fishing

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

Native Hawaiian Practices

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

Preliminary Draft Fishing Regulations

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

*Changes highlighted in yellow

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

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

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

§ 665.12 Definitions

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

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

§ 665.13 Permits and fees

(f) Fees.

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

(xiv) Northwestern Hawaiian Islands non-commercial permit

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

§ 665.14 Reporting and recordkeeping

(b) Fishing record forms

(1) Applicability.

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

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

* * *

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

(2) Timeliness of submission.

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

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

Subpart J – Northwestern Hawaiian Islands Monument Expansion Area

Sec.

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

665.971 Boundaries. The Monument Expansion Area includes the following:

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

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

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

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

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

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

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

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

665.974. Regulated activities.

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

665.975. Fishing permit procedures and criteria.

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

665.976. International law.

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



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
Office of National Marine Sanctuaries
1305 East-West Highway
Silver Spring, Maryland 20910

May 26, 2022

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

Dear Ms. Simonds:

I would like to thank you for the Western Pacific Regional Fishery Management Council's response letter dated March 22, 2022, regarding the consideration for designating marine portions of Papahānaumokuākea Marine National Monument as a national marine sanctuary. As part of the National Marine Sanctuaries Act Section 304(a)(5) process, coordination with the Regional Fishery Management Council is a critical step in the proposed sanctuary designation and I am pleased that we continue to coordinate on how to best manage this naturally and culturally significant place.

I would also like to thank the Council for its decision to develop draft fishery regulations for the proposed sanctuary. As we prepare for the next phase of the sanctuary designation process, it is important that NOAA receives the Council's draft regulations in a timely manner. To best facilitate this timing, I have asked members of my staff to coordinate a meeting between Office of National Marine Sanctuaries (ONMS), National Marine Fisheries Service (NMFS), and Council staff to set a reasonable deadline for NOAA's receipt of draft fishery regulations and to help ONMS better understand the Council's process for amending the Hawaii Archipelago Fishery Ecosystem Plan.

As part of our commitment to transparency throughout the sanctuary designation process, I want to assure the Council that any draft regulations received by NOAA will be measured against the current requirements under Presidential Proclamations 8031, 8112, and 9478 specific to Papahānaumokuākea Marine National Monument (PMNM), as well as the goals and objectives of the proposed national marine sanctuary as detailed in our November 19, 2021 letter to Chairperson Soliai.

I appreciate the time and effort of the Council thus far and look forward to receiving your final draft regulations. Please feel free to contact Athline Clark at 808-725-5800 or Athline.Clark@noaa.gov if you have any questions or require more information.

Sincerely,
John Armor
Director

cc: Michael Tosatto, Regional Administrator, NMFS-PIRO
Gerry Davis, Assistant Regional Administrator NMFS-PIRO HCD
Kristina Kekuewa, Regional Director, ONMS-PIR
Athline Clark, Superintendent, PMNM





ACTION MEMORANDUM

193rd Council Meeting

December 5-8, 2022

Pagoda Hotel
Honolulu, Hawaii

AGENCY REPORTS

Regarding the NMFS Pacific Islands Regional Office (PIRO) Agency Report, the Council:

1. Requested NMFS to consider holding a future Leadership Council meeting in the U.S. Pacific Islands Territories of American Samoa, Guam, or CNMI.
2. Reiterated its request to U.S. Fish and Wildlife Service (USFWS) and NMFS to meet with the Territory Governments of American Samoa, CNMI and Guam to review the information at least 30 days in advance of publishing the green sea turtle critical habitat proposed rule.
3. Requested NMFS consider nominating a new vice-chair to the Northern Committee of the Western and Central Pacific Fisheries Commission (WCPFC).

Regarding the USFWS Report, the Council:

4. Requested USFWS and NOAA re-convene the Mariana Trench Monument Advisory Council (MTMAC) with expanded participation from Guam to expedite the completion of the Mariana Trench Marine National Monument (MTMNM) Management Plan.

Regarding the State Department, the Council:

5. Petitioned the U.S. State Department (DOS) to consider returning 1,200 square miles of U.S. Exclusive Economic Zone (EEZ) waters off Guam forfeited to the Federated States of Micronesia (FSM) to the patrimony of Guam.



ACTION MEMORANDUM

193rd Council Meeting

December 5-8, 2022

Pagoda Hotel

Honolulu, Hawaii

HAWAII ARCHIPELAGO AND PRIA

Regarding the Paper Inferring Spillover Benefits of the Papahānaumokuākea Marine National Monument (PMNM), the Council:

1. Requested NMFS staff to work with SSC members to evaluate the impacts of large static closed areas in the Pacific Islands Region (including the Marine National Monuments) on target and non-target species, address the SSC's concerns on a lack of reproducibility of findings by a recent paper published in *Science*, and also evaluate socioeconomic impacts.
2. Reiterated its previous recommendation from its 191st Meeting for NOAA to allocate funding support for external experts to evaluate the impacts that Marine National Monuments have on fisheries, working in collaboration with NOAA and the Council's advisory bodies.

Regarding NWI fishing regulations for the Monument Expansion Area, the Council:

3. 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 and Reporting: Any person engaging in Native Hawaiian subsistence practices must obtain a Native Hawaiian Subsistence Practices 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. In addition, under this alternative, there would be specific permit review and issuance processes for a Native Hawaiian Subsistence Practices Fishing Permit.
- 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 an application contains all of the required information, NMFS will forward copies of the application to the Council, the U.S. Fish and Wildlife Service (USFWS), the Office of the National Marine Sanctuaries (ONMS), the Office of Hawaiian Affairs (OHA), and the Chair of the Hawaii Department of Land and Natural Resources (DLNR). The Council may consult with its advisory bodies to provide comments on the application.

- Following receipt of a complete application, NMFS will consult with the Council through its Executive Director, and the USFWS, ONMS, OHA, and the Chair of the Hawaii 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 customary exchange. Additionally, permittees may sell, barter or trade catch to recoup costs associated with the trip to the MEA, not to exceed the actual direct costs associated with the trip, subject to the limit below. Direct costs include costs of supplies such as bait, fuel or ice needed for the trip, but do not include purchase, berthing, or maintenance of vessels or other costs external to the trip. This restriction ensures that the activity is not for commercial purposes.
- NMFS and the Council would limit the total value of catch traded, bartered or sold not to exceed the cost for fuel and ice, and other trip costs to make a trip from the main Hawaiian Islands to the MEA and in no case exceed \$15,000 per trip. A permittee would also be required to document and report to NMFS, the direct costs associated with each trip conducted to the MEA and the amount and value of any catch that is sold, bartered or traded.
- 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.

Further, the Council deemed that the regulations implementing the recommendations are necessary or appropriate in accordance with Section 303(c) of the Magnuson-Stevens



Fishery Conservation and Management Act (MSA). In doing so, the Council directs Council staff to work with NMFS to complete regulatory language to implement the Council's final action. Unless otherwise explicitly directed by the Council, the Council authorizes the Executive Director and the Chairman to review the draft regulations to verify that they are consistent with the Council action before submitting them, along with this determination, to the Secretary on behalf of the Council. The Executive Director and the Chairman are authorized to withhold submission of the Council action and/or proposed regulations and take the action back to the Council if, in their determination, the proposed regulations are not consistent with the Council action.

4. Directed staff to organize a meeting with Council advisors and Native Hawaiian groups to provide the Council with the details of Native Hawaiian practices and a review process for the Native Hawaiian subsistence fishing permit for its consideration at its next meeting.

Regarding Hawaii Fishery Issues, the Council:

5. Requested the State of Hawaii provide a presentation on the Holomua Marine 30x30 to the Council and its advisory groups in order to determine the impacts on fisheries managed by the Council.



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

February 22, 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 December 2022 Council meeting, recommending fishing regulations for the Papahānaumokuākea Monument Expansion Area (MEA). Coordination with the Council under section 304(a)(5) of the National Marine Sanctuaries Act (NMSA), 16 U.S.C. § 1434(a)(5), for the proposal to designate marine portions of Papahānaumokuākea Marine National Monument (Monument) as a national marine sanctuary, which began in November 2021, has been a critical step in the proposed sanctuary designation process. I would like to thank the Council for its time and effort in this matter. This letter provides the Council with notice regarding the conclusion of its role in the NMSA 304(a)(5) process and notice that the final action taken at the December 2022 meeting, in part, does not fulfill the purposes and policies of the NMSA and the goals and objectives of the proposed designation.

NOAA made this finding by evaluating the Council's action relative to Presidential Proclamations 8031, 8112, and 9478 specific to the Monument, as well as the purposes and policies of the NMSA and the goals and objectives of the proposed national marine sanctuary. At this time, and as required by the NMSA, NOAA will begin to develop its own regulations to fulfill the purposes and policies of the NMSA and the goals and objectives of the proposed designation. Should the Council choose to reconsider this matter at its March 2023 meeting and take action to revise its recommended fishing regulations as specified below, NOAA will consider such a revision as a part of the NMSA 304(a)(5) process **until Friday, April 14, 2023**. NOAA also welcomes input from the Council as a part of any future public comment process associated with the proposed designation. In either case, I offer the following input on key components of the December 2022 action that NOAA finds do not meet the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary.

Position on Council Final Action

NOAA finds that the majority of the Council's final action fulfills the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary designation. However, the



inclusion of the ability to “sell” fish caught pursuant to the Native Hawaiian Subsistence Practices Fishing Permit fails to fulfill the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary designation, as outlined below. While NOAA may authorize subsistence fishing in the MEA under a Native Hawaiian Practices Fishing Permit only where the fish may be traded, bartered, or exchanged *on a small scale within the family or community*, such activities must be sustainable and must not serve as a toehold for prohibited commercial fishing. As such, any Council regulations establishing a MEA permit system would need to include sufficient safeguards to ensure that the resources harvested do not enter commerce.

Specifically, the Council’s final action recommends that:

“Bottomfish [Management Unit Species (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 customary exchange. Additionally, permittees may sell, barter or trade catch to recoup costs associated with the trip to the MEA, not to exceed the actual direct costs associated with the trip, subject to the limit below. Direct costs include costs of supplies such as bait, fuel or ice needed for the trip, but do not include purchase, berthing, or maintenance of vessels or other costs external to the trip. This restriction ensures that the activity is not for commercial purposes.”

Pursuant to the NMSA section 304(a)(5), NOAA finds that the allowance of “sale” is inconsistent with the following goals and objectives of the proposed sanctuary.

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

NOAA makes this finding based on the following information. The State of Hawaii representative on the Council voted against the Council’s December 2022 final action on the basis that the inclusion of “sale” under a Native Hawaiian Subsistence Practices Fishing Permit is inconsistent with the state’s constitutional protection of Native Hawaiian traditional and customary rights. While the MEA does not include state waters, the state is a co-managing partner for the Monument and the proposed sanctuary, and accordingly, NOAA believes that the Council’s final action fails to fulfill Objectives 3 and 5 of proposed sanctuary. In addition, the Council has received comments from the Papahānaumokuākea Native Hawaiian Cultural Working Group (CWG), supported by the Office of Hawaiian Affairs, a co-trustee of the Monument, opposing any form of customary exchange (exchange, trade, barter, or sale) or regulations that would allow catch to be brought back to the Main Hawaiian Islands and

consumed outside of the Monument or the MEA. The opposition from members of the Papahānaumokuākea CWG, represents an inconsistency between the Council's final action and NOAA partner knowledge and expertise regarding Native Hawaiian cultural perspectives and practices. As such, NOAA finds that the Council's final action is not consistent with the sanctuary's goal of partnerships that "generate active and meaningful involvement, with a commitment to incorporating traditional values and stewardship ethics"; and the sanctuary's objectives to "ensure unified governance" of the Papahānaumokuākea Monument Management Board, "manage the sanctuary as a sacred site consistent with Native Hawaiian traditional knowledge, management concepts, and principles," and "engagement of the Indigenous Hawaiian community in the development and execution of management of the sanctuary" specific to the proposed sanctuary Goal 4 and Objectives 3, 5 and 6.

Should the Council wish to provide to NOAA a revised action by **no later than Friday, April 14, 2023**, the Council is advised to remove any provision that allows for the ability to "sell" fish caught under a Native Hawaiian Subsistence Fishing Practices Permit. The Council is further advised to retain the remaining provisions of the December 2022 action so as not to warrant additional NOAA review at this time. Any revisions the Council wishes to make beyond those associated with the provisions described in this letter may be raised as a part of future public comment processes associated with the sanctuary designation. I sincerely hope that this information is helpful to the Council in its deliberations.

I appreciate the active engagement of the Council throughout this process and look forward to continuing to work with the Council on the proposed sanctuary designation. Please contact Kristina Kekuewa at Kristina.Kekuewa@noaa.gov if you have any questions or require more information.

Sincerely,
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Nicole R. LeBocuf
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 Kekuewa, Regional Director, ONMS Pacific Islands Region
Eric Roberts, Superintendent (Acting), Papahānaumokuākea Marine National Monument



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.

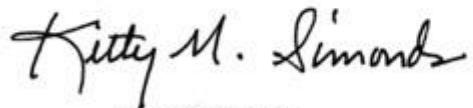
In order to provide equity for Native Hawaiian communities, the Council also recommended that funding be provided to the Western Pacific Community Demonstration Projects Program (CDPP) and Community Development Plans (CDP) under the authority of Section 305(i) of the Magnuson Stevens Act. Funding could 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,



Kitty M. Simonds
Executive Director

cc: Janet Coit, Assistant Administrator, NOAA Fisheries
John Armor, Director, Office of National Marine Sanctuaries
Kristina Kekuewa, 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



WPRFMC Recommendations for Fishing Regulations in the Monument Expansion Area

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 Kekuewa at Kristina.Kekuewa@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 Kekuewa, Regional Director, ONMS Pacific Islands Region
Eric Roberts, Superintendent, Papahānaumokuākea Marine National Monument

Coastal Zone Management Act (16 U.S.C. §§ 1451 et seq.)



STATE OF HAWAII OFFICE OF PLANNING & SUSTAINABLE DEVELOPMENT

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

DAVID Y. IGE
GOVERNOR

MARY ALICE EVANS
DIRECTOR

Telephone: (808) 587-2846
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Web: <https://planning.hawaii.gov/>

DTS202111231309BA

Coastal Zone
Management
Program

December 1, 2021

Environmental
Review Program

Ms. Athline Clark
NOAA Superintendent
Papahānaumokuākea Marine National Monument
1845 Wasp Blvd., Bldg 176
Honolulu, Hawai'i 96818

Land Use
Commission

Land Use Division

Special Plans
Branch

State Transit-
Oriented
Development

Statewide
Geographic
Information System

Statewide
Sustainability
Program

Dear Ms. Clark:

Subject: Proposed Designation of a National Marine Sanctuary Within
Papahānaumokuākea Marine National Monument (PMNM).

According to Federal Register (86 FR 64904, November 19, 2021) the National Oceanic and Atmospheric Administration intends to seek consistency consultation under the Coastal Zone Management Act (CZMA) in accordance with 15 CFR Part 930, Subpart C. This letter acknowledges the intent to designate marine portions of PMNM as a national marine sanctuary and inform you that this activity may have reasonably foreseeable effects on coastal uses and resources.

We kindly invite you to consult with our office prior to the submittal of your CZMA consistency determination to facilitate the review process.

If you have any questions, please contact Keelan Barcina of our Hawai'i Coastal Zone Management Program at keelan.mk.barcina@hawaii.gov or (808) 587-2803.

Mahalo,

Mary Alice Evans

Mary Alice Evans
Director



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
Office of National Marine Sanctuaries
1305 East-West Highway
Silver Spring, Maryland 20910

Mary Alice Evans
Director
State of Hawai'i Office of
Planning & Sustainable Development
P.O. Box 2359
Honolulu, HI 96804

Dear Director Evans:

On March 1, 2024, ONMS proposed to designate marine portions of Papahānaumokuākea Marine National Monument as a sanctuary, and released for public comment a draft management plan, notice of proposed rulemaking, and an accompanying draft environmental impact statement (DEIS). The documents are available for public comment until May 7, 2024 at <https://www.regulations.gov/>, docket number NOAA-NOS-2012-0114. As described in the enclosed Draft Environmental Impact Assessment, NOAA's preferred boundary alternative is Alternative 1, which includes all marine waters of the Papahānaumokuākea Marine National Monument and Monument Expansion Area from the shoreline of all islands and atolls to 200 nautical miles (see DEIS Section 3.4). NOAA is also proposing a set of proposed regulations, based on the existing Monument regulations (see DEIS Section 3.3 as well as the notice of proposed rulemaking for the full text of the proposed regulations).

The purpose of the attached application packet is to ensure compliance with the requirements of Section 307 of the Coastal Zone Management Act for the proposed sanctuary designation. Pursuant to the requirements of 15 CFR Part 930, NOAA submits for your review this consistency determination.

Description of Proposed Action

NOAA proposes to designate marine portions of the Papahānaumokuākea Marine National Monument (Monument) as a national marine sanctuary to provide comprehensive and coordinated management of the marine areas of Papahānaumokuākea to protect nationally significant biological, cultural, and historical resources. The proposed sanctuary boundary is coextensive with the marine portions of the Monument. The designation of the proposed sanctuary would not replace the area's current status as a marine national monument. Through sanctuary designation, NOAA is proposing to supplement and complement existing management of the Monument, and would manage the sanctuary in close collaboration with Monument co-trustees. The proposed rule would only add to, and would not diminish, Monument management measures and protections. NOAA published proposed regulations, a draft management plan, and draft environmental impact statement (EIS) in the Federal Register on March 1, 2024, and the State of Hawai'i, Department of Natural Resources published a Notice of Availability for the draft EIS in the State's The Environmental Notice on March 8, 2024. NOAA and the State of Hawai'i would co-manage the sanctuary. The proposed action will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the Hawai'i Coastal Zone Management Program.

The attached map and project description provide more details regarding the proposed action.

Consistency Determination

A summary of environmental analysis and evaluation of coastal effect is summarized in the attached Hawai'i State CZM consistency determination application. This completed application presents NOAA's evaluation of the relevant state CZM Program enforceable policies for the proposed action. As required by 15 CFR 930.39, this consistency determination is based on a review of the potential effects of the proposed action on Hawai'i coastal uses and resources and the Hawai'i coastal management program's enforceable policies. NOAA has evaluated the proposed action and determined that it is consistent to the maximum extent practicable with the Hawai'i coastal management program. NOAA has also reviewed the Hawai'i enforceable policies that were provided on February 26, 2024 and concludes that this proposed action is consistent with the applicable enforceable policies of the Hawai'i coastal management program. As such, NOAA requests your concurrence with our determination. Pursuant to 15 CFR 930.41, the State of Hawai'i has 60 days to complete its review of this consistency determination and to provide concurrence, subject to a right of extension up to 15 days upon notice to NOAA. If no response is received within this timeframe, state concurrence with this action will be conclusively presumed.

Mahalo for your cooperation in completing this process in a timely manner. If you have questions, or if we can provide other assistance, please contact Eric Roberts at Eric.Roberts@noaa.gov.

Sincerely,



Eric Roberts
Superintendent
Papahānaumokuākea Marine National Monument
and UNESCO World Heritage Site

cc: Ryan Okano, David Sakoda, Nick Sagum, Kelli Ann Kobayashi, Kristina Kekuewa



APPLICATION FOR CZM FEDERAL CONSISTENCY REVIEW

Project/Activity Title or Description: Proposed Papahānaumokuākea National Marine Sanctuary

Location: Northwestern Hawaiian Islands

Island: _____

Tax Map Key: n/a

Applicant or Agency

NOAA

Name of Applicant or Agency

Office of National Marine Sanctuaries

Mailing Address

1305 East-West Highway

City / State / Zip Code

Silver Spring, Maryland 20910

Phone

Eric.Roberts@noaa.gov

E-mail Address

Agent or Representative for Applicant

Eric Roberts, Superintendent for Papahānaumokuākea

Agent or Representative for Applicant

NOAA/ONMS/PMNM

Mailing Address

1845 Wasp Blvd., Bldg 176

City / State / Zip Code

Honolulu, Hawaii, 96818

Phone

Eric.Roberts@noaa.gov

E-mail Address

CZM Consistency Determination or Certification

✓ Check the applicable type of federal action below and sign.

Federal Agency Activity

CZM Consistency Determination: "The proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the Hawaii Coastal Zone Management Program."

Signature E. Roberts

Date 3/21/2024

Federal Permit or License

CZM Consistency Certification: "The proposed activity complies with the enforceable policies of Hawaii's approved management program and will be conducted in a manner consistent with such program."

Signature _____

Date _____

Federal Grants and Assistance

CZM Consistency Certification: "The proposed activity complies with the enforceable policies of Hawaii's approved management program and will be conducted in a manner consistent with such program."

Signature _____

Date _____

Submit Application By: Email - Debra.L.Mendes@hawaii.gov

USPS Mail - Office of Planning & Sustainable Development, P.O. Box 2359, Honolulu, Hawaii 96804

For Questions or Help Contact: Debra Mendes | Email: Debra.L.Mendes@hawaii.gov | Phone: (808) 587-2840



HAWAII CZM PROGRAM FEDERAL CONSISTENCY ASSESSMENT FORM

Federal regulations (15 CFR Part 930) require that an evaluation of consistency with the relevant enforceable policies of the Hawaii CZM Program be provided. This assessment form is organized according to the Hawaii CZM objectives and their supporting policies (Hawaii Revised Statutes § 205A-2) to help the Hawaii CZM Program evaluate the consistency of the proposed action. An independent evaluation would need to be submitted in lieu of using this form for a consistency review.

For Help Contact: Debra Mendes | Email: Debra.L.Mendes@hawaii.gov | Phone: (808) 587-2840

RECREATIONAL RESOURCES

Objective: Provide coastal recreational opportunities accessible to the public. Policies:

- 1) Improve coordination and funding of coastal recreational planning and management.
- 2) Provide adequate, accessible, and diverse recreational opportunities in the coastal zone management area by:
 - a) Protecting coastal resources uniquely suited for recreational activities that cannot be provided in other areas.
 - b) Requiring restoration of coastal resources that have significant recreational and ecosystem value, including but not limited to coral reefs, surfing sites, fishponds, sand beaches, and coastal dunes, when these resources will be unavoidably damaged by development; or requiring monetary compensation to the State for recreation when restoration is not feasible or desirable.
 - c) Providing and managing adequate public access, consistent with conservation of natural resources, to and along shorelines with recreational value.
 - d) Providing an adequate supply of shoreline parks and other recreational facilities suitable for public recreation.
 - e) Ensuring public recreational uses of county, state, and federally owned or controlled shoreline lands and waters having recreational value consistent with public safety standards and conservation of natural resources.
 - f) Adopting water quality standards and regulating point and non-point sources of pollution to protect, and where feasible, restore the recreational value of coastal waters.
 - g) Developing new shoreline recreational opportunities, where appropriate, such as artificial lagoons, artificial beaches, and artificial reefs for surfing and fishing.
 - h) Encouraging reasonable dedication of shoreline areas with recreational value for public use as part of discretionary approvals or permits by the land use commission, board of land and natural resources, and county authorities; and crediting that dedication against the requirements of Hawaii Revised Statutes, section 46-6.



RECREATIONAL RESOURCES (continued)

Check either Yes or No for each of the following questions, and provide an explanation or information for Yes responses in the Discussion section that follows:

	<u>Yes</u>	<u>No</u>
1. Will the proposed action occur in or adjacent to a dedicated public right-of-way? E.g., public beach access, inland or coastal hiking trail, shared-use path	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Will the proposed action affect public access to or along the shoreline?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Is the project parcel adjacent to the shoreline?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Is the project site on or adjacent to a sandy beach?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Is the project site in or adjacent to a state or county park?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Is the project site in or adjacent to a water body such as a stream, river, pond, lake, or ocean?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Will the proposed action occur in or affect an ocean or coastal recreation area, swimming area, surf site, fishing or gathering area, or boating area?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Discussion: Explain "Yes" responses to the questions above. If more space is needed, attach a separate sheet, or append additional information.

Section 4.6.2 (Human Uses of the Monument) of the DEIS (draft Environmental Impact Statement) provides a description of recreational activities and regulations under Monument management. As the action does not add to or subtract from regulations related to recreational activities, the DEIS does not analyze the impact of the action on these resources.

Public access to the proposed sanctuary follows the existing requirements of the Papahānaumokuākea Marine National Monument, where access is restricted. Users must obtain a sanctuary permit for one of the designated allowed activities, which includes recreation. Applications must meet specific criteria for approval.

We answered Yes to Questions 3, 4 and 6. While the proposed action is adjacent to a shoreline (#3), a sandy beach (#4), and encompasses the ocean (#6), these factors do not restrict public recreational activity over the current status for the following reasons:

-Access to the sanctuary would require users to apply for and be issued a sanctuary permit for the described recreational activity.

-Within the proposed sanctuary boundary, recreational activities would be limited to the Midway Atoll Special Management Area, which consists of the waters surrounding Midway Atoll to a distance of 12 nautical miles.

-No recreational activity within the sanctuary can be associated with a for-hire operation.

-No recreational activity within the sanctuary can involve any extractive use.



HISTORIC RESOURCES

Objective: Protect, preserve, and, where desirable, restore those natural and manmade historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture.

Policies:

- 1) Identify and analyze significant archaeological resources.
- 2) Maximize information retention through preservation of remains and artifacts or salvage operations.
- 3) Support state goals for protection, restoration, interpretation, and display of historic resources.

Check either Yes or No for each of the following questions, and provide an explanation or information for Yes responses in the Discussion section that follows:

	Yes	No
1. Is the project site within a designated historic or cultural district?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Is the project site listed on or nominated to the Hawaii or National Register of Historic Places?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Has the project site been surveyed for historic or archaeological resources?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Has the State Historic Preservation Division been consulted?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Does the project parcel include undeveloped land which has not been surveyed by an archaeologist?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Is the project site within or adjacent to a Hawaiian fishpond or historic settlement area?	<input type="checkbox"/>	<input checked="" type="checkbox"/>



HISTORIC RESOURCES (continued)

Discussion: Explain “Yes” responses to the questions above. If more space is needed, attach a separate sheet, or append additional information.

Section 4.5.2 (Maritime Heritage Resources) of the DEIS provides a description of maritime heritage resources, the threats they are facing, and the laws protecting them. Appendix G provides detailed supplemental information on these resources. This includes the submerged wreck of the Two Brothers whaling ship, discovered at Lalo (French Frigate Shoals) in 2008, and now listed on the National Register of Historic Places. Impacts of the preferred action alternative and two other alternatives on maritime heritage resources are analyzed in Chapter 5, which concludes that the preferred action will have long term, direct moderate benefits on maritime heritage resources.

We answered Yes to Questions 2, 3, and 4.

Question 2: As noted above, the Two Brothers is listed on the National Register of Historic Places. There are no other sites on this list within the marine waters of the project area. Land-based sites at Mokumanamana (Necker Island), Nihoa, and Kuaihelani (Midway Atoll) are on the National Register, but are not impacted by the regulations or management of the proposed action.

Question 3: Maritime archaeology is an important research and management focus for the Monument, and many non-invasive surveys have occurred over the years, leading to new information and better protection.

Question 4: NOAA initiated consultation with the State Historic Preservation Division (SHPD) on November 22, 2021 as part of the National Historic Preservation Act (NHPA) Section 106 Review process. As the State of Hawai'i is a co-action agency for this proposed designation, on May 31, 2023 the DLNR submitted a letter to the SHPD in fulfillment of Title 1, Chapter 6E, Hawaii Revised Statutes - Historic Preservation. At this time, neither NOAA or DLNR has received a response from SHPD.



SCENIC AND OPEN SPACE RESOURCES

Objective: Protect, preserve, and, where desirable, restore or improve the quality of coastal scenic and open space resources.

Policies:

- 1) Identify valued scenic resources in the coastal zone management area.
- 2) Ensure that new developments are compatible with their visual environment by designing and locating those developments to minimize the alteration of natural landforms and existing public views to and along the shoreline.
- 3) Preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources.
- 4) Encourage those developments that are not coastal dependent to locate in inland areas.

Check either Yes or No for each of the following questions, and provide an explanation or information for Yes responses in the Discussion section that follows:

	Yes	No
1. Will the proposed action alter any natural landforms or existing public views to and along the shoreline?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Does the proposed action involve the construction of a multi-story structure?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Is the project site located on or adjacent to an undeveloped parcel, including a beach or oceanfront land?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Does the proposed action involve the construction of a structure visible between the nearest coastal roadway and the shoreline?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Will the proposed action involve constructing or placing a structure in waters seaward of the shoreline?	<input type="checkbox"/>	<input checked="" type="checkbox"/>



SCENIC AND OPEN SPACE RESOURCES (continued)

Discussion: Explain “Yes” responses to the questions above. If more space is needed, attach a separate sheet, or append additional information.



COASTAL ECOSYSTEMS

Objective: Protect valuable coastal ecosystems, including reefs, beaches, and coastal dunes, from disruption and minimize adverse impacts on all coastal ecosystems.

Policies:

- 1) Exercise an overall conservation ethic, and practice stewardship in the protection, use, and development of marine and coastal resources.
- 2) Improve the technical basis for natural resource management.
- 3) Preserve valuable coastal ecosystems of significant biological or economic importance, including reefs, beaches, and dunes.
- 4) Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land water uses, recognizing competing water needs.
- 5) Promote water quantity and quality planning and management practices that reflect the tolerance of fresh water and marine ecosystems and maintain and enhance water quality through the development and implementation of point and nonpoint source water pollution control measures.

Check either Yes or No for each of the following questions, and provide an explanation or information for Yes responses in the Discussion section that follows:

	<u>Yes</u>	<u>No</u>
1. Does the proposed action involve dredge or fill activities?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Is the project site within the Special Management Area (SMA) or the Shoreline Setback Area?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Is the project site within the State Conservation District?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Will the proposed action involve some form of discharge or placement of material into a body of water or wetland?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Will the proposed action require earthwork, grading, clearing, grubbing, or stockpiling?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Will the proposed action include the construction of waste treatment facilities, such as injection wells, discharge pipes, or septic systems?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Will the proposed action involve the construction or installation of a stormwater discharge or conveyance system?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. Is an intermittent or perennial stream located on or adjacent to the project parcel?	<input type="checkbox"/>	<input checked="" type="checkbox"/>



COASTAL ECOSYSTEMS (continued)

	<u>Yes</u>	<u>No</u>
9. Does the project site provide habitat for endangered species of plants, birds, or mammals?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Is any such habitat located near the project site?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Is a wetland located on the project site or parcel?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
12. Is the project site situated in or abutting a Natural Area Reserve, Marine Life Conservation District, Marine Fisheries Management Area, or an estuary?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
13. Will the proposed action occur on or near a coral reef or coral colonies?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Discussion: Explain “Yes” responses to the questions above. If more space is needed, attach a separate sheet, or append additional information.

Sections 4.3 (Physical Environment) and 4.4 (Biological Environment) of the DEIS provide description of physical and biological resources, the threats they are facing, and the laws protecting them, respectively. Appendix D provides tables of biological resources, including endangered species, non-endangered marine mammals, non-endangered birds, and marine alien species that are known to occur within the boundary of the proposed sanctuary. Impacts of the preferred action and two alternatives on coastal ecosystems are analyzed in Chapter 5, which concludes that the preferred action will have long term, direct moderate benefits to physical and biological resources.

We answered Yes to Questions 3, 9, 10, 12, and 13. The project site falls under the State Conservation Land Use District, (Resource and Protective Subzones), has no applicable Tax Map Keys, and is located within the Honolulu judicial district (#3). It provides habitat for endangered species (#9, 10). While it does not abut a Natural Area Reserve, Marine Life Conservation District, Marine Fisheries Management Area or estuary, it does include waters of the Northwestern Hawaiian Islands Marine Refuge and the Kure Atoll Wildlife Sanctuary (#12); and encompasses coral reefs (#13).

The project is primarily administrative in nature, with the express purpose of enhancing protections for these resources through improved management and regulatory tools. The proposed action applies only to marine portions of Papahānaumokuākea, entails no new development, and does not increase activities in the area.



ECONOMIC USES

Objective: Provide public or private facilities and improvements important to the State's economy in suitable locations.

Policies:

- 1) Concentrate coastal development in appropriate areas.
- 2) Ensure that coastal dependent development and coastal related development are located, designed, and constructed to minimize exposure to coastal hazards and adverse social, visual, and environmental impacts in the coastal zone management area.
- 3) Direct the location and expansion of coastal development to areas designated and used for that development and permit reasonable long-term growth at those areas, and permit coastal development outside of designated areas when:
 - a) Use of designated locations is not feasible;
 - b) Adverse environmental effects and risks from coastal hazards are minimized; and
 - c) The development is important to the State's economy.

Check either Yes or No for each of the following questions, and provide an explanation or information for Yes responses in the Discussion section that follows:

	<u>Yes</u>	<u>No</u>
1. Does the proposed action involve a harbor or port?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Is the proposed action a visitor industry facility or a visitor industry related activity?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Does the project site include agricultural lands or lands designated for such use?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Does the proposed action relate to commercial fishing or seafood production?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Is the proposed action related to energy production or transmission?	<input type="checkbox"/>	<input checked="" type="checkbox"/>



ECONOMIC USES (continued)

Discussion: Explain “Yes” responses to the questions above. If more space is needed, attach a separate sheet, or append additional information.



COASTAL HAZARDS

Objective: Reduce hazard to life and property from coastal hazards.

Policies:

- 1) Develop and communicate adequate information about the risks of coastal hazards.
- 2) Control development, including planning and zoning control, in areas subject to coastal hazards.
- 3) Ensure that developments comply with requirements of the National Flood Insurance Program.
- 4) Prevent coastal flooding from inland projects.

Check either Yes or No for each of the following questions, and provide an explanation or information for Yes responses in the Discussion section that follows:

	Yes	No
1. Is the project site on or adjacent to a sandy beach?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. If "Yes" to question no. 1, has the project parcel or adjoining shoreline areas experienced erosion?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Is the project site within a potential tsunami inundation area? Refer to tsunami evacuation maps at: https://dod.hawaii.gov/hiema/public-resources/tsunami-evacuation-zone/	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Is the project site within a flood hazard area according to a FEMA Flood Insurance Rate Map? Refer to FEMA maps at: https://msc.fema.gov/portal/home	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Is the project site susceptible to or has it experienced ocean related impacts? E.g., sea water inundation, high tides, wave runup, sea level rise, storm surge, ground water intrusion, or subsidence.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Is the project site susceptible to or has it experienced either stormwater or groundwater impacts?	<input type="checkbox"/>	<input checked="" type="checkbox"/>



COASTAL HAZARDS (continued)

Discussion: Explain “Yes” responses to the questions above. If more space is needed, attach a separate sheet, or append additional information.

Section 4.3 (Physical Environment) of the DEIS includes text related to coastal hazards, including erosion of the islands and atolls, storm surges, and other phenomena. These concerns differ from the policies of the CZM Program, which address development in the coastal area. As the action provides supplementary and complementary regulatory and management measures for permitted activities in marine areas, the coastal hazard concerns of the CZM Program are not directly relevant. As such, with the exception of the accumulation and removal of marine debris in nearshore habitats, coastal hazards are not analyzed in the DEIS.

We answered Yes to Questions 1, 2, 3, and 5. However, as described above, the location status of the project, (i.e., adjacent to a sandy beach that has experienced erosion (#1, #2); within a tsunami inundation area (#3); is susceptible to ocean related impacts (#5)) does not affect its compatibility with the policies of the CZM Program.



MANAGING DEVELOPMENT

Objective: Improve the development review process, communication, and public participation in the management of coastal resources and hazards.

Policies:

- 1) Use, implement, and enforce existing law effectively to the maximum extent possible in managing present and future coastal zone development.
- 2) Facilitate timely processing of applications for development permits and resolve overlapping or conflicting permit requirements.
- 3) Communicate the potential short and long-term impacts of proposed significant coastal developments early in their life cycle and in terms understandable to the public to facilitate public participation in the planning and review process.

Check either Yes or No for each of the following questions, and provide an explanation or information for Yes responses in the Discussion section that follows:

	Yes	No
1. List the permits or approvals required for the proposed action and provide the status of each in the Discussion section below.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Does the proposed action conform with state and county land use designations for the site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Has an environmental impact statement or environmental assessment been prepared for the proposed action?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Has the public, applicable neighborhood board, or community groups been notified of the proposed action?	<input checked="" type="checkbox"/>	<input type="checkbox"/>



MANAGING DEVELOPMENT (continued)

Discussion: Explain “Yes” responses to the questions above. If more space is needed, attach a separate sheet, or append additional information.

Similar to the rationale provided for coastal hazards, CZM Program policies related to managing development are not relevant for this action. The action area is the marine environment and the action is promulgating new regulations and management measures for permittees within the proposed sanctuary boundary, and does not extend to the land areas of Papahānaumokuākea. The DEIS does not include any discussion on development.

We answered Yes to Questions 1, 3 and 4.

Question 1: While permits are not required, this action is currently going through the NEPA approval process, which includes requiring consultations and favorable agency determinations with regards to endangered species, cultural and historic resources, environmental justice, and other laws and statutes. These requirements and the status of the determinations are described in Appendix C and E of the DEIS.

Questions 3 and 4: A DEIS was released for public comment on February 29, 2024 and the public comment period will continue through May 7, 2024. NOAA has announced the proposed sanctuary designation to the public through a variety of media, including television, email list-serves, website announcements and other social media; and will host 10 public meetings across the islands to solicit comments in both English and 'Ōlelo Hawai'i.



PUBLIC PARTICIPATION

Objective: Stimulate public awareness, education, and participation in coastal management.

Policies:

- 1) Promote public involvement in coastal zone management processes.
- 2) Disseminate information on coastal management issues by means of educational materials, published reports, staff contact, and public workshops for persons and organizations concerned with coastal issues, developments, and government activities.
- 3) Organize workshops, policy dialogues, and site-specific mediations to respond to coastal issues and conflicts.

Check either Yes or No for each of the following questions, and provide an explanation or information for Yes responses in the Discussion section that follows:

	<u>Yes</u>	<u>No</u>
1. Has information about the proposed action been disseminated to the public, applicable neighborhood board, or community groups?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Has the public been provided an opportunity to comment on the proposed action?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Has or will a public hearing or public informational meeting be held?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Discussion: Explain “Yes” responses to the questions above. If more space is needed, attach a separate sheet, or append additional information.

We answered Yes to questions 1, 2 and 3, ensuring that the public has access to project information (#1), has the opportunity to comment on the action (#2), and that public hearings will be held (#3), as described above.

Sanctuary designation must comply with NEPA, including preparation of an EIS. The EIS process includes public scoping, which occurred in November and December 2021, as well as a public comment period.

NOAA is soliciting public comments from February 29 to May 7, 2024 through email, mail and at 10 public meetings being held across the islands. As the State is a partner, this action must adhere to the requirements of HEPA, which includes responses to all substantive written comments received during this period.



BEACH AND COASTAL DUNE PROTECTION

Objective:

- (A) Protect beaches and coastal dunes for:
 - (i) Public use and recreation;
 - (ii) The benefit of coastal ecosystems; and
 - (iii) Use as natural buffers against coastal hazards; and
- (B) Coordinate and fund beach management and protection.

Policies:

- 1) Locate new structures inland from the shoreline setback to conserve open space, minimize interference with natural shoreline processes, and minimize loss of improvements due to erosion.
- 2) Prohibit construction of private shoreline hardening structures, including seawalls and revetments, at sites having sand beaches and at sites where shoreline hardening structures interfere with existing recreational and waterline activities.
- 3) Minimize the construction of public shoreline hardening structures, including seawalls and revetments, at sites having sand beaches and at sites where shoreline hardening structures interfere with existing recreational and waterline activities.
- 4) Minimize grading of and damage to coastal dunes.
- 5) Prohibit private property owners from creating a public nuisance by inducing or cultivating the private property owner's vegetation in a beach transit corridor.
- 6) Prohibit private property owners from creating a public nuisance by allowing the private property owner's unmaintained vegetation to interfere or encroach upon a beach transit corridor.

Check either Yes or No for each of the following questions, and provide an explanation or information for Yes responses in the Discussion section that follows:

	<u>Yes</u>	<u>No</u>
1. Will the proposed action occur on a shoreline parcel?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Will the proposed action occur in an area or parcel that is adjacent to a shoreline parcel?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Is the proposed action located within the shoreline setback area?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Will the proposed action affect natural shoreline processes?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Will the proposed action affect recreational activities?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Will the proposed action affect public access to or along the shoreline?	<input type="checkbox"/>	<input checked="" type="checkbox"/>



BEACH AND COASTAL DUNE PROTECTION (continued)

Discussion: Explain “Yes” responses to the questions above. If more space is needed, attach a separate sheet, or append additional information.

The proposed action is for marine waters only



MARINE AND COASTAL RESOURCES

Objective: Promote the protection, use, and development of marine and coastal resources to assure their sustainability.

Policies:

- 1) Ensure that the use and development of marine and coastal resources are ecologically and environmentally sound and economically beneficial.
- 2) Coordinate the management of marine and coastal resources and activities to improve effectiveness and efficiency.
- 3) Assert and articulate the interests of the State as a partner with federal agencies in the sound management of ocean resources within the United States exclusive economic zone.
- 4) Promote research, study, and understanding of ocean and coastal processes, impacts of climate change and sea level rise, marine life, and other ocean resources to acquire and inventory information necessary to understand how coastal development activities relate to and impact ocean and coastal resources.
- 5) Encourage research and development of new, innovative technologies for exploring, using, or protecting marine and coastal resources.

Check either Yes or No for each of the following questions, and provide an explanation or information for Yes responses in the Discussion section that follows:

	<u>Yes</u>	<u>No</u>
1. Will the proposed action involve the use or development of marine or coastal resources?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Will the proposed action affect the use or development of marine or coastal resources?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Does the proposed action involve research of ocean processes or resources?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Will the proposed action occur in or abutting a Natural Area Reserve, Marine Life Conservation District, Marine Fisheries Management Area, or an estuary?	<input checked="" type="checkbox"/>	<input type="checkbox"/>



MARINE AND COASTAL RESOURCES (continued)

Discussion: Explain “Yes” responses to the questions above. If more space is needed, attach a separate sheet, or append additional information.

The proposed action aligns directly with the CZM Program policies for marine and coastal resources, including their use being ecologically and environmentally sound (objectives #1), coordination of management and asserting the State’s interests (objectives #2 and #3) as the State is a partner of this action, and promoting relevant research (objectives #4 and #5) as research is a key activity of the National Marine Sanctuary System “[to support, promote, and coordinate scientific research on, and long-term monitoring of, the resources of these marine areas” (16 U.S.C. § (b)(5))]. Section 4.6.2.1 provides an overview of research that has occurred in the proposed sanctuary, including conducting Native Hawaiian research.

We answered yes to Question 3 and 4 of this section.
Question 3: As noted above, and in Sections 4.2.7 (Management of Threats) and 4.6.2 (Human Uses of the Monument) of the DEIS, research is currently and will continue to be conducted to improve management of Papahānaumokuākea as well as the greater coral reef ecosystems of Hawai‘i.
Question 4: was previously answered under Coastal Ecosystems (Question 12).



Project Description:

Proposed Papahānaumokuākea National Marine Sanctuary

The National Oceanic and Atmospheric Administration (NOAA) proposes to designate the waters surrounding the Northwestern Hawaiian Islands as Papahānaumokuākea National Marine Sanctuary to protect nationally significant biological, cultural, and historical resources and to manage this special place as part of the National Marine Sanctuary System. Partnerships with Native Hawaiian practitioners, scientific organizations, educational institutions, and others will ensure that future generations continue to discover the cultural, historical, and scientific significance of the area and its connection to the greater Pacific. NOAA has prepared a draft environmental impact statement (EIS) analyzing the impacts on the human environment of the proposed action and a range of alternatives for sanctuary designation, including proposed regulations for managing the new sanctuary. A draft sanctuary management plan, which includes information about the proposed sanctuary's priority management goals and actions proposed to address those goals over the next five years, has been concurrently as an appendix to the draft EIS. A proposed rule identifying proposed regulations for the new sanctuary has also been published concurrently.

Project Location and Characteristics

The proposed sanctuary area extends 1,200 miles across the northwestern region of the Hawaiian archipelago, starting approximately 140 miles from the main Hawaiian islands, and roughly 3,000 miles from the nearest continental land mass. This vast ecosystem is one of the largest wild, pristine marine sites in the world, encompassing 582,578 square miles of the Pacific Ocean.

This vast coral reef ecosystem supports 98% of the breeding population of the threatened honu (Hawaiian green turtle), more than half of the population of the endangered ʻiloholoikauaua (Hawaiian monk seal), 14 million seabirds representing 21 species, and large populations of sharks, jacks, and other apex predators missing or significantly depleted from reef habitats around the world. Papahānaumokuākea¹ is an endemic (species found nowhere else) hotspot, a critical feature with the decline in global marine biodiversity.

The area of the proposed sanctuary includes the location of the Battle of Midway, a turning point in World War II for the allies in the Pacific Theater. Research indicates 60–80 military vessels and hundreds of aircraft are scattered across the seafloor. In addition to Navy steamers and

¹ The term Papahānaumokuākea, when used alone, refers to the place, also historically known as the Northwestern Hawaiian Islands, including the land and all waters to 200 nmi from shore. Papahānaumokuākea Marine National Monument or PMNM refers to the area designated as a monument via Presidential Proclamations 8031 and 8112, extending 50 nmi from all islands and emergent lands of the Northwestern Hawaiian Islands. The Papahānaumokuākea Marine National Monument Expansion Area or MEA refers to waters from 50 to 200 nmi designated as a monument in 2016 by Presidential Proclamation 9478. PMNM and the MEA are referred to collectively as the Monument.

aircraft, there are whaling ships, Japanese junks, Hawaiian fishing sampans, Pacific colliers, and other vessels from the 19th and 20th centuries.

Papahānaumokuākea is also a sacred place to Kānaka ‘Ōiwi (Native Hawaiians), who regard the islands and wildlife as kūpuna, or ancestors. The region holds deep cosmological and traditional significance to Kānaka ‘Ōiwi, who continue to weave knowledge, values, and practices from the past into the present to guide the co-management of Papahānaumokuākea into the future. Regarded by Kānaka ‘Ōiwi as an ‘Āina Akua, or realm of the gods and ancestors, this special biocultural land and seascape is deeply rooted in ‘Ōiwi creation and settlement stories and contains a host of intact and significant archaeological sites. Since nature and culture are considered to be one and the same, the protection of one of the last nearly pristine, natural, marine ecosystems in the archipelago is akin to preserving the living culture.

Protection Actions

Protection of the area began in 1909 when President Theodore Roosevelt designated the Hawaiian Islands Reservation, stretching from Nihoa to Hōlanikū (Kure Atoll), as a preserve and breeding ground for native birds. This designation, as well as the transfer of Midway Atoll from the U.S. Navy to the Department of the Interior, became the Midway Atoll and Hawaiian Islands national wildlife refuges.

On December 4, 2000, President William Clinton issued Executive Order 13178, designating the waters from 3 to 50 nautical miles (nmi) from Nihoa to Hōlanikū as the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve), and directed the secretaries of Commerce and Interior and the governor of Hawai‘i to coordinate management of the Reserve. In 2005, the State of Hawai‘i established the Northwestern Hawaiian Islands Marine Refuge, with waters extending three miles seaward of any coastline from Nihoa Island to Hōlanikū, excluding Kuaihelani (Midway Atoll). In 2006, via Presidential Proclamations 8031 and 8112, President George W. Bush designated the land and waters of Papahānaumokuākea as a marine national monument, extending protection to include the land and nearshore State and national wildlife refuge waters extending out 50 nmi around the Northwestern Hawaiian Islands. The Papahānaumokuākea Marine National Monument (PMNM) designation included the prohibition of commercial fishing, creation of access restrictions, and led to regulations that codified a permitting system with application criteria, prohibitions, and regulated activities (50 CFR Part 404). In 2008, the International Maritime Organization (IMO) designated the waters from shoreline to 50 nmi as a Particularly Sensitive Sea Area (PSSA). The *Associated Protective Measures* for this PSSA include: 1) Areas to be Avoided depicted on international nautical charts, directing ships away from coral reefs; and 2) a ship reporting system upon entering and exiting the PSSA. In 2016, via Presidential Proclamation 9478, President Barack Obama created the Papahānaumokuākea Marine National Monument Expansion Area, extending from the 50 nmi boundary of the Papahānaumokuākea National Marine Monument to 200 nmi, the limit of the U.S. Exclusive Economic Zone. Combined, these two marine national monuments provide protections for 582,570 square miles of land, nearshore, and open ocean in the Northwestern Hawaiian Islands.

Sanctuary Designation

Three presidents (Clinton, Bush, and Obama) and Congress have directed NOAA over the years to work toward designating Papahānaumokuākea as a national marine sanctuary, recognizing the potential value such a designation would have to complement the historical conservation and management that has been in place for more than a century. Consideration of this area for designation as a national marine sanctuary began when Executive Orders 13178 and 13196 directed the Secretary of Commerce to initiate the process to designate the Reserve as a national marine sanctuary. NOAA initiated the process to designate the Reserve as a national marine sanctuary by issuing a notice of intent on January 19, 2001 (66 FR 5509). In 2016, Presidential Proclamation 9478 called for the Secretary of Commerce to consider initiating the process to designate the Monument Expansion Area and the Monument seaward of the Hawaiian Islands and Midway Atoll National Wildlife Refuges as a national marine sanctuary. Finally, in 2020, the Joint Explanatory Statement accompanying the Consolidated Appropriations Act directed NOAA to initiate the sanctuary designation process to “supplement and complement, rather than supplant, existing authorities.” NOAA published a Notice of Intent (NOI) to initiate the sanctuary designation process on November 19, 2021. The State of Hawai‘i published its EIS preparation notice on December 8, 2021. This proposed sanctuary designation is being conducted in consultation with all Papahānaumokuākea Marine National Monument managers. The State of Hawai‘i co-developed the draft EIS and would co-manage the proposed sanctuary.

Purpose of a Sanctuary

The purpose of this proposed action is to provide comprehensive and coordinated management of the marine areas of Papahānaumokuākea to protect nationally significant biological, cultural, and historical resources through a sanctuary designation. Threats to these resources, including impacts from outside the proposed sanctuary’s boundary, remain an ongoing concern.

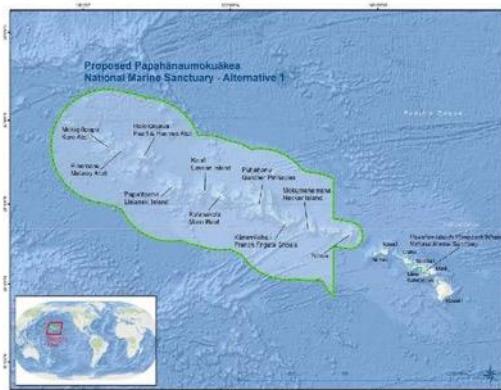
If NOAA designated this area as a national marine sanctuary, NOAA would implement regulations to complement and supplement existing authorities under the Antiquities Act; Presidential Proclamations 8031, 8112, and 9478; Executive Orders 13178 and 13196; 50 CFR 404; and existing federal and State statutes designed to protect marine resources. Sanctuary designation would provide the opportunity to develop a comprehensive and cohesive set of regulations that maintains and enhances existing resource protection. The regulations would adopt measures from the Monument, and in some places, add to those measures to allow for consistency in management and address discrepancies and gaps in prohibitions, regulated activities, and permit criteria. Through sanctuary designation, the National Marine Sanctuaries Act (NMSA) would provide additional regulatory tools for management and protection of Monument resources. Sanctuary designation also provides additional non-regulatory tools to further manage and protect Monument resources. As co-managers of the Monument for more than 20 years, NOAA has maintained robust and effective programs for conservation science; the weaving of Kānaka ‘Ōiwi (Native Hawaiians), heritage, knowledge, values, and practices into co-management; maritime heritage; and education, providing services and expertise that can be leveraged to support resource protection across the Monument and proposed sanctuary.

Proposed Action and Alternatives

The proposed action is the establishment of a sanctuary at Papahānaumokuākea, with terms of designation, regulations, and a sanctuary management plan. NOAA developed a reasonable range of alternatives for the proposed action as required by the Council on Environmental Quality NEPA regulations. The alternatives include a No Action Alternative and three action alternatives that vary by the proposed sanctuary boundaries. NOAA is proposing the same regulatory concepts and sanctuary management plan to manage the sanctuary under all alternatives. NOAA would ensure that the protections described in the Presidential Proclamations and regulations governing PMNM are the foundation of sanctuary management, and a sanctuary designation would only supplement and complement rather than supplant these protections.

Proposed Boundaries

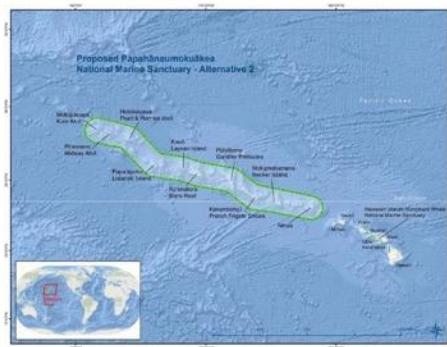
Alternative 1 is coextensive with the marine portions of the Monument. The boundary includes the marine environment surrounding the Northwestern Hawaiian Islands from the shoreline of the islands and atolls seaward to 200 nmi, including all State waters and waters of the Reserve, Midway Atoll and Hawaiian Islands National Wildlife Refuges, and State of Hawai‘i Northwestern Hawaiian Islands Marine Refuge. The area encompassed in Alternative 1 is approximately 582,570 square miles (439,910 square nmi). Within the area considered under Alternative 1, there are five known whaling vessels lost between 1822 and 1842, five merchant ships dating between 1886 and 1957, 60–80 military vessels, and hundreds of aircraft primarily from the Battle of Midway. This alternative includes all shallow-water coral reef habitats most vulnerable to both human and natural threats, including impacts from marine debris, invasive species, and climate change. As the entirety of Papahānaumokuākea is sacred to Kānaka ‘Owi, this alternative ensures that the tangible resources and intangible values of Native Hawaiian culture are considered.



Geographic boundary of Alternative 1. Source: NOAA

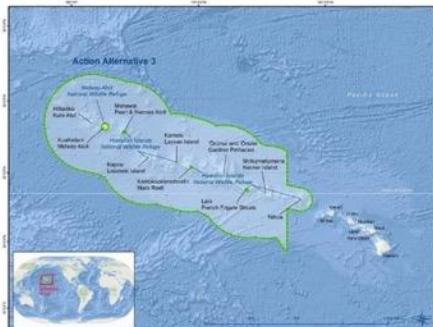
Alternative 2 includes the marine environment from the shoreline of the islands and atolls seaward to 50 nmi. This alternative includes all State waters and waters of the Reserve, Midway Atoll and Hawaiian Islands National Wildlife Refuges, and State of Hawai‘i Northwestern Hawaiian Islands Marine Refuge. This alternative does not include the MEA, 50–200 nmi west of 163° West longitude. The area encompassed in Alternative 2 is approximately 139,782 square miles (105,552 square nmi).

The Alternative 2 boundary includes the same shallow water biocultural and maritime heritage resources included in Alternative 1, but would not include the open ocean and deep-water resources of the MEA, including seamounts supporting rare oases of life in this primarily pelagic and deep-ocean environment and maritime heritage resources from the Battle of Midway.



Geographic boundary of Alternative 2. Source: NOAA

Alternative 3 has the same boundaries as Alternative 1, excluding waters within the Midway Atoll and Hawaiian Islands National Wildlife Refuges. The area encompassed in Alternative 3 is approximately 581,263 square miles (438,923 square nmi). Alternative 3 excludes vulnerable, shallow reef waters, where impacts from land-based legacy pollutants, relatively higher human presence, and potential vessel groundings, marine debris, and invasive species introduction pose a threat. Many of the known maritime heritage resources also occur in these waters.



Geographic boundary of Alternative 3. Source: NOAA

Proposed Regulations

The purpose and need for the sanctuary provides the overarching basis for developing the proposed regulations. NOAA is proposing to supplement and complement existing management of this area by proposing prohibited or otherwise regulated activities to protect sanctuary resources and qualities. Presidential Proclamations 8031, 8112, and 9478 and regulations implementing Presidential Proclamations 8031 and 8112 at 50 CFR part 404 provide the foundation for the proposed prohibitions. Minor changes in management are proposed so as to remove discrepancies and gaps in prohibitions and regulated activities between PMNM and the MEA in order to allow for consistency in management across the proposed sanctuary.

NOAA is proposing the following regulations under all alternatives to manage and protect the resources in the proposed sanctuary.

Access

Access to the sanctuary would be prohibited and thus unlawful except under the following circumstances: for emergency response actions, law enforcement activities, and activities and exercises of the Armed Forces; activities pursuant to a sanctuary permit; when conducting non-commercial fishing activities in the outer sanctuary zone (OSZ) authorized under the Magnuson-Stevens Fishery Conservation and Management Act provided that no sale of harvested fish occurs; and when passing through the sanctuary without interruption.

A vessel may pass without interruption through the sanctuary without requiring a permit as long as the vessel does not stop, anchor, or engage in prohibited activities within the sanctuary, and vessel discharges are limited to the following:

- Vessel engine cooling water, weather deck runoff, and vessel engine exhaust within a Special Preservation Areas or the Midway Atoll Special Management Area; and
- Discharge incidental to vessel operations such as deck wash, approved marine sanitation device effluent, cooling water, and engine exhaust in areas other than Special Preservation Areas or the Midway Atoll Special Management Area.

NOAA also proposes regulations to implement the ship reporting system (CORAL SHIPREP) adopted by the IMO, which would require entrance and exit notifications for vessels that pass without interruption through the sanctuary areas contained within a reporting area, which would be defined as “the area of the proposed sanctuary that extends outward ten nautical miles from the PSSA [Particularly Sensitive Sea Area] boundary, as designated by the IMO, and excludes the ATBAs [Areas to be Avoided] that fall within the PSSA boundary.” The ship reporting requirements would not apply to vessels conducting activities pursuant to a sanctuary permit or vessels conducting non-commercial fishing activities in the OSZ, authorized under the Magnuson-Stevens Fishery Conservation and Management Act. NOAA also proposes exemptions for emergency response and law enforcement purposes, and for activities and exercises of the Armed Forces.

Prohibited or Otherwise Regulated Activities

To supplement and complement existing management of this area, the following are proposed as prohibited or otherwise regulated activities:

- Exploring for, developing, or producing oil, gas, or minerals, or any energy development activities;
- Using or attempting to use poisons, electrical charges, or explosives in the collection or harvest of a sanctuary resource;
- Introducing or otherwise releasing an introduced species from within or into the sanctuary;
- Deserting a vessel;
- Anchoring on or having a vessel anchored on any living or dead coral with an anchor, anchor chain, or anchor rope;
- Commercial fishing and possessing commercial fishing gear except when stowed and not available for immediate use;
- Non-commercial fishing and possessing non-commercial fishing gear except when stowed and not available for immediate use;
- Drilling into, dredging, or otherwise altering the submerged lands other than by anchoring a vessel; or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands;
- Removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging; or attempting to remove, move, take, harvest, possess, injure, disturb, or damage any living or nonliving sanctuary resource;
- Attracting any living sanctuary resource;
- Touching coral, living, or dead;
- Swimming, snorkeling, or closed or open circuit scuba diving;
- Discharging or depositing any material or other matter into the sanctuary, or discharging or depositing any material or other matter outside of the sanctuary that subsequently enters the sanctuary and injures or has the potential to injure any resources of the sanctuary, except for vessel passage without interruption; or
- Anchoring a vessel.

Exemptions and Exceptions

Consistent with existing management of this area, the access restriction and proposed prohibitions would not apply to the following activities:

- Activities necessary to respond to emergencies that threaten life, property, or the environment;
- Activities necessary for law enforcement purposes;
- Activities and exercises of the U.S. Armed Forces including those carried out by the U.S. Coast Guard (USCG);
- Non-commercial fishing in the area of the proposed sanctuary that overlaps with the MEA, the OSZ, authorized under Magnuson-Stevens Fishery Conservation and Management Act regulations is exempt from prohibitions 7–14, provided that no sale of harvested fish occurs; and
- Scientific exploration or research activities by or for the Secretary of Commerce and/or the Secretary of the Interior in the area of the proposed sanctuary that overlaps with the MEA.

Sanctuary General Permits

The proposed sanctuary regulations would include authority to issue sanctuary general permits pursuant to 15 CFR 922.30 to allow certain activities that would otherwise violate prohibitions in the proposed sanctuary's regulations. Three categories of national marine sanctuary general permits, Research, Education, and Management, would apply to this proposed sanctuary. NOAA is proposing to add two additional permit categories to 15 CFR 922.30, Native Hawaiian Practices and Recreation, to be consistent with the types of activities permitted for PMNM under regulations at 50 CFR part 404. The general regulations in 15 CFR 922, subpart D relating to the permit application process, review procedures, amendments, and other permitting stipulations would apply. These national permitting regulations include a list of factors NOAA considers in deciding whether or not to issue the permit, such as whether the activity must be conducted within the sanctuary, and whether the activity will be compatible with the primary objective of protection of sanctuary resources and qualities. NOAA would be able to impose specific terms and conditions through a permit as appropriate.

Special Use Permits

The proposed sanctuary regulations would include authority to issue special use permits (SUPs) pursuant to 15 CFR 922 subpart D to authorize the conduct of specific activities in a national marine sanctuary under certain circumstances.

Terms of Designation

Section 304(a)(4) of the NMSA requires that the terms of designation for national marine sanctuaries include (1) the geographic area included within the sanctuary; (2) the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value; and (3) the types of activities subject to regulation by NOAA to protect those characteristics. See the accompanying proposed rule for the full text of the proposed terms of designation.

Draft Sanctuary Management Plan

NOAA is proposing to implement the same draft sanctuary management plan under all alternatives. Management plans are sanctuary specific planning and management documents used by all national marine sanctuaries. A management plan describes goals for resource protection, research, education, stewardship, and accompanying sanctuary management actions. This plan would chart the course for the proposed sanctuary over the next five to seven years (see Appendix A of the DEIS for the draft sanctuary management plan).

The draft sanctuary management plan was developed in coordination with the Monument's co-managers and is intended to function as a companion document to the Monument Management Plan. At the heart of the draft sanctuary management plan are five kūkulu (pillars of management):

- Resource Protection and Conservation
- Research and Monitoring
- Governance and Operations
- Partnerships and Constituent Engagement
- Education, Interpretation, and Mentoring.

Each kūkulu includes a goal and five to 13 strategies. The kūkulu do not describe explicit activities, which are to be developed as needed within separate tactical or operational plans.

Summary of Impacts for the Preferred Alternative

NOAA evaluated the impacts of its alternatives on the existing laws and management, physical resources, biological resources, cultural and maritime heritage resources, human uses and socioeconomic resources. Because of the existing protection summarized in History of Management (Section 1.2.2) and the current access limitations of PMNM, this proposed sanctuary designation primarily supplements existing resource protections and imparts few minor adverse impacts. Sanctuary designation would not remove the Monument designation or accompanying regulations. Rather, it would give NOAA the authority to provide additional protection. Beneficial impacts of the proposed action would include stronger incentives for compliance through enhanced enforcement, as well as new authorities to respond to and hold financially liable those responsible for destruction, loss of, or injury to sanctuary resources. The proposed sanctuary includes a permitting system modeled after the existing Monument permitting system, with minor changes proposed. The proposed permitting system would not supplant the joint permitting system for PMNM, and was developed to ensure a continued joint permitting system administered by Monument co-managers that incorporates the authorities provided through the NMSA.

Impacts to Laws and Management. Sanctuary designation would allow NOAA to apply National Marine Sanctuary Program Regulations (15 CFR 922) to supplement existing authorities, in part through: 1) emergency regulations; 2) penalties; and 3) authorities to respond to and hold financially liable those responsible for destruction or loss of, or injury to, sanctuary resources. The proposed site-specific regulations would address discrepancies and gaps in prohibitions, regulated activities, and permitting across the area. Alternative 1 would provide NOAA with the

authority to issue permits in the OSZ, for area of the proposed sanctuary that overlaps with the MEA, and vessels wishing to operate within the OSZ would be required to obtain a permit and adhere to all regulations and permit conditions, including installing a Vessel Monitoring System (VMS) that remains on and working when in sanctuary waters. These additional authorities provide NOAA with new tools to improve management and compliance, and address impacts to sanctuary resources.

Impacts to Physical Resources. Sanctuary designation would provide moderate benefits and no adverse impacts to physical resources (e.g., water quality, benthic habitat). Regulations promulgated for the area of the proposed sanctuary that overlaps with the MEA would provide additional protection through permitting requirements, as well as prohibitions related to seafloor disturbance and vessel discharge, both for permitted vessels and those conducting passage without interruption through the sanctuary.

Impacts to Biological Resources. The authorities afforded by sanctuary designation provides new and effective deterrents to permit and regulatory violations, as well as providing a mechanism to conduct damage assessments and hold a permittee or vessel liable for response costs and damages resulting from destruction, loss, or injury of a sanctuary resource. Codified regulations in the area of the proposed sanctuary that overlaps with the MEA provides NOAA's Office of Law Enforcement the option to impose civil penalties, deterring illegal fishing and other prohibited activities, and protecting fish stocks and fragile benthic ecosystems from exploitation on seamounts and on the seafloor. These additional authorities provide enhanced protection and response mechanisms, benefiting biological resources from accidental or intentional loss or damage to sanctuary resources, particularly due to ship groundings in the shallow coral reef ecosystem.

Impacts to Cultural and Maritime Heritage Resources. Cultural heritage is a primary focus of current management, indicated through the use of appropriate protocols, assigning biocultural resource monitors on permitted activities, and employing numerous other measures to protect tangible and intangible cultural resources. These efforts would be expanded to the area of the proposed sanctuary that overlaps with the MEA under sanctuary designation, imparting minor benefits to cultural resources. Sanctuary designation provides new protections for the maritime heritage resources described above, particularly in the OSZ. Permitting authority and new prohibitions, including disturbance of the seafloor and access regulations, would complement existing federal and State regulations for all underwater maritime resources throughout the sanctuary.

Impacts to Socioeconomic Resources. Sanctuary designation would provide alternative sources of funding to support education initiatives and programs in Hawai'i (outside the waters of the proposed sanctuary), including from Friends Groups, the National Marine Sanctuary Foundation, and other non-profit organizations. Additional funding sources provide opportunities to strengthen the public's appreciation of this area.

NOAA determined that sanctuary designation of the preferred alternative (Alternative 1) would have **direct, long-term, moderate beneficial impacts** for laws and management, physical, biological, and maritime heritage resources, **direct, long-term, minor beneficial impacts**



for cultural resources, and **indirect, long-term, minor adverse impacts** for socioeconomic resources for the largest proposed sanctuary area of the three alternatives.



**STATE OF HAWAI'I
OFFICE OF PLANNING
& SUSTAINABLE DEVELOPMENT**

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Coastal Zone
Management
Program

Environmental Review
Program

Land Use Commission

Land Use Division

Special Plans Branch

State Transit-Oriented
Development

Statewide Geographic
Information System

Statewide
Sustainability Branch

DTS202403271042HE

May 17, 2024

Mr. Eric Roberts
Superintendent
Papahānaumokuākea Marine National Monument
and UNESCO World Heritage Site
NOAA/ONMS/PMNM
1845 Wasp Blvd., Building 176
Honolulu, Hawai'i 96818

Dear Mr. Roberts:

Subject: Hawai'i Coastal Zone Management Program Federal
Consistency Review for the proposed to designation of the
Papahānaumokuākea National Marine Sanctuary

The Hawai'i Coastal Zone Management (CZM) Program has reviewed the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service federal consistency determination submitted to our office on March 21, 2024, on the proposed designation of portions of marine areas of the Papahānaumokuākea National Monument to a National Marine Sanctuary (NMS). This Coastal Zone Management Act (CZMA) federal consistency review covers the proposed Papahānaumokuākea NMS designation and the boundary alternatives, as represented in the CZM federal consistency application and supporting information.

As stated in your determination transmittal letter, the NOAA proposes to designate marine portions of the Papahānaumokuākea Marine National Monument as a national marine sanctuary to provide comprehensive and coordinated management of the marine areas of Papahānaumokuākea to protect nationally significant biological, cultural, and historical resources.

It is our understanding that the designation of the sanctuary would not replace the area's current status as a marine national monument. Through sanctuary designation, NOAA is proposing to supplement and complement existing management of the Monument and would manage the sanctuary in close collaboration with Monument co-trustees.

The Hawai'i CZM Program received your CZM federal consistency determination on March 21, 2024; published a public notice in the Office of

Mr. Eric Roberts

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Planning and Sustainable Development, Environmental Review Branch's "The Environmental Notice," on April 8, 2024, with the public review and comment period concluding on April 22, 2024. During the public notice period no public or agency comments or inquiries were received.

Pursuant to 15 CFR Subpart A § 930.4(a)(1), this federal consistency concurrence is based on a review of the potential effects of the proposed action on Hawai'i coastal uses and resources and the Hawai'i CZM program's enforceable policies. We conditionally concur with NOAA's determination that the proposed designation of marine areas of Papahānaumokuākea as a national marine sanctuary is consistent to the maximum extent practicable with the enforceable policies of the Hawai'i CZM Program. The following conditions shall apply to this consistency concurrence:

1. This conditional concurrence applies to the NOAA ONMS proposal to designate marine areas of Papahānaumokuākea Marine National Monument and the Monument Expansion Area as a national marine sanctuary. This includes all three boundary alternatives as represented in the consistency application and supporting information (Draft Environmental impact Statement (DEIS), March 2024). Our conditional concurrence does not cover any subsequent federal reviews (permits or licenses required within National Marine Sanctuaries) or changes to the National Monument or National Marine Sanctuary that may be required. The proposed actions shall be carried out as represented in the CZM federal consistency application and determination. Any changes to the proposed activity shall be submitted to the Hawai'i CZM Program for review and approval. Changes to the proposed activity may require a full CZM federal consistency review, including publication of a public notice and provision for public review and comment. This condition is necessary to ensure that the proposed action is implemented as reviewed for consistency with the enforceable policies of the Hawai'i CZM Program.

Hawai'i Revised Statutes (HRS) Chapter 205A, CZM are the federally approved enforceable policies of the Hawai'i CZM Program that applies to this condition.

2. The proposed activity shall be in compliance with the requirements that result from the State Historic Preservation Division (SHPD), Department of Land and Natural resources (DLNR) consultation initiated on November 22, 2021, as part of the National Historic Preservation Act (NHPA) Section 106 Review Process. Additionally, as a co-applicant, the State Department of Land and Natural Resources, Division of Aquatic Resources submitted a letter on May 31, 2023, to SHPD under HRS Chapter 6E Historic Preservation requirements. We note that the Section 106 and HRS Chapter 6E consultation is ongoing.

HRS § 205A-2(b)(2) Historical Resources and HRS 6E Historic Preservation Program, which are the federally approved enforceable policies of the Hawai'i CZM Program that

Mr. Eric Roberts

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applies to this condition.

If the requirements for conditional concurrences specified in 15 CFR § 930.4(a), (1) through (3), are not met, then all parties shall treat this concurrence letter as an objection pursuant to 15 CFR Part 930, subpart C. The NOAA ONMS shall immediately notify the Hawai'i CZM Program if the conditions are not acceptable in accordance with 15 CFR § 930.4(a)(2). Otherwise, acceptance of the conditions shall be presumed at the end of the 90-day federal consistency notification period on June 30, 2024. This CZM concurrence is not an endorsement of the proposed action, nor does it convey approval of any other regulations administered by any State or County agency.

Thank you for your cooperation in complying with the Hawai'i CZM Program. If you wish to respond to this comment letter, please include DTS202403271042HE in the subject line. If you have any questions or concerns regarding this matter, please contact Joshua Hekekia at (808) 587-2845 or by email to Joshua.K.Hekekia@hawaii.gov.

Sincerely,

Mary Alice Evans

Mary Alice Evans
Director

c: DLNR, State Historic Preservation Division
DLNR, Division of Aquatic Resources

Endangered Species Act (16 U.S.C. §§ 1531 et seq.) – Section 7 Consultation and Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §§ 1801 et seq.) – Essential Fish Habitat Consultation



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
Office of National Marine Sanctuaries
1305 East-West Highway
Silver Spring, Maryland 20910

Sarah Malloy
Acting Regional Administrator
NOAA Fisheries Pacific Islands Regional Office

Re: Request for Initiation of Informal Consultation under section 7(a)(2) of the Endangered Species Act for the Proposed Designation of Papahānaumokuākea National Marine Sanctuary.

Dear Ms. Malloy:

The National Oceanic and Atmospheric Administration (NOAA) Office of National Marine Sanctuaries (ONMS) proposes to designate the marine portions of Papahānaumokuākea Marine National Monument as Papahānaumokuākea National Marine Sanctuary (PNMS). ONMS requests initiation of informal consultation under Section 7(a)(2) of the Endangered Species Act (ESA) for the proposed designation of PNMS. ONMS has determined that the proposed action may affect, but is not likely to adversely affect (NLAA), the ESA-listed species and critical habitat discussed below. ONMS's supporting analysis is discussed below. ONMS requests your written concurrence with our determinations. This letter also serves to request initiation of informal Essential Fish Habitat consultation under Section 305 (b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act.

Proposed Action

On March 1, 2024, ONMS proposed to designate marine portions of Papahānaumokuākea Marine National Monument as a sanctuary, and released for public comment a draft management plan, notice of proposed rulemaking, and an accompanying draft environmental impact statement (DEIS). The documents are available for public comment until May 7, 2024 at <https://sanctuaries.noaa.gov/papahanaumokuakea/>. As described in the enclosed DEIS, NOAA's preferred boundary alternative is Alternative 1, which includes all marine waters of the Papahānaumokuākea Marine National Monument and Monument Expansion Area from the shoreline of all islands and atolls to 200 nautical miles (see DEIS Section 3.4). NOAA is also proposing a set of proposed regulations, based on the existing Monument regulations (see DEIS Section 3.3 as well as the notice of proposed rulemaking for the full text of the proposed regulations).¹

Impacts on listed species and critical habitat

To support this request for informal Section 7 consultation, the enclosed DEIS provides the following information:

¹ The draft Sanctuary Management Plan is an overarching administrative document, describing strategies to meet the proposed sanctuary's Goals and Objectives and not specific activities. As the scope, nature, location and timing of future projects are unknown, and because each permitted activity will undergo NEPA review, impacts from implementation of the sanctuary management plan, including impacts to ESA-listed species, are not analyzed in the DEIS.

- A description of the action (Section 3.3);
- A description of the action area (Section 3.4);
- A description of any listed species or designated critical habitat that may be affected by the action (Section 3.11); and
- A description of habitat requirements, occurrence patterns, and federal status for each of the listed species (Sections 4.4.8, 4.4.9).
- A brief analysis of negligible benefits to ESA-listed species and critical habitat (Section 5.3.3)

ONMS used the NOAA Fisheries “Threatened and Endangered Species Directory” to identify any ESA-listed species or critical habitat that may be present in the action area. ONMS evaluated the species’ habitat requirements, habitat availability within the action area, and the components of the proposed action and determined that 16 listed species and designated critical habitat for two species may occur in the action area and may be affected by the proposed action. Critical habitat is also proposed for one coral species that occurs within the action area.

The nature of the action (sanctuary designation) enhances existing protections for all resources within the proposed boundaries. The area of the proposed sanctuary is extremely remote, nearly 300 miles at its closest point from the main Hawaiian Islands. Therefore, the proposed action is not expected to result in an increase in activity, or in the number of permit requests. In addition, the proposed sanctuary is not expected to increase management activities, as NOAA’s Office of National Marine Sanctuaries currently serves as a co-manager of the existing Monument. With regards to endangered species and their habitats, including designated critical habitat, the proposed protections provide negligible benefits, as briefly noted in Section 5.3.3 of the enclosed draft environmental impact statement for the species listed in Table 4.5.

Potential impacts to these species and critical habitat from human disturbance, vessel strikes, and entanglement have been described in Sections 4.3, 4.4.8, 4.4.9, and 4.4.10. Routine field activities conducted by ONMS staff, including marine debris removal, protected species management, small boat operations, in-water research and monitoring activities, and sustenance fishing, have been assessed during the Monument permitting process for these potential impacts and will continue to be assessed under sanctuary designation. The proposed action does not create an increase in any activities within the action area, including permitted activities conducted by NOAA and its partners in the management of the Monument.

ONMS’s analysis concludes that any impacts resulting from sanctuary designation of the marine waters of the Papahānaumokuākea Marine National Monument would be beneficial, insignificant, or discountable for the following reasons:

- Extending the access and permitting requirements to the areas of the proposed sanctuary overlapping the Monument Expansion Area (50-200 nautical miles) to ensure management and enforcement of prohibited and otherwise regulated activities;
- Regulation protecting waters that overlap with the Monument Expansion Area through a prohibition on disturbance of the submerged lands of the proposed sanctuary ;
- Regulation protecting waters that overlaps with the Monument Expansion Area through the regulation of vessel discharge;
- Authorize NOAA to assess civil penalties for violations of provisions of the NMSA and regulations and permits issued pursuant to the NMSA;



- Impose liability for destruction, loss of, or injury to sanctuary resources and provide natural resource damage assessment authorities for destruction, loss of, or injury to any sanctuary resource; and
- Require interagency consultation for any federal agency action that is likely to destroy, cause the loss of, or injure any sanctuary resource.

These complementary and supplementary resource protection measures to existing regulations and management strengthen protection of the endangered species and their habitat within the proposed sanctuary.

Therefore, ONMS determined that the proposed action will have a **beneficial effect on listed** species and their designated critical habitat. ONMS requests your concurrence with our determinations pursuant to Section 7 of the Endangered Species Act of 1973 and the consultation procedures at 50 C.F.R. Part 402. ONMS certifies that the best scientific and commercial data available was used in order to prepare the environmental impact statement and this accompanying request for consultation.

Impacts on Essential Fish Habitat

ONMS also evaluated the potential impacts of the proposed action on Essential Fish Habitat (EFH) and Habitat Areas of Particular Concern (HAPC) and determined that the proposed action would not adversely affect EFH. The enclosed environmental assessment provides the following information related to this analysis:

- A description of the action (Section 3.3 and 3.4);
- A description of EFH and HAPC found in the sanctuary (Section 4.3.1); and
- An analysis of the potential impacts to physical habitat (bottom habitat and water column) in the project area, including all EFH and HAPC, from implementing the proposed action (5.3.2, 5.4.2, and 5.5.2).

The proposed sanctuary designation encompasses EFH, as it is broadly defined in the *Fishery Ecosystem Plan for Pacific Pelagic Fisheries of the Western Pacific* and the *Fishery Ecosystem Plan for the Hawaii Archipelago*. Within these documents, across all species groups, EFH includes all bottom habitat to 400 meters (or deeper for deep-water shrimp) and the water column to 1000 meters. Because of this broad definition, the analysis of impacts to habitat corresponds to impacts to EFH. Further, no HAPC is designated within the boundary of the proposed sanctuary. Regulations proposed under this action, also listed above for impacts to critical habitat, provide the following direct benefits to EFH:

- New discharge regulations for waters 50-200 nm from the islands and atolls, benefiting water quality of the water column,
- New seafloor disturbance regulations for waters 50-200 nm from the islands and atolls, benefiting deep-water habitat,
- New enforcement mechanisms, including civil penalties and damage assessment authority, for infractions of regulations or permit requirements and destruction of sanctuary resources, benefiting shallow-water and seamount benthic habitat.

Conclusion

ONMS appreciates your cooperation in completing this informal Section 7 consultation and EFH consultation in a timely manner. ONMS will continue to coordinate with NMFS via email to

provide any requested information or to answer any questions related to this consultation request.
Please contact me at eric.roberts@noaa.gov with any questions.

Sincerely,

Eric Roberts
Superintendent, Papahānaumokuākea Marine National Monument
and UNESCO World Heritage Site
NOAA Inouye Regional Center
NOS/ ONMS/ PMNM/ E.Roberts
1845 Wasp Blvd Bldg 176
Honolulu, HI 96818-5007

cc: Ellie Roberts, Phillip Howard, Dawn Golden, Gerry Davis

Enclosure: *Draft EIS for Proposed Papahānaumokuākea National Marine Sanctuary*



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric
Administration

NATIONAL MARINE FISHERIES SERVICE
Pacific Islands Regional
Office 1845 Wasp Blvd.,
Bldg 176
Honolulu, Hawai'i 96818
(808) 725-5000 · Fax: (808) 725-5215

April 29, 2024

Eric Roberts
Superintendent
Papahanaumokuakea Marine National Sanctuary
Office of National Marine Sanctuaries
NOAA Inouye Regional Center
1845 Wasp Blvd., Building 176
Honolulu, HI 96818

RE: Request for ESA Consultation on the Designation of the Papahanaumokuakea National Marine Sanctuary (I-PI-24-2284-DG; PIRO-2024-00674).

Dear Mr. Roberts:

On March 8, 2024, NOAA's National Marine Fisheries Service's (NMFS) Protected Resources Division (PRD) received your written request for informal consultation on the Office of National Marine Sanctuaries (ONMS) action of designating the Papahanaumokuakea National Marine Sanctuary. Your request, which included a draft environmental impact statement, qualified for our expedited review. It met our screening criteria and contained all required information on your proposed action and its potential effects to listed species and designated critical habitat.

We reviewed your consultation request document and related materials. Based on our knowledge, expertise, and the materials you provided; and because, if implemented, sanctuary regulations would complement, rather than replace, existing authorities in the Papahanaumokuakea Marine National Monument; we concur with your conclusions that the proposed action may affect, but is not likely to adversely affect the endangered and threatened species under our jurisdiction found in Table 1; and designated critical habitat for Hawaiian monk seals and Main Hawaiian Islands insular false killer whales.

Table 1. Common name, scientific name, ESA status, effective listing date, and Federal Register reference for ESA-listed species and critical habitats considered in this consultation.

Species/ common name	ESA Status	Effective Listing Date/ FR Notice	Critical Habitat	Recovery Plan
<i>Chelonia mydas</i>	Threatened	05/06/2016 81 FR 20057		

Species/ common name	ESA Status	Effective Listing Date/ FR Notice	Critical Habitat	Recovery Plan
Central North Pacific Green Sea Turtle				
<i>Eretmochelys imbricata</i> Hawksbill Sea Turtle	Endangered	06/03/1970 35 FR 8491		5/22/98 63 FR 28359
<i>Caretta caretta</i> North Pacific Loggerhead Sea Turtle	Endangered	10/24/2011 76 FR 58868		5/22/98 63 FR 28359
<i>Lepidochelys olivacea</i> Olive Ridley Sea Turtle	Threatened	08/27/1978 43 FR 32800		5/22/98 63 FR 28359
<i>Dermochelys coriacea</i> Leatherback Sea Turtle	Endangered	06/03/1970 35 FR 8491		5/22/98 63 FR 28359
<i>Neomonachus schauinslandi</i> Hawaiian Monk Seal	Endangered	11/23/1976 41 FR 51612	9/21/2015 (revised) 80 FR 50925	8/22/07 72 FR 46966
<i>Balaenoptera musculus</i> Blue Whale	Endangered	12/02/1970 35 FR 18319		Proposed 10/12/18 83 FR 51665
<i>B. physalus</i> Fin Whale	Endangered	12/02/1970 35 FR 18319		8/06/10 75 FR 47538
<i>B. borealis</i> Sei Whale	Endangered	12/02/1970 35 FR 18319		7/22/11 76 FR 43985
<i>Physeter macrocephalus</i> Sperm Whale	Endangered	12/02/1970 35 FR 18319		12/28/10 75 FR 81584
<i>Eubalaena japonica</i> North Pacific Right Whale	Endangered	04/07/2008 73 FR 12024		6/07/13 78 FR 34347
<i>Pseudorca crassidens</i>	Endangered	12/28/2012	8/23/2018	

Species/ common name	ESA Status	Effective Listing Date/ FR Notice	Critical Habitat	Recovery Plan
False Killer Whale Main Hawaiian Island Insular		77 FR 70915	83 FR 35062	
<i>Sphyraena lewini</i> Scalloped Hammerhead Shark Indo West Pacific	Threatened	09/02/2014 79 FR 38213		
<i>Carcharhinus longimanus</i> Oceanic Whitetip Shark	Threatened	03/01/2018 83 FR 4153		
<i>Manta birostris</i> Giant Manta Ray	Threatened	02/21/2018 83 FR 2916		
Corals <i>Acropora globiceps</i>	Threatened	10/10/2014 79 FR 53852	Proposed on 11/30/2023	

This concludes informal consultation under section 7 of the ESA for species under our jurisdiction. A complete record of this consultation is on file at the Pacific Island Regional Office, Honolulu, Hawaii. Reinitiation of consultation is required and shall be requested by NMFS ONMS or by NMFS PRD, where discretionary Federal involvement or control over the action has been retained or is authorized by law and if:

- New information reveals effects of the action that may affect ESA-listed species or designated critical habitat in a manner or to an extent not previously considered;
- The identified action is subsequently modified in a manner that causes an effect to ESA-listed species or designated critical habitat that was not considered in this concurrence; or
- A new species is listed or critical habitat designated that may be affected by the identified action.

If you have further questions, please contact Richard Hall at (808) 725-5018 or richard.hall@noaa.gov. Thank you for working with us to protect our nation's living marine resources.

Sincerely,

GOLDEN.DAWN.KIM
BERLY.1365826150

Dawn Golden

Assistant Regional
Administrator Protected
Resources Division



CC: Phillip Howard, ONMS PMNM



Fwd: NOS PNMS Designation EFH Consultation Response

From: Richard Hall - NOAA Federal <richard.hall@noaa.gov>
Date: Thu, Mar 21, 2024 at 7:46 AM
Subject: NOS PNMS Designation EFH Consultation Response
To: Eric Roberts <eric.roberts@noaa.gov>
Cc: Sean Hanser - NOAA Federal <sean.hanser@noaa.gov>, David Delaney - NOAA Federal <david.delaney@noaa.gov>, Gerry Davis <gerry.davis@noaa.gov>, Ellie Roberts - NOAA Federal <ellie.roberts@noaa.gov>, Phillip Howard - NOAA Federal <phillip.howard@noaa.gov>, Malia Chow - NOAA Federal <malia.chow@noaa.gov>

Mr. Roberts,

The National Marine Fisheries Service, Pacific Islands Regional Office (NMFS) received a request for an essential fish habitat (EFH) consultation from the Office of National Marine Sanctuaries (ONMS) on March 8, 2024. The consultation request was for the proposed designation of the waters surrounding the Northwestern Hawaiian Islands (NWHI) as the Papahānaumokuākea National Marine Sanctuary (PNMS) as described in the Draft Environmental Impact Statement (DEIS). We appreciate the opportunity to review the proposed action pursuant to the EFH provision (Section 305(b) as described by 50 CFR 600.920) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1855(b)).

Project Description

The NWHI extends 1,200 miles across the northwestern region of the Hawaiian archipelago and encompasses an area within the U.S. Exclusive Economic Zone of 582,578 square miles. The three alternatives for the PMNS described in the DEIS are each a subset of that total area. Alternative 1 overlays the marine portions of the Papahānaumokuākea Marine National Monument (Monument) and would cover 582,570 square miles. Alternative 2 would include the marine environment between 50 – 200 miles beyond the islands and atolls in the NWHI, and would encompass 139,782 square miles. Alternative 3 would have the same boundaries as Alternative 1, but would exclude the waters within Midway Atoll and Hawaiian Islands National Wildlife Refuge. The sanctuary under Alternative 3 would be 581,263 square miles in size.

Along with the designation, ONMS has developed a draft sanctuary management plan and a set of proposed sanctuary regulations. The management plan that would be implemented would be the same under each of the three proposed sanctuary designations, and describes goals for resource protection, research, education, stewardship, and accompanying management actions. The proposed sanctuary regulations would supplement and complement existing management of the Monument, and would control access and define prohibited, regulated, and exempted activities.

Essential Fish Habitat

The marine water column from the surface to a depth of 3280.8 feet from shoreline to the outer boundary of the EEZ (200 nautical miles), and the seafloor from the shoreline out to a depth of 2296.6 feet around each of the Hawaiian Islands, has been designated as EFH. As such, the water column and bottom of the Pacific Ocean near all of the islands and atolls of the Northwestern Hawaiian Islands, and their surrounding waters and submerged lands are designated as EFH and support various life stages for the management unit species (MUS) identified under the Western Pacific Fishery Management Council's Pelagic and Hawai'i Archipelago Fishery Ecosystem Plans. The MUS and life stages found in these waters include larvae, juveniles, and adults of Bottomfish, Crustacean, and Pelagic MUS. Specific types of habitats considered as EFH include coral reef, patch reefs, hard substrate, artificial substrate, seagrass beds, soft substrate, mangrove, lagoon, estuarine, surge zone, deep-slope terraces, and pelagic/open ocean.

Baseline Condition

The NWHI stretches in a northwesterly direction from 22° N to 30° N latitude, and 161° W to 180° W longitude. The islands and atolls of the NWHIs are remnants of volcanic islands that formed over centuries as the Pacific Plate moved in a northwesterly direction over a hot spot in the Earth's mantle (Dalrymple et al. 1974). Each of these emergent lands are described below.

French Frigate Shoals is the largest atoll in the NWHI chain, and consists of 67 acres of total emergent land surrounded by approximately 230,000 acres of coral reef. The atoll has a more diverse ecosystem than other islands in the NWHI, with 41 coral species and 178 reef fish species. The atoll is made of several small islands and islets, of which Tern Island is the largest with a land mass of nearly 26 acres (PMNM 2009).

Gardner Pinnacles consist of two emergent basaltic volcanic peaks. The surrounding coral reef habitat encompasses approximately 600,000 acres, and provides habitat for 124 reef fish species and 27 coral species (PMNM 2009).

Kure Atoll is a nearly circular reef containing two islets comprising 200 acres of emergent land surrounded by nearly 80,000 acres of coral reef habitat. Its marine environment supports 155 species of fish and 27 species of corals (PMNM 2009).

Laysan is a raised atoll, with a maximum elevation of 45 feet, and land area of approximately 1,023 acres. The atoll is surrounded with nearly 100,000 acres of coral reef and supports 131 species of reef fish and 27 species of coral (PMNM 2009).

Lisianski is a raised atoll, with approximately 400 acres of emergent land. The reef area around the island, called Neva Shoals, covers nearly 290,000 acres and supports 124 species of reef fish and 24 coral species (PMNM 2009).

Maro Reef is a largely submerged atoll with less than one acre of emergent land. While there is no terrestrial biota, the shallow water reef system is extensive, covering nearly 500,000 acres, and supports 37 coral species and 142 fish species (PMNM 2009).

Midway Atoll consists of three sandy islets (Sand, Eastern, and Spit) with a total of nearly 1,500 acres of terrestrial habitat. Their surrounding reef environment encompasses approximately 90,000 acres and supports 16 species of corals and 163 species of fish (PMNM 2009).

Necker Island is a small basalt island with only 46 acres of emergent land. The reef surrounding the island covers over 380,000 acres and supports 125 reef fish species and 18 coral species (PMNM 2009).

Nihoa is the first, and youngest island, in the NWI chain. The island's surrounding reef habitat is approximately 142,000 acres, and supports approximately 127 fish species and 17 coral species (PMNM 2009).

Pearl and Hermes Atoll is a large atoll with several small islets, which total 96 acres of land. The surrounding coral reef habitat encompasses more than 300,000 acres. The atoll has a high rate of reef fish endemism, with 62% of its 174 species documented as endemic to the Hawaiian Archipelago; while coral species richness is high with 33 species present (PMNM 2009).

The islands, atolls, and associated reef environments mentioned above represent a small fraction of the area of the proposed sanctuary, the vast amount would be pelagic marine environments, of which a large portion (84 %) are deeper than 6,000 feet (Miller et al. 2006).

Adverse Effects

Because proposed sanctuary regulations would provide incentives for compliance, through enhanced enforcement, and would allow for determining financial liability for destruction or injury to sanctuary resources through the implementation of new authorities; there would be some minor beneficial impacts of a sanctuary designation. On the other hand, sanctuary designation would likely result in minor negative impacts related to an increase in activities in a designated sanctuary from actions that would be undertaken as described in the sanctuary management plan and from other actions that would likely come from new funding sources made available after the sanctuary is designated. These activities may result in short- and long-term adverse effects to EFH related to the potential for physical damage to corals and other benthic habitats, possible accidental release of chemical contaminants, and the potential for the introduction of invasive species.

ONMS-imposed Best Management Practices (BMPs)

To avoid or minimize potential project impacts to EFH, the ONMS would require adherence to the following BMPs by any permittees granted access and on Sanctuary staff conducting field activities:

Vessel Use and Maintenance: Marine Alien Species Inspection Standards for Maritime Vessels; BMPs for Boat Operations and Diving Activities; Disease and Introduced Species Prevention Protocol for Permitted Activities in the Marine Environment; and BMPs to Minimize the Spread of Nuisance Algae

Scuba Diving: BMPs for Boat Operations and Diving Activities; Disease and Introduced Species Prevention Protocol for Permitted Activities in the Marine Environment; and BMPs to Minimize the Spread of Nuisance Algae

Deploying Research and Monitoring Equipment or Buoys: Disease and Introduced Species Prevention Protocol for Permitted Activities in the Marine Environment and BMPs to Minimize the Spread of Nuisance Algae

Sampling Organisms: General Storage and Transport Protocols for Collected Samples; Disease and Introduced Species Prevention Protocol for Permitted Activities in the Marine Environment; and BMPs to Minimize the Spread of Nuisance Algae

Collecting Artifacts for Time-Sensitive Maritime Heritage Resource Protection Needs: BMPs for Maritime Heritage Sites

Removal of Materials: BMPs to Minimize the Spread of Nuisance Algae.

NMFS Concerns

While the BMPs listed above will help to avoid or minimize impacts to EFH from permitted activities and management activities undertaken by ONMS in a designated Papahānaumokuākea National Marine Sanctuary, NMFS is concerned that the range of possible management actions that ONMS may have to undertake to implement the goals of the sanctuary management plan and to address issues related to climate change cannot be fully addressed in the DEIS and the proposed sanctuary management plan at this time.

In the event that the Sanctuary is designated, NMFS recommends that the ONMS should continue to seek technical assistance from our agency in advance of any management actions, when appropriate, and to continue to initiate EFH consultations for those actions (including permitted actions) where there is the potential for adverse effects to EFH.

Conclusion

NMFS greatly appreciates the ONMS' efforts to comply with the EFH provisions of the Magnuson-Stevens Act for the proposed designation of the PNMS. NMFS agrees with ONMS that the act of designating the PNMS will not adversely affect EFH; however, as we mention above, future management actions (including issuing permits) may result in impacts to EFH, so ONMS should continue to engage our office for technical assistance or to initiate consultations when necessary.

We look forward to working with ONMS to ensure that adverse effects to EFH are avoided, minimized, offset, or otherwise mitigated if the Sanctuary is designated. Thank you for coordinating on this action. Feel free to contact me 808-725-5018 or at richard.hall@noaa.gov with any questions or comments.

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From: Phillip Howard - NOAA Federal <phillip.howard@noaa.gov>
Sent: Tuesday, April 30, 2024 3:02 PM
To: Sachs, Elyse M <elyse_sachs@fws.gov>
Subject: [EXTERNAL] Amended_No effect ESA determination

Aloha Elyse,

Per our conversation our office would like to amend our ESA determination as follows:

On March 1, 2024, NOAA proposed to designate marine portions of Papahānaumokuākea Marine National Monument as a sanctuary, and released for public comment a draft management plan, notice of proposed rulemaking, and an accompanying draft environmental impact statement (EIS). The documents are available for public comment until May 7, 2024 at <https://sanctuaries.noaa.gov/papahanaumokuakea/>. As described in the enclosed draft environmental impact statement, NOAA's preferred boundary alternative is Alternative 1, which includes all marine waters of the Papahānaumokuākea Marine National Monument from the shoreline of all islands and atolls to 200 nautical miles (See Section 3.4). NOAA is also proposing a set of proposed regulations based on the existing Monument regulations (see EIS Section 3.3 as well as the notice of proposed rulemaking for the full text of the proposed regulations).

NOAA used the USFWS's Environmental Conservation Online System (ECOS) Information for Planning and Conservation (IPaC) tool to identify species or critical habitat that may be present in the action area. This search identified 15 endangered or threatened species under USFWS jurisdiction and critical habitat for 6 species.

Birds (8):

Seabirds (4)

Band-rumped Storm-petrel, *Hydrobates castro*. Endangered

Hawaiian Petrel, *Pterodroma sandwichensis*. Endangered

Newell's Shearwater, *Puffinus newelli*. Threatened

Short-tailed Albatross, *Phoebastria* (=*Diomedea*) *albatrus*. Endangered

Landbirds (4)

Laysan Duck, *Anas laysanensis*. Endangered

Laysan Finch, *Telespiza cantans*. Endangered

Nihoa Finch, *Telespiza ultima*. Endangered

Nihoa Millerbird (old World Warbler), *Acrocephalus familiaris kingi*. Endangered

Reptiles (1)

Green Sea Turtle, *Chelonia mydas*. Threatened

Flowering Plants (6)

Amaranthus brownii. Endangered

Cyperus pennatifloris. Endangered

Ihi, *Portulaca villosa*. Endangered

Loulu, *Pritchardia remota*. Endangered

Popolo, *Solanum nelsonii*. Endangered

Schiedea verticillata. Endangered

Critical habitats (6)

Amaranthus brownii

Cyperus pennatifloris

Green Sea Turtle, *Chelonia mydas* (Proposed)

Loulu, *Pritchardia remota*

Ohai, *Sesbania tomentosa*

Schiedea verticillata

NOAA evaluated these species' habitat requirements, habitat availability within the action area, and the components of the proposed action, and determined the proposed action will have no effects on ESA-listed species or critical habitats.

If there are any further questions or required information from ONMS regarding this consultation please let me know.

Mahalo,

Phillip Howard
Permit Specialist



National Historic Preservation Act of 1966 (54 U.S.C. §§ 300101 et seq.)

Finding of No Historic Properties Affected for the Proposed Papahānaumokuākea National Marine Sanctuary Designation

Summary

This document describes the National Oceanic and Atmospheric Administration's (NOAA's) compliance with Section 106 of the National Historic Preservation Act (NHPA) and documents the agency's Finding of No Historic Properties Affected (Finding) for the undertaking of designating a national marine sanctuary within the marine portions of the existing Papahānaumokuākea Marine National Monument, pursuant to 36 CFR § 800.4(d)(l). NOAA has prepared this documentation following the standards outlined in 36 CFR § 800.11(d). This Finding and supporting documentation are being provided to the consulting parties and will be available to the [public](#).

NOAA has determined that historic properties are present within the Area of Potential Effects (APE), but that the undertaking would have no effect on them. If NOAA designates this area as a national marine sanctuary, NOAA would implement regulations to complement and supplement existing authorities under the Antiquities Act; Presidential Proclamations 8031, 8112, and 9478; Executive Orders 13178 and 13196; 50 CFR 404; and existing federal and State of Hawai'i (State) statutes designed to protect marine resources, including historical and cultural resources. In the proposed sanctuary regulations, NOAA has adopted the management measures from the presidential proclamations, and in a few places, added on to those measures to provide consistency in regulations and management, including for historic properties.

Native Hawaiian cultural and maritime heritage resources are a focus of management for the current monument, and designation as a national marine sanctuary would strengthen and increase management and protections of these unique resources. The proposed sanctuary regulations consistently apply a prohibition on removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging; or attempting to remove, move, take, harvest, possess, injure, disturb, or damage any living or nonliving sanctuary resource, the definition of which encompasses historic properties. The proposed regulations further include prohibition on access to the proposed sanctuary without a permit, and Native Hawaiian practices permits to ensure access to the proposed sanctuary for activities that perpetuate traditional knowledge, care for and protect the environment, and strengthen cultural and spiritual connections to the Northwestern Hawaiian Islands. Additionally, in bringing to bear consistent authority under the National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1431 *et seq.*), NOAA will continue its robust and effective management, outreach, and education programs that highlight resource protection. These include the engagement of Kānaka ‘Ōiwi (Native Hawaiians) to continually guide the co-stewardship framework; long-term conservation science programs; maritime heritage research; and educational programming.

Description of the Undertaking

Federal Involvement

On June 15, 2006, President George W. Bush issued Presidential Proclamation 8031 establishing the Northwestern Hawaiian Islands Marine National Monument under the authority of the Antiquities Act of 1906 (16 U.S.C 431). A year later, the Monument was renamed with its Hawaiian name as Papahānaumokuākea Marine National Monument (Presidential Proclamation 8112, February 28, 2007). The Monument encompasses a number of existing federal conservation areas, including: the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (managed by the U.S. Department of Commerce through NOAA) and Midway Atoll National Wildlife Refuge, Hawaiian Islands National Wildlife Refuge, and Battle of Midway National Memorial, managed by the U.S. Department of Interior through the U.S. Fish and Wildlife Service (USFWS). These areas remain in place within the Monument subject to their applicable laws and regulations in addition to the provisions of the Proclamation.

The Northwestern Hawaiian Islands also include State of Hawai‘i lands and waters, managed by the State through the Department of Land and Natural Resources as the Northwestern Hawaiian Islands Marine Refuge (Chapter 60.5 Hawaii Administrative Rules), and the Seabird Sanctuary at Kure Atoll. These areas also remain in place and are subject to their applicable laws and regulations.

To provide the most effective management of the area, Governor Linda Lingle, Secretary of Commerce Carlos M. Gutierrez, and Secretary of the Interior Dirk Kempthorne signed a memorandum of agreement (MOA) on December 8, 2006, which provided for coordinated administration of all the federal and State lands and waters within the boundaries of the Monument. The MOA provided that management of the Monument is the responsibility of the three parties acting as co-trustees: the State of Hawai‘i, Department of Land and Natural Resources; the U.S. Department of the Interior, USFWS; and the U.S. Department of Commerce, NOAA. It also established the institutional arrangements for managing the Monument, including representation of Native Hawaiian interests by the Office of Hawaiian Affairs on the Monument Management Board (MMB).

The NMSA is the organic legislation governing NOAA’s Office of National Marine Sanctuaries. The NMSA authorizes the Secretary of Commerce to designate as a national marine sanctuary any discrete area of the marine or Great Lakes environment with special national significance due to its conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities (16 U.S.C. 1433(a)). In addition to designating and managing these special places, the NMSA provides additional purposes and policies that guide how NOAA manages these areas, including guidance to:

- Provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities (16 U.S.C. 1431 (b)(2));
- 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 (16 U.S.C. 1431 (b)(4));

- Support, promote, and coordinate scientific research on, and long-term monitoring of, the resources of these marine areas (16 U.S.C. 1431 (b)(5));
- 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 (16 U.S.C. 1431 (b)(6));
- 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 (16 U.S.C. 1431 (b)(7)).

The Undertaking

The proposed designation of marine areas of Papahānaumokuākea Marine National Monument as a national marine sanctuary meets the definition of an undertaking as defined at § 800.16(y). Specifically, the undertaking includes:

1. delineation of proposed boundaries for the Papahānaumokuākea National Marine Sanctuary;
2. a notice of proposed rulemaking containing proposed regulations for the sanctuary; and
3. publication of a management plan for the proposed national marine sanctuary, which outlines the proposed goals, objectives, and strategies for managing sanctuary resources for the next five years, as described in section 304(a)(2)(C) of the NMSA.

The purpose of this proposed designation is to provide comprehensive and coordinated conservation and management of the marine areas of Papahānaumokuākea to protect nationally significant biological, cultural, and historical resources. Through the proposed designation, NOAA aims to address threats to these resources and discrepancies in management across the Monument.

NOAA is the lead federal agency for this proposed action. This proposed sanctuary designation is being conducted in cooperation with all Monument co-managers, which includes the USFWS, State of Hawai‘i Department of Land and Natural Resources, and the Office of Hawaiian Affairs. The State of Hawai‘i co-developed the draft environmental impact statement and would co-manage the proposed sanctuary.

The undertaking does not include assessment of project-specific effects on historic properties that may occur once the proposed sanctuary is designated (e.g., research, education, management activities, or issuance of permits). Future project-specific undertakings will be reviewed on a case-by-case basis in compliance with NHPA.

Area of Potential Effects

As defined in the Section 106 regulations (36 CFR § 800.16(d)), the APE is the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The dimensions of the APE are influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

Papahānaumokuākea is the name given to a vast and isolated linear cluster of small, low-lying islands and atolls, with their surrounding ocean, extending to the north west of the main Hawaiian Archipelago, located in the north-central Pacific Ocean. The APE for this undertaking, consistent with the scope of the study area and impact analysis in the EIS for the proposed sanctuary designation, is defined as the areas within the boundaries of the proposed action and alternatives, as illustrated in Figure 1. The proposed national marine sanctuary boundaries only include the submerged lands, seamounts, and Pacific Ocean waters; terrestrial areas of the islands and atolls are not included within the APE. The boundary alternatives include the following:

- Alternative 1 is coextensive with the marine portions of the Monument. The boundary includes the marine environment surrounding the Northwestern Hawaiian Islands from the shoreline of the islands and atolls seaward to 200 nautical miles (nmi), including all State waters and waters of the Reserve, Midway Atoll National Wildlife Refuge, Hawaiian Islands National Wildlife Refuge, the Battle of Midway National Memorial, and State of Hawai‘i Northwestern Hawaiian Islands Marine Refuge. The area encompassed in Alternative 1 is approximately 582,570 square miles (439,910 square nmi).
- Alternative 2 includes the marine environment from the shoreline of the islands and atolls seaward to 50 nmi. This alternative includes all State waters and waters of the Reserve, Midway Atoll National Wildlife Refuge, Hawaiian Islands National Wildlife Refuge, the Battle of Midway National Memorial, and State of Hawai‘i Northwestern Hawaiian Islands Marine Refuge. This alternative does not include the Monument Expansion Area. The area encompassed in Alternative 2 is approximately 139,782 square miles (105,552 square nmi).
- Alternative 3 has the same boundaries as Alternative 1, but excludes waters within the Midway Atoll National Wildlife Refuge, Hawaiian Islands National Wildlife Refuge, and the Battle of Midway National Memorial. The area encompassed in Alternative 3 is approximately 581,263 square miles (438,923 square nmi).

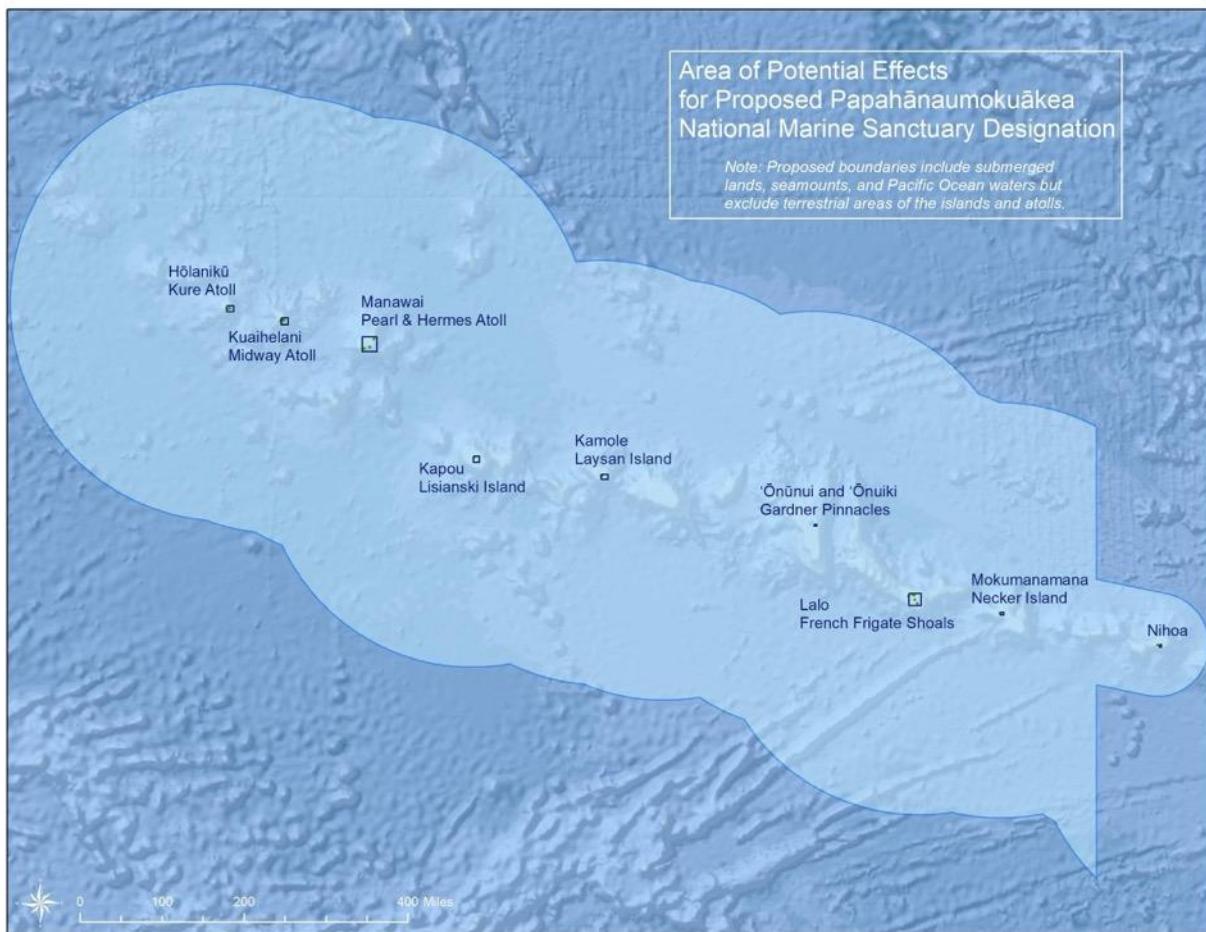


Figure 1. The Area of Potential Effects.

Consultation with Appropriate Parties and the Public

NOAA's Consultation Efforts

NOAA published a *Notice of Intent to Conduct Scoping and to Prepare an Environmental Impact Statement* for designating the Papahānaumokuākea National Marine Sanctuary on November 19, 2021 (86 FR 64904). Through this notice NOAA invited public participation in the Section 106 process, per 36 CFR § 800.2(d)(3). NOAA additionally initiated consultation with the Hawai‘i State Historic Preservation Division (SHPD) which serves as the State Historic Preservation Office and invited the Advisory Council on Historic Preservation (AHP) to participate.

NOAA further initiated an effort to identify consulting parties to participate in the Section 106 process through distribution of over 500 letters to Native Hawaiian organizations,¹ historic preservation organizations, and individuals and organizations with demonstrated interests or expertise in the project and/or APE. This included outreach to Native Hawaiian individuals and families with lineal and cultural connections to Papahānaumokuākea, cultural practitioners, the fishing community (including subsistence, recreational, and commercial fishers), maritime heritage organizations, government agencies, and others. These letters solicited input regarding the identification of, and potential effects on, historic properties from the proposed sanctuary designation for the purpose of obtaining input for the Section 106 review and to additionally determine their interest in participating as a consulting party. A list of entities that received invitation from NOAA to participate as consulting parties is included as Appendix 1. A sample letter of invitation to participate as a consulting party is included as Appendix 2.

In December of 2021, NOAA and the State hosted four virtual public scoping meetings concurrent with the public comment period which ended January 31, 2022. At the end of the comment period, NOAA received six requests to participate as a consulting party to the Section 106 review. In June of 2022, NOAA distributed approximately 200 follow-up letters and inquiries to individuals and entities that may have interest in participating as a consulting party. In response, NOAA received 31 requests to be a consulting party. The individuals and entities that NOAA has recognized as consulting parties are listed in Appendix 3. NOAA subsequently hosted 10 Section 106 consultation meetings with the consulting parties, summarized in Table 1. Through these consultation meetings NOAA further sought to invite consulting party and public input regarding the identification of, and potential effects on, historic properties from the proposed sanctuary designation.

On March 1, 2024, NOAA's ONMS released for public comment a draft sanctuary management plan, a notice of proposed rulemaking, and an accompanying draft EIS for proposed designation of Papahānaumokuākea National Marine Sanctuary. These documents are available to the [public](#). In the draft designation documents, NOAA further sought to identify consulting parties pursuant to 36 CFR § 800.3(f); consult on existing information regarding the proposed undertaking and the geographic extent of the APE; and solicit additional information on historic properties within the APE from the public. NOAA held a 68-day public review and comment period on the draft designation documents, during which NOAA held 11 public comment meetings (two virtual and nine in-person meetings on O‘ahu, Kaua‘i, Hawai‘i Island, Maui, and Moloka‘i). Copies of public comments received will be included in Appendix K to the final EIS, and comments also can be viewed [online](#).

¹ The NHPA defines a Native Hawaiian organization as “any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians.” The term includes, but is not limited to, the Office of Hawaiian Affairs of the State of Hawaii and Hui Malama I Na Kupuna O Hawai‘i Nei, an organization incorporated under the laws of the State of Hawaii. 54 U.S.C. § 300314. The NHPA defines Native Hawaiian as “any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.” 54 U.S.C. § 300313.

Table 1. Summary of Section 106 consultation meetings.

Meeting:	Date:	Format:	Description:
1	8/23/2022	Virtual	Orientation Meeting for Recognized Consulting Parties
2	10/25/2022	Virtual	Consulting Parties meeting with Native Hawaiian Organizations with a focus on cultural resources
3	10/27/2022	In-person	Individual consultation with two lineal descendants of Papahānaumokuākea
4	10/28/2022	Virtual	Consultation with Maritime Heritage Consulting Parties
5	10/31/2022	Virtual	Individual consultation with Maritime Heritage Consulting Parties
6	1/24/2023	Virtual	Group consultation with Native Hawaiian Organizations and Maritime Heritage Consulting Parties
7	3/19/2024	Virtual	Additional consultation made available to all Consulting Parties following the release of the draft Environmental Impact Statement
8	3/25/2024	Virtual	Additional consultation made available to all Consulting Parties following the release of the draft Environmental Impact Statement
9	3/26/2024	Virtual	Additional consultation made available to all Consulting Parties following the release of the draft Environmental Impact Statement
10	4/16/2024	Virtual	Individual consultation with Office of Hawaiian Affairs Chief Advocate and Policy Team

Related State Reviews

In addition to the consultation activities described above, NOAA engaged with the State of Hawai‘i Department of Land and Natural Resources (DLNR) as they conducted their Cultural Impact Assessment (CIA). The State of Hawai‘i CIA is triggered by requirements of the Hawai‘i Environmental Policy Act (HEPA), Hawai‘i Revised Statutes (HRS) §343, and was conducted parallel to the Section 106 process and NEPA review conducted by NOAA. The State of Hawai‘i Historic Preservation program is codified under HRS Chapter 6E and recognizes the State’s constitutional duty to conserve and develop the historic and cultural property in the State. SHPD review includes identification and inventory of historic properties, evaluation of significance of the properties, determination of effects to significant properties, and mitigation. Pursuant to HRS § 6E-8 and HAR § 13-275-3, the state proposing agency, DLNR-Division of Aquatic Resources (DAR) submitted a written request to SHPD for an agency determination letter. On June 7, 2024, SHPD concurred with DAR’s determination of no historic properties affected. DAR’s determination and the concurrence letter from SHPD are included as Appendix 4.

A legal analysis was also conducted to support the State’s constitutional duties to protect Native Hawaiian traditional and customary practices. Nohopapa Hawai‘i, LLC created the document *E Ho‘i I Ke Au A Kanaloa* (Nohopapa Hawai‘i, 2023) containing the CIA and a legal analysis relating to Native Hawaiian rights and cultural resources.

The CIA presents a detailed genealogy of Papahānaumokuākea, its connection to Hawaiian history and the main Hawaiian Islands, and the cultural resources, practices, beliefs, and spirituality associated with this biocultural seascape that are fundamental to Native Hawaiians. Following extensive outreach to identify individuals and groups interested in participating, Nohopapa Hawai‘i, LLC interviewed 25 people with connections to Papahānaumokuākea. These

interviewees identified their cultural practices and connection to Papahānaumokuākea, potential impacts to these practices and cultural resources, recommendations, and other considerations. The CIA outlines several Native Hawaiian customs such as voyaging, kilo (Indigenous observational science), feather gathering, and fishing. Based on analysis in the CIA, these traditions and customs are not significantly impacted by sanctuary designation but may actually be subject to greater protection with sanctuary designation.

Description of the Steps Taken to Identify Historic Properties

NOAA has compiled existing and available information on historic properties within the APE, including data concerning possible historic properties not yet identified. This includes information compiled through development of the draft EIS for the proposed sanctuary, consultation with the parties, coordination with other federal agencies, and research conducted at relevant repositories including SHPD site files, as listed below in Appendix 5. A description of historic properties and cultural resources is also available in sections 4.5.1 and 4.5.2 of the EIS and a summary is provided below.

If designated as a national marine sanctuary, NOAA recognizes that additional long-term historic property identification efforts are warranted, in part to meet the agency's responsibilities to identify and evaluate historic property under Section 110 of NHPA. These continuing efforts are reflected in the draft management plan and are built upon 16 years of archaeological survey, and cultural research conducted by Kānaka ‘Ōiwi scholars and cultural practitioners in the Monument.

Native Hawaiian Cultural Resources and UNESCO World Heritage Designation

Kānaka ‘Ōiwi (Native Hawaiian) cultural resources that may be present within the APE include formerly terrestrial areas now submerged that have the potential to contain archaeological sites, landscape features, and locations potentially significant as Traditional Cultural Properties. The EIS Section 4.5.1 provides further background on the cultural significance of the APE.

Numerous significant properties are located adjacent to the APE on the terrestrial portions of the islands and atolls. The occupation and use of these islands represent one of the earliest signs of Hawaiian religious activity. For over four hundred years (ca. 1400–1815), the islands were used as a ritual center of power connected by an extensive voyaging interaction sphere that supported long-term settlement of the islands (Kikiloi, 2012). Nihoa and Mokumanamana contain more than 140 archaeological sites that include agricultural, habitation, and religious structures. Based on radiocarbon data, it has been estimated that Nihoa and Mokumanamana Islands could have been inhabited from 100 C.E. to 1700 C.E. (Kikiloi, 2012; PMNM, 2008). Nihoa and Mokumanamana are listed in the National Register of Historic Places as archaeological districts.

The area of the proposed sanctuary is a sacred place to Kānaka ‘Ōiwi, who regard the islands and wildlife as kūpuna, or ancestors. The region holds deep cosmological and traditional significance for living Kānaka ‘Ōiwi culture. Papahānaumokuākea is as much a spiritual as it is a physical geography, deeply rooted in Kānaka ‘Ōiwi creation and settlement stories. Since Kānaka ‘Ōiwi culture considers nature and culture to be one and the same, the protection of one of the last nearly pristine, natural, marine ecosystems in the archipelago is seen as being akin to preserving the living culture.

NOAA recognizes that areas of the proposed national marine sanctuary may constitute one or more Traditional Cultural Properties. This potential property has not been formally assessed and boundaries have not been determined; however, for the purpose of this Section 106 review, NOAA is considering the area to be potentially eligible for the National Register of Historic Places based on the association with cultural practices of a living community that are rooted in that community's history and that are important to maintaining the continuity of cultural identity to the community (Parker & King, 1990). The area has played, and continues to play, a significant role in the culture and traditions of Kānaka ‘Ōiwi. From the time of the first Polynesian voyagers who first populated the Hawaiian Archipelago to the present renaissance of Hawaiian culture, Kānaka ‘Ōiwi have considered Papahānaumokuākea a profoundly sacred place.

In 2010, Papahānaumokuākea was inscribed as a United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage Site. Of note, the site was nominated and inscribed as both a site of global natural and cultural significance. The listing is in recognition of the inextricably linked pristine natural heritage of the area and its deep cosmological and traditional significance for living Kānaka ‘Ōiwi culture, as an ancestral environment, as an embodiment of the Hawaiian concept of kinship between people and the natural world, and as the place where it is believed that life originates and where the spirits return to after death.

Post-Contact Historic Properties

The Hawaiian Archipelago has a history of hundreds of years of intensive maritime activity, and thus possesses many historical and archaeological resources such as shipwrecks and other types of maritime heritage sites. Archaeological survey within the Northwestern Hawaiian Islands by NOAA began during research and monitoring expeditions in 2002 and continued opportunistically through 2018. There are more than 60 reported vessel losses in the historic record, and hundreds of naval aircraft lost within the Monument's current marine boundaries. The following provides an overview of the currently known post-contact resources within the APE, separated by resource type. For the purpose of this review and unless otherwise noted, NOAA is considering known wreck sites to be potentially eligible for the National Register of Historic Places, with the general exception of those younger than 50 years. Formal Determinations of Eligibility have yet to be completed for the majority of sites, as noted below.

Whaling activities represented a global industrial pursuit. At the peak of historic whaling activity, hundreds of whaling vessels came to port in Hawai‘i annually. Native Hawaiians quickly adapted the skills necessary to sail and work these foreign vessels, and many young Hawaiian men found employment on board whalers. There are 10 recorded losses of British and American whaling vessels in the APE, five of which have been located by NOAA and assessed (Table 2). These whaler wrecks are scattered archaeological sites composed generally of ceramics and iron/copper artifacts. The archaeological remains of the whaler *Two Brothers*, discovered in 2008, is listed on the National Register of Historic Places. Additionally, onshore WWII-era military facilities located at Midway Atoll are designated as a National Historic Landmark. This property is located outside of the APE; however, NOAA recognizes that additional sites associated with the Battle of Midway are located within the APE, as described below, and are likely eligible for National Register (NR) listing.

Table 2. Known sites associated with the whaling industry.

Site Name	Atoll Location	Year Lost	NR Status	Description
Parker	Kure	1842	Not evaluated	406-ton American whaling ship; built New Bedford. Low relief; scattered artifact site.
Gledstanes	Kure	1837	Not evaluated	428-ton British whaling ship; built 1827 Leith, Scotland. Low relief; scattered artifact site.
Pearl	Pearl and Hermes	1822	Not evaluated	British whaling vessel. Medium relief; confined scatter site. Possibly eligible under criterion D.
Hermes	Pearl and Hermes	1822	Not evaluated	British whaling vessel. Medium relief; scattered archaeological site. Possibly eligible under criterion D.
Two Brothers	French Frigate Shoals	1823	Listed (A, B, D)	217-ton whaling ship out of Nantucket, Captain George Pollard, Jr. Low relief; archaeological scatter site

Merchant vessels that strayed off course and fell prey to these shallow and unseen reefs included iconic Pacific lumber schooners and iron-hulled square-rigged tall ships of a bygone age (Table 3). Wooden sailing vessels like *Carrollton* and *Churchill* are archaeological sites of scattered iron and steel artifacts and features (e.g., anchors, windlass, ship's pumps, chain), while iron and steel-hulled ships like *Dunnottar Castle*, *Quartette*, and *Mission San Miguel*, have greater site integrity, exhibiting more complete site structures.

Table 3. Known merchant vessels.

Site Name	Atoll Location	Year Lost	NR Status	Description
Carrollton	Midway	1906	Not evaluated	1450-ton American sailing bark; built Bath, Maine, 1872. Low relief; scattered artifact site
Dunnottar Castle	Kure	1886	Not evaluated	1750-ton British iron-hulled tall ship; built Glasgow, 1874. High relief; large area major site, hull portions, features, artifacts. Possibly eligible under criterion D.
Churchill	French Frigate Shoals	1917	Not evaluated	Four-masted wooden merchant lumber schooner built North Bend, Oregon, 1900. Medium relief; archaeological scatter site
Quartette	Pearl and Hermes	1952	Not evaluated	Former WWII Liberty ship, built Savannah, Georgia, 1944. High relief; archaeological confined scatter site both inside/outside reef crest
USNS Mission San Miguel	Maro Reef	1957	Not evaluated	523-foot WWII T2 tanker, built Sausalito, California, 1943. Medium relief; intact stern on port side; mangled midships area

Fishing in the Northwestern atolls has a long and varied history. The identity of some of these shipwrecks remains unknown, but the types of propulsion make it very likely that some were long-range fishing sampans. Distinctive Hawaiian fishing sampans, a local hybrid of original Japanese traditional watercraft design with modernized diesel engines, are historically

associated with Hawaii's commercial tuna fishery, centered at Kewalo Basin on O'ahu, and Hawaiian Tuna Packers Ltd. established in 1916. Known wrecks of fishing vessels and possible fishing vessels are summarized at Table 4.

Table 4. Known fishing/miscellaneous vessels.

Site Name	Atoll Location	Year Lost	NR Status	Description
<i>Mimi</i>	Pearl and Hermes	1989	Not eligible	Possible fishing vessel. Low relief; single object
"Oshima" wreck	Pearl and Hermes	UNK	Not evaluated	Possible fishing sampan; low relief; partial structure and discrete features
<i>Kaiyo Maru</i>	Laysan	1959	Not evaluated	Possible fishing sampan; low relief; partial hull
Steel bow wreck site	Kure	UNK	Not evaluated	Possible modern (fishing) vessel; low relief; partial hull
<i>Hoei Maru</i>	Kure	1976	Not eligible	Diesel powered steel fishing vessel; low relief; bow and stern sections intact.
Sailing vessel	Pearl and Hermes	UNK	Not evaluated	Modern sloop; medium relief; intact hull portion
Motorized vessel	Pearl and Hermes	UNK	Not evaluated	Possible fishing sampan; low relief; single object
<i>Paradise Queen-II</i>	Kure	1998	Not eligible	Longline steel fishing vessel; Low relief; partial structure

The military's activities within the Northwestern atolls dates back to the survey of the Civil War-era sloop-of-war USS *Lackawanna* at Midway Atoll in 1867 and extends through the closure of Midway Naval Air Station in 1993. The significance of World War II and the Battle of Midway often overshadow properties associated with other periods. The Battle of Midway, June 4–7 1942, was one of the major watershed moments of World War II and a significant historical factor in the designation of the marine national monument in 2006. Military vessels with known locations are summarized at Table 5. The Monument Expansion Area, designated in 2016 encompasses many Japanese and American vessels and aircraft lost in the conflict. American losses totaled one fleet carrier (USS *Yorktown*) and one destroyer (USS *Hammann*) sunk, along with approximately 150 aircraft and 307 casualties. Japanese losses totaled four fleet carriers (IJN *Kaga*, *Akagi*, *Hiryu*, *Soryu*) and one heavy cruiser (IJN *Mikuma*) sunk, along with approximately 248 aircraft and 3,057 casualties. The USS *Yorktown* was discovered and recorded by Robert Ballard/National Geographic in 1998. IJN *Kaga* and *Akagi* were discovered and recorded by Rob Kraft/Vulcan Inc. in 2019. A subsequent deep ocean survey of *Yorktown*, *Kaga*, and *Akagi* was conducted by NOAA and Ocean Exploration Trust in 2023.

Table 5. Known military craft.

Site Name	Atoll Location	Year Lost	NR Status	Description
USS Macaw	Midway	1944	Not evaluated	Naval submarine rescue/salvage vessel built; high relief; large area major site, hull portions, features, artifacts. Possibly eligible under criteria A and D.
LCVP landing craft	Midway	UNK	Not evaluated	Naval amphibious craft; medium relief; intact
Navy water barge	Midway	UNK	Not evaluated	Ferro-concrete barge medium relief; intact
Navy barge	Midway	UNK	Not evaluated	Steel barge; medium relief; intact
Navy landing craft	French Frigate Shoals	UNK	Not evaluated	Inverted LC; medium relief; relatively intact
IJN Akagi	Midway	1942	Not evaluated	Japanese Amagi-class battlecruiser converted to WWII aircraft carrier, built Kure, Japan, 1920; high relief; intact vessel. Possibly eligible under criteria A and D.
IJN Kaga	Midway	1942	Not evaluated	Japanese Tosa-class battleship converted to WWII aircraft carrier, built Kobe, Japan, 1921; high relief; intact vessel. Possibly eligible under criteria A and D.
USS Saginaw	Kure	1870	Not evaluated	508-ton U.S. Civil War-era Navy steam sloop; built Mare Island, 1859; medium relief; large scattered artifact site. Possibly eligible under criteria A, B and D.
USS Yorktown	Midway	1942	Not evaluated	American Yorktown-class aircraft carrier, built Newport News, Virginia, 1936; high relief; intact vessel. Possibly eligible under criteria A and D.

Naval aviation exercises in the Northwestern Hawaiian Islands began in the early 1930s, and activity at French Frigates Shoal and Midway Atoll increased during wartime preparations. Losses during the Battle of Midway June 4–7, 1942, and subsequent intensive aviation activities at Midway during subsequent decades have added significantly to the submerged aircraft resource. Military aircraft with known locations are listed in Table 6.

Table 6. Known aircraft.

Site Name	Atoll Location	Year Lost	NR Status	Description
F4U-1 Corsair	Kure	1945	Not evaluated	Single-seat navy fighter aircraft; low relief; partial feature
Sikorsky helicopter	Kure	UNK	Not evaluated	Partial rotor and engine elements; low relief; feature partially buried

Site Name	Atoll Location	Year Lost	NR Status	Description
F4U Corsair	Midway	UNK	Not evaluated	Single-seat navy fighter aircraft; low relief; wing/partial fuselage only (inverted); engine nearby
P-40K Warhawk	Midway	1943	Not evaluated	Single-seat army fighter aircraft; low relief; few artifacts
F2A Brewster Buffalo	Midway	UNK	Not evaluated	Single-seat navy fighter aircraft; low relief; only partial landing gear

Some isolated properties may be associated with specific locations (context) or specific historic activities, such as multiple anchors within a known historic anchorage. Anchors in particular are multifunctional and tend to be used and reused once being lost or abandoned by a ship (for moorings, navigational markers, stored on reefs for later use, etc.). A summary of known miscellaneous properties is provided in Table 7.

Table 7. Known miscellaneous features.

Site Name	Atoll Location	Year Lost	NR Status	Description
3 anchors near landing site	Laysan	UNK	Not evaluated	Possible wreck site; low relief; features
2 anchors and debris	Laysan	UNK	Not evaluated	Possible wreck site; low relief; features
Anchor in Welles Harbor lagoon anchorage	Midway	UNK	Not evaluated	Possible wreck site; low relief; features

The Basis for the Determination of No Historic Properties Affected

Through its analysis of the undertaking and having considered input received through the consultation process, NOAA has determined that the designation of Papahānaumokuākea National Marine Sanctuary will not have an effect, as defined at (36 CFR § 800.16(i) on historic properties within the APE.

NOAA's Finding of No Historic Properties Affected is consistent with the impact assessment in the EIS which has determined that designation of the national marine sanctuary would have no adverse impacts on historic properties or cultural resources and may create direct, long-term, moderate beneficial impacts. Specifically, NOAA's mission in management of the proposed sanctuary is to carry out seamless integrated management to ensure ecological integrity and achieve strong, long-term protection and perpetuation of Northwestern Hawaiian Islands ecosystems, Kānaka 'Ōiwi culture, and heritage resources for current and future generations.

This Finding is supported by NOAA's proposed sanctuary regulations that provide comprehensive and coordinated conservation and management, including for maritime heritage

and cultural resources, and the submerged lands within the proposed sanctuary boundaries while still allowing access, where appropriate, through a permitting system. Access to the sanctuary would be prohibited except under specific circumstances (e.g., emergency response actions, law enforcement activities, exercises of the Armed Forces, passing through the sanctuary without interruption). Specifically, the Finding is supported by NOAA's inclusion of a proposed prohibition on moving, removing, or injuring, or attempting to move, remove, or injure, a sanctuary historical resource; or possessing or attempting to possess a sanctuary resource. If designated as a national marine sanctuary, this protection would apply to all areas of the sanctuary. Furthermore, the proposed regulations would strengthen NOAA's ability to enforce this prohibition and would authorize NOAA to assess civil penalties for violations of sanctuary regulations or violation of permit terms and conditions. Sanctuary designation also provides additional NMSA authorities, which allow for emergency regulations and cost recovery in the event of damage or potential damage to sanctuary resources.

NOAA further proposes to continue issuance of Native Hawaiian practices permits. Native Hawaiian practices are cultural activities conducted for the purposes of perpetuating traditional knowledge, caring for and protecting the environment, and strengthening cultural and spiritual connections to the Northwestern Hawaiian Islands that have demonstrable benefits to the Native Hawaiian community. Additionally, the Papahānaumokuākea Native Hawaiian Cultural Working Group (CWG) which formed when the Monument was first established, is composed of Kānaka ‘Ōiwi kūpuna, researchers, cultural practitioners, educators, and community members with deep connections and historical ties to Papahānaumokuākea. The CWG represents a Kānaka ‘Ōiwi community voice to aid in Monument management. The CWG has taken major roles in developing cultural protocols, perpetuating ancestral knowledge, and developing the Mai Ka Pō Mai management guidance document (OHA, 2021). Mai Ka Pō Mai is a collaborative management framework that guides co-trustee agencies towards integrating traditional Hawaiian knowledge systems, values, and practices into all areas of management. The CWG provides recommendations on a variety of issues as they develop. CWG welcomes members at any time who wish to contribute to the perpetuation of Kānaka ‘Ōiwi practices and protocols to protect the cultural significance of Papahānaumokuākea. The CWG often reviews applications for Native Hawaiian practice permits, which are specifically authorized to provide access for activities that perpetuate living cultural practices.

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Appendix 1. List of entities that received invitation from NOAA to participate as a consulting party

‘Aha Kāne - Foundation for the Advancement of Native Hawaiian Males	Au Puni O Hawaii	Hālau Ka Lei Mokihana O Leina‘ala
‘Aha Kiole	Brian Kaniela Nae‘ole Naauao	Hālau Ka Waikahe Lani Mālie
Aha Kukaniloko	Charles Pelenui Mahi Ohana	Hālau Kaulupuaonālani
Aha Kukaniloko Koa Mana mea ola kanaka mauli	CNO Office, Infrastructure, Posture, and Environmental Planning Branch, Department of Navy	Hālau Ke‘alaokamaile
Aha Moku	Council for Native Hawaiian Advancement	Hālau Mōhala O Ka Pua Hau Hele
‘Aha Moku Council	Daughters of Hawai‘i	Hālau o Huluena
Aha Moku O Kahikinui	EAO Hawaii Inc.	Hālau Palaihiwa O Kaipuwai
Aha Moku o Kaupō	Edith Kanaka‘ole Foundation	Hale Naua III
Aha Moku o Maui Inc.	Florida Hawaiian Civic Club	Hanona
Aha Puhala O Puna	Friends of ‘Iolani Palace	Hau‘oli Mau Loa Foundation
‘Aha Pūnana Leo	Friends of Moku‘ula	Hau‘ouwi Homestead Association on Lāna‘i
Aha Wahine	Friends of Waimanalo	Hawai‘i Alliance of Nonprofit Organizations
‘Aha Wahine Kūhinapapa	George K. Cypher ‘Ohana	Hawai‘i Island Burial Council
Ahahui Ka‘ahumanu	God’s Country Waimanalo	Hawai‘i Pacific Foundation
‘Ahahui Siwila Hawai‘i O Kapōlei	Hā Kūpuna	Hawai‘i Pono‘ī Coalition
Ahonui Homestead Association	Haawi Hemolele O Keakawaiola	Hawai‘i Pono‘ī Foundation
Ahupua‘a o Moloka‘i	Hale Halawai ‘Ohana o Hanalei	Hawaii State Historical Preservation Division
Āina Momona	Hālau Hula Na Lei Kupua O Kaua‘i	Hawaiian Civic Club of Honolulu
Ala Kahakai Trail Association	Hālau Hula O Kauikamakakeahiopuna / Hālau Hula Makanahale O Kapi‘ioho	Hawaiian Civic Club of Wahiawa
Ali‘i Trust	Hālau Hula O Leilani	Hawaiian Community Assets, Inc.
Aloha First	Hālau Hula O Nani	Hawaiian Historical Society
Alu Like, Inc.		
‘Ao‘ao O Nā Loko I‘a O Maui		
Association of Hawaiian Civic Clubs		
Association of Hawaiians for Homestead Lands		

Healani's Hula Hālau	Institute for Native Pacific Education and Culture	Kamiloloa One Ali'i Homestead Association
Historic Hawaii Foundation	International Midway Memorial Foundation	Kānehūnāmoku Voyaging Academy
Ho Ohana	Island Burial Councils	Kanu o ka 'Āina Learning 'Ohana
Ho'okano Family Land Trust	John A. Burns School of Medicine, University of Hawai'i – Department of Native Hawaiian Health	Kāpili Like
Hoa 'Āina o Mākaha	Johnson 'Ohana Foundation	Kapolei Community Development Corporation
Honolulu Community College	Ka 'Aha Hula O Hālauaola	Kā'ū Women's Health Collective
Honua Consulting	Ka Honua Momona International	Kaua'i and Ni'ihau Islands Burial Council
Honu'apo	Ka 'Ike O Ka 'Āina	Kauai Heritage Center of Hawaiian Culture & The Arts
Hookipa Network of Hawaiian CBO's	Ka'ala Farms	Kaupe'a Homestead Association
Hookuaaina	Kaha I Ka Panoa Kaleponi Hawaiian Civic Club	Kauwahi 'Anaina Hawai'i Hawaiian Civic Club
Hui Aloha 'Āina Momona	Kahiko Ha Lapa I Hula Alapai	Kawaihapai Ohana
Hui Aloha Kīholo	Kaho'olawe Island Reserve Commission	Ke Ea Hawai'i
Hui Huliau Inc.	Kahumana Farms	Ke Kula Nui O Waimanalo
Hui 'Ai Pohaku Hula	Kai Kuleana	Ke Ola Mamo
Hui Kaleleiki Ohana	Kai Palaoa	Ke One O Kakuhihewa
Hui Maka'ainana o Makana	Kāko'o 'Ōiwi	Keaukaha Community Association
Hui Mālama I Nā Kūpuna O Hawai'i Nei	Kalaeloa Heritage and Legacy Foundation	Kēhaulani Hula Studio
Hui Mālama O Ke Kai Foundation	Kalama'ula Homesteaders Association	Kia Manu Project - Nā Kia'i Nihokū
Hui Mālama o Mo'omomi	Kalihi Palama Hawaiian Civic Club	Kia'i Kanaloa
Hui Mālama Ola Nā 'Ōiwi	Kali'uokapa'akai	Kia'i Kaua'ula
Hui o Kuapā	Kamealoha	Kimokeo Foundation
Hui O Wa'a Kaulua	Kamehameha Schools - Community Relations and Communications Group, Government Relations	Kina'ole Foundation
Huli		Kingdom of Hawai'i
Huliauapa'a		Kīpahulu 'Ohana
'Ilio'ulaokalani/Pa'i Foundation		Koa Ike
I Nui Ke Aho		
Imua Hawaii		

Koa Mana	Makaha Hawaiian Civic Club	Moloka'i Island Burial Council
Kohala Center	Makana o Ke Akua Inc.	Na Aikane O Maui
Kokua Hawai'i Foundation	Maku'u Farmers Association	Nā Hoaloha
Kōkua Kalihī Valley Comprehensive Family Services - Ho'oulu 'Āina	Malama Kakanilua	Nā Hui O Kamakaokalani
Ko'olau Foundation	Mālama Learning Center	Nā Hula O Kaohikukapulani
Ko'olau Cooperative Community Hub	Mālama Loko Ea	Na Kālai Wa'a
Ko'olaupoko Hawaiian Civic Club	Mālama Mākua	Nā Kama Kai
Kua'āina Ulu 'Auamo	Mālama Mano/Moana 'Ohana	Na Koa Ikaika Ka Lahui Hawai'i
Kuhialoko	Mālama Maunalua	Na Ku'auhau 'o Kahiwakaneikopolei
Kūkulu Kumuhana o Anahola	Mālama Pupukea	Nā Kuleana o Kānaka 'Ōiwi
Kula no na Po'e Hawaii	Malu'ohai Residents Association	Na Kupuna Moku O Keawe
Kuleana Coral Reefs	Mana Health Services, Inc.	Na Lei Aloha Foundation
Kuloloi'a Lineage - I ke Kai 'o Kuloloi'a	Manaiakalani	Nā Mahi'ai O Keanae
Kupu	MA'O Organic Farms	Nā Maka Onaona
Lā Ho'ihō'i Ea Honolulu	Marae Ha'a Koa	Nā Mamo o Mū'olea
Lahaina Restoration Foundation	Maui and Lana'i Islands Burial Council	Na Mookupuna O Wailua
Lahui Kaka'ikahi	Maui Cultural Lands	Na Ohana o Puaoi a me Hanawahine
La'i'ōpua 2020	Maui Native Hawaiian Chamber of Commerce	Nā Pua No'eau
Lili'uokalani Trust	Maui Nui Makai Network	Na'aikane o Maui
Living Pono Project	Mauliola Endowment	Nakupuna Foundation
Ma Ka Hana Ka 'Ike	Mauna Kea Anaina Hou	Namahoe
Ma'a 'Ohana c/o Lani Ma'a Lapilio	Maunakea Education & Awareness	Nanakuli Housing Corporation
Machado-Akana-Aona-Namakaeha Ohana	Meleana Kawaiae, LLC	Nation of Hawaii
Mahamoku Ohana Council	Menehune Foundation	Native Hawaiian Chamber of Commerce
Mahu Ohana	Moanalua Gardens Foundation	Native Hawaiian Church
Mainland Council Association of Hawaiian Civic Clubs	Mokaeua Fishermen's Association	Native Hawaiian Education Association

Native Hawaiian Education Council	Papahānaumokuākea Native Hawaiian Cultural Working Group	State Council on Hawaiian Heritage
Native Hawaiian Hospitality Association	Papa Ola Lokahi	State Historic Preservation Division
Native Hawaiian Legal Corporation	Papahana Kuaola	The Friends of Hokuleʻa and Hawaiʻiloa
Native Hawaiian Organizations Association	Papakōlea Community Development Corporation	The I Mua Group
Native Stories	Partners in Development Foundation	The Makua Group
Naval History and Heritage Command, Department of Navy	Paukukalo Hawaiian Homes Community Association	The Mary Kawena Pūkuʻi Cultural Preservation Society
Nekaifes Ohana	Peahi Ohana	The Pōpolo Project
Nohopapa Hawaiʻi	Pearl Harbor Hawaiian Civic Club	The State Foundation on Cultural and the Arts
Northwestern Hawaiian Island HUI	Pele Defense Fund	Tokyo University Marine Science and Technology
Oʻahu Island Burial Council	Piihonua Hawaiian Homestead Community Association	Tokai University School of Humanities
Office of Hawaiian Affairs	PLACES (Place-Based Learning And Community Engagement In Schools)	UH Hilo Kīpuka Native Hawaiian Student Center
Office of Hawaiian Education, Hawaiʻi Department of Education	Pōhāhā i Ka Lani	Uhiwai O Haleakalā
‘Ohana Ayau	Polanui Hiu	Ulu A‘e Learning Center
‘Ohana Hāpai	Polynesian Voyaging Society	Wahiawa Ahupuaa LCA 7714B Apana 6 RP 7813
‘Ohana Kahaunaele	Protect Kaho‘olawe ‘Ohana	Waialua Hawaiian Civic Club
‘Ohana Keaweamahi	Pūlama	Wai‘anae Coast Community Foundation
‘Ohana O Hanalei	Purple Mai‘a Foundation	Wai‘anae Hawaiian Civic Club
Order of Kamehameha I	Royal Hawaiian Academy of Traditional Arts	Waiehu Kou Phase 3 Association
Our Lady of Kea‘au	Royal Order of Kamehameha	Wailuku Ahupua‘a
Pa‘a Pono Miloli‘i	Society for Hawaiian Archaeology	Waimānalo Hawaiian Homes Association
Pacific Agricultural Land Management Systems	Sovereign Council of Hawaiian Homestead Associations	Waimanalo Limu Hui
Pacific Islands Institute		Waimea Valley
Pacific Justice & Reconciliation Center		Waipā Foundation
Paepae o He‘eia		
PA‘I Foundation		



Appendix 2. Sample letter of invitation to participate as a consulting party



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE

Papahānaumokuākea Marine National Monument
NOAA DKIRC
NOS/ONMS/PMNM
1845 Wasp Blvd, Building 176
Honolulu, Hawaii 96818

November 22, 2021

Re: Invitation for Consultation under Section 106 of the National Historic Preservation Act
Papahānaumokuākea Marine National Monument proposed Sanctuary Designation and
Environmental Impact Statement (EIS)

Aloha,

"Ua mau ke ea o ka 'āina i ka pono"
(The life of the land is perpetuated in righteousness)

Spoken by Kamehameha III, King of Hawai'i, in 1843
and adopted in 1959 as the motto of the State of Hawai'i

Historic Significance of the Papahānaumokuākea Marine National Monument

The area known as the Papahānaumokuākea Marine National Monument (Monument) includes the Northwestern Hawaiian Islands (NWHI), an immense seascape of natural and cultural significance. According to Hawaiian traditions, this vast region is considered a sacred place that is foundational to the cultural origins of Native Hawaiians. This place is connected to Hawaiian cosmology, religion and spirituality, and historical accounts which shaped the social and political development of traditional Hawaiian society. The island of Mokumanamana, became a ritual center of power, supported by long-term habitation of the island of Nihoa as an extensive voyaging sphere that helped to support prolonged recurring access and use throughout the NWHI. Up until the late 1800s, Hawaiian chiefs and monarchs traveled to these remote islands and initiated expeditions to bring these islands under political authority and control of the Hawaiian Kingdom.

After European contact with the area, commercial access led to a variety of extractive activities during the 1800s and early 1900s, such as the harvest of whales, seals, turtles, sharks, seabirds, pearl oysters, fish, and other natural resources. In the 1900s, the atolls played a role in transpacific cable communications and early aviation routes. During World War II, most of the Battle of Midway occurred at sea in the NWHI region, and for much of the latter part of the 1900s, most activities were military, commercial fishing, conservation, and scientific in nature.

Over the last two decades, several state and federal protections have been afforded to the NWHI which are now known as Papahānaumokuākea, a name conferred by the Native Hawaiian community. Currently, Papahānaumokuākea is one of the largest marine protected areas in the world and the only natural and cultural (mixed) World Heritage site in the country recognized by the United Nations Educational, Scientific, and Cultural Organization (UNESCO). The Monument is managed by four Co-trustees: the National Oceanic and Atmospheric Administration (NOAA) for the Department of Commerce, the U.S. Fish and Wildlife Service (USFWS) for the



Department of Interior, the Department of Land and Natural Resources (DLNR) for the State of Hawai'i, and the Office of Hawaiian Affairs (OHA).

Purpose of this Letter

NOAA is initiating the process to consider the designation of marine portions of the Monument as a national marine sanctuary under the authority of the National Marine Sanctuaries Act (16 U.S.C. § 1431 *et seq.*). Sanctuary designation would provide continued or enhanced long-term protection for the marine waters within the Monument. As part of the sanctuary designation process, NOAA will work with cooperating agencies including the USFWS, the State of Hawai'i, and OHA, to prepare a draft environmental impact statement to evaluate the potential environmental effects of this action on the human environment under the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 *et seq.*). Additionally, NOAA will coordinate responsibilities under Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. § 3001 *et seq.*) with the NEPA process for the sanctuary designation. The Section 106 consultation process specifically applies to any federal agency undertaking that may affect historic properties and requires federal agencies to take into account the effects of their undertakings on historic properties. NOAA is requesting public input on potential effects on historic properties from the proposed sanctuary designation as part of the NEPA scoping process. Through this letter, NOAA is seeking to identify and invite consulting parties to participate in this process. Consulting parties will have a reasonable opportunity to identify their concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional, religious, and cultural importance, articulate their views on the undertaking's effects on such properties, and participate in the resolution of any adverse effects, if identified.

Proposed Federal Action and Undertaking

The purpose and need of the sanctuary designation is to fulfill the purposes and policies outlined in Section 301(b) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. § 1431(b)), including to identify and designate as sanctuaries, areas of the marine environment which are of special national significance, provide authority for comprehensive and coordinated conservation and management of these marine areas, and to provide continued or enhanced long-term protection for the resources of these areas. Additionally, the purpose and need for the designation is to implement the provisions of Executive Order 13178 and Presidential Proclamation 9478 that direct NOAA to consider initiating the sanctuary designation process. NOAA will consider marine areas within the original Monument boundary and the Monument Expansion Area for designation as a national marine sanctuary. The proposed sanctuary would not replace or supersede any existing designations or authorities in the marine areas of the Monument, but would provide a means of supplementing and reinforcing protection in these areas.

Coordinating NEPA and Section 106

NOAA is coordinating this Section 106 review with the NEPA process, pursuant to 36 C.F.R. 800.8(a). Through this coordination, NOAA will use the NEPA scoping process and other public notices and meetings to solicit participation from the public and other stakeholders and to seek input and information regarding the identification of, and potential effects to, historic properties associated with this undertaking. Further information on how you can provide comments and participate in this process is detailed below.

Proposed Area of Potential Effects

The proposed area of potential effects is the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The proposed area of potential effects for this project will encompass the entirety of the marine area of Papahānaumokuākea, including the Monument Expansion Area. The proposed area of potential effects is shown in Attachment A.

Identification of Historic Properties within the Proposed Area of Potential Effects

NOAA invites your comments to aid in the identification of historic properties that may be present within the proposed area of potential effects, including traditional and cultural properties associated with traditional and customary practices of Native Hawaiians. NOAA also seeks comments to help identify issues relating to the proposed designation's potential effects on historic properties.

Of note, the draft environmental impact statement will include archaeological survey reports, architectural inventories, and a cultural assessment. The State of Hawai'i, a cooperating agency, will be responsible for the cultural impact assessment and compliance with the Hawai'i Environmental Policy Act (HEPA), hence the need for a comprehensive approach to the Section 106 and cultural assessment process. In compliance with the State of Hawai'i's Guidelines for Assessing Cultural Impacts, the Section 106 process will address the necessary methodology and content of cultural impact assessment as per Chapter 343 Hawai'i Revised Statutes.

Participation as a Consulting Party

NOAA is currently identifying consulting parties through outreach to potentially interested entities such as Native Hawaiian organizations (NHO); including Native Hawaiian descendants with ancestral, lineal, or cultural connections to or knowledge of Papahānaumokuākea; and/or cultural practitioners. Other consulting parties may be fishers (commercial, recreational, and subsistence); representatives of local government, other parties, and the public. Certain individuals and organizations may also participate as consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the potential effects on historic properties. With this letter, NOAA is inviting you to participate as a consulting party in the Section 106 consultation process. Should you wish to participate as a consulting party, we request that you complete and return the attached Consulting Party Response form. You may also register by sending a letter of interest.

By becoming a consulting party, you will be actively informed of steps in the Section 106 process, including public meetings, and your views will be actively sought. You may elect to participate as a consulting party at any time and you may also choose to withdraw your request to be a consulting party at any time. NOAA will consider these requests throughout the consultation process, and intends to provide multiple opportunities to comment on this project and its potential effects on historic properties.

Opportunities to Comment

Concurrent with the initiation of Section 106 consultation, NOAA published a Notice of Intent to prepare an EIS in the Federal Register on November 19, 2021. Through this Notice, NOAA is inviting public and consulting party participation and input regarding the identification of historic properties and potential effects to historic properties related to the undertaking. This Notice directs the public to the project website <https://www.papahanaumokuakea.gov> for additional information.

Type of Participation and Input	Methods of Participation and Input Options for providing comments include:
Section 106 Consulting Party Participation	<ul style="list-style-type: none"> Submit written comment letter and/or Consulting Party Response Form by email or by U.S. Postal Service Submit written comments at regulations.gov, docket # NOAA-NOS-2021-0114 Provide comments at public scoping meetings
Public Participation Provide comments but not as a consulting party	<ul style="list-style-type: none"> Submit written comment letter by U.S. Postal Service Submit written comments at regulations.gov, docket # NOAA-NOS-2021-0114 Provide comments at public scoping meetings

NOAA will also host virtual public scoping meetings to gather public and consulting party comments at the dates and times listed below. Written comments can be provided at: [\[regulations.gov\]](https://regulations.gov), docket # NOAA-NOS-2021-0114]. Following the close of the public comment period, NOAA will continue to seek engagement and input from consulting parties in order to inform the Section 106 review. Options for consulting parties include individual consultations upon request.

Public scoping meetings will be hosted virtually on the Zoom online platform and require registration to participate on the following dates:

- Wednesday, December 8, 2021, 6:00 PM HST
Register at:
https://zoom.us/meeting/register/tZ0vc--przotHdAlz-shgXe_ceEcH-RSB1b7
- Saturday, December 11, 2021, Noon (12:00 PM) HST
Register at:
https://zoom.us/meeting/register/tZAocO6urTMiHtXpAGJq5_4YODHChiPlz1qN
- Tuesday, December 14, 2021, 6:00 PM HST
Register at:
<https://zoom.us/meeting/register/tZ0pcGurTopHNc8OXiGhIAntQ5mhGrdAe>
- Thursday, December 16, 2021, 3:00 PM HST
Register at:
https://zoom.us/meeting/register/tZMpfuiprTwsEt3p_c569qkQUaYxgHo7JJXV

Hāmama 'ia nā hālāwai lehulehu a pau
i ka hāpai 'ana i ka mana'o ma ka 'ōlelo Hawai'i a ho'opa'a kūhelu 'ia.
We welcome comments in 'ōlelo Hawai'i (Hawaiian language) at all public scoping meetings.

Conclusion

On behalf of NOAA, we respectfully request your review and consideration of the information contained in this letter and additional information at this website
<https://www.papahanaumokuakea.gov>.

Should you wish to register as a consulting party please submit the Consulting Party Response Form (Attachment B). If you choose to submit a letter of interest, please include the following information:

- Organization/Agency/Native Hawaiian organization (NHO)
- Organization/Agency/NHO address, telephone number, email
- Point of Contact (POC) and/or Authorized Representative (AR)
- POC or AR address, telephone number, email
- Geographic and/or cultural areas of interest and/or expertise
- If desired, the letter may also include comments you may have on historic properties within the proposed area of potential effects or that may be beyond the boundaries of the proposed area of potential effects but associated with traditional and customary practices, as well as the names and contact information of Native Hawaiian descendants with ancestral, lineal or cultural connection to or knowledge of Papahānaumokuākea; cultural practitioners; fishers (commercial, recreational, and subsistence); NHOs; individuals; or organizations who may have a cultural affiliation and historical properties information within the proposed area of potential effects.

Please send the Consulting Party Response Form (Attachment B) and/or letter of interest via email to pmnm.section106@noaa.gov or via U.S. Postal Service to:

Papahānaumokuākea Marine National Monument
Attn: Response to Section 106 Letter
NOAA/Daniel K. Inouye Regional Center
1845 Wasp Blvd, Building 176
Honolulu, HI 96818

Further information is available at <https://www.papahanaumokuakea.gov>. Should you have any questions, please contact Kalani Quiocho, Cultural Resources Coordinator for NOAA Office of National Marine Sanctuaries - Pacific Islands Region, at pmnm.section106@noaa.gov.

Mahalo,

Athline M. Clark

Athline Clark
Superintendent

Attachments

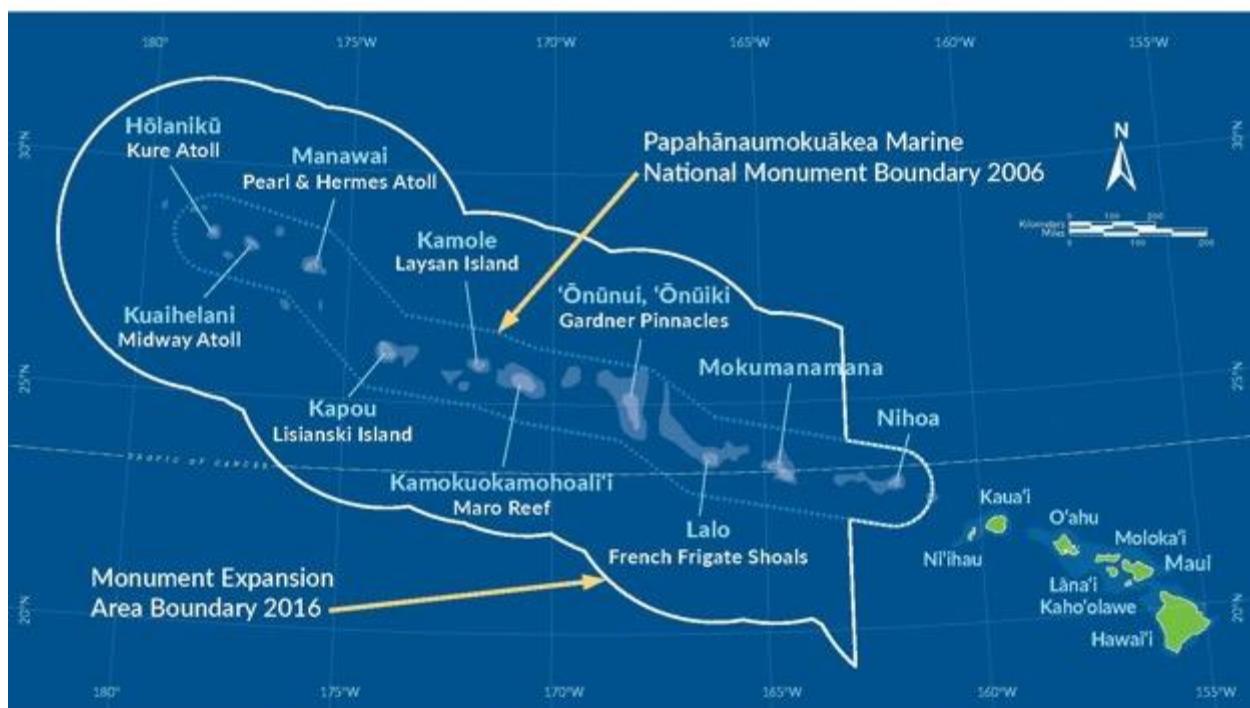
Selected background information:

The Papahānaumokuākea 2020 State of the Monument Report can be downloaded at:
<https://sanctuaries.noaa.gov/science/condition/pmnm/>

Guidance on consultation with Native Hawaiian organizations by the Advisory Council on Historic Preservation: <https://www.achp.gov/sites/default/files/guidance/2020-01/ConsultationwithNHOshandbookupdate29Jan2020final.pdf>

Information about Section 106 of the National Historic Preservation Act can be found here: <http://www.achp.gov/work106.html>

Attachment A



Attachment B

Consulting Party Response Form for Section 106 Review Process

Aloha - Thank you for your interest in consulting on NOAA's proposed sanctuary designation process for Papahānaumokuākea Marine National Monument (PMNM). Consultation is the process of seeking, discussing, and considering the views of consulting parties and how this undertaking affects historic properties. Consulting parties play an important role in the Section 106 process and are provided with opportunities to share their views, receive and review pertinent information, offer ideas, and consider possible mitigation efforts if potential impacts to historic properties are identified. NOAA has identified members of Native Hawaiian organizations, fishers (commercial, recreational, and subsistence), representatives of local government, and other parties as potential consulting parties. It is up to you to decide how actively you want to participate in consultation.¹ Pursuant to the regulations implementing the National Historic Preservation Act, Native Hawaiian organizations are specifically afforded a reasonable opportunity to identify their concerns about historic properties; advise on the identification and evaluation of historic properties, including those of traditional, religious, and cultural importance; articulate their views on the undertaking's effects on such properties; and participate in the resolution of adverse effects. See 36 C.F.R. 800.2(c)(2)(ii)(A).

Please complete this form and return it via email to pmnm.section106@noaa.gov or via U.S. Postal Service to:

Papahānaumokuākea Marine National Monument
Attn: Response to Section 106 Letter
NOAA/Daniel K. Inouye Regional Center
1845 Wasp Blvd, Building 176
Honolulu, HI 96818

If desired, you may also include comments below on the proposed area of potential effects, any information you may have on historic properties or cultural resources within the area of potential effects, or that may be beyond the boundaries of the area of potential effects but associated with traditional and customary practices.

¹ Advisory Council on Historic Preservation, *Protecting Historic Properties: A Citizen's Guide to Section 106 Review*, available electronically at https://www.achp.gov/sites/default/files/documents/2021-01/CitizenGuide2021_011321.pdf.

Attachment B

Consultation Participation

I accept NOAA's invitation to be a consulting party on the proposed undertaking.

I do not wish to participate in consultation on the undertaking. (Please note you may request to rejoin the consultation process later.)

Contact Information Preference

Please take this opportunity to provide and/or update your contact information with us, including your mailing address, email address, and phone number. Please note that our preference is to conduct all future correspondence via email. However, if you are unable to receive correspondence via email and would prefer to be contacted via postal mail or telephone, please check one of the boxes below.

Name/Point of Contact:

(First) _____
(Last) _____

Title (if applicable): _____

Name of Agency/Organization/Native Hawaiian organization:

Address: (Street) _____

(City/Town) _____ (State) _____

Phone: _____

Email: _____

Geographic and/or Cultural Areas of Interest and/or Expertise:

Please provide all future correspondence via (mark response):

Email
 U.S. Postal Service
 Telephone

Appendix 3. Confirmed consulting parties

‘Āina Momona

Advisory Council on Historic Preservation (AChP)

Chief of Naval Operations, Cultural Resources Team, Department of the Navy

Daughters of Hawai‘i

Hale Halawai ‘Ohana O Hanalei

Hawai‘i Department of Education Office of Hawaiian Education

Hawai‘i Department of Land and Natural Resources

Honolulu Community College

International Midway Memorial Foundation

Kai Palaoa

Kānehūnāmoku Voyaging Academy

Kiamanu Project/Nā Kia‘i Nihokū

Lineal descendant

Malama Manō/Moana Ohana

Mauliola Endowment

Mauna Kea Anaina Hou

Moana Ohana/Lawai`a Pono

Nā Maka Onaona

Native Hawaiian Individual

Native Hawaiian Individual

Native Hawaiian Individual

Naval History and Heritage Command, Department of the Navy

Office of Hawaiian Affairs

‘Ohana Hāpai, ‘Ohana Kahaunaele, ‘Ohana Ayau

Pacific Agricultural Land Management Systems

Papahānaumokuākea Native Hawaiian Cultural Working Group

Pi‘ihonua Hawaiian Homestead Community Association/Sovereign Council of Hawaiian Homestead Associations

Society for Hawaiian Archaeology

State Historic Preservation Division (SHPD)

Tokai University, School of Humanities

Tokyo University of Marine Science and Technology

Appendix 4. DLNR-DAR's determination of no historic properties affected, and SHPD's concurrence



Memorandum:

To: Alan Downer, Administrator
State Historic Preservation Division

Attn: Stephanie Hacker, Historic Preservation Archaeologist IV

From: Dawn N.S. Chang, Chairperson
Department of Land and Natural Resources 

Subject: Hawaii Revised Statutes §6E-8 Compliance – Request Review of Proposed
Sanctuary Designation of the State Waters within the Papahānaumokuākea
Marine National Monument, State of Hawai'i, Northwestern Hawaiian
Islands

The Department of Land and Natural Resources (DLNR) is requesting a letter of determination for the proposed project to designate the marine area of Papahānaumokuākea Marine National Monument (Papahānaumokuākea) as a national marine sanctuary which includes State of Hawai'i waters and submerged lands. The letter is sought in conjunction with the ongoing National Historic Preservation Act (NHPA) Section 106 review process.

In 2006, the President established Papahānaumokuākea to preserve the unique areas of the Northwestern Hawaiian Islands. The original boundary included the islands and atolls from Nihoa to Kure Atoll, including Midway and surrounding waters and submerged lands to fifty nautical miles. This included all lands and waters in the Northwestern Hawaiian Islands that are under the State of Hawai'i jurisdiction. In 2016, Proclamation 9478 expanded the Monument into the waters and submerged lands to the seaward limit of the U.S. Exclusive Economic Zone, the Monument Expansion Area. In December of 2020, Congress directed the National Oceanic and Atmospheric Administration (NOAA) to initiate a national marine sanctuary designation process under the National Marine Sanctuaries Act. NOAA is initiating designation in partnership with the State of Hawai'i (the State). NOAA and the State are preparing a draft environmental impact statement (DEIS) to evaluate potential environmental effects of these actions. The DEIS will meet National Environmental Policy Act and Hawaii Environmental Policy Act requirements to identify and describe the potential effects of the Proposed Action and reasonable alternatives, on the human environment. Potential impacts will include possible impacts to Papahānaumokuākea's cultural and historic resources including Traditional Cultural Properties and archaeological sites.

Project Description

There is a long history of considering this area for national marine sanctuary designation, beginning with an Executive Order in 2000 by President William J. Clinton for the establishment of the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve. Groundwork was laid for national marine sanctuary designation when the monument was designated in 2006 by President George W. Bush. The proclamation in 2016 by President Barack H. Obama expanding Papahānaumokuākea also called for initiating the process to designate a national marine sanctuary. Then in December of 2020, Congress directed NOAA to initiate the process to designate Papahānaumokuākea as a national marine sanctuary under the National Marine Sanctuaries Act.

Designation as a national marine sanctuary would strengthen and increase the long-term protections already existing in the monument by enhancing authorities and the regulatory and enforcement framework. Many of Papahānaumokuākea's extensive education, outreach, and research accomplishments have been executed under the authority of the National Marine Sanctuaries Act. Sanctuary designation will ensure the full benefits and expertise offered by the National Marine Sanctuary System and staff. The current co-management structure with four co-trustees (the State through DLNR), the Secretaries of the U.S. Department of Interior and the U.S. Department of Commerce, and OHA), and seven co-managers (DLNR Division of Aquatic Resources, DLNR Division of Forestry and Wildlife, NOAA National Marine Fisheries Service, NOAA Office of National Marine Sanctuaries, USFWS Refuges, USFWS Ecological Services, and OHA) will continue.

The proposed area of potential effects for this project is the entirety of the marine area of Papahānaumokuākea, including state waters and submerged lands, and the Monument Expansion Area. The project is subject to review under Hawaii Revised Statutes (HRS) §6E-8 because the inclusion of State waters and submerged lands may affect historic properties.

Summary of Historic Properties

The Northwestern Hawaiian Islands (NWHI) holds important cultural, historical, and archaeological importance. When agencies propose undertakings that may affect the cultural landscape, the potential impacts to these values must be taken into consideration.

Under HRS §6E-8, proposed State projects that may affect aviation artifacts, burial sites, and historic properties require review.¹ An aviation artifact is defined as "airplanes, fallen aircraft, crash sites, or any objects or materials associated with the history of aerospace in Hawaii which are over fifty years old, or determined to be of exceptional historic significance by the department."² A burial site is defined as "any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods are interred, and its immediate surrounding archaeological context."³ A historic property is defined as "any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old."⁴ These properties include properties listed on the Hawai'i Register of Historic Places (HRHP) and the National Register of Historic Places (NRHP).

¹ Haw. Rev. Stat. §6E-8.

² Haw. Rev. Stat. §6E-2.

³ *Id.*

⁴ *Id.*

Historic properties as defined under the NHPA mean any prehistoric or historic districts, sites, buildings, structures, or objects included in, or eligible for inclusion in the NRHP maintained by the Secretary of Interior.⁵ The term includes properties of traditional religious and cultural importance to Native Hawaiian Organizations and properties that meet the NRHP criteria. As part of sanctuary designation, these cultural values are also considered within the framework of the National Environmental Policy Act and Hawaii Environmental Policy Act through analysis in the DEIS, draft Management Plan, and the Cultural Impact Assessment.

The Hawaiian Archipelago has a history of hundreds of years of intensive maritime activity, and thus possesses many historical and archaeological resources such as shipwrecks and other types of maritime heritage sites including historic anchorage sites. Aviation in Hawai‘i also has a significant past. Naval aviation exercises in the NWHI began in the early 1930s with activity at French Frigates Shoal and Midway Atoll increasing during wartime preparations. Losses during the Battle of Midway June 4-7, 1942, and subsequent intensive aviation activities at Midway during subsequent decades have added to the submerged aircraft resource.

NOAA, the State, and USFWS also share the statutory responsibility to inventory, evaluate and protect these resources, guided by the NHPA and other preservation laws. An archaeological survey within the NWHI began in 2002 and continued opportunistically through 2018. In addition to the terrestrial archaeological properties of the atolls and islands, there are more than 60 reported vessel losses in the historic record, and hundreds of sunken naval aircraft lost within Papahānaumokuākea’s currently existing marine boundaries. NOAA’s Maritime Heritage Program maintains the database (MS Access/GIS-compatible) on these heritage properties within Papahānaumokuākea.

A full list and detailed description of these historic maritime properties is attached.

Historic Significance

The historic properties within Papahānaumokuākea have not all been individually assessed for significance. NOAA considers all properties to be potentially significant. Furthermore, the whaler *Two Brothers*, discovered in 2008, is listed on the NRHP and the Hawai‘i Register of Historic Places (HRHP).

Chapters one and two of the Maritime Heritage Plan include more detailed explanations of the historical, cultural, and archaeological significance of Papahānaumokuākea and its various historic properties.

Project Effects

DLNR believes that there will be no direct or indirect impacts to significant properties because the proposed action is administrative and there will be no development or physical alterations to the properties. Pursuant to Hawaii Administrative Rules §13-275-7, DLNR recommends that a “no historic properties affected” determination be established.

Mitigation

The proposed action will increase these management measures and protections. All projects in Papahānaumokuākea will require a permit with associated review and provision of permit conditions to protect tangible and intangible resources. Regulated activities may be permitted to occur within

⁵ 36 C.F.R. § 800.16.

Papahānaumokuākea only if an applicant can demonstrate that their proposed activities are consistent with the goals of Papahānaumokuākea and meet all relevant findings criteria to support issuance of the permit.

Applications are reviewed by managers, scientists, and other experts from the Co-Trustee agencies and by Native Hawaiian cultural reviewers. The Monument Management Board may require applicants to submit additional information, comply with special conditions, or undergo additional training to meet this requirement. Permit applications are posted for public notification, and applications with activities in State waters are approved by the State Board of Land and Natural Resources Land. Any actions within Papahānaumokuākea are also individually subject to all applicable State and Federal laws including HRS Chapter 6E and Section 106 of the NHPA. Chapter five of the Maritime Heritage Plan covers management of the maritime heritage resources in the monument in more detail.

If you have any questions about the proposed sanctuary designation, please feel free to contact Ryan Okano, DLNR Division of Aquatic Resources Ecosystem Protection Program Manager, by email at ryan.ly.okano@hawaii.gov.

Attachments

Photos of the Two Brothers Site
Provided by NOAA.

Rough Map

The locations of maritime heritage sites are roughly specified on the map.

Summary of Properties

This document was produced by NOAA for the current Section 106 process.

Maritime Heritage Plan (2011)

This document guides current maritime heritage management in Papahānaumokuākea.

For the purposes of this document, the Maritime Heritage Plan can be found on the [Papahānaumokuākea website](#).



Two Brothers site: Cooking Pot



Two Brothers site: Blubber hook



Summary of Known Historical and Archaeological Properties within PMNM

7/08/2022

Background:

The Northwestern Hawaiian Islands (NWHI) not only feature unique natural ecosystems, the area possesses important cultural, historical, and archaeological significance as well. When federal agencies propose undertakings that may affect the cultural landscape, the potential impacts to these values must be taken into consideration. The National Historic Preservation Act of 1966 (NHPA), specifically NHPA Section 106, is one part of this process. Section 106 review requires federal agencies to consider the effects of their undertakings on certain cultural, historical, and archaeological resources which the Act defines as "historic properties."

Historic properties as defined by the NHPA means any prehistoric or historic districts, sites, buildings, structures or objects included in, or eligible for inclusion in the National Register of Historic Places maintained by the Secretary of Interior. The term includes properties of traditional religious and cultural importance to Native Hawaiian Organizations and that meet the National Register criteria. As part of sanctuary designation, these cultural values are also considered within the framework of the National Environmental Policy Act (e.g., within the draft Environmental Impact Statement, draft Management Plan, and the State's Cultural Impact Assessment).

Historic properties as defined by NHPA also include historical and archaeological resources that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and exhibit one or more criteria:

- A. That are associated with events that have made a significant contribution to the broad patterns of our history; or
- B. That are associated with the lives of persons significant in our past; or
- C. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- D. That have yielded, or may be likely to yield, information important in prehistory or history.

The Hawaiian Archipelago has a history of hundreds of years of intensive maritime activity, and thus possesses many historical and archaeological resources such as shipwrecks and other types of maritime heritage sites. NOAA, the State of Hawai'i, and the U.S. Fish and Wildlife Service also share the statutory responsibility to inventory, evaluate and protect these resources, guided by the NHPA and other preservation laws. Archaeological survey within the NWHI was begun during the NOWRAMP research expedition in 2002 and continued opportunistically through 2018. In addition to the terrestrial archaeological properties of the atolls and islands, there are more than 60 reported vessel losses in the historic record, and hundreds of sunken naval aircraft lost within the Monument's currently existing marine boundaries. NOAA's

Maritime Heritage Program maintains the database (MS Access/GIS-compatible) on these heritage properties within the Monument.

This document acknowledges the cultural significance of the NWHI (above) and, additionally, provides a brief summary of the subset of currently known (discovered/located) maritime heritage shipwreck and aircraft properties (historical and archaeological resources) within the marine environment of the Papahānaumokuākea Marine National Monument, prior to sanctuary designation-related Section 106 consultations.

Whaling vessels:

Western whaling activities represent a global industrial pursuit, one which brought European and American voyagers into the Pacific in the late 18th/early 19th centuries. Whaling was often the context for cultural contacts with the foreigners. At the peak of historic whaling activity, hundreds of whaling vessels called in Hawai‘i annually. Ships not only needed provisions, they needed crews; whaling captains constantly needed to recruit for labor. Hawaiians quickly adapted the skills necessary to sail and work these foreign vessels, and many young Hawaiian men found employment on board whalers, venturing again for the first time in hundreds of years beyond the waters of the Hawaiian Kingdom.

The wrecks of whaling vessels can preserve aspects of ship construction and fitting out for the voyage, the tools and whalecraft of the 19th century, and evidence of the wrecking event and subsequent rescue and salvage itself. Certain individuals, such as carpenter James Robinson, had an important influence on the history of the islands (opening the first modern shipyard) following the dual shipwrecks of the British whalers *Pearl* and *Hermes* in 1822. There are ten recorded losses of British and American whaling vessels in PMNM, five of which have been located by NOAA and assessed. These whaler wrecks are scattered archaeological sites comprised generally of heavy ceramics and iron/copper artifacts (e.g., bricks, anchors, try pots, ballast, cannon, hull sheathing...the wooden structure having deteriorated long ago) subject to powerful shallow water surf, surge and storm effects. (The predominantly low integrity ratings for all sites reflect the dynamic environment of the NWHI.) The whaler *Two Brothers*, discovered in 2008, is now listed on the National Register of Historic Places.

Site Name (whalers)	Atoll Location	Year Lost	Property Type	NRHP status and criteria (ONMS)	Description	Defining Features	Site Integrity	Survey Date(s)/Record
Parker	Kure	1842	arch site	TBD	406-ton American whaling ship; built New Bedford.	ship's equipment elements (windlass, anchors, rigging, ship's bell); whalecraft (blubber hook, tryworks bricks)	low; scattered artifact site	Discovered 2003; survey complete in 2006; site plan, cruise report, web content, digital images
Gledstones	Kure	1837	arch site	TBD	428-ton British whaling ship; built 1827 Leith, Scotland	ship's equipment elements (ballast, anchor, cannon)	low; scattered artifact site	Discovered/surveyed 2008; site plan, cruise report, web content, digital images
Pearl	Pearl and Hermes	1822	arch site	eligible (D)	British whaling vessel	ship structure (keel/keelson); ship's	medium; confined scatter site	Discovered 2005; surveyed 2006-2007; site plan, cruise report, web content, digital

						equipment elements (anchors, rigging, fasteners, cannon, grinding wheel, pintle/gudgeon); whalecraft (tryworks bricks, trypots)		images
Hermes	Pearl and Hermes	1822	arch site	eligible (D)	British whaling vessel	ship's equipment elements (anchors, rigging, fasteners, cannon; whalecraft (tryworks bricks, trypots))	medium; scattered arch site	Discovered 2005; surveyed 2006-2007; site plan, cruise report, web content, digital images
Two Brothers	French Frigate Shoals	1823	arch site	listed NRHP (A, B, D)	217-ton whaling ship out of Nantucket, Captain George Pollard Jr.	ship's equipment elements (rigging, anchors, cast iron cooking pots, ceramics and glass); whalecraft (rubber hooks, lances, try pots, tryworks bricks, harpoon tips)	low; large arch scatter site	discovered 2008; site plan, cruise report, web content, digital images; possible associated site east of original location discovered 2021

Merchantmen:

Even after they had been placed on Western charts, the low islands and atolls of the Hawaiian archipelago (without navigational aids) presented hazardous obstacles for commercial vessels transiting the Pacific. Ships that strayed off course and fell prey to these shallow and unseen reefs included iconic Pacific lumber schooners and iron-hulled square-rigged tall ships of a bygone age. Wooden sailing vessels like *Carrollton* and *Churchill* are archaeological sites of scattered iron and steel artifacts and features (e.g., anchors, windlass, ship's pumps, chain), while iron and steel-hulled ships like *Dunnottar Castle*, *Quartette*, and *Mission San Miguel*, have greater site integrity, exhibiting more complete site structure. Even relatively modern ships like *Mission San Miguel*, a former 500-foot WWII T2 tanker, are subject to the forces of nature. The steel ship's aft section lies crushed on its side, the ship's forward section broken and lost altogether.

Site Name (merchants)	Atoll Location	Year Lost	Property Type	NRHP status and criteria (ONMS)	Description	Defining Features	Site Integrity	Survey Date(s)/Record
Carrollton	Midway	1906	arch site	not eligible	1450-ton American sailing bark; built Bath, Maine 1872	ship's equipment elements (windlass, aux boiler, ship's pump, hawse pipes, rigging, pintle/gudgeon, anchors, anchor chain, fasteners)	low; scattered artifact site	Surveyed 2003; site plan; site photographs; historical docs
Dunnottar Castle	Kure	1885	arch site	eligible (D)	1750-ton British iron-hulled tall ship; built Glasgow 1874	hull sections, deck machinery, anchors, cargo (coal blocks), mast sections, rigging	high; large area major site, hull portions, features, artifacts	Discovered 2006; survey 2007 and 2008; site plan, cruise report, web content, digital images
Churchill	French Frigate Shoals	1917	arch site	TBD	four-masted wooden merchant lumber schooner built	deck machinery, ship's pumps, hawse pipes, wire rigging, fasteners, blocks	medium; large arch scatter site	Surveyed 2007; site plan, cruise report, web content, digital images
Quartette	Pearl and Hermes	1952	arch site	TBD	former WWII Liberty ship built	major engine shaft propeller features and large steel hull/cargo mast sections	high; arch confined scatter site both inside/outside reef crest	Surveyed 2002; follow up 2006; GPS survey started 2007; survey outside reef 2008; site photographs; historical photographs; historical docs

USNS Mission San Miguel	Maro Reef	1967	structure	TBD	523-foot WWII T2 tanker built	gun tubs, cargo masts	medium; intact stern on port side; mangled midships area	site photographs; ship plans; historic photographs; salvage and assessment docs;
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Fishing/miscellaneous vessels:

Fishing in the Northwestern atolls has a long and varied history, from Native Hawaiians making regular canoe trips to Mokupapapa for turtles and seabirds and traditional resources, to Western sailing ships exploit the area in the 19th century for seals, reef fish, turtles, sharks, birds, pearl oysters and sea cucumbers. The history of some of these shipwrecks remains unknown, but the types of propulsion make it very likely that some were long-range fishing sampans. Distinctive Hawaiian fishing sampans, a local hybrid of original Japanese traditional watercraft design with modernized diesel engines, are historically associated with Hawaii's commercial tuna fishery, centered at Kewalo Basin on O'ahu, and Hawaiian Tuna Packers Ltd. established in 1916.

Site Name (fishing vessels)	Atoll Location	Year Lost	Property Type	NRHP status and criteria (ONMSI)	Description	Defining Features	Site Integrity	Survey Date(s)/Record
Mimi	Pearl and Hermes	1969	arch site	not eligible	possible fishing vessel	engine component	low; single object	2006
Oshima wreck	Pearl and Hermes	UNK	arch site	not eligible	possible fishing sampan	engine house cover and stack; engine, anchors, hawse pipes	low; partial structure and discrete features	Surveyed 2006-2007; site plan, cruise report, web content, digital images
Kaiyo Maru	Leysan	1969	arch site	not eligible	possible fishing sampan	bow structure on beach	low; partial hull	2006
steel bow wreck site	Kure	UNK	structure	not eligible	modern (fishing) vessel?	cabin house	low; partial hull	assessed 2002
Hoel Maru	Kure	1976	structure	not eligible	diesel powered steel fishing vessel	bow structure (ashore)	low; bow and stern sections intact	assessed 2002
sailing vessel	Pearl and Hermes	UNK	object	not eligible	modern sloop	fiberglass hull/cabin	medium; intact hull portion	assessed 2002
motorized vessel	Pearl and Hermes	UNK	arch site	not eligible	possible fishing sampan	single engine block	low; single object	2002; 2005 site photographs;
Paradise Queen-II	Kure	1998	object	not eligible	longline steel fishing vessel	single deck	low; partial structure	assessed 2002

Sunken military craft:

The military's activities within the Northwestern atolls dates back to the survey of the Civil War-era sloop-of-war USS *Lackawanna* at Midway Atoll in 1867...and extends through the closure of Midway Naval Air Station in 1993. Sunken military craft range in time from USS *Saginaw* lost at Kure Atoll in 1870 to a Sikorsky helicopter of more recent years. However, the significance of World War II and the Battle of Midway overshadow properties associated with other periods.

The bulk of wartime preparations took place in the main Hawaiian Islands, but the strategic location of Midway and the NWHI was clear. Tern Island at French Frigate Shoals was developed

as a staging point for flights. French Frigate Shoals had been used before World War II for seaplane maneuvers, and the shoals were a staging point for two Japanese seaplane attack/reconnaissance patrols between December 1941 and June 1942. Construction of the landing strip on Tern Island began in July 1942, but by late 1942, expendable wing tanks became available, making the intermediate staging at French Frigate Shoals unnecessary.

Midway had previously been an important stop for PanAmerican transpacific commercial flights. Initial naval plans included support for one squadron of seaplanes at the atoll. War-construction PNAB contract work began at Midway in March 1940. Three runways and two hangars were constructed on Eastern Island. Sand Island featured seaplane ramps and hangar, ordnance, radio, engine, and repair shops, communication facilities, a naval hospital, and housing. Following the Battle of Midway, plans for Midway intensified. By the spring of 1943 Midway's role was changed from a defensive to an offensive base, and construction of a major submarine base was begun. By 1944, three 471-foot piers, a 769-foot tender pier, and an ARD wharf had been completed.

The Battle of Midway, June 4-7 1942, was one of the major watershed moments of World War II and a significant historical factor in the designation of the Marine National Monument in 2006. The Monument's expansion in 2016 likely encompasses the many Japanese and American vessels and aircraft lost in the conflict. American losses totaled one fleet carrier (USS *Yorktown*) and one destroyer (USS *Hammann*) sunk, along with approximately 150 aircraft and 307 casualties. Japanese losses totaled four fleet carriers (IJN *Kaga*, *Akagi*, *Hiryu*, *Soryu*) and one heavy cruiser (IJN *Mikuma*) sunk, along with approximately 248 aircraft and 3,057 casualties. USS *Yorktown* was discovered and recorded by Robert Ballard/National Geographic in 1998. IJN *Kaga* and *Akagi* were discovered and recorded by Rob Kraft/Vulcan Inc. in 2019. Data (including positions) from these private surveys remains proprietary and has not been shared with the management agencies.

Site Name (military)	Atoll Location	Year Lost	Property Type	NRHP status and criteria (ONMS)	Description	Defining Features	Site Integrity	Survey Date(s)/Record
USS <i>Macaw</i>	Midway	1944	structure	eligible (A-D)	Naval submarine rescue/salvage vessel built	salvage machinery, naval auxiliary fittings, anchors	high; large area, major site, hull portions, features, artifacts	Surveyed 2003; site plan; site photographs; site mosaic; salvage docs; historical docs; monograph published 2022
LCVP landing craft	Midway	UNK	structure	not eligible	naval amphibious craft	ramp	medium; intact	assessed 2002
navy water barge	Midway	UNK	structure	not eligible	ferro-concrete barge	ferro-concrete construction	medium; intact	assessed 2002, 2005
navy barge	Midway	UNK	structure	not eligible	steel barge	hull	medium; intact	assessed 2002, 2007
navy landing craft	French Frigate Shoals	UNK	structure	not eligible	inverted LC	ramp	medium; relatively intact	
IJN <i>Akagi</i>	Midway	1942	structure	eligible (A-D)	Japanese Amagi-class battlecruiser converted to WWII aircraft carrier	hull, flight deck, gunnery, primary flight control, aircraft, assoc. aircraft in vicinity (presumably)	high; intact vessel	Vulcan Inc video and survey data proprietary (not shared) 2019
					Japanese Amagi-	hull, flight deck,	high; intact vessel	Vulcan Inc video and survey data

USS Kaga	Midway	1942	structure	eligible A, D)	class battlecruiser converted to WWII aircraft carrier	gunnery, primary flight control, aircraft, assoc. aircraft in vicinity (presumably)		proprietary (not shared) 2019
USS Sardinia	Kure	1870	arch site	eligible (A, B, D)	508-ton US Civil War-era Navy steam sloop; built Mare Island 1859	boiler face, anchors, cannon, engine components, rigging components	medium; large scattered artifact site	Survey complete in 2006; site plan, cruise report, web content, digital images, historical documents, 2010 monograph published University Press of Florida
USS Yorktown	Midway	1942	structure	eligible A, D)	Yorktown-class aircraft carrier	hull, flight deck, gunnery, primary flight control,	high; intact vessel	video and survey data proprietary (not shared) 1998

Naval aircraft:

It would be difficult to overemphasize the overall impact naval aviation would ultimately have on Hawai‘i and in the Pacific. Hawai‘i evolved very quickly from a few small seaplane bases to six major naval air stations operating during World War II, not to mention the aviation training activities conducted from aircraft carriers in Hawaiian waters. Naval aviation exercises in the Northwestern Hawaiian Islands began in the early 1930s, and activity at French Frigates Shoal and Midway Atoll increased during wartime preparations. Losses during the Battle of Midway June 4-7, 1942, and subsequent intensive aviation activities at Midway during subsequent decades have added to the submerged aircraft resource.

The wrecks of naval aircraft are a specific subset of archaeological resources. Even though mass produced in great number, with interchangeable engines and components, submerged aircraft wreck sites are still capable of revealing details of aircraft construction, modifications over time, and even use by aircrews. Like sunken military craft, submerged aircraft may be war graves as well. Sunken aircraft can exhibit evidence of water ditching and emergency escape, engine failure or combat loss events that led to the crash. Except for heavier features like machine guns, rotary engines and landing gear, naval aircraft are relatively fragile (composed of lightweight aluminum skin). Aircraft which ditched in “low impact” events and lost in deep waters are often amazingly intact on the seafloor. However, aircraft which crashed in “high impact” events or sunk in shallower waters are impacted by surf and surge and a very scattered archaeological sites, sometimes consisting only of a few landing gear components, or propeller, or single machine gun.

Site Name (aircraft)	Atoll Location	Year Lost	Property Type	NRHP status and criteria (ONMS)	Description	Defining Features	Site Integrity	Survey Date(s)/Record
F4U-1 Corsair	Kure	1945	object	TBD	single-seat navy fighter aircraft		low; partial feature	survey complete in 2008
Sikorsky helicopter	Kure	UNK	arch site	not eligible	partial rotor and engine elements	engine part	low; feature partially buried	
F4U Corsair	Midway	UNK	structure	TBD	single-seat navy fighter aircraft	wing/landing gear design	low; wing/partial fuselage only (inverted); engine nearby	Surveyed 2002, 2007; site plan, cruise report, web content, digital images
P-40K Warhawk	Midway	1943	arch site	not eligible	single-seat army		low; few artifacts	Surveyed 2014;

F2A Brewster Buffalo	Midway	Arch site	not eligible	fighter aircraft	single-seat navy fighter aircraft	landing gear	low; only partial landing gear	Surveyed 2015; cruise report, web content, digital images
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Miscellaneous features:

Flotsam and jetsam have deposited numerous items on the seafloor. Debris which has drifted into the PMNM or been left randomly behind (e.g., timbers from elsewhere, isolated anchors, fishing gear, discarded materials) is to be expected and, while included in research records, is without context and generally not associated with archaeological sites or historic properties. The exception to this are those artifacts that may be evidence of more complex properties or wreck sites, and artifacts associated with specific locations (context), such as multiple anchors within a known historic anchorage. Anchors in particular are multifunctional and tend to be used and reused once being lost or abandoned by a ship (for moorings, navigational markers, stored on reefs for later use, etc.).

Site Name (misc features)	Atoll/Location	Year Lost	Property Type	NRHP status and criteria (ONMS)	Description	Defining Features	Site Integrity	Survey Date(s)/Record
3 anchors near landing site	Laysan	UNK	features	not eligible		historic iron admiralty-style anchors in context	low; features	2002
2 anchors and debris	Laysan	UNK	features	not eligible	possible wreck site	historic iron admiralty-style anchors in context	low; features	2002
anchor in Welles Harbor lagoon anchorage	Midway	UNK	object	TBD		historic iron admiralty-style anchor in context	low; features	2003

JOHNSON, M.D.
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STATE OF HAWAII | KA MOKUĀINA 'O HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

STATE HISTORIC PRESERVATION DIVISION
KAKUHIHEWA BUILDING
601 KAMOKILA BLVD, STE 555
KAPOLEI, HAWAII 96707

June 7, 2024

Brian Neilson
Administrator
Division of Aquatic Resources
Department of Land and Natural Resources
1151 Punchbowl Street, Room 330
Email Reply to: Edward.L.Kekoa@hawaii.gov
Electronic Transmittal Only, No Hard Copy to Follow

IN REPLY REFER TO:
Project No.: 2022PR00296
Doc No.: 2406SH06
Archaeology
History and Culture Branch

Dear Brian Neilson:

SUBJECT: Hawai'i Revised Statutes (HRS) Chapter 6E-8 Historic Preservation Review –
Initiation of Consultation and Request for Concurrence with the Effect Determination
Proposed Sanctuary Designation of the State Waters within the Papahānaumokuākea
Marine National Monument
Northwestern Hawaiian Islands, State of Hawai'i
TMK: (5)

The State Historic Preservation Division (SHPD) received a letter from the State of Hawai'i Department of Land and Natural Resources (DLNR), Division of Aquatic Resources (DAR) to initiate the HRS Chapter 6E historic preservation review and to request the SHPD's concurrence with the effect determination for the Proposed Sanctuary Designation of the State Waters within the Papahānaumokuākea Marine National Monument in the Northwestern Hawaiian Islands (HICRIS Submission No. 2022PR00296.002). The SHPD received this submittal on May 26, 2023.

According to the letter received, in December of 2020 Congress directed the National Oceanic and Atmospheric Administration (NOAA) to initiate a national marine sanctuary designation process under the National Marine Sanctuaries Act. NOAA has initiated the designation in partnership with the State of Hawai'i. The original boundary of Papahānaumokuākea included the islands and atolls from Nihoa to Kure Atoll, including Midway and surrounding waters and submerged lands to fifty nautical miles. This included all lands and waters in the Northwestern Hawaiian Islands that are under the State of Hawai'i jurisdiction. In 2016, Proclamation 9478 expanded the Monument into the waters and submerged lands to the seaward limit of the U.S. Exclusive Economic Zone, the Monument Expansion Area.

The project is subject to review under HRS Chapter 6E-8 because of the inclusion of State waters and submerged lands. The proposed action is also a federal undertaking as defined in 36 CFR 800.16(y) and is subject to compliance with Section 106 of the NHPA. NOAA is the lead federal agency, and the Section 106 review process is on-going at this time.

DAR states that designation as a national marine sanctuary would strengthen and increase the long-term protections already existing in the monument by enhancing authorities and the regulatory and enforcement framework. Many of Papahānaumokuākea's extensive education, outreach, and research accomplishments have been executed under the authority of the National Marine Sanctuaries Act. Sanctuary designation will ensure the full benefits and expertise offered by the National Marine Sanctuary System and staff. The current co-management structure with four co-

Brian Neilson
 June 7, 2024
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trustees (the State through DLNR), the Secretaries of the U.S. Department of Interior and the U.S. Department of Commerce, and OHA), and seven co-managers (DLNR Division of Aquatic Resources, DLNR Division of Forestry and Wildlife, NOAA National Marine Fisheries Service, NOAA Office of National Marine Sanctuaries, USFWS Refuges, USFWS Ecological Services, and OHA) will continue.

According to the document received, the proposed action will increase management measures and protections. All projects in Papahānaumokuākea will require a permit with associated review and provision of permit conditions to protect tangible and intangible resources. Regulated activities may be permitted to occur within Papahānaumokuākea only if an applicant can demonstrate that their proposed activities are consistent with the goals of Papahānaumokuākea and meet all relevant findings criteria to support issuance of the permit. Any actions within Papahānaumokuākea are individually subject to all applicable State and Federal laws including HRS Chapter 6E and Section 106 of the NHPA.

The proposed project area is the entirety of the marine area of Papahānaumokuākea, including state waters and submerged lands and the Monument Expansion Area. The project area totals 373,120,000 acres.

The Hawaiian Archipelago has a history of hundreds of years of intensive maritime activity, and thus possesses many historical and archaeological resources such as shipwrecks and other types of maritime heritage sites including historic anchorage sites. Aviation in Hawai‘i also has a significant past. Naval aviation exercises in the NWHI began in the early 1930s with activity at French Frigates Shoal and Midway Atoll increasing during wartime preparations. Losses during the Battle of Midway June 4-7, 1942, and subsequent intensive aviation activities at Midway during subsequent decades have added to the submerged aircraft resource. In addition to the terrestrial archaeological properties of the atolls and islands, there are more than 60 reported vessel losses in the historic record, and hundreds of sunken naval aircraft lost within Papahānaumokuākea's currently existing marine boundaries. The historic properties within Papahānaumokuākea have not all been individually assessed for significance and integrity. DAR states that NOAA, the lead federal agency for this proposed action, considers all properties to be potentially significant. Within the project area is the whaler Two Brothers, discovered in 2008, which is listed in the National Register of Historic Places and the Hawaii Register of Historic Places. A summary of identified historic properties is provided with DAR's letter.

The DLNR DAR has determined there will be no direct or indirect impacts to significant properties because the proposed action is administrative and there will be no development or physical alterations to the properties. Pursuant to Hawaii Administrative Rules §13-275-7, DLNR DAR has recommended a "No historic properties affected" determination be established.

Based on the information received, **the SHPD concurs** with DAR's effect determination of "No historic properties affected". The SHPD's concurrence is based on the project area defined and the written scope of work received from the DAR. Any deviations from the scope of work or the project area requires the Chapter 6E historic preservation review process is re-opened prior to the project moving forward, to consider the potential for effects to historic properties resulting in project scope or project area revisions.

The SHPD requests the opportunity to review future actions proposed in the Papahānaumokuākea Marine National Monument under the HRS Chapter 6E and NHPA Section 106 historic preservation review processes, when applicable.

Please submit any forthcoming information and correspondence related to the subject project to SHPD via HICRIS under Project No. 2022PR00296 using the Project Supplement option.

The DLNR DAR and NOAA are the offices of record for this undertaking. Please maintain a copy of this letter with your environmental review record for this undertaking.

Please contact Stephanie Hacker, Historic Preservation Archaeologist IV, at Stephanie.Hacker@hawaii.gov or at (808) 692-8046, for any matters regarding archaeological resources or this letter.

Brian Neilson
June 7, 2024
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Aloha,



Jessica Puff
Architecture Branch Chief
Acting Administrator, State Historic Preservation Division

cc: Kelli Ann Koboyashi, DAR (Kelliann.Koboyashi.researcher@hawaii.gov)
Kalani Quiocho, NOAA (Kalani.Quiocho@noaa.gov)

Appendix 5. Repositories reviewed for information regarding the identification of historic properties

- State Historic Preservation Division Library, Kapolei
- Bishop Museum Library and Archives
- State of Hawai‘i public library and archives division
- Hawai‘i Maritime Center manuscripts and library inventory
- University of Hawai‘i library system
- National Archives and Records Administration (San Bruno, California; Washington, D.C.; and College Park, Maryland)
- Public and private libraries and collections (Thrum’s Hawaiian Almanac, Richard Roger’s database collection, Bob Krauss Memorial Shipwreck Article Database)
- Historic newspapers (Pacific Commercial Advertiser, Honolulu Star Bulletin, The Friend, Polynesian Paradise)
- Historic maps and navigation charts (University of Hawai‘i at Manoa Government Documents section historic maps, NOAA Office of Coast Survey Historical Maps and Chart Collection)
- Archaeological site reports (University of Hawai‘i Manoa Marine Option Program reports, Department of Defense navy shipwreck and aircraft database (Naval History & Heritage Command) and legacy report US Navy Shipwrecks in Hawaiian Waters: an Inventory of Submerged Naval Properties (Van Tilburg, 2003), Department of Homeland Security United States Coast Guard records, U.S. Army Corps of Engineers Honolulu District); NOAA Resources and Undersea Threats (RUST), MHP internal database for Pacific Islands Region)
- Archaeological survey data from: University of Hawai‘i Marine Option Program (UH MOP), NOAA MHP and Office of Exploration and Research (OER); and Online sources (International Registry of Sunken Ships, Northern Mariner Research shipwrecks database 2002, Papakilo Database, Automated Wreck and Obstruction Information System, Electronic Navigation Charts, Hawai‘i State wreck inventory)

Appendix D:

Biological Species Associated with Consultations

Table D.1a. ESA and State-Listed Marine Reptile Species of Papahānaumokuākea

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
Central North Pacific green sea turtle	Honu	<i>Chelonia mydas</i>	Resident	Threatened
Hawksbill turtle	Honu'ea	<i>Eretmochelys imbricata</i>	Resident to Main Hawaiian Islands	Endangered
North Pacific loggerhead turtle	Unknown	<i>Caretta caretta</i>	Transient	Endangered
Olive ridley turtle	Unknown	<i>Lepidochelys olivacea</i>	Transient	Threatened
Leatherback turtle	Unknown	<i>Dermochelys coriacea</i>	Transient	Endangered

Table D.1b. ESA and State-Listed Marine Mammal Species of Papahānaumokuākea

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
Hawaiian monk seal	'Ilioholoikauaua	<i>Neomonachus schauinslandi</i>	Resident	Endangered
Sperm whale	Palaoa	<i>Physeter macrocephalus</i>	Transient	Endangered
Blue whale	Koholā	<i>Balaenoptera musculus</i>	Transient	Endangered
Sei whale	Koholā	<i>B. borealis</i>	Transient	Endangered
Fin whale	Koholā	<i>B. physalus</i>	Transient	Endangered
North Pacific right whale	Koholā	<i>Eubalaena japonica</i>	Transient	Endangered
False killer whale, Main Hawaiian Islands insular	Unknown	<i>Pseudorca crassidens</i>	Unknown	Endangered

This table has been updated since the draft EIS, based on additional information provided through the ESA consultation process.

Table D.1c. ESA and State-Listed Marine Fish Species of Papahānaumokuākea

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
Giant manta ray	Hāhālua	<i>Manta birostris</i>	Unknown	Threatened
Oceanic whitetip shark	Manō	<i>Carcharhinus longimanus</i>	Unknown	Threatened
Shortfin mako shark	Manō	<i>Isurus oxyrinchus</i>	Unknown	Candidate
Scalloped hammerhead shark, Indo West Pacific	Unknown	<i>Sphyrna lewini</i>	Unknown	Threatened

This table has been updated since the draft EIS, based on additional information provided through the ESA consultation process.

Table D.1d. ESA and State-Listed Seabird Species of Papahānaumokuākea

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
Short-tailed albatross	Mōlī	<i>Phoebastria albatruss</i>	Resident	Endangered
Band-rumped storm petrel	‘Ake‘ake	<i>Oceanodroma castro</i>	Transient	Endangered
Hawaiian petrel	‘Ua‘u	<i>Pterodroma sandwichensis</i>	Transient	Endangered
Newell’s shearwater	‘A‘o	<i>Puffinus newelii</i>	Resident	Threatened

This table has been updated since the draft EIS, based on additional information provided through the ESA consultation process.

Table D.1e. ESA and State-Listed Coral Species of Papahānaumokuākea

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
No common name	Unkown	<i>Acropora globiceps</i>	Resident	Threatened

Of the above listed species, NMFS has designated critical habitat for the Hawaiian monk seal and the false killer whale Main Hawaiian Islands insular population. Critical habitat for the Hawaiian monk seal spans from shore to 20 fathoms around every island, atoll, and bank of Papahānaumokuākea, except Sand Island at Midway Atoll, including all beach areas, sand spits and islets, inner reef waters, and ocean waters. Critical habitat for the Main Hawaiian Islands insular population of the false killer whale includes waters from the 45-meter depth contour to the 3,200-meter depth contour around the main Hawaiian Islands from Ni‘ihau east to Hawai‘i. No other critical habitat has been designated in the project area for any other of the species of Table D.1.

Table D.2a. ESA and State-Listed Shorebird and Land Bird Species of Papahānaumokuākea

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
Laysan suck	Koloa pōhaka	<i>Anas platyrhynchos laysanensis</i>	Resident	Endangered
Laysan finch	'Ekupu'u	<i>Telespyza cantans</i>	Resident	Endangered
Nihoa millerbird	Ulūlu	<i>Acrocephalus familiaris</i>	Resident	Endangered
Nihoa finch	Palihoa	<i>Telespyza ultima</i>	Resident	Endangered

Table D.2b. ESA and State-Listed Terrestrial Plant Species of Papahānaumokuākea

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
Nihoa fan palm	Loulu	<i>Pritchardia remota</i>	Endemic	Endangered
No common name	'Ihi	<i>Portulaca villosa</i>	Endemic	Endangered
No common name	Pōpolo	<i>Solanum nelsonii</i>	Endemic	Endangered
No common name	'Ōhai	<i>Sesbania tomentosa</i>	Endemic	Endangered
No common name	Unknown	<i>Amaranthus brownii</i>	Endemic	Critically endangered
No common name	Unknown	<i>Cenchrus agrimonoides var. laysanensis</i>	Endemic	Endangered, potentially extinct

Table D.3a. Marine Mammals of Papahānaumokuākea: Family Phocidae

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
Hawaiian monk seal	'Ilioholoikauaua	<i>Neomonachus schauinslandi</i>	Resident	Endangered

Table D.3b. Marine Mammals of Papahānaumokuākea: Family Balaenopteridae (Baleen Whales)

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
Humpback whale	Koholā	<i>Megaptera novaeangliae</i>	Resident	Least Concern
Blue whale	Koholā	<i>Balaenoptera musculus</i>	Transient	Endangered
Sei whale	Koholā	<i>B. borealis</i>	Transient	Endangered
Fin whale	Koholā	<i>B. physalus</i>	Transient	Vulnerable
North Pacific right whale	Koholā	<i>Eubalaena japonica</i>	Transient	Endangered
Bryde's whale	Palaoa	<i>Balaenoptera edeni</i>	Unknown	Least Concern
Minke whale	Unknown	<i>Balaenoptera acutorostrata</i>	Unknown	Least concern

Table D.3c. Marine Mammals of Papahānaumokuākea: Family Physeteridae (Toothed Whales)

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
Sperm whale	Palaoa	<i>Physeter macrocephalus</i>	Transient	Endangered

Table D.3d. Marine Mammals of Papahānaumokuākea: Family Ziphiidae (Beaked Whales)

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
Baird's beaked whale	Unknown	<i>Berardius bairdii</i>	Transient	Least Concern
Blainville's beaked whale	Unknown	<i>Mesoplodon densirostris</i>	Transient	Least Concern
Cuvier's beaked whale	Unknown	<i>Ziphius cavirostris</i>	Transient	Least concern

Table D.3e. Marine Mammals of Papahānaumokuākea: Family Delphinidae (dolphins)

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
False killer whale	Koholā	<i>Pseudorca crassidens</i>	Transient	Near threatened
Killer whale	Unknown	<i>Orcinus orca</i>	Transient	Data deficient
Melon-headed whale	Unknown	<i>Peponocephala electra</i>	Transient	Least concern
Short-finned pilot whale	Unknown	<i>Globicephala macrorhynchus</i>	Transient	Least concern

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
Bottlenose dolphin	Nai`a	<i>Tursiops truncatus</i>	Resident	Least concern
Spinner dolphin	Nai`a	<i>Stenella longirostris</i>	Resident	Least concern
Striped dolphin	Nai`a	<i>Stenella coeruleoalba</i>	Transient	Least concern
Rough-toothed dolphin	Unknown	<i>Steno bredanensis</i>	Transient	Least concern
Pantropical spotted dolphin	Unknown	<i>Stenella attenuata</i>	Transient	Least concern
Pacific White-sided dolphin	Unknown	<i>Lagenorhynchus obliquidens</i>	Transient	Least concern
Pygmy killer whale	Unknown	<i>Feresa attenuata</i>	Transient	Least concern
Risso's dolphin	Unknown	<i>Grampus griseus</i>	Transient	Least concern

Table D.3f. Marine Mammals of Papahānaumokuākea: Family Kogiidae

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
Pygmy sperm whale	Unknown	<i>Kogia breviceps</i>	Transient	Least concern
Dwarf sperm whale	Unknown	<i>Kogia sima</i>	Transient	Least concern

Table D.4. Shorebirds and Land birds of Papahānaumokuākea

Common Name	Hawaiian Name	Scientific Name
Laysan duck	Koloa pōhaka	<i>Anas platyrhynchos laysanensis</i>
Nihoa millerbird	Ulūlu	<i>Acrocephalus familiaris</i>
Laysan finch	‘Ekupu‘u, ‘Ainohu kauo	<i>Telespyza cantans</i>
Nihoa finch	Palihoa	<i>Telespyza ultima</i>
Bristle-thighed curlew	Kioea	<i>Numenius tahitiensis</i>
Wandering tattler	‘Ūlili	<i>Heteroscelus incanus</i>
Ruddy turnstone	‘Akekeke	<i>Arenaria interpres</i>
Pacific golden plover	Kōlea	<i>Pluvialis fulva</i>

Table D.5. Seabirds of Papahānaumokuākea

Common Name	Hawaiian Name	Scientific Name	PMNM Status	BCC?	IUCN Status	ESA Status
Black-footed albatross	Ka'upu	<i>Phoebastria nigripes</i>	I	Y	NT	T
Laysan albatross	Mōlī	<i>Phoebastria immutabilis</i>	I	Y	NT	NL
Short-tailed albatross	Makalena	<i>Phoebastria albatrus</i>	I	Y	E	E
Bonin petrel	Nunulu	<i>Pterodroma hypoleuca</i>	I	Y	V	NL
Hawaiian petrel	'Ua'u	<i>Pterodroma sandwichensis</i>	M	Y	E	E
Bulwer's petrel	'Ou	<i>Bulweria bulwerii</i>	I	Y	LC	NL
Wedge-tailed shearwater	'Ua'u kani	<i>Puffinus pacificus</i>	I	N	LC	ENL
Christmas shearwater	'Ao'ū	<i>Puffinus nativitatis</i>	I	Y	V	E
Newell's shearwater	'A'o	<i>Puffinus newelli</i>	M	Y	E	E
Tristram's storm-petrel	'Akihike'ehi'ale	<i>Oceanodroma tristrami</i>	I	Y	LC	NL
Band-rumped storm petrel	'Ake'ake	<i>Hydrobates castro</i>	M	Y	LC	NL
Red-tailed tropicbird	Koa'e 'ula	<i>Phaethon rubricauda</i>	I	Y	LC	NL
White-tailed tropicbird	Koa'e kea	<i>Phaethon lepturus</i>	I	N	LC	NL
Masked booby	'Ā, Akeake	<i>Sula dactylatra</i>	I	N	LC	NL
Brown booby	'Ā	<i>Sula leucogaster</i>	I	N	LC	NL
Red footed booby	'Ā, Akeake	<i>Sula sula</i>	I	N	LC	NL
Nazca booby	'Ā, Akeake		M	N	LC	NL
Great frigatebird	'Iwa	<i>Fregata minor</i>	I	Y	LC	NL
White tern	Manu o Kū	<i>Gygis alba</i>	I	N	LC	NL
Grey-backed tern	Pakalakala	<i>Sterna lunata</i>	I	Y	LC	NL

Common Name	Hawaiian Name	Scientific Name	PMNM Status	BCC?	IUCN Status	ESA Status
Sooty tern	‘Ewa‘ewa	<i>Sterna fuscata</i>	I	N	LC	NL
Least tern	Unknown	<i>Sternula antillarum</i>	I	Y	LC	NL
Black noddy	Noio, lae hina	<i>Anous minutus</i>	I	Y	LC	NL
Brown noddy	Noio koha	<i>Anous stolidus</i>	I	N	LC	NL
Blue noddy	Noio hinaoku, manuohina	<i>Procelsterna cerulea</i>	I	Y	LC	NL

1 E = endemic to PMNM; I = indigenous to PMNM; M = non-breeding in PMNM. Source: USFWS

This table has been updated since the draft EIS, based on additional information provided through the ESA consultation process.

Table D.6a. Marine Alien Species of Papahānaumokuākea: Phylum Annelida (worms)

Species Name	Alien/ Cryptogenic	Distribution	Notes
<i>Chaetopterus variopedatus</i>	A	Kuaihelani	
<i>Kuwaita (Lumbrineris) heteropoda</i>	C	Kuaihelani	
<i>Lumbrineris sphaerocephala</i>		No data	Not in database
<i>Branchiomma cingulatum</i>	A	Kuaihelani	
<i>Potamethus elongatus</i>	C	Kuaihelani	
<i>Sabellastarte spectabilis</i>	A	Multiple locations	
<i>Potamilla sp.</i>	C	Kuaihelani	
<i>Hydroides brachyacantha</i>	A	Kuaihelani	
<i>Hydroides elegans</i>	A	Kuaihelani	
<i>Hydroides exaltata</i>	A	Kuaihelani	
<i>Pseudovermilia pacifica</i>	A	Kuaihelani	
<i>Salmacina tribanchiata</i>	A	Kuaihelani	
<i>Protula cf. atypa</i>	C	Kuaihelani	Only genus in database
<i>Vermiliopsis sp.</i>	C	Kuaihelani	
<i>Lanice conchilega</i>	A	Kuaihelani	

Table D.6b. Marine Alien Species of Papahānaumokuākea: Phylum Arthropoda (crustaceans, barnacles, amphipods)

Species Name	Alien/ Cryptogenic	Distribution	Notes
<i>Chthamalus proteus</i>	A	Kuaihelani	
<i>Caprella scaura</i>	A	Kapou	
<i>Ligia (Megaligia) exotica</i>	A	Kuaihelani	
<i>Amphibalanus reticulatus</i>	A	No data	Maybe seen at Lalo

Species Name	Alien/ Cryptogenic	Distribution	Notes
<i>Amphibalanus venustus</i>	A	No data	Not established, seen only on R/V <i>Sette</i> hull during port inspection

Table D.6c. Marine Alien Species of Papahānaumokuākea: Phylum Bryozoa

Species Name	Alien/ Cryptogenic	Distribution	Notes
<i>Amathia distans</i>	A	Kuaihelani	
<i>Amathia verticillata</i>	A	Kuaihelani, Kapou	
<i>Watersipora</i> sp.	C	Kuaihelani	Uncertain whether occurs
<i>Schizoporella</i> cf <i>errata</i>	A	Kuaihelani	
<i>Bugula</i> sp.	A	Kuaihelani	

Table D.6d. Marine Alien Species of Papahānaumokuākea: Phylum Chordata (non-vertebrates)

Species Name	Alien/ Cryptogenic	Distribution	Notes
<i>Diplosoma listerianum</i>	A	Kuaihelani	
<i>Didemnum perlucidum</i>	A	Kuaihelani	
<i>Didemnum</i> sp.	A	Kuaihelani	
<i>Lissoclinum fragile</i>	A	Kuaihelani	
<i>Polyclinum constellatum</i>	A	Kuaihelani	
<i>Ascidia archaia</i>	A	Kuaihelani	
<i>Ascidia sydneiensis</i>	A	‘Ōnūnui and ‘Ōnuiki, Kuaihelani	
<i>Phallusia nigra</i>	A	Kuaihelani	
<i>Ascidia</i> sp.	A	Kuaihelani	
<i>Microcosmus exasperatus</i>	A	Multiple locations	
<i>Herdmania pallida</i>	A	Kuaihelani	
<i>Cnemidocarpa irene</i>	A	Multiple locations	
<i>Polycarpa aurita</i>	C	Multiple locations	
<i>Styela canopus</i>	A	Kuaihelani	
<i>Symplegma brakenhielmi</i>	A	Kuaihelani	
<i>Symplegma</i> sp.	A	Manawai	
<i>Botrylloides</i> sp.	A	Kuaihelani	
<i>Botryllus</i> sp.	A	Kuaihelani	

Table D.6e. Marine Alien Species of Papahānaumokuākea: Subphylum Vertebrata (fish)

Species Name	Alien/ Cryptogenic	Distribution	Notes
<i>Lutjanus fulvus</i>	A	Lalo	
<i>Lutjanus kasmira</i>	A	Multiple locations	
<i>Cephalopholis argus</i>	A	Multiple locations	

Table D.6f. Marine Alien Species of Papahānaumokuākea: Phylum Cnideria

Species Name	Alien/ Cryptogenic	Distribution	Notes
<i>Pennaria disticha</i>	A	Multiple locations	
<i>Diadumene lineata</i>	A	Manawai	Not established

Table D.6g. Marine Alien Species of Papahānaumokuākea: Phylum Porifera (sponges)

Species Name	Alien/ Cryptogenic	Distribution	Notes
<i>Heteropia glomerosa</i>	A		
<i>Halichondria</i> sp.	C	Manawai	Uncertain whether occurs
<i>Chelonaplysilla violacea</i>	C	Kuaihelani	
<i>Darwinella australiensis</i>	C	Kuaihelani	
<i>Dictyodendrilla dendyi</i>	C	Kuaihelani	
<i>Dysidea arenaria</i>	C	Kuaihelani	
<i>Cladocroce burapha</i>	C	Kuaihelani	
<i>Haliclona</i> sp.	C	Kuaihelani	
<i>Callyspongia</i> sp.	C	Kuaihelani	
<i>Lissodendoryx similis</i>	C	Kuaihelani	
<i>Monanchora</i> cf. <i>unguiculata</i>	A	Kuaihelani	
<i>Monanchora quadrangulata</i>	A	Kuaihelani	
<i>Crella</i> (<i>Ynesia</i>) <i>spinulata</i>	C	Kuaihelani	
<i>Phorbas burtoni</i>	C	Kuaihelani	
<i>Strongylamma wilsoni</i>	C	Kuaihelani	
<i>Tedania</i> (<i>Tedania</i>) <i>strongylostyla</i>	C	Kuaihelani	
<i>Tethya deformis</i>	C	Kuaihelani	

Table D.6h. Marine Alien Species of Papahānaumokuākea: Phylum Rhodophyta (red algae)

Species Name	Alien/ Cryptogenic	Distribution	Notes
<i>Hypnea</i> sp.	C	Multiple locations	
<i>Chondra</i> sp.	C	Kuaihelani, Manawai	
<i>Acanthophora spicifera</i>	A	Kuaihelani	

Appendix E: Analysis of Relevant Federal and State Statutes

The resources within the proposed sanctuary are protected under numerous federal and State laws and their clarifying regulations. These include, but are not limited to, those listed below. Specific descriptions of some that contribute to day-to-day management are further described.

Laws and Existing Management (EIS Section 4.2)

Numerous federal and state agencies provide regulatory oversight to the resources within or near the study area. Many of these are particularly relevant to the study area, as they provide the primary current regulatory framework for resources in the study area. This appendix provides information on these federal and State laws and policies and how they intersect with management of the study area. NOAA's proposed sanctuary designation complies with all applicable environmental laws and regulations associated with the study area.

Federal Actions – Statutes

Antiquities Act of 1906, 54 U.S.C. § 320301, et seq.

This act grants the President the authority to designate national monuments on federal lands that contain historic landmarks, historic and prehistoric structures, or other objects of historic or scientific interest. The President is directed to reserve areas of land as monuments that are confined to the smallest area compatible with the proper care and management of the objects to be protected. Through Executive Order, President George W. Bush used the Antiquities Act to establish Papahānaumokuākea Marine National Monument in 2006. President Barack Obama also used the Antiquities Act to create the Monument Expansion Area.

National Marine Sanctuaries Act of 1972, as amended, §§16 U.S.C. 1431-1445c

The National Marine Sanctuaries Act (NMSA) authorizes the Secretary of Commerce to designate and protect areas of the marine environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational or esthetic qualities as national marine sanctuaries. The 2000 Amendments to the NMSA specifically authorized designation of a Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve) to be managed by the Secretary of Commerce. President William J. Clinton subsequently issued Executive Order 13178 and Executive Order 13196 to establish the Reserve and manage it under the NMSA. Executive Order 13178 also established a Reserve Advisory Council pursuant to section 315 of the NMSA.

National Wildlife Refuge System Administration Act of 1966, as amended, 16 U.S.C. §§ 668dd-ee

The National Wildlife Refuge System Administration Act (NWRSA) serves as the “organic act” for the National Wildlife Refuge System. The NWRSA consolidated the lands administered by the Secretary of the Interior, through the U.S. Fish & Wildlife Service (FWS), into a single National Wildlife Refuge System. The NWRSA establishes a process for determining

compatible uses of NWRs so long as wildlife conservation is the overarching principle. The NWRSAA reinforces and expands the “compatibility standard” of the Refuge Recreation Act. The Refuge Administration Act authorizes the Secretary to “permit the use of any area within the System for any purpose including, but not limited to, hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible with the major purposes for which such areas were established.” The NWRSAA draws on the following previous acts:

- National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. §§ 668dd-ee)
- Refuge Recreation Act of 1966, as amended (16 U.S.C. 460k-460k-4)
- Fish and Wildlife Improvement Act of 1978, as amended, 16 U.S.C. 742l
- Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742a-742m)

The NWRSAA notes that the Comprehensive Conservation Plan required for each national wildlife refuge “shall, to the maximum extent practicable and consistent with this Act consult with adjoining federal, state, local, and private landowners and affected State conservation agencies; and coordinate the development of the conservation plan or revision with relevant State conservation plans for fish and wildlife and their habitats.”

Federal Actions – Executive Orders

Executive Order 1019—Hawaiian Islands Reservation, February 3, 1909

Executive Order (E.O.) 1019 established the Hawaiian Islands Reservation as a preserve and breeding grounds for native birds, making it unlawful for any person to hunt, trap, capture, willfully disturb, or kill any bird, or take their eggs. The E.O. defined the boundaries of the reservation as the “islets and reefs” of all land except Midway atoll. The Reservation became the Hawaiian Islands National Wildlife Refuge, managed by the U.S. Fish and Wildlife service.

Executive Order 10413, Restoring Kure (Ocean) Island to the Jurisdiction of the Territory of Hawaii, 17 FR 10497 (November 17, 1952)

During the build-up to World War II, the U.S. Navy took control and jurisdiction of Kure Atoll and built a LORAN (Long Range Navigation) station (E.O. 7299, February 10, 1936). E.O. 10413 restored jurisdiction of the atoll and surrounding reefs to the Territory of Hawaii, while still providing for the Navy to maintain and access the LORAN station.

Executive Order 13022—Administration of the Midway Islands, November 1, 1996 (61 FR 56875)

E.O. 13022 executed the transfer of control of Midway Atoll, including the land and marine waters to 12 nm, under Department of the Interior jurisdiction. The U.S. Fish and Wildlife Service (FWS) administers the islands as the Midway Atoll National Wildlife Refuge in a manner consistent with Executive Order 12996 of March 25, 1996, to: (1) maintain and restore natural biological diversity; (2) provide for the conservation and management of fish, wildlife and their habitats; (3) fulfill international treaty obligations with respect to fish and wildlife; (4) provide opportunities for scientific research, environmental education, and compatible wildlife dependent recreational activities; and (5) in a manner compatible with refuge purposes,

recognize and maintain the historic significance of the Midway Islands consistent with E.O. 11593.

Executive Order 13089—Coral Reef Protection, June 11, 1998 (63 FR 32701)

E.O. 13089 for Coral Reef Protection created the U.S. Coral Reef Task Force, headed by the Secretaries of Commerce and Interior, fostering cooperation for protection of marine resources between these two agencies.

Executive Order 13158—Marine Protected Areas, May 26, 2000 (65 FR 34909)

E.O. 13158 for marine protected areas (MPAs) directed the Department of Commerce and Department of the Interior to develop a national system of MPAs. This E.O. included a Memorandum regarding Protection of U.S. Coral Reefs in the Northwest Hawaiian Islands, directing the Secretaries to “provide for culturally significant uses of the Northwest Hawaiian Islands’ marine resources by Native Hawaiians.” Native Hawaiians with decades of first-hand knowledge of the ecosystem’s fragility and dangers of over-exploitation gave testimony and support for greater protection of this area.

Executive Order 13178—Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, December 4, 2000 (65 FR 76903)

This E.O. established the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve) in the federal waters of the Northwestern Hawaiian Islands from 3 - 50 nm around all islands and atolls. The Reserve remains under the proposed action and is managed by the U.S. Department of Commerce through NOAA. The E.O. stated “[t]he Secretary shall initiate the process to designate the Reserve as a national marine sanctuary pursuant to sections 303 and 304 of the National Marine Sanctuaries Act.”

Executive Order 13196—Final Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, January 18, 2001 (66 FR 7395)

This executive order amended 13178, making the Reserve Preservation Areas permanent, capping the take of pelagic trolling and bottom fishing allowed in the Reserve, and establishing discharge regulations.

Federal Actions – Presidential Proclamations

Presidential Proclamations 8031—Establishment of the Northwestern Hawaiian Islands National Monument, June 15, 2006 (71 FR 36443)

This proclamation established the Northwestern Hawaiian Islands Marine National Monument, including all land and waters to 50 nm, establishing a co-management authority between the Department of Interior (through the U.S. Fish and Wildlife Service, Department of Commerce (through the Office of National Marine Sanctuaries), and the State of Hawaii (through the Department of Land and Natural Resources).

Presidential Proclamation 8112—Amending Proclamation 8031 of June 15, 2006, To Read, “Establishment of the Papahānaumokuākea Marine National Monument,” February 28, 2007 (72 FR 10031)

This proclamation renamed the Monument and required that living resources harvested in the Monument under a Native Hawaiian practices permit must be consumed in the Monument.

Presidential Proclamation 9478—Papahānaumokuākea Marine National Monument Expansion (81 FR 60227)

On August 26, 2016, President Barack Obama issued Presidential Proclamation 9478, which established the Monument Expansion Area to include the waters and submerged lands seaward of PMNM and extending to the seaward limit of the United States Exclusive Economic Zone (EEZ) west of 163° West longitude. Proclamations 8031, 8112, and 9478 are discussed in detail in the EIS.

Federal Actions – Secretarial Orders

Department of the Interior Secretary’s Order 3217—Designation of the Battle of Midway National Memorial (September 13, 2000)

This order recognized the Battle of Midway as one of the two most significant dates in U.S. Naval history. The memorial ensures that “the heroic courage and sacrifice of those who fought against overwhelming odds to win an incredible victory will never be forgotten.”

Federal Actions – Regulations

Papahānaumokuākea Marine National Monument Regulations, 50 CFR Part 404

These regulations codify prohibitions and management measures set forth in Presidential Proclamations 8031 and 8112, including those relating to boundaries, access, ship reporting requirements for Areas to be Avoided and Particularly Sensitive Sea Areas, prohibited activities, regulated activities, emergencies and law enforcement, armed forces actions, commercial fishing, permitting procedures and criteria, international law, boundaries of ecological preserves, special preservation areas and Midway Atoll Special Management Area. These regulations are discussed in detail in the EIS.

Papahānaumokuākea Marine National Monument Provisions, December 3, 2008, 73 FR 73592

These regulations, incorporated into 50 CFR 404, were promulgated following the International Maritime Organization 2008 designation of waters of the Monument as Particularly Sensitive Sea Areas, which expanded and consolidated the six existing Areas To Be Avoided, established in 1981, in the Monument into four larger areas, enlarged the class of vessels to which they apply, and established a ship reporting system for vessels transiting the Monument.

State of Hawai‘i Authorities and Actions

Hawaii Organic Act of April 30, 1900, c339, 31 Stat.141 § 2

The Organic Act established the Territory of Hawai‘i after the illegal overthrow of the Hawaiian Kingdom and the subsequent annexation of the Republic of Hawai‘i by the U.S.

Hawaii Admission Act of March 18, 1959, Pub. L. 86-3, 73 Stat. 4 § 2

The Admission Act granted the Territory of Hawai‘i statehood status and created the public land trust. Section 5 of the act established the public land trust. The trust has five trust purposes: the support of public schools and other public educational institutions, the betterment of the conditions of Native Hawaiians, the development of farm and home ownership, and for the provision of lands for public use. The State of Hawai‘i and U.S. government are trustees with Native Hawaiians and the general public as beneficiaries. This trust was adopted in the Constitution of the State of Hawai‘i.

Constitution of the State of Hawaii, Article XI, §§ 1, 4, 6, and 9 and Article XII § 7

The State of Hawai‘i has constitutional public trust duties to protect and conserve its natural resources for future generations. The State also has a constitutional duty to protect Native Hawaiian traditional and customary practices.

Hawaii Environmental Policy Act, Title 19, Chapter 343, Hawaii Revised Statutes

The Hawaii Environmental Policy Act (HEPA), provides the basis for the public environmental review through disclosure documents such as an environmental impact statement or environmental assessment for certain individual or agency actions. The requirements of HEPA are presented in Hawaii Administrative Rules (HAR) Chapter 200.1. Comments received during public scoping are included in Appendix F, and relevant comments have been addressed in the EIS and attached appendices. This EIS and the associated public process meet the requirements of HEPA and HAR Chapter 200.1.

Physical Environment (EIS Section 4.3)

Federal Authorities

Air Quality and Climate Change

Federal Clean Air Act, 42 U.S.C. § 7401 et seq.

The federal Clean Air Act requires the USEPA to set National Ambient Air Quality Standards (40 CFR part 50) for six principal pollutants (“criteria” air pollutants) that can be harmful to public health and the environment (USEPA, 2022a).

Section 176(c)(4) of the federal Clean Air Act contains provisions that apply specifically to federal agency actions, including actions that receive federal funding. This section of the Clean Air Act requires federal agencies to ensure that their actions are consistent with the Clean Air Act and with applicable state air quality management plans. The USEPA’s general conformity

rule applies to federal actions occurring in nonattainment or in certain designated maintenance areas when the total direct and indirect emissions of nonattainment pollutants (or their precursors) exceed specified thresholds under National Ambient Air Quality Standards. The federal agency providing the funding for the proposed action is responsible for submitting conformity determination documentation to the USEPA (USEPA, 2022b; USEPA, 2022c). Due to the remote nature of the sanctuary, permitted activities depend on large vessel support for both transport and accommodations, which would be controlled under sanctuary designation. The number of permits has been in decline over the past 10 years, rendering fewer vessels operating within the proposed sanctuary. While the lands of Midway Atoll are outside of the proposed sanctuary, the National Wildlife Refuge accommodates 50–60 staff at any given time, and relies on supply barges that travel through the proposed sanctuary, and airplanes to maintain operations, a 2,600-mile round trip. The proposed sanctuary designation does not include stationary sources of emissions and would not result in emissions that exceed thresholds. Therefore, the proposed sanctuary designation is not subject to a formal conformity determination.

During scoping, the EPA recommended that the draft EIS include a draft general conformity determination to fulfill the public participation requirements of 40 CFR 93.156. In response, NOAA has reviewed the requirements of the Clean Air Act, and determined that a conformity determination is not required as the proposed action meets the *de minimis* standard on 40 CFR 93.153(c)(2). Specifically, the proposed action falls under three categories of actions determined to “result in no emissions increase or an increase in emissions that is clearly *de minimis*;” 1) “Continuing and recurring activities such as permit renewals where activities conducted will be similar in scope and operation to activities currently being conducted,” and 2) “Rulemaking and policy development and issuance,” and 3) “Routine operation of facilities, mobile assets and equipment.”

MARPOL Annex VI Regulations for the Prevention of Air Pollution from Ships

Annex VI of MARPOL, the International Convention for the Prevention of Pollution from Ships, addresses air pollution from ocean-going ships. Annex VI’s international air pollution requirements set limits on nitrogen oxides emissions and require use of fuel with lower sulfur content to reduce ozone-producing pollution. Designated emission control areas set more stringent standards for sulfur oxides, nitrogen oxides, and particulate matter. These requirements apply to vessels operating in U.S. waters as well as ships operating within 200 nautical miles of the coast of North America, also known as the North American Emission Control Area (USEPA, 2021). In 2011, the International Maritime Organization adopted more stringent measures to significantly reduce the amount of greenhouse gas emissions from ships; these measures went into effect on January 1, 2013 (IMO, 2019a). Transiting vessels, primarily international cargo ships, would be allowed to use identified sealanes in the sanctuary to avoid dangerous sea conditions, thus reducing fuel consumption, operating in calmer conditions, and reducing emissions.

Geology and Oceanography

Submerged Lands Act, 43 U.S.C. § 1301 *et seq.*

Under the Submerged Lands Act, the location of energy and mineral resources determines whether or not they fall under state control. The Submerged Lands Act granted states title to the natural resources located within 3 miles of their coastline. For purposes of the Submerged Lands Act, the term “natural resources” includes oil, gas, and all other minerals. The State has designated all State waters of Papahānaumokuākea, which includes a prohibition “to engage in any activity ... that can or does result in damaging or destroying coral.” This effectively prohibits the exploitation of natural resources, as defined in the Submerged Lands Act, within State waters.

Water Quality

Marine water quality is regulated by numerous statutes and government agencies. These serve to protect the marine environment from the various point and nonpoint sources of marine pollution.

Federal Water Pollution Control Act, commonly known as the Clean Water Act (CWA), 33 U.S.C. § 1251 *et seq.*

The CWA was passed in 1972 by Congress, and amended in 1987. Point source discharges into waters of the United States are prohibited under the CWA unless authorized by a National Pollutant Discharge Elimination System (NPDES) permit. NPDES permits require compliance with technology- and water quality-based treatment standards. Two sections of the CWA deal specifically with discharges to marine and ocean waters.

In 2018, the EPA added Tern Island to the List of Impaired Waters (Section 303(d)) for trash, determining that waters around Tern Island are not meeting the water quality standards of Hawai‘i for trash based on a Center for Biological Diversity review. The EPA recommended that NOAA consider strategies focused on minimizing trash and marine debris in the waters around Tern Island.

CWA Section 312 (33 U.S.C. § 1322) establishes a regulatory framework to protect human health and the aquatic environment from disease-causing microorganisms that may be present in sewage from boats. Pursuant to Section 312 of the CWA and its implementing regulations (33 CFR part 159), all recreational boats with installed toilet facilities must have an operable Marine Sanitation Device on board. All installed Marine Sanitation Devices must be USCG-certified. USCG-certified devices are so labeled except for some holding tanks, which are certified by definition under Section 312 of the CWA (33 U.S.C. § 1322).

Under CWA Section 403 (33 U.S.C. § 1343), any discharge to the territorial seas (3 miles) or beyond also must comply with the Ocean Discharge Criteria established under CWA Section 403.

Section 404 of the CWA establishes a permit program to regulate the discharge of dredged or fill material into waters of the U.S., including wetlands. Section 404 requires a permit before dredged or fill material may be discharged into waters of the U.S., unless the activity is exempt from Section 404 regulation (e.g., certain farming and forestry activities) (USEPA, 2022d).

Under Section 401 of the CWA, a federal agency may not issue a permit or license to conduct any activity that may result in any discharge into waters of the U.S. unless a Section 401 water quality certification is issued, or certification is waived. States and authorized tribes where the discharge would originate are generally responsible for issuing water quality certifications. In cases where a state or tribe does not have authority, the USEPA is responsible for issuing certification (33 U.S.C. § 1341) (USEPA, 2022e).

CWA Section 311 pertains to cleanup and removal of oil and/or hazardous substance discharges into navigable waters, adjoining shorelines, or certain other areas. Section 311(c)(1)(A) requires the President to ensure effective and immediate removal of a discharge by, for example, directing all federal, state, and private actions to remove a discharge or mitigate or prevent a substantial threat of a discharge (USEPA, 2023a).

The proposed action complies with the CWA through the permit process, ensuring permittees have an acceptable plan for addressing vessel discharge. Without a permit, discharge must be limited to discharge incidental to vessel operations such as approved marine sanitation device effluent, cooling water, and engine exhaust. Within Special Preservation Areas or the Midway Atoll Special Management Area, discharge is limited to “vessel engine cooling water, weather deck runoff, and vessel engine exhaust.” The exceptions to this activity must also be conducted in accordance with other applicable federal statutes and regulations. Sanctuary designation also confers the powers of the NMSA, which allow for emergency action and cost recovery in the event of damage or potential damage to sanctuary resources, such as with a vessel grounding in which fuel, oil, or other fluid or debris may be released.

Vessel Incidental Discharge Act (Title IX of the Frank LoBiondo Coast Guard Authorization Act of 2018, Pub. L. 115-282)

On December 4, 2018, the President signed into law the "Vessel Incidental Discharge Act" (VIDA) (Title IX of the Frank LoBiondo Coast Guard Authorization Act of 2018). The VIDA restructures how EPA and the U.S. Coast Guard (USCG) regulate incidental discharges, primarily from commercial vessels, into waters of the United States and the contiguous zone. Specifically, the VIDA requires EPA to develop new national standards of performance for commercial vessel discharges and the USCG to develop corresponding implementing regulations.

On October 26, 2020, EPA's Notice of Proposed Rulemaking for the VIDA was published in the Federal Register for public comment. A Supplemental Notice of Proposed Rulemaking followed on October 18, 2023. The proposed rule would reduce the environmental impact of discharges, such as ballast water, that are incidental to the normal operation of commercial vessels. When finalized, this new rule will streamline the current patchwork of federal, state, and local requirements that apply to the commercial vessel community and better protect our nation's waters.

The following interim requirements continue to apply until EPA publishes final standards and the USCG publishes corresponding implementing regulations:

- For large commercial vessels (\geq 79 feet in length), except fishing vessels: The existing vessel discharge requirements established through the EPA 2013 Vessel General Permit

(VGP) and the USCG ballast water regulations, and any applicable state and local government requirements.

- For small vessels (<79 feet in length) and fishing vessels of any size: The existing discharge requirements for ballast water only established through the EPA 2013 VGP and the USCG ballast water regulations, and any applicable state and local government requirements.

Prior to the VIDA, the USEPA regulated incidental discharges from commercial vessels under the NPDES Permit Program, primarily through two NPDES general permits: the Vessel General Permit and the Small Vessel General Permit (USEPA, 2022f).

Title I of the Marine Protection, Research, and Sanctuaries Act (MPRSA), also known as the Ocean Dumping Act, t, 33 U.S.C. §§ 1401 *et seq.*

The MPRSA, also known as the Ocean Dumping Act, prohibits dumping into marine waters material that would unreasonably degrade or endanger human health or the marine environment. Ocean dumping cannot occur unless a permit is issued under the MPRSA. The USEPA is the permitting agency for the ocean disposal of all materials except dredged material. In the case of ocean disposal of dredged material, the decision to issue a permit is made by the USACE, using the USEPA's environmental criteria and subject to USEPA's concurrence (USEPA, 2022g).

Oil Pollution Act (OPA) of 1990, 33 U.S.C. § 2701 *et seq.*

The OPA of 1990 streamlined and strengthened the USEPA's ability to prevent and respond to catastrophic oil spills. A trust fund financed by a tax on oil is available to clean up spills when the responsible party is incapable or unwilling to do so. The OPA requires oil storage facilities and vessels to submit to the federal government plans detailing how they will respond to large discharges. The USEPA has published regulations for aboveground storage facilities; the USCG has done so for oil tankers. The OPA also requires the development of Area Contingency Plans to prepare and plan for oil spill response on a regional scale (USEPA, 2022h). See Section 4.6.2 of the final EIS for more information.

MARPOL Annex I Regulations for the Prevention of Pollution by Oil

Annex I of MARPOL, the International Convention for the Prevention of Pollution from Ships, addresses pollution of the marine environment by oil pollution from ships. It details discharge requirements for prevention of pollution by oil and oily materials (IMO, 2019b).

MARPOL Annex IV Regulations for the Prevention of Pollution by Sewage from Ships

Annex IV of MARPOL, Prevention of Pollution by Sewage from Ships, contains a set of regulations regarding the discharge of sewage into the sea from ships, including: regulations regarding the ships' equipment, systems for the control of sewage discharge, the provision of port reception facilities for sewage, and requirements for survey and certification. The regulations in Annex IV prohibit the discharge of sewage into the sea within a specified distance from the nearest land, unless otherwise provided, since it is generally considered that bacterial

processes in the ocean are capable of processing raw sewage (IMO, 2019b). Proposed regulations either prohibit or regulate this discharge throughout the proposed sanctuary.

MARPOL Annex V Regulations for the Prevention of Pollution by Garbage from Ships

The Act to Prevent Pollution from Ships (33 U.S.C. § 1901 *et seq.*) implements provisions of the International Convention for the Prevention of Pollution from Ships (MARPOL), including Annex V, which regulates prevention of pollution by garbage from ships. The discharge of solid wastes in United States waters is regulated under the Act to Prevent Pollution from Ships, as amended by the Marine Plastic Pollution Research and Control Act of 1987, and the Clean Water Act. Under these laws, the disposal of plastics is prohibited in all waters, and other garbage, including paper, glass, rags, metal, and similar materials, is prohibited within 14 miles (12 nm) from shore (unless macerated). Garbage ground to pieces under an inch can be discharged beyond 3 nm from shore (IMO, 2019c). Proposed regulations either prohibit or regulate this discharge throughout the proposed sanctuary.

Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.*

The CZMA provides incentives for coastal states to develop and implement coastal area management programs. Among other things, the CZMA requires states that participate in the National Coastal Zone Management Program (CZMP) to develop coastal nonpoint pollution control programs. Appendix C provides a summary of ONMS' consultation with the State of Hawai'i Office of Planning CZMP. NOAA has concluded the CZMA consultation process and documented all compliance steps in the final EIS, Appendix C.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601-9675, as amended

CERCLA addresses cleanup of hazardous substances and mandates liability for environmental cleanup on those who release hazardous substances into the environment. In conjunction with the CWA, it requires preparation of a National Contingency Plan for responding to oil or hazardous substances release. The EPA placed Tern Island on the Federal Agency Hazardous Waste Compliance Docket in 2004 due to legacy military waste and associated hazardous substances buried on the island. EPA and USFWS completed a CERCLA Preliminary Assessment (PA) of Tern Island in 2014, confirming that polychlorinated biphenyls (PCBs), lead, hydrocarbons, dioxins/furans, and heavy metals from onsite buried military wastes have been released in sensitive marine and terrestrial environments based on elevated levels of PCBs in monk seals inhabiting the area. In 2019, EPA completed a removal assessment for hazardous substances on the island. Data from the report demonstrated elevated concentrations of metals, PCBs and polycyclic aromatic hydrocarbons in soil, groundwater, and surface water in the vicinity of the legacy "Bulky Dump" and the southeastern corner of the island. EPA is coordinating with USFWS to conduct a removal action of these hazardous substances to mitigate impacts from the Bulky Dump (exposed during Hurricane Walaka) and other isolated areas of concern. At this time, Tern Island has not been included on the National Priorities List.

Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.*

RCRA addresses hazardous waste management, establishing duties and responsibilities for hazardous waste generators, transporters, handlers, and disposers. RCRA requires that vessels that generate or transport hazardous waste offload these wastes at treatment or disposal facilities or outside of the territorial waters of the United States.

Marine Debris Act 33 U.S.C. § 1951 *et seq.*

The Marine Debris Act, signed into law in 2006 and amended in 2012, 2018, and 2020, established a Marine Debris Program within NOAA to identify, determine sources of, assess, prevent, reduce, and remove marine debris and address adverse impacts on the U.S. economy, the marine environment, and navigation safety. The Marine Debris Act also directs NOAA to provide national and regional coordination to assist states, tribes, and regional organizations in the process of addressing marine debris, and to undertake outreach and education activities for the public and other stakeholders on sources of marine debris, threats associated with marine debris, and approaches to identifying and addressing marine debris. NOAA has had an established marine debris program for Papahānaumokuākea since 1996, including a recent update to the [Marine Debris Action Plan](#). The impact of marine debris on Papahānaumokuākea resources continues to be a primary threat, and annual clean-ups currently continue through a partnership with NOAA and the Papahānaumokuākea Marine Debris Project (PMDP). Between 1996 and 2018, NOAA removed 923 metric tons of marine debris from Papahānaumokuākea, including 74 metric tons of marine debris from shallow coral reef and shoreline environments in 2018. From 2020 to 2023, PMDP removed an additional [228 metric tons of debris](#).

State Authorities

Conservation District, Chapter 183C, Hawaii Revised Statutes

HRS Chapter 183C establishes the State's authority over submerged lands, including those of Papahānaumokuākea. The State Board of Land and Natural Resources provides a public process for review and determination of all permits requested for land uses within a conservation district. The rules for this program are presented in Hawaii Administrative Rules, Title 13, Chapter 5. This requirement will continue in the same manner under the proposed action.

Water Pollution, Chapter 342D, Hawaii Revised Statutes

The Hawai‘i State Department of Health implements regulations governing water quality in the State (HAR Chapter 11-54), including ensuring water quality standards are met. Chapter 11-55 includes water pollution laws and regulations, and issuing NPDES permits for point-source discharge under the authority of the CWA. The State also has Ballast Water Management rules (HAR Chapter 1-76) which complement federal regulations to prevent the introduction of invasive species through vessel ballast waters.

Biological Environment (EIS Section 4.4)

There are numerous federal and state laws and regulations providing protection of biological resources in the study area. An overview of some of the primary regulations and regulating agencies are summarized below (note, the following does not comprise a comprehensive list).

Federal Authorities

Endangered Species Act (ESA), 16 U.S.C. § 1531 et seq.

The Endangered Species Act (ESA) of 1973, as amended, provides for the conservation of species that are endangered or threatened throughout all or a significant portion of their range, and the conservation of the ecosystems on which they depend. The ESA directs all federal agencies to work to conserve endangered and threatened species and to use their authorities to further the purposes of the act. NMFS works with USFWS to manage ESA listed species. Generally, NMFS manages marine species, while USFWS manages land and freshwater species. A species is considered endangered if it is in danger of extinction throughout all or a significant portion of its range. A species is considered threatened if it is likely to become an endangered species within the foreseeable future. When listing a species as threatened or endangered, NMFS or USFWS also designates critical habitat for the species to the maximum extent prudent and determinable (16 U.S.C. § 1533(a)(3)). Section 4.4 of the EIS provides information on threatened and endangered species in the project area. Chapter 5 of the EIS analyzes the potential impacts of the designation (and not individual management activities or permitted actions) to these species. Appendix C provides a summary of the ESA Section 7 consultation process with NMFS and the USFWS.

Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. § 1801 et seq.

Under the MSA, the U.S. claimed sovereign rights and exclusive fishery management authority over all fish, and all Continental Shelf fishery resources, within the U.S. EEZ (within 230 mi [200 nm] of the shoreline). The MSA established a procedure for authorizing foreign fishing, and prohibited unauthorized foreign fishing within the U.S. EEZ.

The MSA also established national standards for fishery conservation and management within the U.S. EEZ, and created eight Regional Fishery Management Councils composed of state officials with fishery management responsibility, the regional administrators of NMFS, and individuals appointed by the Secretary of Commerce who are knowledgeable regarding the conservation and management, or the commercial or recreational harvest, of the fishery resources of the geographical area concerned. The Councils are responsible for preparing and amending fishery management plans for each fishery under their authority that requires conservation and management.

Fishery management plans (FMPs) describe the fisheries and contain necessary and appropriate conservation and management measures, applicable to foreign vessels in U.S. waters and fishing by U.S. vessels. The plans are submitted to the Secretary of Commerce, who has delegated to NOAA approval of the plans. If approved, NMFS promulgates implementing regulations. NMFS may prepare Secretarial FMPs if the appropriate Council fails to develop such a plan.

The Fishery Ecosystem Plan for the Hawaiian Archipelago (WPFMC, 2009a) and the Fishery Ecosystem Plan for Pacific Pelagic Fisheries of the Western Pacific Region (WPFMC, 2009b) cover the proposed action area and were prepared by NMFS and the Western Pacific Fishery Management Council (WPFMC) to comply with Section 303(a)(7) of the MSA to:

- Describe and identify EFH for the fishery;
- Designate Habitat Areas of Particular Concern (HAPC);
- Minimize to the extent practicable the adverse effects of fishing on EFH; and
- Identify other actions to encourage the conservation and enhancement of EFH.

EFH is broadly defined by depth in the Western Pacific Region as described in Section 4.3 of the EIS. No HAPC has been designated in the proposed action area and commercial fishing is prohibited throughout the action area by 50 CFR 404 and Presidential Proclamation 9478.

Fish and Wildlife Coordination Act and Implementing Regulations, 16 U.S.C. § 661 et seq.

Any federal agency that proposes to control or modify any body of water must first consult with the USFWS or NMFS, as appropriate, and with the head of the appropriate state agency exercising administration over the wildlife resources of the affected state. The USACE has a memorandum of understanding with the USFWS to provide a coordination act report to assist in planning efforts.

Marine Mammal Protection Act of 1972, 16 U.S.C. § 1361 et seq.

The MMPA, enacted by Congress on October 21, 1972, establishes a national policy to prevent marine mammal species and population stocks from declining beyond the point where they cease to be significant functioning elements of the ecosystems of which they are a part. The MMPA, as amended, prohibits, with certain exceptions, the "take" of marine mammals in U.S. waters and by U.S. citizens on the high seas, and the importation of marine mammals and marine mammal products into the U.S. The MMPA defines "take" as: "to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal" (16 U.S.C. § 1362(13)). Harassment means any act of pursuit, torment, or annoyance that has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or that has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment) (16 U.S.C. § 1362).

Section 101(a)(5)(A-D) of the MMPA provides a mechanism for allowing, upon request, the "incidental," but not intentional, taking, of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing or directed research on marine mammals) within a specified geographic region. The NMFS Office of Protected Resources processes applications for incidental takes of small numbers of marine mammals. Authorization for incidental takes may be granted if NMFS finds that the taking would be of small numbers, have no more than a "negligible impact" on those marine mammal species or stocks, and not have an "unmitigable adverse impact" on the availability of the species or stock for "subsistence" uses. NMFS issuance of an incidental take authorization also requires NMFS to make determinations under NEPA and section 7 of the ESA.

Migratory Bird Treaty Act of 1918, as amended, 16 U.S.C. § 703 et seq.

The Migratory Bird Treaty Act of 1918 (MBTA) implements the U.S.'s commitment to bilateral treaties, or conventions, with Great Britain, Canada, Japan, Russia, and Mexico for the

protection of shared migratory bird resources. The MBTA establishes that it is unlawful to pursue, hunt, take, capture, kill or sell migratory birds unless authorized by a permit issued by USFWS. Take is defined in regulations as: “pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect” (50 CFR § 10.12). The statute does not discriminate between live or dead birds, and gives full protection to any bird parts including feathers, eggs and nests. The MBTA protects over 800 species of birds that occur in the U.S., and the list of migratory bird species protected by the MBTA is set forth in 50 CFR § 10.13. Of these migratory bird species protected under the MBTA, 21 species of seabirds nest on the islets within Papahānaumokuākea, while an additional 47 species of shorebirds may be found transiting, resting, or foraging within the study area. NOAA has determined that the proposed action would not cause the take of any migratory bird species protected under the MBTA, as detailed in Appendix C: Consultations.

Non-indigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANCPA), 16 U.S.C. § 4701 et seq.

NANCPA mandates ballast water management for vessels entering the Great Lakes. This law was reauthorized as the National Invasive Species Act of 1996 (NISA 96; Pub. L. 104-332), which strengthened the 1990 law and required the development of voluntary ballast management guidelines for all other ships entering U.S. waters. The law also requires all vessels that enter U.S. territorial waters (with certain exemptions) to manage ballast water according to prescribed measures. NISA 96 also required the USCG to evaluate the effectiveness of the voluntary ballast management program three years after implementation. In 2004, voluntary guidelines were determined to be ineffective, and thus USCG initiated mandatory ballast management for all ships entering U.S. waters from outside the U.S. EEZ.

Under current management, permitted vessels undergo hull inspections, rodent inspections and adhere to strict cleaning protocols for personal gear and equipment. The Monument has a technical Invasive Algal Working Group, and NOAA conducts ongoing invasive species surveys.

USCG Ballast Water Management Regulation

Linked to the National Invasive Species Act of 1996, the USCG established the rule, “Standards for Living Organisms in Ships’ Ballast Water Discharged in U.S. Waters” (77 FR 17253), which is codified at 33 CFR Part 151 and 46 CFR Part 162. The final rule became effective on June 21, 2012. The rule prohibits all vessels with ballast tanks to discharge untreated ballast water into U.S. waters. Ships must also manage their ballast water by following treatment methods and good practices.

Executive Order 13112—Invasive Species, February 3, 1999 (64 FR 6183)

E.O. 13112 tasked executive departments and agencies to take steps to prevent the introduction and spread of invasive species, and to support efforts to eradicate and control invasive species that are established. E.O. 13112 also tasked the Department of the Interior with establishing an Invasive Species Advisory Committee. President Biden’s E.O. 14048 (2021) reestablished the Invasive Species Advisory Committee. The proposed action would support the agency in meeting the mandates of E.O. 13112 to prevent the introduction and spread of invasive species because it would be prohibited to introduce or otherwise release from within or into the proposed

sanctuary an introduced species. Invasive species are discussed in sections 4.2.7 and 5.2.3 of the EIS and introducing or otherwise releasing an introduced species from within or into the sanctuary is prohibited in the proposed rule.

State Authorities

Fishing in the Northwestern Hawaiian Islands, Title 12, Section 188-37, Hawaii Revised Statutes

The Board of Land and Natural Resources may issue permits for extractive activities in the Northwestern Hawaiian Islands. This state permit is part of the rules for the Northwestern Hawaiian Islands Marine Refuge and built into the current joint permitting process for the Monument.

Northwestern Hawaiian Islands Marine Refuge, Title 13, Ch. 60.5, Hawaii Administrative Rules (2005)

The Northwestern Hawaiian Islands Marine Refuge, established in 2005, includes the waters extending three miles seaward of any coastline from Nihoa to Hōlanikū (Kure Atoll), excluding Midway Atoll. Refuge rules prohibit access without a permit, and regulate extractive activities through the permit. These rules are built into the current Papahānaumokuākea permit approval process and will continue in the same manner under the proposed action.

Rules Regulating Wildlife Sanctuaries, Title 13, Ch. 126, Hawaii Administrative Rules

Hawaii Revised Statutes Title 12, Section 183D-4, provides that the Department of Land and Natural Resources may establish wildlife sanctuaries such as the Kure Atoll State Wildlife Sanctuary. The rules established to conserve, manage, and protect the indigenous wildlife of Hawai‘i and their habitats in sanctuaries are presented in Hawaii Administrative Rule Title 13, Chapter 126. The Kure Atoll State Wildlife Sanctuary was established in 1981. Green Island and Sand Island are closed wildlife sanctuaries meaning that entry is prohibited unless authorized by permit. This permit is built into the current Papahānaumokuākea permit approval process and will continue in the same manner under the proposed action.

Cultural Heritage and Maritime Heritage Resources (EIS Section 4.5)

Cultural and historical resources are regulated through numerous federal and state laws, as summarized below. Depending on the resources identified, the following authorities could apply within the study area.

Federal Authorities

National Historic Preservation Act of 1996, 54 U.S.C. § 300101 et seq.

Cultural and historical resources on state and federal lands are protected primarily through the National Historic Preservation Act (NHPA) (16 U.S.C. § 300101 *et seq.*) of 1966 and its implementing regulations (found at 36 CFR Part 800). Section 106 of the NHPA requires federal

agencies to identify and evaluate the effects of their actions on properties listed in or eligible for listing in the National Register of Historic Places (NRHP). Consultation with the State Historic Preservation Officer (SHPO), Native American tribes Tribal Historic Preservation Officer (THPO), the Advisory Council for Historic Preservation, and other interested parties is part of the regulatory process. The intent of the process is to require the federal agency, in consultation with other affected parties, to make an informed decision as to the effect its actions would have on something that may be important to our heritage. To be protected under the NHPA, a property must meet specific criteria of significance established under the NHPA's regulations at 36 CFR Part 60.

According to NHPA (36 CFR Part 800), the agency official shall apply the National Register criteria (36 CFR part 63) to properties identified within the area of potential effects that have not been previously evaluated for National Register eligibility, in consultation with the SHPO/THPO and any Indian tribe that attaches religious and cultural significance to identified properties, and guided by the Secretary's Standards and Guidelines for Evaluation. The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the agency official to reevaluate properties previously determined eligible or ineligible. The agency official shall acknowledge that Indian tribes possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.

Regarding assessment of adverse effects, NHPA (36 CFR § 800.5) states that the agency official shall apply criteria of adverse effects to historic properties within the area of potential effects, in consultation with the SHPO/THPO and any Indian tribe that attaches religious and cultural significance to identified historic properties. The agency official shall consider any views concerning such effects which have been provided by consulting parties and the public. A summary of the consultation process is provided in Appendix C. NOAA's Finding of No Historic Properties Affected for the Proposed Papahānaumokuākea National Marine Sanctuary Designation is included in Appendix C.

Archaeological Resources Protection Act of 1979, as amended, 16 U.S.C. § 470 aa-mm

The Archaeological Resources Protection Act governs the excavation of archaeological sites on federal and Indian lands in the United States, and the removal and disposition of archaeological collections from those sites. The Archaeological Resources Protection Act was enacted “to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before October 31, 1979.” This act also imposes criminal penalties for unauthorized excavations.

Native American Graves Protection and Repatriation Act of 1990, as amended, 25 U.S.C. § 3001 et seq.

This act requires federal agencies to identify and inventory possible Native American, native Alaskan, or native Hawaiian human remains, burial goods, or cultural items in their collections

and to make them available for repatriation to affiliated tribes or lineal descendants. The act also establishes procedures for handling and disposing of such remains, burial goods, or cultural items discovered on federal lands.

The ongoing protection of Papahānaumokuākea's cultural heritage is demonstrated through a series of management actions, including the development of Mai Ka Pō Mai, a collaborative management framework that guides co-trustee agencies towards integrating traditional Hawaiian knowledge systems, values, and practices into all areas of management. These and other existing management measures ensure compliance with this Act.

National Marine Sanctuaries Act, Section 301(b)(7) (16 U.S.C. § 1431(b)(7))

Section 301(b)(7) of the National Marine Sanctuaries Act authorizes NOAA to “Develop and implement coordinated plans” with various government entities. In 2000, Executive Order 13158: Marine Protected Areas reaffirmed this by stating each federal agency whose actions affect the natural or cultural resources that are protected by an MPA shall identify such actions. To the extent permitted by law and to the maximum extent practicable, each federal agency, in taking such actions, shall avoid harm to the natural and cultural resources that are protected by an MPA.

Abandoned Shipwreck Act of 1987, 43 U.S.C. § 2101 et seq.

The Abandoned Shipwrecks Act is meant to protect historic shipwrecks in U.S. waters from treasure hunters and unauthorized salvagers by transferring the title of the wreck to the U.S. state whose waters it lies in. This Act covers non-military vessels, including whalers, sampans, and fishing vessels. Shipwrecks in federal waters remain under the jurisdiction of the federal government.

Sunken Military Craft Act of 2004, 10 U.S.C. § 113 et seq.

The primary purpose of the Sunken Military Craft Act of 2004 (SMCA) is to preserve and protect from unauthorized disturbance all sunken military craft that are owned by the United States government, as well as foreign sunken military craft that lie within U.S. waters. This act asserts federal ownership over sunken military craft, regardless of their location. A number of federal agencies, such as the U.S. Navy and the U.S. Coast Guard, have jurisdiction and management over sunken military craft, including statutory authority to conduct and permit specific activities. The Act provides that no person shall engage in or attempt to engage in any activity directed at a sunken military craft that disturbs, removes, or injures any sunken military craft, except — (1) as authorized by a permit under this title by the Secretary concerned; (2) as authorized by regulations issued under this title; or (3) as otherwise authorized by law.

Antiquities Act of 1906, 54 U.S.C. § 320301 et seq.

In addition to being the authority that designated Papahānaumokuākea Marine National Monument (discussed above), this act requires a permit to excavate or remove any historic objects or antiquities from federal lands, and grants the President the authority to designate as national monuments landmarks of historic or scientific importance. The permit provisions of the Antiquities Act are generally enforced through the NHPA process.

Historic Sites, Buildings, Objects and Antiquities Act of 1935, 54 U.S.C. § 3201 et seq.

This act establishes the national policy of preserving historic sites, buildings, and objects of national significance and gives the Secretary of the Interior the power to make historic surveys and document, evaluate, acquire, and preserve archaeological and historic sites across the country. This act provided the authority behind the establishment of the National Historic Landmarks and Historic American Buildings Survey programs.

Archaeological and Historic Preservation Act (AHPA) of 1974

The AHPA applies to all federal agencies, requiring them to preserve historic and archeological objects and materials that would otherwise be lost or destroyed as a result of their projects or licensed activities or programs. The AHPA built upon the Historic Sites Act of 1935, which established historic preservation to be national policy. The act established permanent institutions and created a clearly defined process for historic preservation in the United States. Historic structures that would be affected by federal projects—or by work that was federally funded—now had to be documented to standards issued by the Secretary of the Interior. This act provides similar protections of the NHPA.

Preserve America Executive Order

This E.O. directs federal agencies to advance the protection, enhancement, and contemporary use of federal historic properties and to promote partnerships for the preservation and use of historic properties, particularly through heritage tourism.

State Authorities

Historic Preservation, Title 1, Chapter 6E, Hawaii Revised Statutes,

The Hawai‘i Historic Preservation Program is managed by the Department of Land and Natural Resources State Historic Preservation Division. The program requires review of projects that may impact a historic site.

State Historic Preservation Division Rules, Title 13, Chapters 275-284, Hawaii Administrative Rules

This section of the HAR covers rules governing the Hawai‘i Historic Preservation Program including historic preservation, archaeological site development, preservation, practices, surveys, reports, data, agency reviews, and other aspects of the program.

Socioeconomic Resources, Human Uses, and Environmental Justice (EIS Section 4.6)

Federal Authorities

Executive Order (E.O.) 12898, Federal Actions to Address Environmental Justice in Minority and Low-Income Populations and Executive Order (E.O.)

14096: Revitalizing Our Nation’s Commitment to Environmental Justice for All

E.O. 12898 and E.O. 14096 direct federal agencies to identify and address disproportionately high and adverse effects of their actions on human health and the environment of communities with environmental justice concerns. The analysis of environmental justice issues associated with the proposed action are presented in Chapter 5.

Executive Order 14008: Tackling the Climate Crisis at Home and Abroad

In 2021, President Biden signed E.O. 14008 reaffirming E.O. 12898, stating in Sec. 219 that agencies shall make achieving environmental justice part of their missions by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related, and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts. In addition, Sec. 220 of E.O. 14008 called for the creation of a White House Environmental Justice Interagency Council (Interagency Council) within the Executive Office of the President.

Executive Order 13045, Protection of Children from Environmental Health or Safety Risks

In April 1997, President Clinton signed EO 13045, Protection of Children from Environmental Health Risks and Safety Risks. This EO requires federal agencies to identify, assess, and address disproportionate environmental health and safety risks to children from federal actions.

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Appendix F:

Summary of Scoping Input on Notice of Intent and EIS Preparation Notice, and State of Hawai‘i Responses to Public Scoping Comments

F.1. Public Participation

Public involvement is a key component of both the NEPA and HEPA processes. Public input is formalized in a public scoping process and in prescribed public review/comment periods. Figure F.1 depicts the stages of public involvement in the HEPA/NEPA environmental processes, with opportunities for public input highlighted in yellow. HEPA and NEPA public involvement processes for this EIS are running concurrently to meet the requirements for both regulations.

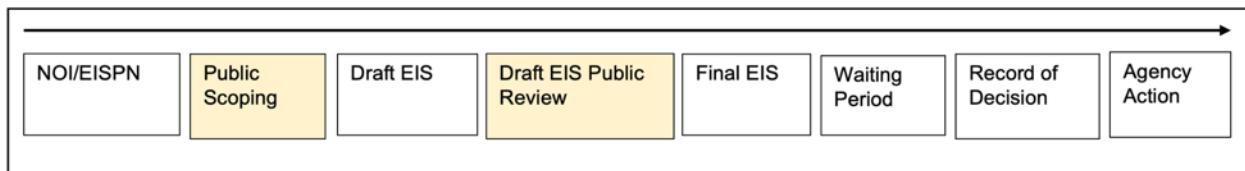


Figure F.1. NEPA/HEPA public participation process and opportunities for public input (yellow)

Notice of Intent/EIS Preparation Notice

Publication of an NOI in the Federal Register alerts the public of an agency's intent to prepare an EIS and initiates the NEPA 30-day public scoping period. The NOI for this EIS was published on November 19, 2021 with a public comment period extending through January 31, 2022 (86 FR 64904).

In accordance with HAR Section 11-200.1-23, publication of the HEPA EIS Preparation Notice (EISPN) in the State Office of Environmental Quality Control (now Environmental Review Program) bi-monthly publication, The Environmental Notice, alerts the public of the applicant's intent to prepare an EIS and initiates the HEPA 30-day public comment period. Notice of the HEPA EISPN availability was published in The Environmental Notice on December 8, 2021 with a public comment period extending through January 31, 2022. As required by HAR § 11-200.1-5(e)(4)(B), copies of the EISPN were submitted to the Hawai‘i State Library (Hawai‘i Document Center), Hilo Public Library, Lahaina Public Library, and Lihue Public Library.

Both of these public notifications included information on the public scoping meetings and how to participate in them. Additional information was provided via press releases, list-serve announcement, the Papahānaumokuākea Marine National Monument website, and the NOAA Office of National Marine Sanctuaries website.

Public consultation on effects of an action on historic properties is required in accordance with the National Historic Preservation Act (NHPA) Section 106, and HRS Chapter 343-2 requires an environmental assessment of cultural resources (Cultural Impacts Assessment or CIA) in determining the significance of a proposed project. These two processes were conducted in tandem with the HEPA/NEPA processes, and a CIA was prepared as outlined by HAR §11-200-10 and 16 through 18.

F.2. Public Scoping Summary

The purpose of a public scoping process is to help identify reasonable alternatives and potential impacts and to obtain input from the community regarding key issues of concern and resources to be addressed or analyzed through the EIS process. In this regard, it helps to define the “scope” of issues and analyses in the EIS. The intent of a scoping process is to reach out early and engage a broad range of stakeholders with the purpose of informing and requesting input. Methods to solicit public input during the scoping process for this EIS included notification, publication of project information, and invitations to participate in scoping at various stakeholder meetings and presentations.

NOAA invited federal, State, and local agencies; Native Hawaiian organizations; and the public to participate in the scoping process. Written comments were accepted throughout the public scoping period using two methods:

1. through the federal eRulemaking portal at <https://www.regulations.gov>;
2. sent in a hard copy letter via U.S. Postal Service.

Four public meetings were jointly held by NOAA and the State of Hawai‘i to gather input on the proposed sanctuary designation for Papahānaumokuākea. Public input on a variety of topics were specifically sought, including: proposed sanctuary boundaries; resources to protect; potential socio-economic, cultural, and biological impacts of concern; potential management measures, and regulations, but all input was accepted and recorded.

Due to the continuing COVID-19 threat, public scoping meetings were held virtually via Zoom. Based on the regulatory needs of the Monument agencies for recordkeeping, the meetings were moderated and recorded by a third-party provider. Meetings consisted of an informational presentation followed by an oral public comment period. All meetings were recorded as required by the State of Hawai‘i and transcribed. Transcripts are available upon request from NOAA.

A total of 143 people attended the virtual meetings, including agency representatives, with approximately 111 members of the public (based on non-governmental email addresses).

- December 8, 2021 at 6:00PM HST – 52 participants
- December 11, 2021 at 12:00PM HST – 28 participants
- December 14, 2021 at 6:00PM HST – 30 participants
- December 16, 2021 at 3:00PM HST – 33 participants

The virtual meetings were co-hosted by the National Oceanic and Atmospheric Administration (NOAA) and the State of Hawai‘i in cooperation with the U.S. Fish and Wildlife Service (USFWS) and the Office of Hawaiian Affairs (OHA). The meetings were conducted through a web-hosted video-conference platform to allow participants to see speakers, view prepared slides, and record the meeting. The presentation provided a background on the NWHI, the significance of this area to Kānaka ‘Ōiwi culture as well as important flora and fauna. An overview of the Proposed Action was given. Participants could pre-register to submit an oral comment at the meeting, but an opportunity to submit a comment without registering was also made available at the end of each meeting. Per HAR Section 11-200.1-23(d), the original

recordings were submitted as audio files with the draft EIS to the Environmental Review Program and are available from its online EA/EIS library. The transcripts for all oral comments are provided in Section 4. Written comments were accepted throughout the scoping period and are provided in Section 3. A list of all those that provided both written and oral comments during scoping is included in Table F.2.

Summary of Oral Public Input Received, By Topic

Only a few attendees chose to provide oral public comments during each virtual meeting. A total of 9 individuals, all Hawai‘i residents, provided comments. Comments mainly addressed the areas of resource protection, sanctuary boundaries, and fishery management. Additionally, two-thirds of speakers emphasized the importance of Native Hawaiian participation, and/or practices and/or perspectives. A summary of the oral public comments received can be found in Table F.1.

Table F.1. Summary of oral public input received (issues and recommendations)

Topic	Issue or Recommendation	# of references to topic
Sanctuary Boundary	<ul style="list-style-type: none"> Include all of the Monument and MEA in the sanctuary. Area should be viewed and managed as one place - this is important biologically and culturally. Consider Native Hawaiian perspective when zoning. Honor past agreements with small fishers, regarding the footprint of a sanctuary, especially near Kaua‘i 	3
Resource Protection	<ul style="list-style-type: none"> Resources of PMNM are fragile and exceptional. Protection is essential to sustain native systems and wildlife. A sanctuary would provide strong, lasting protections. Life on earth depends on healthy oceans and ecosystems, so we need to protect them. Not sure what we are protecting the resources from. 	6
Fishery Management	<ul style="list-style-type: none"> Protect the fishing rights that had been established during 2016 expansion for fisher families in nearby islands. Honor past agreements with small fishers. Long-term sustainability is needed. More fishery protection is needed. Grant Native Hawaiian fishermen access to fishery if it is monitored and regulated. Fish have been depleted at alarming rates. Previous mismanagement of fisheries has negatively impacted the NWHI. We inherit the impacts of commercialism. Fishers are constantly getting bombarded with fishing restrictions. Too many regulations on the little guy. NOAA should honor past agreements made with small fishers regarding the footprint of a sanctuary, especially near the island of Kaua‘i. 	8
Native Hawaiian Values, Practices and Contributions	<ul style="list-style-type: none"> Voices of Native Hawaiians must be an integral part of the socio-economic conversations. Look to, acknowledge, and/or build on the contributions of Native Hawaiians to the present PMNM management regime. 	4

N=9. Some participants provided input in multiple areas. Therefore, the number of references exceeds the number of participants.

Summary of Written Public Scoping Input Received, By Topic

A total of 73 written comment submissions were received during the scoping period. The team identified nine topics under which to categorize the comment submissions:

- 1) Economic/budget
- 2) Enforcement
- 3) Sanctuary Boundary
- 4) Threats
- 5) Fishery Management
- 6) NHPA 106 Properties
- 7) Native Hawaiian Values, Practices, and Management
- 8) Sanctuary Regulations
- 9) Resource Protections

The number of times each category was mentioned can be seen in Figure F.2. A single commenter could provide input in multiple categories, therefore there is a larger number of category tallies than total comments.

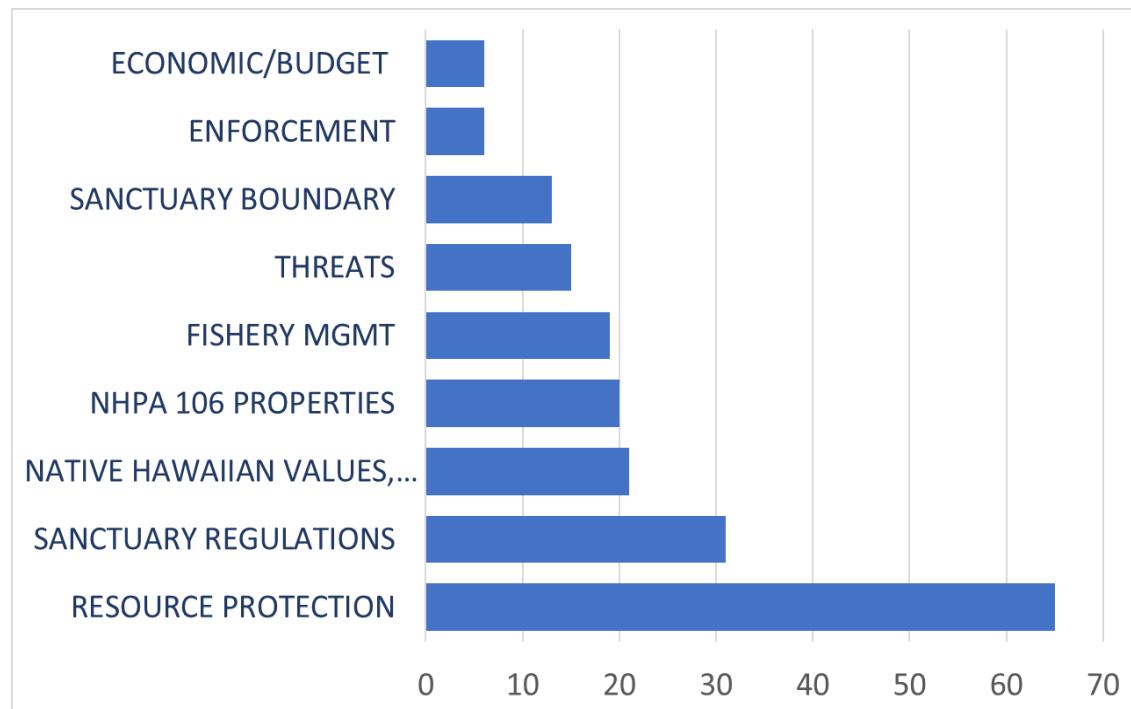
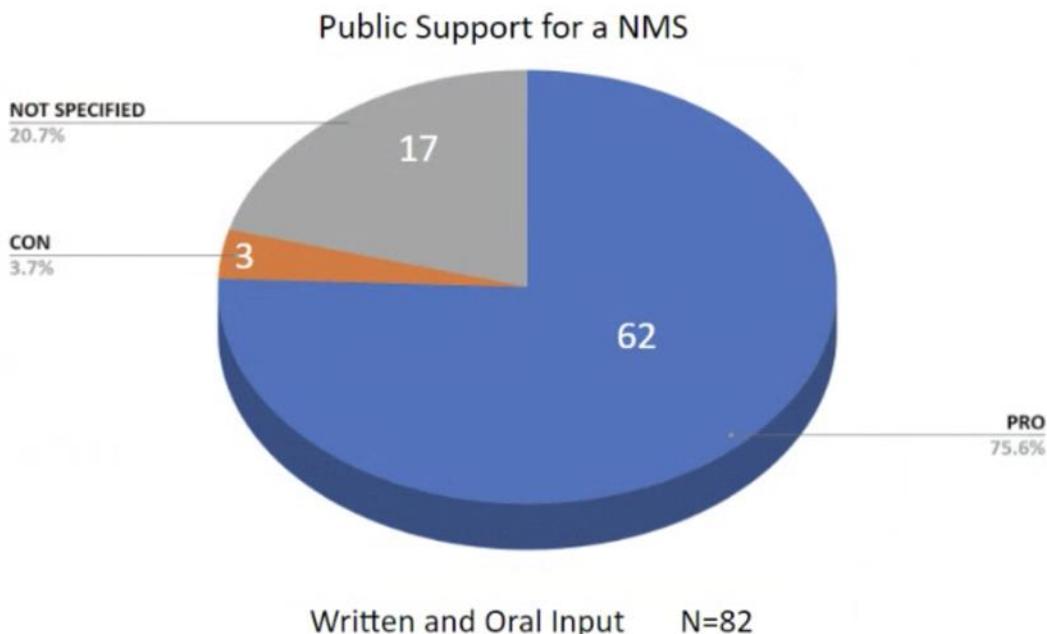


Figure F.2. Categories of written public comment submissions and number of references

Summary of Attitudinal Data Regarding Sanctuary Designation

Of the 82 total comments, 76% of comments were “pro-sanctuary” designation, 4% were against sanctuary designation and 20% did not definitively mention a pro or con attitude (see Figure F.3).



Written and Oral Input N=82

Figure F.3. Number and percentage of commenters who expressed positive or negative support of sanctuary designation

Summary of Comments by Geographic Location

The majority of the public comments were received from the continental United States (49) and Hawaii (19). Written public comments are available to view at the Regulations.gov website and transcripts of oral comments are available by request.

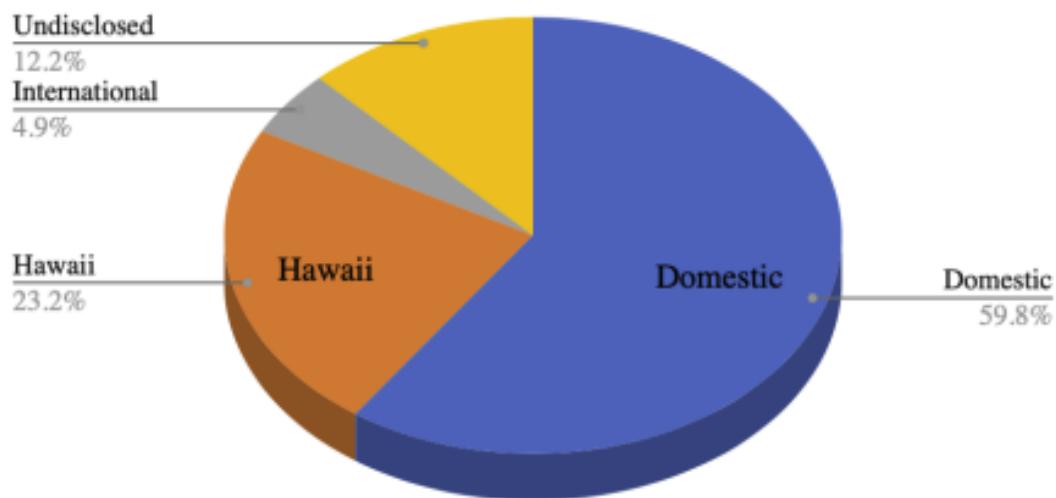


Figure F.4. Summary of public input: Origin of written and oral comments, N=82

Summary of State of Hawai‘i Review of Substantive Comments Regarding Sanctuary Designation

All 82 written and oral communications were reviewed for substantive content and subsequently assigned to one or more subject categories. In determining whether a comment was substantive, the agency reviewers considered “... the validity, significance and relevance of the comment to the scope, analysis or process of the EIS (HAR Section 11-200.2-26[a]).” For this EIS, comments that help refine the Proposed Action or alternatives; help inform the development of the EIS; or identify specific resource analyses to be conducted in the EIS were considered substantive. Statements considered to not be substantive were general comments with no specific information, such as those that stated preferences for or against the Proposed Action. A total of 51 comments were deemed substantive. From there, substantive comments were placed into one of four categories pertaining to the development of the draft EIS:

- 1) Purpose and Need
- 2) Alternatives
- 3) Affected Environment
- 4) Environmental Consequences

Section F.3 includes all scoping comments received (both written and oral) and Section F.4 provides responses to all substantive comments under the category headings listed above.

Table F.2. List of parties who submitted scoping comments

Parties	Provided Written Comment	Provided Oral Comment
Federal Agencies		
EPA	x	x
U.S. Navy	x	
Organizations		
Surfrider Foundation	x	x
The Pew Charitable Trusts (x2)	x	
National Marine Sanctuary Foundation (and partners)	x	
Ocean Sanctuaries	x	
Earth Island Shark Stewards	x	
Center for Sport Fishing Policy	x	
International Marine Mammal Project of Earth Island Institute	x	
Marine Mammal Commission	x	
The Deep Ocean Stewardship Initiative	x	
Cruise Lines International Association	x	
American Sportfishing	x	
Mystic Aquarium	x	
Creation Justice Ministries	x	
Defenders of Wildlife	x	
Northwest Hawaiian Islands Coral Reef Ecosystem Advisory Council (RAC) (X2)	x	
Center for Marine Conservation	x	
Individuals		
Michelle Johnston	x	
Callan Fromm	x	
John Pechin	x	
Constance Lombard	x	

Parties	Provided Written Comment	Provided Oral Comment
Rick V. Macys	X	
Anonymous	X	
Karie Wakat	X	
Dave Treichel	X	
Beth Orcutt	X	
Katherine Weeks	X	
Cory H.	X	
Maureen Kellman	X	
Christopher Kelley	X	
Linda M.B. Paul	X	
Anonymous	X	
Michele Paularena	X	
Nancy Fleming	X	
Diane Kastel (x4)	X	
J. Thew	X	
Jennifer Valentine	X	
Daphne Alden	X	
Denise Martini	X	
Anonymous	X	
Gregory Gordon	X	
Vic Bostock	X	
Scott Wolland	X	
Risa Mandell	X	
Julie Nagase Miller	X	
Stephanie Shorter	X	
J. Miller	X	
Jacqui Smith-Bates	X	
Neil Finlay	X	
Maria Gritsch	X	
Joe Smith	X	
Warren TenHouten	X	
Nancy Meehan	X	
Kelly Eigler	X	
Carol Jagiello	X	
Georgia Braithwaite	X	
Kristina Dutton	X	
Brad Nahill	X	
Susan Fleming	X	
Anonymous	X	
Elizabeth McCloskey	X	
Sarah Millisen	X	
Nancy Fleming	X	
Dinah Bear and Lois Schiffer	X	
Victor Carmichael	X	
Klayton Kubo		X
Devin Silva		X
Kenton Geer		X
Kolomona Kaho'ohalahala		X
Doug Fetterly		X
Tammy Harp		X
Brian Bowen		X

F.3. Scoping Comments

The following are written or transcribed comments received from parties listed in Table F.2.

F.3.1 Written Comments

Written comments were received via regulations.gov. Most of the comments received were submitted as form-generated text, while a few comments were submitted as attached letters. Written comments submitted as form-generated text are included in Section F.3.1.1, and written comments submitted as attachments are reproduced as received in Section F.3.1.2. No comments were received via the U.S. Postal Service.

F.3.1.1 Summary of Form-Generated Comments Submitted via *Regulations.gov*

Table F.3 contains the comments generated via the *regulations.gov* fillable form. Comments submitted as separate documents (i.e. attached, in *Regulations.gov*) are reproduced in section F.3.1.2.

Table F.3. Summary of Comments Received as Form-Generated Text via *Regulations.gov*

Name	Comment
Michelle Johnston	I fully support NOAA's Office of National Marine Sanctuaries initiation to consider designating marine portions of Papahānaumokuākea Marine National Monument as a national marine sanctuary. This designation would add the conservation benefits and permanency of a national marine sanctuary to safeguard resources in the marine portions of the monument, particularly the coral reef habitat, highly endangered Hawaiian monk seal, and threatened green turtles.
Callan Fromm	The wildlife I've seen during the Nautilus expedition's dives in the Monument have been absolutely jaw-dropping, and it's been so incredible to see so much seabed that's almost totally free of human debris. I've added some screenshots of a few of the amazing things from just one hour of watching tonight, November 28th, 2021, and they honestly don't capture the crispness of the video. There have been anglerfish, starfish, fuzzy pink lobsters, double-headed sponges covered in crinoids like living versions of the fossils I found as a kid in Indiana, and just so, so many beautiful corals-- I had no idea corals came in so many shapes and colours! Please give this area even greater protection under the law to better defend this sacred ground and deep-sea wonderland of life.
John Pechin	I support designation as a national marine sanctuary the original Papahānaumokuākea Marine National Monument and the Monument Expansion Area (collectively "Papahānaumokuākea" or "Monument"). The designation as a national marine sanctuary would strengthen and increase the long term protections already existing in the monument, In addition the designation would enhance existing authorities and the regulatory and enforcement framework. The scoping study should include a section on means of funding sources to support the monument over the long term. Please consider a voluntary tax provision similar to state of Minnesota Non Game Wildlife Fund. Sincerely, John H. Pechin
Constance Lombard	Watching EV Nautilus' livestream exploring the Papahānaumokuākea Marine National Monument has inspired an interest in marine life, for me and thousands of other people across the world. Papahānaumokuākea is an example of a diverse and culturally significant ecosystem that currently has a massive engagement with the public. This shows that people care about marine life, and its preservation and protection. Providing Papahānaumokuākea Marine National Monument with additional legal protection means that an important cultural legacy will be respected and that human impact to the monument will be limited. In a time where climate change and pollution are destroying marine ecosystems around the world, for example parts of the Great Barrier Reef here in Australia, it is important that we save what we can.
Rick V. Macys	To Whom it May Concern, I believe we should, as a civilized society, do whatever we have at our disposal to care for all animal life, and to live in harmony with nature as best as we can. To protect wildlife areas is akin to protecting life in general. We should always take care of the animals, wherever they may dwell. I am all for the added protections. Thank you!

Name	Comment
Anonymous	I am 100% in support of a marine sanctuary at Papahānaumokuākea, but a Native Hawaiian must be in charge of it. Despite making up such a small amount of the population, indigenous peoples make up the largest numbers of the world's conservationists, and someone with ancestral knowledge of the land and waters should be the one to oversee a sanctuary there.
Anonymous	While the Papahānaumokuākea Marine National Monument is currently closed to tourism, tourism's impact on the marine environment can not be forgotten when protecting these species. Hawaii had 10 million visitors in 2019 alone and with that, marine life is significantly impacted. This sanctuary needs to have protections in place from tourist activities that could potentially harm marine habitats and ecosystems like wake activities and scuba diving. These impacts need to be evaluated and accounted for. Currently, since there are no visitors, there are virtual tours and other places suggested to visit and these may need to stay permanently in place in order to protect the marine life around the monument. Further, the NOAA must also take into account climate change and the effects it has on the marine environment within what is now the Papahānaumokuākea Marine National Monument, especially with regard to ocean acidification, when completing this EIS. Across the world, climate change and its correlated sea level rise, water acidification, and rise in surface temperatures have been well documented and Papahānaumokuākea is no exception. As humans continue to release carbon dioxide into the atmosphere, the ocean will be forced to absorb higher and higher levels of it. This means corals will become bleached, reefs slowly killed, and organisms relying on carbonate based skeletons and shells will be weakened, if not killed. Although these effects are already ongoing in the national monument, they are projected to continually worsen this decade. In preparation of this EIS, the NOAA should account for climate change and the continued need to understand its causes and impacts. This will ensure the ability to better plan for the future of the vast ecosystems and wildlife in Papahānaumokuākea, such as its reef system. Finally, ocean pollution is becoming an increasing concern and one that is especially alarming to the Papahānaumokuākea Marine National Monument. The North Pacific Subtropical Gyre surrounds the Hawaiian Islands, and the National Monument specifically, circulating pollution through currents of the North Pacific. Even though the islands are the most remote island chain in the world, they act as a filter, slowly collecting pieces of marine debris on their reefs and beaches. This collection is seriously endangering the marine life in the National Monument. The EIS needs to evaluate both the impacts of designating part of the Papahānaumokuākea Marine National Monument a marine sanctuary and how pollution would continue to affect the National Monument in the event the sanctuary is not designated. The regulations under the new sanctuary should be more restrictive on the allowances of plastic in its zone than the current National Monument, because the amount of plastic being circulated by the Subtropical Gyre is ever-increasing. In the event No Action is initiated, the decision needs to be supported by accurate findings as to why designating a sanctuary would not succeed in removing plastic debris from the National Monument.
Karie Wakat	As a resident of Hawaii Island, I fully support designating marine portions of Papahānaumokuākea Marine National Monument as a national marine sanctuary under the National Marine Sanctuaries Act. I see everyday the need to protect our ocean, and the creatures that live in/on it.
Dave Treichel	I would like to say that the Papahānaumokuākea Marine National Monument needs to be expanded from the east end. So that it will include more area and including that one area that is divided then. Thanks -Dave

Name	Comment
Beth Orcutt	<p>I am writing in full support of the consideration of designating the marine parts of the Papahānaumokuākea Marine National Monument (PMNM) as a National Marine Sanctuary. As the largest current fully protected marine protected area, sanctuary status would strengthen these protections into the future. Such strengthening is important to achieve sustainable development goals to ensure a healthy ocean.</p> <p>The current PMNM management structure is a model for shared governance with local Indigenous communities, with the involvement of the Office of Hawaiian Affairs as a co-trustee. I highly encourage maintaining and strengthening this shared governance model in the consideration of sanctuary status. Studies have documented that local Indigenous communities are the best stewards of marine protection because of their framework of the responsibility for reciprocal caring for sacred non-human kin, which increases the likelihood of success of Papahānaumokuākea in achieving sanctuary goals. The vision and guidance provided in "Mai Ka Pō Mai" (https://www.oha.org/maikapomai/), reflecting the Native Hawaiian perspective on incorporating traditional concepts and cultural traditions into management of this area considered sacred by Native Hawaiian culture, is a welcome tool for moving this vision forward.</p> <p>I look forward to the preparation of the attendant Environmental Impact Assessment (EIA) of sanctuary designation. As a deep-sea marine scientist, I recently had the great privilege to participate in a deep-sea exploration expedition of the Ocean Exploration Trust within the boundaries of the PMNM (https://nautiluslive.org/cruise/na134). On this expedition, we documented diverse and distinct communities of deep-sea corals, sponges, and fishes within the Voyager Seamount range south of Kapou/Lisianski Island and Kamole/Laysan Island. Some of these seamounts exist outside the current monument boundary. We observed that different communities existed on the seamount flanks, but more exploration is needed to determine if these differences are due to predominant current direction versus seamount flank orientation, water depth, oxygen and temperature conditions, overlying productivity in the upper ocean, or other factors. The information generated during this expedition may be helpful to managers when preparing the EIA. If our scientific expertise can be of any use during this process, please do not hesitate to contact us.</p> <p>Dr. Beth N. Orcutt, Senior Research Scientist, Bigelow Laboratory for Ocean Sciences, Maine</p>
Katherine Weeks	<p>I am an official volunteer for NOAA's Hawaiian Islands Humpback Whale National Marine Sanctuary during the winter months. I am also familiar, as a layperson, with the value of deep sea corals such as those that have been found off the reefs at the Papahānaumokuākea National Monument. The islands, atolls, and reefs that make up this archipelago are very important not only for the corals that line the walls of the sea mounts, but also for turtle nests of the local turtles such as the Green Sea Turtle (aka Honu to the native Hawaiians), Ridley's, and the Hawksbill, as well as resting places for birds and sea mammals. This area needs to be protected for the future of our planet's ecosystem. Please make this area a new National Marine Sanctuary.</p>
Cory H	<p>I support sanctuary designation, but only if the purpose and regulations provide environmental protections that are as strong, or stronger, than existing monument proclamations. For example, the prohibited activities provisions could designate Papahānaumokuākea as a limited access reserve that requires a permit for entry. Those permits should include restrictions as strong, or stronger, than those imposed for monument entry.</p>
Maureen Kellman	<p>I have never been to Hawaii, yet I have a personal interest in seeing PAPAHĀUMOKUĀKEA as a National Marine Monument. You see, I taught fourth graders for twenty years. All of them learned that there is really one ocean and that it plays a critical role in the health of the whole planet. So I join with everyone, especially Hawaiians, who support this designation which will contribute to protecting the area.</p>

Christopher Kelley	<p>I am writing in support of a sanctuary designation for Papahanaumokuakea Marine National Monument (PMNM). I have been involved in various deep water research projects inside PMNM starting in 2001, with my most latest visit being this past fall in 2021. Over the years, we have made numerous new discoveries that warrant the additional protection a sanctuary designation would provide including numerous potential new species and spectacular high density communities many of which living on the type of substrate and at the depth that deep sea mining will likely occur in the future. PMNM, while its original intent may have been to protect terrestrial and shallow water species such as sea birds, monk seals, top predators, and turtles, is also providing very important protection to deep water species and communities that will be threatened in the future by mining activities.</p> <p>PMNM is also providing protection from deep sea fishing that used to take place before it became a monument. Deepwater bottomfishing is a very active fishery in the Main Hawaiian Islands (MHI) and has experienced various levels of stock depletion over the years. PMNM is forming a critical function as a recruitment source for this fishery. It's no fishing regulations are not only providing protection and sustainability for bottomfish in the monument itself, it is helping the Bottomfish fishery in the main islands by its proximity and by providing a nearby source of bottomfish larvae that no doubt is already helping the replenishment of depleted stocks in the MHI.</p> <p>There is one absolutely critical site for this fishery in Hawaii, which is Middle Bank. Unfortunately, the original monument boundary was drawn in a manner that bisects this bank, with the northwest part being inside PMNM whereas the rest of the bank remains outside. Bottomfishers are very actively fishing this bank, probably because of its proximity to the monument boundary. At least two commercially valuable species, onaga and opakapaka, are no doubt moving in and out across the boundary. Ehu and Gindai would not be and kalekale may or may not be. The monuments side of the bank at least offers a "TimeOut" or temporary refuge for the mobile species.</p> <p>But this is not enough because of the importance of this bank and also because fishermen may be fishing inside PMNM here since activity on Middle Bank is extremely difficult to monitor. As a result, I strongly urge that during the sanctuary designation process, the monument boundary be expanded southward to enclose Middle Bank entirely. If this happens, then a significant buffer will be created between the monument and the closest island, Niihau. If the monument were to extend entirely over the bank, then no Bottomfisher should ever be even close to the monument, which seems like it would make it more enforceable. Another argument comes from Ana Vaz's PhD research modeling larval transport between the MHI and PMNM. Her model revealed that Middle Bank is crucial to the connectivity between the MHI and PMNM. Closing Middle Bank entirely to fishing would not make fishers happy. However, Kaula Rock does not play anywhere near such an important role for the bottomfish fishery and therefore one idea is to make an agreement with the state and bottomfishers whereby the Kaula Rock Restricted Fishing Area be removed as an exchange for expanding the monument over Middle Bank. Fishermen as well as the state would only benefit from this deal since it would be providing a protected recruitment source to the MHI for this fishery. If Middle Bank were fished down and if Ana was correct, this could be a real problem. Recruitment sources further north in the monument would not be as effective in proving recruits simply due to distance and current flow.</p> <p>In 2017, a single Okeanos Explorer ROV dive was conducted on Middle Bank just outside of the boundary. The dive site was no doubt on a fishing site since it was a little cone feature. It was an amazing dive with precious corals, new species of black corals, a new fish that no one has yet to identify, and a conger eel condominium on the summit. We did not see any bottomfish species, which is alarming. Furthermore, the corals we saw are clearly vulnerable to damage from anchors and weights from bottom fishers. This is not the main reason for extending the boundary but rather just adds an additional argument.</p> <p>Please seriously consider supporting the expansion of the monument boundary to include Middle Bank for the reasons described above. While this may make the sanctuary designation process more contentious, if successful, it could provide a</p>
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Name	Comment
	<p>significant benefit to both the monument and the Hawaiian Islands as a whole.</p> <p>Christopher Kelley Affiliate Research Faculty Department of Oceanography University of Hawaii</p>
Surfrider Foundation	<p>As the Regional Manager of the Hawai'i Chapters of the Surfrider Foundation, I am writing to you in strong support to designate Papahānaumokuākea as a national marine sanctuary under the National Marine Sanctuaries Act. Hawai'i has four local chapters as part of our national non-profit network, which works with grass-roots activists everyday to protect the world's beaches, oceans, and waves. In all, Surfrider operates 85 chapters, 30 youth clubs, and reaches over a quarter million members, supporters, and activists.</p> <p>In Hawai'i, as you know, the ocean is life, and the ocean is the very soul of those who call these remote islands home. Surfrider Foundation's four Hawai'i Chapters are some of the most active in our network and each year we work with the Hawai'i State Legislature and our City and County Councils to bring about progressive environmental policy shifts that will protect this public trust resource for generations into the future.</p> <p>In addition, the current PMNM management structure is a model for shared governance with local Indigenous communities, with the involvement of the Office of Hawaiian Affairs as a co-trustee. I highly encourage maintaining and strengthening this shared governance model in the consideration of sanctuary status. Studies have documented that local Indigenous communities are the best stewards of marine protection because of their framework of the responsibility for reciprocal caring for sacred non-human kin, which increases the likelihood of success of Papahānaumokuākea in achieving sanctuary goals.</p> <p>On behalf of the Surfrider Foundation's Hawai'i Chapters, we urge you to take action to designate Papahānaumokuākea as a national marine sanctuary under the National Marine Sanctuaries Act. This additional layer of protection is important to permanently safeguard resources in the marine portions of the monument.</p> <p>Mahalo for your leadership and for the time, energy, and consideration of such an important issue for the future of our oceans.</p> <p>Sincerely,</p> <p>Lauren Blickley Hawai'i Regional Manager Surfrider Foundation LBlickley@surfrider.org 808-280-4736</p>
Anonymous	<p>I fully support the national marine sanctuary designation for Papahānaumokuākea. This is yet another place threatened by climate collapse, and all efforts to preserve it should be undertaken.</p>

Name	Comment
Michele Paularena	<p>I am in favor of designating Papahānaumokuākea as a National Marine Sanctuary as it will give that pristine area the protection it so richly deserves. The Hawaiian cultural sites, the World War II sites, the marine life and the birds that nest there are definitely worth protecting.</p>
Nancy Fleming	<p>Papahānaumokuākea Marine National Monument is the largest contiguous fully-protected conservation area under the U.S. flag, encompassing an area of 582,578 square miles of the Pacific Ocean. These waters host the highly endangered Hawaiian monk seal, threatened green turtles, several species of sharks and several species found nowhere else on earth. The large reef systems and protected waters in the monument are significant contributors to the biological diversity of the ocean.</p> <p>The sanctuary designation process will not change the area's status as a marine national monument. However, it will add the protections of a national marine sanctuary to the monument's waters. We must act now to protect the natural resources and habitat of this extraordinary area.</p>
Diane Kastel	<p>Our family's objective is to save sharks from overfishing, and, by protecting where they live, including the critical, habitat and ecosystem, all, species depend upon! Supporting the creation of NO fishing zones, in the Pacific, leading in developing, and, monitoring, behavior in "California Marine Protected Areas", and, supporting the expansion of the boundaries of our "National Marine Sanctuary" in the "Greater Farallones National Marine Sanctuary" in 2015, have been a major, focus.</p> <p>In the, next, three years, we have our sights on increasing, marine, protection, in US waters, through the creation of, two, new "National Marine Sanctuaries": one in California with the "Chumash Heritage National Marine Sanctuary", and, one, in Hawaii, with the creation of the "Papahānaumokuākea National Marine Sanctuary".</p> <p>Creating these, two, new "National Marine Sanctuaries", with NOAA", and, stakeholders, in US waters, are, major, goals towards achieving the global 30% by 2030 goals protecting our oceans!</p> <p>In January the "United Nations Convention on Biological Diversity" released its 'zero draft', text, proposal for a, post-2020, global, biodiversity framework. Featured, in the text, is a target to protect at least 30% of the planet — land, and, sea — by 2030. The, draft, text is a, proposed, framing for a, 10-year, strategy to halt, and, reverse, species decline, and, restore, ecosystem, services that are critical to, humanity's, survival. Included, in the draft, is retaining, all, intact, ecosystems with a, strong, linkage to, nature-based, climate mitigation.</p> <p>Dr. Enric Sala, "Explorer in Residence" at "National Geographic", and, co-author of the "Global Deal for Nature", recommends 30 percent of Earth to be, formally, protected, and, an, additional, 20 percent designated as, climate, stabilization areas: "We cannot continue, just, writing the obituary of the ocean".</p> <p>On October 7, 2020, California Governor, Gavin Newsom, ordered the state to create a, new, "California Biodiversity Collaborative", and, conserve 30 percent of its land, and, coastal, waters, by 2030. This program aligns with the, international, "30 by 30" goal shared by the "United Nations Convention on Biological Diversity", the "International Union for Conservation of Nature", and, many of the world's, most prominent, conservation, scientists.</p>
J Thew	We support any and all national marine sanctuary designations.

Name	Comment
Diane Kastel	<p>On November 19th, "NOAA" initiated the process to designate portions of the Papahānaumokuākea Marine National Monument" as a, national, marine sanctuary. This designation would build on, existing, management by adding, conservation, benefits, and, enhancing, long-term, protection of these areas.</p> <p>"NOAA"s "Office of National Marine Sanctuaries" is initiating the process to consider designating, marine, portions of "Papahānaumokuākea Marine National Monument" as a, national, marine sanctuary. This designation would add the conservation benefits, and, permanency, of a, "National, Marine Sanctuary" to safeguard resources in the, marine, portions of the monument.</p> <p>"Papahānaumokuākea Marine National Monument" is the, largest, contiguous, fully-protected, conservation area, under the U.S. flag, encompassing an area of 582,578 square miles of the Pacific Ocean, This is an area larger than, all, the country's, National Parks combined. These waters host the, highly, endangered Hawaiian monk seal, threatened, green turtles, several, species of sharks, and, several, species found nowhere else on earth. The large, reef systems, and, protected, waters, in the monument, are, significant, contributors to the, biological, diversity of the ocean.</p> <p>The, sanctuary, designation process will not change the area's status as a Marine National Monument. However, it will add the protections of a "National Marine Sanctuary" to the Monument's waters. The, co-management, structure that is a hallmark of "Papahānaumokuākea Marine National Monument" will continue, and, the process to designate a National Marine Sanctuary" will be conducted, in concert, with the monument's, co-managing, agencies.</p> <p>The spiritual, and, cultural, associations, of the Papahānaumokuākea, by Native Hawaiians will be a, foundational, element in the management of these, sacred, waters.</p>
Jennifer Valentine	<p>NOAA's Office of National Marine Sanctuaries is initiating the process to consider designating marine portions of Papahānaumokuākea Marine National Monument as a national marine sanctuary. This designation would add the conservation benefits and permanency of a national marine sanctuary to safeguard resources in the marine portions of the monument. Please designate it as a sanctuary</p>
Daphne Alden	<p>Papahānaumokuākea Marine National Monument is the largest contiguous fully-protected conservation area under the U.S. flag, encompassing an area of 582,578 square miles of the Pacific Ocean, This is an area larger than all the country's national parks combined. These waters host the highly endangered Hawaiian monk seal, threatened green turtles, several species of sharks and several species found nowhere else on earth. The large reef systems and protected waters in the monument are significant contributors to the biological diversity of the ocean. Please vote to designate this area as a national marine sanctuary. This designation would add the conservation benefits and permanency of a national marine sanctuary to safeguard resources and marine life.</p>
Denise Martini	<p>The sanctuary designation process does not change the area's status as a marine national monument. It would add the protections of a national marine sanctuary to the monument's waters.</p>
Anonymous	<p>I support the designation of Papahānaumokuākea as a National Marine Sanctuary, and support completely closing it off to commercial and recreational fishing in order to protect the sea life within it, but urge you to keep it open in a limited capacity to recreational scuba divers that dive with guides that hold proper permits. Having a limited number of experienced recreational divers in a marine sanctuary can help in managing the danger of invasive species, disposal of "ghost nets" and other discarded fishing equipment that inevitably drift into the area and threaten marine life, and even help to generate data for researchers on sightings of species of interest, much more than if the area is completely closed to visitors.</p>

Name	Comment
Gordon Gregory	I 100% support this attempt to protect our oceans for future generations. Please approve this proposal.
Vic Bostock	Papahānaumokuākea Marine National Monument is the largest contiguous fully-protected conservation area under the U.S. flag, encompassing an area of 582,578 square miles of the Pacific Ocean. This is an area larger than all the country's national parks combined. These waters host the highly endangered Hawaiian monk seal, threatened green turtles, several species of sharks and several species found nowhere else on earth. The large reef systems and protected waters in the monument are significant contributors to the biological diversity of the ocean. The sanctuary designation process will not change the area's status as a marine national monument. However, it will add the protections of a national marine sanctuary to the monument's waters. The co-management structure that is a hallmark of Papahānaumokuākea Marine National Monument will continue, and the process to designate a national marine sanctuary will be conducted in concert with the monument's co-managing agencies.
Scott Wolland	NOAA, I am writing to show my support of a new designation for parts of the Papahānaumokuākea Marine National Monument as a national marine sanctuary. It is critical that we increase conservation benefits in this vital area and enhance long-term protection of these areas through the NMS Designation. Please hold a hearing to discuss this opportunity. Sincerely,
Risa Mandell	Marine megafauna like sharks, marine mammals, and sea turtles, need large areas of healthy habitat to safely forage and successfully reproduce. Help us achieve our national goals of 30% ocean protection by 2030 to help protect endangered sharks and rays. Marine protected areas buffer against climate change, and provide important habitat for marine species important to ocean and human health. As a US citizen, I urge you to protect endangered sharks and rays.
Julie Nagase Miller	Hawaii and it'd surrounding areas are rare gems that need to be aggressively protected! Papahānaumokuākea Marine National Monument should be awarded national marine sanctuary status!
Stephanie Shorter	Please protect our ocean ecosystems and wildlife! I request that you support the National Oceanographic and Atmospheric Administration's (NOAA) proposed designation of new National Marine Sanctuaries in California and Hawaiian waters. Thank you.
Julie Miller	30% of the ocean by 2030 is the very minimal goal we should have. Our planet needs protection!
Jacqui Smith-Bates	I am writing to support the National Oceanographic and Atmospheric Administration's (NOAA) proposed designation of new National Marine Sanctuaries in California and Hawaiian waters. According to the MPA Atlas by the Marine Conservation Institute, 7.7% of the ocean is protected and of that, only 2.8% is fully or highly protected from fishing. We have a long way to meet the UN and national goals of protecting 30% of our oceans, but we have the opportunity to help achieve this now. Marine megafauna like sharks, marine mammals, and sea turtles, need large areas of healthy habitat to safely forage and successfully reproduce. Marine sanctuaries are crucial to a healthy ocean ecosystem, which is a key component of supporting life on earth.

Name	Comment
Diane Kastel	<p>The, principal goal of the 16 U.S. national marine sanctuaries is to protect places with, special, natural, cultural, or, historical significance. Marine Protected Areas buffer against climate change, and, provide, important, habitat for, marine, species important to ocean and, human, health. Marine megafauna like sharks, marine mammals, and, sea turtles, need, large, areas of, healthy, habitat to, safely, forage and, successfully, reproduce. We want to help to achieve our, national, goals of 30% ocean protection, by 2030, to help protect, endangered, sharks and rays.</p> <p>As part of the, global, initiative to protect 30% of our oceans under Marine Protected Areas by 2030 (30x30), "Shark Stewards" is working to support the "National Oceanographic and Atmospheric Administration" 's (NOAA), proposed, designation of new, "National Marine Sanctuaries" in California and Hawaiian waters. According to the "MPA Atlas" by the "Marine Conservation Institute, 7.7% of the ocean is protected, and, of that, only 2.8% is, fully, or, highly, protected from fishing. We have a, long, way to meet the UN, and, national, goals of protecting 30% of our oceans, but, today, we have the opportunity to help achieve this! In California, 16% of our state, waters are under ecosystem-connected, well-managed, and, well- studied, Marine Protected Areas, including, four, federally managed national marine sanctuaries. We, now, have the opportunity to increase protection in two sensitive, and, biodiverse, regions, in US waters, also, protecting, culturally, significant Native American, and, Hawaiian areas.</p>
International Marine Mammal Project of Earth Island Institute	<p>We submitted comments by mistake to this online form for the Chumash Heritage National Marine Sanctuary. We are in favor of the proposed establishment of a National Marine Sanctuary within the boundaries of the Papahānaumokuākea Marine National Monument, and encourage NOAA to proceed with the development of the Environmental Impact Statement. Thank you.</p>
Neil Finlay	<p>While in my younger days I spend over forty years, and a large amount of money learning and studying sharks at my expense, dealing with other Countries you find most are trying to reach a goal in Conservation, some are restricted due to Government intervention, I found in my Travels Education is major factor, teaching the youth, Children of Today and the Future will help towards the preservation of our Oceans</p> <p>Today there is a bigger push from all walks of life World Wide to protect the Planet and the Oceans, Governments all over the World have to come on board to help save this Planet, problem is the rich are not getting involved and the poor are struggling, commonly known as a attitude problem, setting out protection area is a great Idea, who will provide the protection and cost, we need a commitment from the United Nations and sanctioned by the Big Countries to pay and implement it, start with a world ban on long line fishing, Ban on Shark finning, and that will be the best start to help protect our Oceans</p>
Ocean Sanctuaries	<p>Only 2% of the world's oceans are unprotected by MPAs, so please, we need more of this type of legal protection.</p>

Maria Gritsch	<p>I strongly support designating parts of the Papahānaumokuākea Marine National Monument as a national marine sanctuary to enhance protections and safeguard resources in the marine portions of the Monument. We believe sanctuary designation will complement the efforts of the Office of Hawaiian Affairs, the state of Hawaii, and other federal agencies to conserve this nationally significant area and its cultural resources and bolster strong and lasting protection for the marine environment. Papahānaumokuākea is a sacred place with deep cosmological significance to Native Hawaiians who have a genealogical relationship to all living things in the Hawaiian archipelago. The Monument is a mixed (natural and cultural) World Heritage Site. Coral islands, undersea volcanoes, flat-topped undersea mountains, banks, and shoals stretch 1,350 miles. The Monument supports a diversity of life, including over 7,000 species, many found nowhere else on earth. Threatened green sea turtles and endangered Hawaiian monk seals are among the rare species that inhabit the island chain.</p> <p>The National Marine Sanctuaries Act established the National Marine Sanctuary System to protect areas of the marine environment that have special conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, or esthetic qualities. The monument is an area of national significance that merits this protection in addition to the protections provided by the Antiquities Act.</p> <p>It is critical that sanctuary designation strengthen and enhance the protection of Papahānaumokuākea, as designated under the Antiquities Act and the Presidential Proclamations. Those efforts should include integrating traditional Hawaiian knowledge systems, values, and practices into management. We oppose any regulatory or management measures that would decrease the current level of protection within the Monument and Monument Expansion Area.</p> <p>Scoping is a critical early step in the EIS process. It sets the boundaries of the analysis, helps to identify information sources, and helps to focus alternatives and identify issues to address within the EIS. A comprehensive scoping process is essential for identifying the “reasonable range” of alternatives in the EIS to address the purpose and need of proposed agency action.</p> <p>Papahānaumokuākea Marine National Monument is unique. The Monument is one of the few intact, large-scale predator-dominated reef ecosystems left in the world. It is home to more than 7,000 marine species. The islands and atolls—Kure (Hōlanikū), Midway (Kuaihelani), Pearl and Hermes (Manawai), Lisianski (Kapou), Laysan (Kamole), Maro Reef (Kamokuokamohoali'i), Gardner Pinnacles ('Önū nui and 'Önū iki), French Frigate Shoals (Lalo), Mokumanamana, and Nihoa—provide breeding areas for Hawaiian monk seals and four species of sea turtles, nesting sites for more than 14 million seabirds, and more than 5,000 square miles of coral reefs. This is the only known marine area where all resident species are endemic.</p> <p>At least 23 species protected under the US Endangered Species Act inhabit the Monument, two national wildlife refuges, and two state-protected areas within its boundaries. For example, Papahānaumokuākea provides nearly the entire Hawaiian nesting habitat for the threatened green turtle. On the undisturbed beaches, the turtles come ashore to bask in daylight, a behavior not seen in most other parts of the world.</p> <p>The Monument provides critical foraging habitats for marine species and birds. Laysan albatross, Black-footed albatross, Bonin petrels, shearwaters, petrels, tropicbirds, Short-tailed albatross, and other seabird species forage in the Monument, along with five species of protected sea turtles. Twenty-four species of whales and dolphins have been sighted in the Monument. Three species are threatened or endangered: sperm whales, fin whales, and sei whales. Acoustic evidence also shows that endangered blue whales visit the area and may migrate past the Hawaiian Islands twice a year. Sharks, including tiger sharks and Galapagos sharks, are key species in the Monument's ecosystems.</p> <p>Thank you for the opportunity to comment on the proposed sanctuary designation. We look forward to working with NOAA to enhance and strengthen protections for the Monument.</p>
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Name	Comment
Joe Smith	<p>In California, 16% of our state waters are under ecosystem-connected, well-managed and well-studied marine protected areas, including four federally managed national marine sanctuaries. We now have the opportunity to increase protection in two sensitive and biodiverse regions in US waters, also protecting culturally significant Native American and Hawaiian areas.</p> <p>The principal goal of the 16 U.S. national marine sanctuaries is to protect places with special natural, cultural, or historical significance. Marine protected areas buffer against climate change, and provide important habitat for marine species important to ocean and human health. Please protect our oceans and wildlife!</p>

Warren TenHouten	<p>I absolutely support designating parts of the Papahānaumokuākea Marine National Monument as a national marine sanctuary to enhance protections and safeguard resources in the marine portions of the Monument. We believe sanctuary designation will complement the efforts of the Office of Hawaiian Affairs, the state of Hawaii, and other federal agencies to conserve this nationally significant area and its cultural resources and bolster strong and lasting protection for the marine environment. Papahānaumokuākea is a sacred place with deep cosmological significance to Native Hawaiians who have a genealogical relationship to all living things in the Hawaiian archipelago. The Monument is a mixed (natural and cultural) World Heritage Site. Coral islands, undersea volcanoes, flat-topped undersea mountains, banks, and shoals stretch 1,350 miles. The Monument supports a diversity of life, including over 7,000 species, many found nowhere else on earth. Threatened green sea turtles and endangered Hawaiian monk seals are among the rare species that inhabit the island chain.</p> <p>The National Marine Sanctuaries Act established the National Marine Sanctuary System to protect areas of the marine environment that have special conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, or esthetic qualities. The monument is an area of national significance that merits this protection in addition to the protections provided by the Antiquities Act.</p> <p>It is critical that sanctuary designation strengthen and enhance the protection of Papahānaumokuākea, as designated under the Antiquities Act and the Presidential Proclamations. Those efforts should include integrating traditional Hawaiian knowledge systems, values, and practices into management. We oppose any regulatory or management measures that would decrease the current level of protection within the Monument and Monument Expansion Area.</p> <p>Scoping is a critical early step in the EIS process. It sets the boundaries of the analysis, helps to identify information sources, and helps to focus alternatives and identify issues to address within the EIS. A comprehensive scoping process is essential for identifying the “reasonable range” of alternatives in the EIS to address the purpose and need of proposed agency action.</p> <p>Papahānaumokuākea Marine National Monument is unique. The Monument is one of the few intact, large-scale predator-dominated reef ecosystems left in the world. It is home to more than 7,000 marine species. The islands and atolls—Kure (Hōlanikū), Midway (Kuahelani), Pearl and Hermes (Manawai), Lisianski (Kapou), Laysan (Kamole), Maro Reef (Kamokuokamohoali'i), Gardner Pinnacles ('Önū nui and 'Önū iki), French Frigate Shoals (Lalo), Mokumanamana, and Nihoa—provide breeding areas for Hawaiian monk seals and four species of sea turtles, nesting sites for more than 14 million seabirds, and more than 5,000 square miles of coral reefs. This is the only known marine area where all resident species are endemic.</p> <p>At least 23 species protected under the US Endangered Species Act inhabit the Monument, two national wildlife refuges, and two state-protected areas within its boundaries. For example, Papahānaumokuākea provides nearly the entire Hawaiian nesting habitat for the threatened green turtle. On the undisturbed beaches, the turtles come ashore to bask in daylight, a behavior not seen in most other parts of the world.</p> <p>The Monument provides critical foraging habitats for marine species and birds. Laysan albatross, Black-footed albatross, Bonin petrels, shearwaters, petrels, tropicbirds, Short-tailed albatross, and other seabird species forage in the Monument, along with five species of protected sea turtles. Twenty-four species of whales and dolphins have been sighted in the Monument. Three species are threatened or endangered: sperm whales, fin whales, and sei whales. Acoustic evidence also shows that endangered blue whales visit the area and may migrate past the Hawaiian Islands twice a year. Sharks, including tiger sharks and Galapagos sharks, are key species in the Monument's ecosystems.</p> <p>Thank you for the opportunity to comment on the proposed sanctuary designation. We look forward to working with NOAA to enhance and strengthen protections for the Monument.</p>
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Name	Comment
Nancy Meehan	We need to protect our ocean & waters. Between pollution & bombs being dropped in the waters, it's hard to believe anything left. Off shore drilling needs to end as well as pipelines. Water is life! Sealife & river life are important! Protect it!
Kelly Eigler	Sharks are the wolves of the sea and as top level predators, are responsible for an entire food chain. More over, they have significant research value as live, not dead subjects. They are in trouble almost worldwide and our country can set a positive example of conservation leadership by enacting proactive and protective legislation. We need to help this vulnerable and mysterious species to survive with all our legal might. Thank you.
Carol Jagiello	Sanctuary designation free from fishing is vital to ensure protection.
The Pew Charitable Trusts	<p>On behalf of The Pew Charitable Trusts, we thank you for the opportunity to submit comments on the “Notice of Intent To Conduct Scoping and To Prepare an Environmental Impact Statement for the Proposed Designation of a National Marine Sanctuary Within Papahānaumokuākea Marine National Monument.”</p> <p>As home to more than 7,000 species, a quarter of which are endemic, Papahānaumokuākea safeguards key ecosystems and provides protection for a range of rare species such as threatened green turtles, endangered Hawaiian monk seals, and false killer whales, as well as 14 million seabirds representing 22 species. Given the site’s vital biological importance, we support designating Papahānaumokuākea Marine National Monument as a national marine sanctuary provided it maintains its status as highly/fully protected. Furthermore, we do not support future management that would allow industrial fishing – which would be a step backwards.</p> <p>Sanctuary designation provides an opportunity to further integrate indigenous knowledge systems, values, and practices into the area’s management. Papahānaumokuākea is a place of honor and a deeply sacred space for Native Hawaiians, who maintain strong cultural ties to the land and sea and believe in the importance of managing the islands and waters inextricably connected to one another. As such, we urge relevant agencies to work with the Native Hawaiian Cultural Working Group, OHA, and the Native Hawaiian community throughout the sanctuary designation process and include the Mai Ka Pō Mai framework into the designation document, management plan, and regulations.</p> <p>Additionally, we call for the sanctuary designation process to take measures to ensure that there is adequate funding in place for ongoing management. Staff and budget capacity have been found to be the strongest predictors of conservation impact and the most important factors in explaining fish responses to MPA protection. MPAs with adequate capacity have shown ecological benefits that are 2.9 times greater than those with inadequate capacity (David Gill et al., 2017). According to a recent report by the Center for American Progress, many MPAs lack sufficient funding. Both staffing and financial resources should be carefully considered throughout the sanctuary designation process to ensure desired outcomes are effectively met.</p> <p>We appreciate the opportunity to comment on the proposed sanctuary designation, and we look forward to working with NOAA to support continued protections for the Monument.</p>
Georgia Braithwaite	Please set aside 30% of our oceans as protected areas.

Name	Comment
Kristina Dutton	Marine megafauna like sharks, marine mammals, and sea turtles, need large areas of healthy habitat to safely forage and successfully reproduce. Please adopt NOAA's proposal to designate two National Marine Sanctuaries in California and Hawaiian waters. I am a resident of Marin County, CA, and the Greater Farallones and Cordell Bank are an immeasurable gift to our coast, our economy, our health, and the global ecosystem that relies on ocean health and productivity. We need to protect our oceans and meet the UN and national goal to reserve 30% of our waters for marine sanctuaries.
Shark Stewards	We need to protect these areas for future generations as they have an abundance of ocean habitats and creatures that rely on it for their survival.
Brad Nahill	I strongly support increased protections for Papahānaumokuākea Marine National Monument including inclusion of as much of an area of the monument as possible to be designated as a National Marine Sanctuary. This monument is incredibly unique in US waters.
Susan Fleming	Our Sanctuaries and monuments need our support, and additional funding for NOAA to study, protect and manage these important marine areas.
Anonymous	I have been viewing the Nautilus expeditions for several years and am in amazement of all the beautiful underwater locations. The expedition of the Papahānaumokuākea Marine National Monument was especially exciting to see. Please consider expanding this wonderful marine monument and give it the national marine sanctuary protection it deserves, to keep it safe for our future generations. We need to do something now to help add additional protection to this beautiful marine location.
Elizabeth McCloskey	The Papahānaumokuākea Marine National Monument is an extremely vital area for the protection of ocean life, especially the Hawaiian monk seal, which is critically endangered. The designation of this Monument as a marine sanctuary would build on existing management by adding conservation benefits and enhancing long-term protection of this area. I fully support this designation and look forward to reviewing the EIS.
Sarah Milsen	I have been fortunate enough to see Papahānaumokuākea National Marine Monument in person, and help clean it up on the last NOAA Marine Debris mission in the fall of 2021. I support the proposal to work towards PNMM becoming a National Marine Sanctuary. It is an extremely rare, fragile place with very endangered animals and must be protected as an utmost priority. Thank you.
Diane Kastel	Marine megafauna, like sharks, marine mammals, and, sea turtles, need, large, areas of ,healthy, habitat to, safely, forage, and, successfully, reproduce. We must achieve our, national, goals of 30% ocean protection, by 2030, to help protect, endangered, sharks and rays!
Nancy Fleming	We now have the opportunity to increase protection in two sensitive and biodiverse regions in US waters, also protecting culturally significant Native American and Hawaiian areas. We must protect these vulnerable areas now. Please act in a responsible manner to ensure the viability of species that reside in these waters.

Name	Comment
Victor Carmichael	Surfing for over 50 years and traveling all over the world pursuing waves, I, too, at times have feared sharks especially locally here in Northern California which is in an area known as the 'Red Triangle' due to an abundance of Great Whites. But I also have respected their existence and right to live. They are an alpha predator in a complex food chain. Through exaggerated fear and overfishing (for their prized dorsal fins) they are being seriously reduced in numbers and many species are endangered. I support public hearings by NOAA to address the problem.

F.3.1.2 Summary of Comments Submitted as Separate Documents (Letters)

Comments submitted as separate documents are reproduced below. These documents were received as attachments in regulations.gov.

CRUISE LINES INTERNATIONAL ASSOCIATION

31 January 2022
 Office of National Marine Sanctuaries
 National Oceanic and Atmospheric Administration
 86 FR 64904

**CRUISE LINES INTERNATIONAL ASSOCIATION (CLIA) COMMENTS ON NOAA's
 NOTICE OF INTENT TO CONDUCT SCOPING AND TO PREPARE AN
 ENVIRONMENTAL IMPACT STATEMENT FOR THE PROPOSED DESIGNATION
 OF A NATIONAL MARINE SANCTUARY WITHIN PAPAHANAUMOKUAKEA
 MARINE NATIONAL MONUMENT**

Thank you for the opportunity to comment on the Notice of Intent to Conduct Scoping and to Prepare an Environmental Impact Statement for the Proposed Designation of a National Marine Sanctuary within Papahānaumokuākea Marine National Monument and provide the following comments for consideration:

CLIA Members recommend that the National Marine Sanctuary designation apply to the original boundary of the Papahānaumokuākea Marine National Monument, and not to the 2016 expanded boundary. The expanded boundary encompasses the exclusive economic zone and discharge restrictions applied to this substantial area would have far reaching operational impacts, including ships in transit. If, however, the expanded boundary is designated a National Marine Sanctuary, CLIA Members recommend that the applicable discharge restrictions only apply to the original boundary, not the 2016 expanded boundary, maintaining the discharge restrictions per 50 CFR § 404 that are currently applied in the Papahānaumokuākea Marine National Monument.

CLIA Members welcome the National Marine Sanctuary designation given that the prohibited and regulated activities in the area are similar to the restrictions in other existing National Marine Sanctuaries, detailed in 15 CFR § 922, such as approved marine sanitation device effluent, cooling water, etc. Members also recommend that the list of discharges currently restricted in the Papahānaumokuākea Marine National Monument presently under 50 CFR § 404 correlate to the waste stream restrictions under the proposed National Marine Sanctuary.

Thank you for the opportunity to comment on the Proposed Designation of a National Marine Sanctuary within Papahānaumokuākea Marine National Monument. CLIA is available to discuss these comments with you should you have any follow up questions. The CLIA point of contact is Maureen Hayes, Technical Advisor, Maritime Policy. Phone: (202)-705-8464. Email: Mhayes@cruising.org

Sincerely,

Maureen Hayes

Maureen Hayes
 Technical Advisor, Maritime Policy

CRUISE LINES INTERNATIONAL ASSOCIATION

Cruise Lines International Association (CLIA)

Cruise Lines International Association (CLIA) is the world's largest cruise industry trade association, providing a unified voice and leading authority of the global cruise community. The association has 15 offices globally with representation in North and South America, Europe, Asia, and Australasia. CLIA supports policies and practices that foster a safe, secure, healthy, and sustainable cruise ship environment for the more than 30 million passengers who typically cruise annually and is dedicated to promoting the cruise travel experience. The CLIA Community is comprised of the world's most prestigious ocean, river, and specialty cruise lines; a highly trained and certified travel agent community; and cruise line suppliers and partners, including ports & destinations, ship development, suppliers, and business services. The organization's mission is to be the unified global organization that helps its members succeed by advocating, educating, and promoting for the common interests of the cruise community.

cruising.org
1201 F Street N.W. Ste. 250 | Washington, D.C., 20004 | U.S.A | 202-759-6760





January 31, 2022

PMNM-Sanctuary Designation
NOAA/ONMS
1845 Wasp Blvd., Bldg 176
Honolulu, HI 96818

Re: NOAA-NOS-2021-0114, National Marine Sanctuary Designation for
Papahānaumokuākea Marine National Monument

To NOAA's Office of National Marine Sanctuaries,

Thank you for the opportunity to comment on NOAA-NOS-2021-0114, National Marine Sanctuary Designation for Papahānaumokuākea Marine National Monument. The American Sportfishing Association represents the sportfishing industry and the recreational fishing community. Our over 900 members include manufacturers, retailers and allied organizations that comprise the \$125 billion recreational fishing economy. We provide a unified voice for the industry and anglers when emerging laws and policies could significantly affect business or sportfishing itself. Accordingly, we seek to ensure recreational fishing access to our nation's marine sanctuaries.

As you are aware, commercial fishing is prohibited in the entire Papahānaumokuākea Marine National Monument. In the Monument Expansion Area, non-commercial (e.g., recreational) fishing may be allowed through a permit. However, there are currently no regulations or a permitting process in place to allow non-commercial fishing in this area.

As NOAA prepares a draft environmental impact statement (DEIS) for the sanctuary designation process, we urge the agency to include consideration of regulations or a permitting process to allow non-commercial fishing, not only in the Monument Expansion Area, but throughout the entire Papahānaumokuākea Marine National Monument.

Through Proclamation 9478¹, which established the Monument Expansion area, President Barack Obama stated that non-commercial fishing would be permitted. Given the compatibility between recreational fishing and conservation, and that recreational fishing is allowed in nearly all National Marine Sanctuary waters, we believe it is warranted to revisit the prohibition on recreational fishing in the original Monument boundaries as well. Allowing recreational fishing throughout Papahānaumokuākea would help this action more fully achieve the goals of the

¹ [Proclamation No. 9478](#), DCPD-201600535 (2016)

Biden Administration's America the Beautiful initiative, particularly the recommendation to, "Increase Access for Outdoor Recreation."² We therefore urge that such considerations be included in the DEIS.

Sincerely,



Mike Leonard
Vice President of Government Affairs

² [Report: Conserving and Restoring America the Beautiful 2021](#) (May 2021)

January 31, 2022

Mr. John Armor, Director
Office of National Marine Sanctuaries
National Ocean Service
National Oceanic and Atmospheric Administration

Dear Mr. Armor:

We are responding to the National Oceanic and Atmospheric Administration's (NOAA) Notice of Intent (NOI) of November 19, 2021, in which NOAA seeks public scoping comments regarding the draft environmental impact statement (DEIS) being prepared for the consideration of designating the marine components of the Papahānaumokuākea Marine National Monument as a national marine sanctuary.¹ We understand, of course, that Presidential Proclamation 9478 directs the Secretary of Commerce to consider initiating the process to designate components of the Monument as a National Marine Sanctuary. Further, the Conference Report for the Appropriations Act of 2021 directs NOAA to initiate that process "to supplement and complement, rather than supplant, existing authorities."² In contrast, in NOAA's NOI, it appears that NOAA is seeking scoping comment on what should be in the Environmental Impact Statement that would inform *what a designation as a Sanctuary should look like, rather than whether* a designation of the marine areas of the Monument as a Sanctuary is appropriate and warranted. NOAA clearly has the discretion to decide whether to finalize a sanctuary designation. We set forth below some basic background points and then an analysis that the exact question at issue must be clarified in the purpose and need statement and appropriate alternatives must be analyzed.

I. Background points:

- A. In general, Monuments established under the Antiquities Act are more protective of designated objects than Sanctuaries designated under the National Marine Sanctuaries Act. The Antiquities Act specifies: "Sec. 2. That the President of the United States is hereby authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with proper care and management of the objects to be protected" (emphasis added).³

¹ 86 Fed. Reg. 64904 (November 19, 2021).

² Report on Fiscal Year 2021 Commerce, Justice, Science, and related agencies appropriations, <https://www.govinfo.gov/content/pkg/CREC-2020-12-21/pdf/CREC-2020-12-21-house-bk3.pdf> p. H7926

³ Recodified without substantive change at 54 U.S.C. § 320301(a) & (b).

In contrast, the National Marine Sanctuaries Act (NMSA) provides:

"STANDARDS.—The Secretary may designate any discrete area of the marine environment as a national marine sanctuary and promulgate regulations implementing the designation if the Secretary determines that—

- (1) the designation will fulfill the purposes and policies of this chapter;**
- (2) the area is of special national significance due to—**
 - (A) its conservation, recreational, ecological, historical, scientific, cultural, archaeological, educational, or esthetic qualities;**
 - (B) the communities of living marine resources it harbors; or**
 - (C) its resource or human-use values;**
- (3) existing State and Federal authorities are inadequate or should be supplemented to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;**
- (4) designation of the area as a national marine sanctuary will facilitate the objectives stated in paragraph (3); and**
- (5) the area is of a size and nature that will permit comprehensive and coordinated conservation and management."**⁴

In addition, under NMSA, a series of factors and consultations are required that turn the act into more of a multiple-use statute. In implementing NMSA, NOAA has permitted a fair amount of commercial activity in the Sanctuaries, including commercial fishing.⁵ Several reports are helpful in evaluating the comparison between Monument proclamations and Sanctuary designations.⁶

B. Under the Justice Department's Office of Legal Counsel memoranda, Monuments must be managed at least in part by a component of the Department of the Interior --several Monuments are managed jointly or primarily by a non-Interior agency; Sanctuaries are managed under the Sanctuaries Act by NOAA. The Office of Legal Counsel in the US Department of Justice issued an Opinion in the year 2000 about establishment of monuments in the ocean that has useful information.⁷

⁴ 16 U.S.C. § 1433(a).

⁵ See, e.g. Monterey Bay National Marine Sanctuary,
https://sanctuaries.noaa.gov/science/socioeconomic/montereybay/comm_fishing.html

⁶ Report on commercial activities in National Marine Sanctuaries –NOAA emphasis:
<https://sanctuaries.noaa.gov/science/socioeconomic/factsheets/national-system.html>

NAPA study includes commercial activities: <https://napawash.org/academy-studies/national-marine-sanctuaries-program-the-first-fifty-years-and-the-next-fifty-years>

CAP report: <https://www.americanprogress.org/article/to-protect-30-percent-of-the-ocean-the-united-states-must-invest-in-the-national-marine-sanctuaries-program/>

⁷ https://www.justice.gov/sites/default/files/olc/opinions/2000/09/31/op-olc-v024-p0183_0.pdf

- C. The Monument in question is currently managed under a 2008 Management Plan that is five volumes long.⁸ The specified federal and state trustee agencies have not yet updated that plan despite the Expansion Proclamation of 2016 and the 2017 Memorandum of Agreement.
- D. As set forth in more detail below, the 2006 Proclamation specified that the Monument includes but does not affect the management of the five existing management units in the same area. Indeed the NOAA website notes: “The Monument comprises several previously existing federal conservation areas, including the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, Midway Atoll National Wildlife Refuge and Battle of Midway National Memorial, Hawaiian Islands National Wildlife Refuge, Northwestern Hawaiian Islands Marine Refuge, and the State Wildlife Sanctuary at Kure Atoll.”⁹
- E. A significant component of protection specified in the original and the expansion Proclamations for the Monument is the provision prohibiting commercial fishing (with a five-year phase out for two species) and providing for recreational and Native Hawaiian traditional fishing under specific regulation.

II. Comments on the Scoping Process:

A. The Purpose and Need Statement Must Be Revised.

As noted in the background information above, NOAA is responding to Conference Report direction **to initiate** the marine sanctuary designation process; nevertheless, NOAA retains full discretion regarding whether ultimately to make that designation. The current statement of purpose and need begins by providing that the “purpose of the designation is to fulfill the purpose and policies of . . . the National Marine Sanctuaries Act”.¹⁰ This sentence inappropriately assumes that a sanctuary will be designated and demonstrates circular reasoning; that is, NOAA assumes it is going to designate a Sanctuary and therefore must comply with the Sanctuaries Act.

However, many of the other needs identified in the NOI could be achieved through existing Monument or other existing protections without sanctuary designation. For example, nothing in NOAA’s notice explains why the current management regime under the Monument and other land management units cannot “safeguard natural and cultural values of the marine environment of the Monument”, “strengthen the existing interagency management regulations”, require interagency consultation for federal agency action that is likely to adversely impact Monument resources, or enhance the joint permitting system for activities in the Monument expansion area. The “needs” to authorize NOAA to assess civil penalties,

⁸ <https://www.papahanaumokuakea.gov/new-about/management/> This link outlines the current management arrangements and includes the 2008 Plan.

⁹ <https://www.fisheries.noaa.gov/pacific-islands/habitat-conservation/papahanaumokuakea-marine-national-monument>

¹⁰ 86 Fed. Reg. at 64905.

prohibit destruction or loss of natural resources and provide natural resource damage assessment authorities should be reframed to an issue of how the resources can best be protected utilizing legal authority available to any of the Monument co-trustees.

There is another identified need that is to “augment existing authorities [cites omitted] to provide additional regulatory and non-regulatory tools for management and protection of Monument resources”. The scoping notice does not specify what the additional tools are, or why they are needed. That NOAA appears to have pre-decided the question whether of designation of a Sanctuary is appropriate is made further evident by the accompanying FAQ’s and memo, linked here.¹¹

Preferably, NOAA should republish the scoping notice with a statement that does not prejudge the designation of a marine sanctuary and with a designation of needs that does not prejudge it either. Such a statement would be legally proper¹² and would provide more appropriate opportunity for public input, better information for the decision-maker, and a more effective evaluation of environmental and management choices for protection. Indeed, NOAA’s NEPA Manual provides: “The purpose and need statement, however, cannot be so arbitrarily narrow that it preordains the outcome of the NEPA analysis.”¹³ In the event NOAA decides not to republish, the agency must insure that the purpose and need statement in the draft EIS (DEIS), including the specification of needs, reflects an intent to evaluate and then determine whether the current designations and protections without a Sanctuary or an added Sanctuary designation most effectively provides the means to protect and manage the resources in the marine areas of the existing Monument.

III. Additional Scoping Comments for the Draft Environmental Impact Statement

A. Alternatives

NOAA’s most important responsibility in this DEIS is to identify and analyze the effects of two types of reasonable alternatives: 1) reasonable alternatives to its current proposed action of designating a marine sanctuary and 2) reasonable alternatives within the context of designating a marine sanctuary. As discussed in this memo, it is not at all evident what additional

¹¹ <https://sanctuaries.noaa.gov/papahanaumokuakea/> (see especially section “How to Comment” and <https://sanctuaries.noaa.gov/papahanaumokuakea/faqs.html>) See also Fact Sheet linked at the first item and FAQs.

¹² Federal courts have held that some purpose and need statements inappropriately narrow the range of alternatives, thus biasing the identification of reasonable alternatives. “An agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency’s power would accomplish the goals of the agency’s action and the EIS would become a foreordained formality” *Friends of Southeast’s Future v. Morrison*, 153 F.3d 1059, 1066 (9th Cir. 1998), cited in for *National Parks & Conservation Association v. Kaiser Eagle Mountain*, 606 F.3d 1058, 1070 (9th Cir. 2010), *cert. denied*, March 28, 2011. As a result of this unreasonably narrow purpose and need statement, the BLM necessarily considered an unreasonably narrow range of alternatives.”

¹³ NOAA’s Companion Manual for NEPA compliance, <https://www.noaa.gov/sites/default/files/2021-10/NOAA-HQ-2016-0145%20NAO%2020216-6A%20Companion%20Manual.pdf>, p. 9.

protection would be afforded by a marine sanctuary designation. It is, however, clear, that a marine sanctuary designation without some additional permanent legal protection provides a new opening for commercial fishing. The DEIS must set forth a robust discussion of the effects of the legal status quo – that is, the Monument with no Sanctuary designation (formally known as the “no action alternative”) and provide a detailed comparison between the protections today and what would be added and diminished by marine sanctuary designation.¹⁴

As to the first type of alternative, it must be stressed that what is called the “no action” alternative does not mean that everything will stay the same if, for example, a Sanctuary is ultimately not designated. As discussed herein, the Monument Management Plan needs to be updated, the pertinent Monument 2008 regulations can and should be modified and extended, other implementing guidance and institutional arrangements can be developed. Thus, the EIS must contain, and NOAA must engage in far more extensive development of information, analysis, and legal analysis before the agency decides whether to move forward with a Sanctuary designation for the marine areas of the Monument as it now stands or might be modified through a new management plan, new regulations, or an additional Presidential Proclamation. Further, neither the decisionmaker, the co-trustees, nor anyone who cares about this ecologically significant area that is of such unique importance to Native Hawaiians would be well-served without such analyses.

As to the alternatives within the context of a potential designation of a marine sanctuary, the DEIS must analyze alternatives that would meet the reformulated “need” of ensuring lasting protections consistent with existing Monument Proclamations and regulations. Factors that are essential in a sanctuary designation to help assure that protections under the Proclamations as they now exist will remain include:

1. Preserving existing Monument protections.

The Federal Register Notice, in the first bullet under the “need” for designation, makes clear that a goal is to preserve the protections in the existing Monument proclamations. Those protections include a prohibition on all commercial fishing that was put in place after a phase out period for certain stocks and significant payments to the small number of affected commercial fishermen.¹⁵ Currently those protections are assured under the Monument proclamations and any Sanctuary designation must be consistent with or more protective than those requirements.

However, both the Notice and the supporting NOAA Materials linked above assume with no analysis that a Sanctuary designation could assure the current protections in the Pāpāhānaumokuākea Monument even if a future President seeks to weaken them, as President

¹⁴ See, *Ctr for Bio.Diversity v. Dept. of Interior* 623 F.3d 633, 642-43 (9th Cir. 2010); see also, *Pit River Tribe v. U.S. Forest Service*, 469 F.3d 768, 786 (9th Cir. 2006).

¹⁵ See 74 Fed. Reg. 47119 (September 15 2009): <https://www.govinfo.gov/content/pkg/FR-2009-09-15/pdf/E9-22181.pdf>

Trump did by proclaiming the end of a ban on commercial fishing in the Northeast Canyons and Seamounts Marine National Monument.¹⁶

This purpose of maintaining permanently the protections in the current Pāpāhānaumokuākea Proclamations is important and worthy; however, how a Sanctuary designation would achieve it is unspecified. If, for example, a future President issues a proclamation like President Trump did to allow commercial fishing, a provision in a Sanctuary designation that it be operated consistent with the Monument Proclamations could simply follow that weakening. If the Sanctuary designation specifies that protections will be no less than what is in the Proclamations of 2006, 2007, and 2016, could the Sanctuary designation and regulations be amended by either the Western Pacific Fishery Management Council (WESPAC) or the Secretary of Commerce to weaken them consistent with the then-Presidential action? Under the Sanctuaries Act, after certain consultations a Sanctuary designation may be modified in the same way it is initially issued.¹⁷

As part of its analysis, NOAA should evaluate what provisions can be or must be included in the Sanctuary designation to actually "ensure" that commercial fishing can never be allowed in the Sanctuary, and whether those are more protective than the current Monument protections would be in the face of a Presidential or Secretarial or WESPAC action to weaken them. A similar analysis is essential for each of the protections for the current Monument proclamations that prior Presidents found necessary.

2. Analyzing other "needs" specified in the Federal Register notice.

For each of these reformulated needs, NOAA should evaluate how the need is met by the Monument proclamation, how it could be met by a management plan and/or regulations for the Monument (now or as amended), and how or whether it would be met if a Sanctuary designation were added. For example, one of the "needs" is to "safeguard natural and cultural values of the marine environment of the Monument." A management structure has been established for the Monument, but the most recent Management Plan is from 2008, before the Expansion. Would updating that Plan, incorporating the recently prepared Mai Ka Pō Mai guidance document released by the co-trustees,¹⁸ be as effective or more effective at safeguarding the natural and cultures values of the Monument than overlaying a Sanctuary designation would be? The DEIS should be analytic and specific about this evaluation, and if the Sanctuary designation is found to be more effective, the analysis should be clear how and why it would be.

¹⁶ That Presidential action was challenged in court, defended by the government, then mooted without decision when President Biden reinstated the original prohibition on commercial fishing (that included a phase-out for two species) imposed by President Obama when he established the Monument. *Conservation Law Foundation v. Biden*, Case No. 1:20-cv-01589-JEB (D.C.). Dismissed by request of the plaintiffs, Nov. 11, 2021.

¹⁷ 16 U.S.C. § 1434(b)(2).

¹⁸ <https://www.oha.org/news/new-guidance-document-to-integrate-native-hawaiian-culture-into-management-of-papahanaumokuakea/> (June 21, 2021).

Another example: the “needs” specify that a purpose of the Sanctuary designation is to “authorize NOAA to assess civil penalties for violations of sanctuary regulations or permits and to enforce provisions of the NMSA.” In addition to the prejudgment and circularity of this “need”, the real question that the DEIS and related documents must evaluate is what legal authorities there are for enforcing protections in the area by any of the co-trustees, what agency coordination there is or may be to use them, and how much are the agencies using them with what level of cooperation. Since use of the authorities may depend on issuance of regulations, what Monument regulations have been issued, what will be issued, and what is the schedule? The “need” to authorize NOAA to enforce the provisions of the Marine Sanctuaries Act should be reformulated to analyze how resources can be protected by using the authorities of any of the co-trustees. For example, if the Fish & Wildlife Service has effective authority to cite and penalize a person destroying Monument resources, how is providing additional authority to NOAA to enforce for the same resources as a Sanctuary more protective? If NOAA already has authority to enforce fisheries violations under the Magnuson-Stevens Act once long overdue Monument regulations are issued, what additional protection for fisheries are provided by a Sanctuary designation?¹⁹ What is the schedule for issuing Magnuson Act regulations for protection and how would that be improved or delayed by a schedule for Sanctuary designation?

Finally, the notice cites the “need” to enhance existing authorities under the Antiquities Act and Presidential Proclamations to provide regulatory and non-regulatory tools for management and protection of marine resources” as a reason for designating a Sanctuary. Instead, this should be part of the evaluation, discussed above, of what tools there are available throughout the federal and state governments to protect these resources, and how they can be used cooperatively. The 2016 Proclamation specifies a long list of authorities for that purpose, and it is not evident that those authorities “need” to be enhanced without an evaluation of how they are being used now, to what protective effect, as well as how they could be used if the Management Plan and regulations were updated. These are, of course, examples and all of the needs should be evaluated in light of all co-trustees’ authorities and responsibilities.

3. Management issues.

The NOI in Section IV specifies that NOAA will develop among other documents a draft Sanctuary Management Plan. In addition, one of the “needs” specified for Sanctuary designation is to “strengthen the existing interagency management regulations (50 CFR 404).” In the DEIS, NOAA must evaluate the existing management arrangements and how adding a layer of Sanctuary designation would or could enhance or detract from implementation of those arrangements. For example, the existing Monument regulations referenced are issued jointly by the Fish and Wildlife Service (DOI) and NOAA (Department of Commerce). They date generally from 2006.²⁰ Nothing prohibits the agencies from moving forward with amendments

¹⁹ We note that the current Monument regulations are based in part on the Magnuson-Stevens Act, 16 U.S.C. § 1801 *et seq.*

²⁰ 71 FR 51134 (August 29, 2006); 50 C.F.R. Part 404.

to these regulations that would include the Monument Expansion of 2016. Yet, more than five years after the expansion, no regulations have been issued for the expanded marine portion of the Monument and no final revised Management Plan has been developed. An evaluation of how a Sanctuary designation would complement those existing and updated (when they are in fact updated) regulations is essential, including an analysis of how a designation that provides for Sanctuary management by NOAA would interact and intersect with the process of updating the Monument regulations. Such an analysis should include the roles for the U.S. Fish and Wildlife Service, State of Hawaii, and the Office of Hawaiian Affairs (OHA) in issuing any regulations. Further, the evaluation must include an analysis of how and whether having some component, but not all, of the Monument designated as a Sanctuary will make management and regulation effective and efficient or less effective and efficient.

Additionally, the Sanctuaries Act requires as part of the designation process that NOAA develop a management plan for the Sanctuary. That plan and its implementation must be evaluated every 5 years.²¹ NOAA should evaluate how the Sanctuaries management plan and the Monument management plan will intersect and how these duties to update both the Monument and Sanctuary plans—if there is a sanctuary designation—will be made compatible and complementary.

4. Use of resources.

Much time and attention has been given to developing management arrangements for the Monument including the Monument Expansion. They are set forth most recently in the Management Agreement of 2017.²² Any evaluation of whether a Sanctuary designation would be useful must consider whether agency resources could be better used in developing an updated management plan, and developing cooperative arrangements for implementing that plan. For example, how are the managing agencies cooperating in enforcing existing regulations? What is the record of protection of the resources? What would be the most effective way to arrange for development of effective scientific analysis of the area? For evaluating how protections are working in the area? For considering and implementing improved protections for the resources? And, importantly, what is the best use of always scarce agency resources: promulgating a new Monument management plan and Monument regulations to cover the expanded area or spending the time and effort to launch another new planning process and regulations for a Sanctuary?

5. Complexities for the public and regulators.

Under the current Monument proclamations, the Monument with expansion encompasses several management areas. The Monument covers marine areas, areas that overlay the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, the Midway Atoll National Wildlife Refuge; areas that overly the Battle of Midway National Memorial; and areas that

²¹ 16 U.S.C. § 1304(e).

²² *Supra* at fn. 4.

overlay the Hawaiian Islands National Wildlife Refuge. While four entities are involved in management of the entire Monument, each of these included areas falls under specific management authority. Providing an additional layer—a Sanctuary—for some, but not all, of the Monument—provides an additional complexity. Any analysis of whether Sanctuary designation is useful or effective for protection must evaluate complexity and how it affects protection of the relevant resources (objects in the Monument). Additionally, it should consider how an additional management unit with a planning process and regulations will affect public involvement in the various management units within the Monument.

6. Complexities of Sanctuary designation.

The process for designating a National Marine Sanctuary is complex. The statute specifies a series of factors to be taken into account and consultations required. These include, as some of the factors, evaluation of “(H) the negative impacts produced by management restrictions on income-generating activities such as living and nonliving resources development; and (I) the socioeconomic effects of sanctuary designation.”²³ Consultation must include any Regional Fishery Management Council under the Magnuson-Stevens Act, in this case WESPAC, which vigorously opposed the original Monument, the expanded Monument and the bans on commercial fishing.²⁴ Indeed, a WESPAC advisory committee member recently stated that, “Turning this monument into a sanctuary gives the council another crack at developing fishery regulations.”²⁵

These complexities, and whether in light of them, Sanctuary designation would be more or less protective of the Monument resources, is an essential component of the environmental analysis in the DEIS and related documents evaluating whether Sanctuary designation is useful or appropriate. For example, the provision in the Sanctuaries Act that permits the Secretary of Commerce to override the Regional Fishery Management Council (Sanctuaries Act at 304(a)(5)) should be considered in the DEIS analysis, including its history and potential use if Monument protections were weakened.

B. Protective Provisions to Evaluate in the DEIS

We recommend that the following provisions be considered in the context of a proposed Sanctuary:

-A provision to ban commercial fishing permanently. To truly increase protection of Monument resources, commercial fishing must remain prohibited as it now is under the Proclamations, even if a future President seeks to permit it under a revised Proclamation. The Sanctuary description and record would have to make clear how essential this

²³ 16 U.S.C. § 1433 (b)(1)(H) and (I).

²⁴ 16 U.S.C. §1433(b)(2)(D).

²⁵ “A New Marine Sanctuary Proposal May Not Be What It Seems”, November 22, 2021, available at: <https://www.civilbeat.org/2021/11/a-new-marine-sanctuary-proposal-may-not-be-what-it-seems/>

protection is to the purposes of the Sanctuary and how it must never be changed even if the Monument recognized in the Sanctuary designation is modified. It is important to note that under the NMSA, the terms of designation may be modified in the same way as the designation is made.²⁶ Therefore commitment to the goal of complete and permanent ban on commercial fishing in the Sanctuary is essential, but how to lock in this protection even if the Monument is modified requires thoughtful legal analysis set forth in the DEIS.

-A provision specifying a fixed “reasonable time” for the Regional Fishery Management Council to issue regulations, so that if the Council does not act within a fixed number of days (“a reasonable period”) to develop regulations barring all commercial fishing and restricting recreational fishing in the same manner as within the Monument, the Secretary will act under Sec.304 (a)(5) of the Act. While the Act does not provide for mandatory Secretarial action, a provision requiring action within a certain time period appears consistent with the goals and purposes of the Act.

-A provision setting forth each and every prohibition for any person and each and every regulated activity for any person with the understanding, evident from the proclamations, that those prohibitions apply to any persons including those working for federal or state agencies except as specified in the Proclamations for the Armed Forces, the U.S. Coast Guard, and in emergency situations. The Sanctuaries Act provides that if another agency is proposing to take an action that will destroy, cause the loss of, or injure a sanctuary resource, there is a process for consultation and mitigation.²⁷ NMSA, Section 304 (d). The Monument protections are for most agency workers and officials stronger and more protective than these Sanctuary Act negotiation provisions. The DEIS should identify this problem and how, under a Sanctuary designation, the stronger standards would pertain and be implemented to be as protective as the Proclamation provisions.

-A provision broadening representation for an Advisory Council. The Sanctuaries Act provides that the Secretary may establish Sanctuary Advisory Councils that are exempt from the Federal Advisory Committee Act.²⁸ These Councils are generally comprised of people in the geographic area of the Sanctuary. Section 315(b) of the Act provides:

“MEMBERSHIP.—Members of the Advisory Councils may be appointed from among—
 (1) persons employed by Federal or State agencies with expertise in management of natural resources;
 (2) members of relevant Regional Fishery Management Councils established under section 1852 of this title; and
 (3) representatives of local user groups, conservation and other public interest

²⁶ 16 U.S.C. §1434(b)(2).

²⁷ 16 U.S.C. § 1434(d).

²⁸ 16 U.S.C. § 1445A.

organizations, scientific organizations, educational organizations, or others interested in the protection and multiple use management of sanctuary resources.”

Because of the national and indeed international importance of this protected area, and to underscore the point that these are resources that belong to everyone in the nation, any Sanctuary designation here should specify that Advisory Council members must include nationally knowledgeable and appropriate people. NOAA should consider whether it wants to include a member of WESPAC given its strong stance for commercial fishing and against the Monument that bans commercial fishing.

-A provision addressing permits. The Sanctuaries Act, at Section 310, permits NOAA to issue permits so long as they are consistent with the purposes for which the sanctuary was designated and for protection of sanctuary resources. To assure protections as effective as those in the Proclamations, any Sanctuary designation should incorporate not only the prohibitions and regulated activity designations noted above, but indeed provide in the designating document each of the prohibitions and restrictions in each of the Proclamations with an analysis, including a sound legal analysis, of how they are supported by the NMSA and how they will remain a permanent part of any Sanctuary designation.

Finally, any evaluation of how the current Monument proclamation protections are or are not as protective as adding a Sanctuary overlay and how protections under any Sanctuary designation are lawfully maintained permanently requires a careful and accurate legal analysis. The material NOAA has placed on its website related to this potential Sanctuary designation has legal mistakes and misstatements. For example, in the Q&A section related to commenting on the Federal Register notice there is the following:

“Q: How does sanctuary designation provide a more stable framework and additional protection?

A: The sanctuary designation process includes significant opportunities for public involvement and procedural steps including environmental review under National Environmental Policy Act and rulemaking under the Administrative Procedure Act. Designation can augment and strengthen existing protections for Papahānaumokuākea ecosystems, living resources, and cultural and maritime heritage resources through the addition of sanctuary regulations. National Marine Sanctuaries Act authorities and regulations would enhance resource protection, increase regulatory compliance, ensure enforceability of protections, provide natural resource damage assessment authorities, and provide for interagency consultation.²⁹

The implication that development of Monument regulations and management plans does not provide the opportunity for public input, does not provide for public notice and comment, and does not provide for NEPA analysis is simply legally wrong. Moreover, there is absolutely no legal explanation or analysis for the assertions that a sanctuary designation would “enhance resource protection, increase regulatory compliance, ensure enforceability of protections,

²⁹ <https://sanctuaries.noaa.gov/papahanaumokuakea/faqs.html>

provide natural resource damage assessment authorities, and provide for interagency consultation.” Simply stating something does not make it fact. However, these repeated assertions may persuade commentators that such assertions are valid. Throughout the process of considering whether Sanctuary designation is appropriate or helpful, it is essential that NOAA and its co-trustee cooperating agencies have accurate legal analysis and support for the information and reasoning it uses in the DEIS.

Sincerely,

Dinah Bear³⁰

Lois Schiffer³¹

³⁰ Environmental attorney; General Counsel, Council on Environmental Quality, Executive Office of the President (1983-1993; 1995-2007) (Deputy General Counsel, 1981-1983).

³¹ Environmental attorney; General Counsel, NOAA (2010-2017); Assistant Attorney General, Environment and Natural Resources Division, U.S. Dept. of Justice (1994-2001).



CREATION JUSTICE MINISTRIES

Justice for God's planet and God's people.

Subject: Scoping period for Papahānaumokuākea Marine National Monument

Document #: 2021-25207

Federal Register #: 86 FR 64904

Creation Justice Ministries represents the creation care and environmental justice policies of 38 major Christian denominations and communions throughout the United States to protect and restore God's Creation.

Creation Justice Ministries educates, equips and mobilizes Christian communions/denominations, congregations and individuals to protect, restore, and rightly share God's creation.

Based on the priorities of its members, with a particular concern for the vulnerable and marginalized, we provide collaborative opportunities to build ecumenical community, guide people of faith and faith communities towards eco-justice transformations, and raise a collective witness in the public arena echoing Christ's call for just relationships among all of creation.

As Christians, we support designating Papahānaumokuākea Marine National Monument (MNM) as a national marine sanctuary to enhance protections and safeguard resources in the marine portions of the Monument. By changing the status of Papahānaumokuākea from a Marine National Monument to a National Marine Sanctuary, higher protections for the monument would be put in place. Within the bounds of Papahānaumokuākea MNM reside coral islands, undersea volcanoes, flat-topped undersea mountains, banks, and shoals stretch 1,350 miles. This Monument supports a diversity of life, including over 7,000 species, many found nowhere else on earth. Threatened green sea turtles and endangered Hawaiian monk seals are among the rare species that inhabit the island chain.

A Sanctuary status would not only protect the incredible biodiversity listed above, but would also preserve the incredible cultural and genealogical ties that Native Hawaiians have with this sacred space. We believe sanctuary designation will complement the efforts of the Office of Hawaiian Affairs, the state of Hawaii, and other federal agencies to conserve this nationally significant area and its cultural resources and bolster strong and lasting protection for the marine environment.



Center for Sportfishing Policy

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Ben Speciale	President Yamaha Marine

January 31, 2022

PMNM-Sanctuary Designation
NOAA/ONMS
1845 Wasp Blvd., Bldg 176
Honolulu, HI 96818

To NOAA's Office of National Marine Sanctuaries,

On behalf of the Center for Sportfishing Policy, thank you for the opportunity to comment on the Proposed Designation of a National Marine Sanctuary within Papahānaumokuākea Marine National Monument (Document ID NOAA-NOS-2021-0114). As part of the scoping and environmental impact statement process, we strongly urge NOAA to allow and promote recreational fishing (non-commercial fishing) in the Monument Expansion Area as well as the entire Papahānaumokuākea Marine National Monument.

We believe recreational anglers were wrongfully locked out of the Papahānaumokuākea Marine National Monument at its initial designation. And even though President Obama allowed recreational fishing in the expanded area, a permitting process has never been put into place. Recreational fishing has proven to be a compatible use in national marine sanctuaries and marine national monuments throughout America's oceans.

Therefore, we ask NOAA to follow President Obama's proclamation 9478 permitting recreational fishing as a regulated activity within the Monument Expansion Area – "non-commercial fishing, provided that the fish harvested, either in whole or in part, cannot enter commerce through sale, barter, or trade, and that the resource is managed sustainably."

Furthermore, allowing recreational fishing throughout the monument would also achieve President Biden's goal of increasing access for outdoor recreation while also meeting conservation objectives.

Again, we appreciate the opportunity to comment on this process.

Sincerely,



Jefferson Angers
President



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A Sanctuary status would not only protect the incredible biodiversity listed above, but would also preserve the incredible cultural and genealogical ties that Native Hawaiians have with this sacred space. We believe sanctuary designation will complement the efforts of the Office of Hawaiian Affairs, the state of Hawaii, and other federal agencies to conserve this nationally significant area and its cultural resources and bolster strong and lasting protection for the marine environment.

We believe that living in right relationship with God's creation means advocating for the best protections possible for each of God's creatures. We also acknowledge that Indigenous peoples have been caring for this land for centuries longer than us. As such, we turn to Indigenous peoples for their guidance and knowledge in caring for Papahānaumokuākea Marine National Monument.

In an effort to preserve and protect all those listed above, we support;

- The scoping and environmental impact statement process.
- The NOAA proposed, spatial extension of the monument's current boundaries to include all the waters, submerged lands, and living and non-living resources within these areas. The shoreward boundary should extend to the mean high tide.
- Management measures for the sanctuary and any additional regulations that should be added under the National Marine Sanctuary Act (NMSA) to protect Monument Resources.

It is critical that sanctuary designation strengthen and enhance the protection of Papahānaumokuākea, as designated under the Antiquities Act and the Presidential Proclamations. Those efforts need to include integrating traditional Hawaiian knowledge systems, values, and practices into management.

We support this scoping and environmental impact study period and urge NOAA to move forward with the designation of Papahānaumokuākea as a National Marine Sanctuary.

As the organizers of a global coalition of deep-sea experts, the Executive Committee of the Deep Ocean Stewardship Initiative (DOSI) is thankful for this opportunity to comment on topics that should be addressed in NOAA's draft EIS of designating marine portions of Papahānaumokuākea Marine National Monument as a National Marine Sanctuary. We would like to offer input from a deep-sea perspective regarding several of the themes on which NOAA has requested comments.

The location, nature, and value of ecosystems, species, and resources that would be protected by a sanctuary:

While shallow environments tend to be the most visible beneficiaries of protection, diverse ecosystems in the deep sea (commonly defined as the part of the ocean below a depth of 200 meters that is too dark to support photosynthesis) are widespread in the current monument. The most recent proof of this is the [exploration cruise conducted in the area](#) by Ocean Exploration Trust, NOAA, and other partners in 2021. That cruise discovered astoundingly rich and diverse deep-sea communities of sponges and corals, along with the creatures those communities support, on the Voyager Seamounts south of Kapou. Significant deep-sea biodiversity was also found during NOAA Ocean Exploration's CAPSTONE campaign [expeditions in 2016](#) and previous Ocean Exploration Trust [exploration expedition in 2018](#). Along with "pure" deep-sea environments, shallow reefs often continue into deeper water, with a high level of connectivity and interdependence between their shallow and deep parts.

While impressive, deep-sea environments like these are exceptionally fragile. Organisms in the deep tend to grow very slowly because of limited food and cold temperatures, which makes the deep sea slow to recover from any human-caused damage or disturbance. Deep-sea species are also especially vulnerable to climate change; because their environment usually changes very little compared to shallow water, warming, acidification or deoxygenation of the deep can be devastating.

Protected area regulations and monitoring plans worldwide often fail to account for deep-sea environments and their particular needs in a world affected by climate change, which can leave these environments vulnerable to harm. NOAA should therefore consider the particular impact of sanctuary designation, and any change in regulation that comes with it, on the rich, deep-sea ecosystems in the area.

The potential socioeconomic, cultural, and biological impacts of sanctuary designation:

In providing more streamlined and politically durable protection of marine portions of Papahānaumokuākea than the current Marine National Monument, sanctuary designation may have a positive impact on the deep-sea life in the area. Deep-sea environments globally are at

increasing risk of damage from deep-seabed mining, bottom trawling, and other uses. Creating a National Marine Sanctuary in the area with regulations that disallow such activities would ensure local deep-sea life remains protected. Sanctuary designation would not protect the deep-sea environment from climate change, but in many cases reduction of other risks is believed to help ocean species survive its effects.

This continued protection may have socioeconomic and cultural benefits. Deep-sea research, which is currently allowed by permit in the Monument, provides valuable contributions to many branches of science. These include the development of new materials, medical research, and the study of climate change. The deep sea also holds cultural and aesthetic value for many, with this archipelago in particular being the sacred wahi kupuna of the Native Hawaiian people. NOAA should consider the value that the deep-sea portions of Papahānaumokuākea provide in these areas and the corresponding benefits of improved protection. At the same time, NOAA should consider the risks that any future changes to sanctuary regulations could pose to deep-sea environments and their uses.

Spatial extent of the sanctuary and boundary alternatives NOAA should consider:

As Dr. Beth Orcutt stated in her comment, a 2021 research cruise conducted by Ocean Exploration Trust and partners found diverse deep-sea communities on seamounts outside of the current Monument boundaries. NOAA's EIS should consider the benefits of expanding the area of a future Sanctuary to include these deep-sea communities, and others in the Pacific Remote Islands Marine National Monument, while also considering the impacts of this action on local people and current human activities in the area.

Important management measures for the sanctuary:

Future management of a National Marine Sanctuary in marine portions of Papahānaumokuākea should take the following recommendations into account:

1. Design management measures for deep-sea and mesophotic environments within the Sanctuary so that the particular needs of these communities are accounted for, avoiding regulatory gaps.
2. Ensure that monitoring plans for the Sanctuary include plans for monitoring of deep-sea environments. Effective use of ROVs and AUVs can help inform management measures.
3. Due to a limited ability to monitor changes and apply adaptive management in the deep sea, especially across such a wide area, apply the precautionary principle to any activities under consideration in deep portions of the future Sanctuary.

Thank you once again for the opportunity to comment in advance of this important decision for Papahānaumokuākea.

Sincerely,

The Executive Committee of the Deep Ocean Stewardship Initiative (DOSI):
Maria Baker, Lisa Levin, Elva Escobar, Kristina Gjerde, Harriet Harden-Davies, Diva Amon, and
Brandon Gertz

With assistance from DOSI members Erik Cordes, Megan Cook, and Bobbi-Jo Dobush



National Headquarters
1130 17th Street, N.W. | Washington, D.C. 20036-4604 | tel 202.682.9400 | fax 202.682.1331
www.defenders.org

Submitted electronically via regulations.gov

January 31, 2022

Ms. Athline Clark
Superintendent
Papahānaumokuākea Marine National Monument and UNESCO World Heritage Site
1845 Wasp Blvd, Building 176
Honolulu, HI 96818

Re: Public Comment for the Proposed Designation of a National Marine Sanctuary within
Papahānaumokuākea Marine National Monument, NOAA-NOS-2021-0114

Dear Superintendent Clark:

Defenders of Wildlife (“Defenders”) respectfully submits the following comments on the proposed designation of a national marine sanctuary within the Papahānaumokuākea Marine National Monument. Defenders of Wildlife is a national non-profit conservation organization dedicated to conserving and restoring native species and the habitats on which they depend. Defenders is deeply involved in the conservation of marine species and ocean habitats, including the protection and recovery of species that occur in U.S. waters in the Pacific Ocean. We submit these comments on behalf of nearly 2.2 million members and supporters nationwide.

Papahānaumokuākea Marine National Monument is located in the Pacific Ocean, encompassing 582,578 square miles and is the “largest contiguous fully protected conservation area under the U.S. flag.”¹ The Monument protects shallow water habitats that are essential for several species of birds, marine mammals, fish, and coral.² Many of the species found within the Monument are endemic and not found anywhere else in the world. As many as twenty-three species protected under the Endangered Species Act can be found within the boundaries of the Monument. Among them are the threatened green sea turtle, whose nesting habitat is within the Monument, and the endangered Hawaiian monk seal, which is found only in Hawai‘i.

In addition to protecting wildlife, the Monument is a natural and cultural World Heritage Site and protects places, including areas located on the islands of Nihoa and Mokumanamana, of cultural significance to Native Hawaiians.³ The island of Mokumanamana has the highest number of sacred sites in the Hawaiian Archipelago and “has spiritual significance in Hawaiian cosmology”.⁴

¹ National Oceanic and Atmospheric Administration. “About Papahānaumokuākea.” *About Papahānaumokuākea* | Papahānaumokuākea, 7 Aug. 2019, <https://www.papahanaumokuakea.gov/new-about/>.

² *Id.*

³ *Id.*

⁴ *Id.*

Defenders supports the designation of portions of Papahānaumokuākea Marine National Monument as a national marine sanctuary. The sanctuary designation will provide added protections to highly productive ecosystems that are necessary for biological diversity and the overall health of the oceans. Considering the number of ESA-protected species found within the Monument, the agencies involved have a responsibility under section 7(a)(2) of the ESA to avoid jeopardizing the existence of any listed species. But the agencies also have a responsibility under section 7(l)(a) of the ESA, which states that all federal agencies – including the ones involved in management of the Monument – are required to use their authorities to conserve threatened and endangered species, defined as recovering species to the point where they no longer need the protections of the ESA.⁵ The agencies can meet this obligation by ensuring strong protections for those species within the Monument. Likewise, a national marine sanctuary designation will advance the conservation purposes of other federal statutes, including the Marine Mammal Protection Act, Migratory Bird Treaty Act, and Magnuson-Stevens Fishery Conservation and Management Act.

Papahānaumokuākea is also extremely important for Native Hawaiians and added protections will ensure that the waters there will be accessible for future generations. Currently, Papahānaumokuākea is co-managed with four co-trustees and seven co-managing agencies including the Office of Hawaiian Affairs that represents local indigenous communities.⁶ We support this continued shared governance for the marine sanctuary as many sites within the Monument are sacred to Native Hawaiians and efforts to further protect them should incorporate traditional ecological knowledge as well as shared management with Native Hawaiians.

Thank you for the opportunity to submit these comments.

Sincerely,

Monique Paul
Conservation Law Coordinator
Defenders of Wildlife
mpaul@defenders.org
202-772-0251

⁵ 16 U.S.C. §§ 1536(a)(1), 1532(3) (defining “conserve”).

⁶ National Oceanic and Atmospheric Administration. “About Papahānaumokuākea.” *About Papahānaumokuākea | Papahānaumokuākea*, 7 Aug. 2019, <https://www.papahanaumokuakea.gov/new-about/>.

The Department of the Navy (DON) appreciates the opportunity to provide comments on the National Oceanic and Atmospheric Administration (NOAA) Office of National Marine Sanctuaries (ONMS) notice of intent to prepare a draft environmental impact statement (EIS) to consider designating marine portions of the Papahanaumokuakea Marine National Monument (PMNM) as a national marine sanctuary. We look forward to working with NOAA, the U.S. Fish and Wildlife Service (FWS), the State of Hawaii, and the Office of Hawaiian Affairs during the designation process and request to be a cooperating agency for this EIS.

The Pacific region is an area of great strategic importance and focus for national defense and specifically for the DON. DON seeks to preserve the ability to conduct military activities in the Pacific as needed to support Navy and Marine Corps readiness and support U.S. national security initiatives. DON requests to be a cooperating agency in order to provide special expertise on potential Navy and Marine Corps equities that may be relevant to the sanctuary designation and management process.

DON requests that the sanctuary designation process be consistent with the spirit and intent of the two Proclamations that established PMNM, directing that the management of this area not restrict or unduly burden the activities and exercises of the Armed Forces. A portion of PMNM overlaps with the Navy's temporary operating area within the Hawaii Range Complex; and training and testing activities that could occur within the PMNM include training by individual ships transiting to and from the Western Pacific on deployment or occasional positioning of ships supporting testing or other events outside of the Monument. Types of events can be in the air, at the surface, or sub-surface. The Navy previously considered the effects of training and testing in and around the Monument in its 2018 Hawaii and Southern California Training and Testing Environmental Impact Statement and earlier analysis around the Hawaiian Islands. Activities conducted in this area are performed in compliance with applicable environmental laws.

During the sanctuary designation process, consistent with the language in the Proclamation, the Navy requests that ONMS work with the Department of Defense (DoD), through the United States Navy, under the Sunken Military Craft Act regarding the protection of sunken craft which are under the DoD's jurisdiction.

DON also requests the sanctuary designation process consider the rights, freedoms, and lawful uses of the sea recognized in customary international law. The proclamations establishing the PMNM are explicit that the designation shall be applied in accordance with international law, and include several statements about the applicability of management provisions to specific entities (e.g., foreign flag vessels, sovereign warships). DON recommends that the sanctuary incorporate the U.S. Armed Forces and emergency and law enforcement activities provisions of the proclamations, as well as the provisions that are in accordance with international law. Any permit system for research should include coordination with the Department of State regarding U.S. Marine Scientific Research policy, and consider appropriate boundaries for the protection and management of cultural resources outside of the contiguous zone and consistency with international law.

We look forward to working with NOAA, FWS, the State of Hawaii, and the Office of Hawaiian Affairs to facilitate the Sanctuary designation while ensuring Navy equities are considered. The Department of the Navy point of contact is: Matt Senska, Office of the Deputy Assistant Secretary of the Navy (Environment & Mission Readiness), matthew.c.senska.civ@us.navy.mil.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

January 31, 2022

Athline Clark
NOAA Superintendent
Papahānaumokuākea Marine National Monument
Attn: PMNM-Sanctuary Designation
1845 Wasp Boulevard, Bldg 176
Honolulu, Hawaii 96818

Subject: Scoping Comments for the Draft Environmental Impact Statement for the National Marine Sanctuary Designation for Papahānaumokuākea Marine National Monument, Honolulu County, Hawaii (docket # NOAA-NOS-2021-0114)

Dear Athline Clark:

The U.S. Environmental Protection Agency has reviewed the National Oceanic and Atmospheric Administration's Notice of Intent to prepare a Draft Environmental Impact Statement for the National Marine Sanctuary Designation for Papahānaumokuākea Marine National Monument (Papahānaumokuākea Marine Sanctuary). Our review and comments are provided pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

The National Oceanic and Atmospheric Administration is preparing an Environmental Impact Statement to consider and disclose the anticipated environmental effects of designating marine portions of Papahānaumokuākea Marine National Monument as a national marine sanctuary. The Monument is administered jointly by four Co-Trustees—the Secretary of Commerce through the NOAA, the Secretary of the Interior through the U.S. Fish and Wildlife Service (USFWS), the State of Hawaii through the Governor and the Office of Hawaiian Affairs. The Monument Co-Trustees currently operate the Monument guided by a 2008 Monument Management Plan for Papahānaumokuākea and the residential Proclamations designating the Monument. Papahānaumokuākea Marine National Monument is one of the largest protected areas in the world. The original Papahānaumokuākea Marine National Monument and the Monument Expansion Area located around the Northwestern Hawaiian Islands, were established under the Antiquities Act through, respectively, Presidential Proclamation 8031 of June 15, 2006, as amended by Proclamation 8112 of February 28, 2007; and Proclamation 9478 of August 26, 2016. Proclamation 9478 expanded the Monument by an additional 442,781 square miles from 139,793 square miles to a total 582,574 square miles and directed NOAA to initiate the process to designate Papahānaumokuākea Marine National Monument as a National Marine Sanctuary.

The EPA offers the following scoping recommendations to NOAA to consider when preparing the Draft EIS, including impacts to biological resources, water quality for coral reef protection, water quality impairments from trash, legacy hazardous waste cleanup at Tern Island, and air quality. These issues are discussed further in the attached detailed comments. The EPA appreciates the Papahānaumokuākea Marine Sanctuary analysis utilizes best available science. Additionally, the EPA appreciates

opportunities to participate in future review periods issued for updates to the overarching Monument Management Plan.

The EPA appreciates the opportunity to comment on the preparation of the Draft EIS. Once it is released for public review, please provide an electronic copy to me at zellinger.andrew@epa.gov. If you have any questions, please feel free to contact me at (415) 972-3093 or by email.

Sincerely,


ANDREW
ZELLINGER

/s/

Digitally signed by
ANDREW ZELLINGER
Date: 2022.01.31
17:19:56 -08'00'

Andrew Zellinger
Environmental Review Branch

Enclosure: EPA's Detailed Comments

**U.S. EPA DETAILED COMMENTS ON THE SCOPING NOTICE FOR THE DRAFT ENVIRONMENTAL
IMPACT STATEMENT FOR THE NATIONAL MARINE SANCTUARY DESIGNATION FOR
PAPAHĀNAUMOKUĀKEA MARINE NATIONAL MONUMENT, HONOLULU COUNTY, HAWAII – JANUARY
31, 2022**

Purpose and Need

In the Draft EIS, clearly identify the underlying purpose and need to which NOAA is responding in proposing the alternatives (40 CFR 1502.13). The *purpose* of the proposed action is typically the specific objectives of the activity, while the *need* for the proposed action may be to eliminate a broader underlying problem or take advantage of an opportunity. The purpose and need should be a clear, objective statement of the rationale for the proposed project.

Range of Alternatives

All reasonable alternatives that fulfill the proposed action's purpose and need should be evaluated in detail. A robust range of alternatives will include options for avoiding significant environmental impacts.

The environmental impacts of the proposed action and alternatives should be presented in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public (40 CFR 1502.14). The potential environmental impacts of each alternative should be quantified to the greatest extent possible (e.g., acres of habitat impacted; change in water quality).

Baseline Environmental Conditions

When evaluating project effects, we recommend using existing environmental conditions as the baseline for comparing impacts across all alternatives, including the no-action alternative. This provides an important frame of reference for quantifying and/or characterizing magnitudes of effects and understanding each alternative's impacts and potential benefits. This is particularly important when there are environmental protections in place that are based on current conditions, such as total maximum daily loads (TMDLs) for impaired waterbodies. It can also be useful, although often less certain, to compare alternatives against a no action baseline that includes reasonably foreseeable future conditions. The EPA recommends that the NEPA analysis compare and present impacts to resources against the existing conditions baseline using a consistent method to measure project impacts for all alternatives. By utilizing existing environmental conditions as a baseline, future changes to environmental resources can be more accurately measured for all alternatives, including the No Action alternative. We recommend that NOAA consider the following when defining baseline conditions:

- Verifying that historical data (e.g., data 5 years or older) are representative of current conditions.
- Including resources directly impacted by the project footprint within the geographic scope of analysis, as well as the resources indirectly (or secondarily) impacted by the project. These indirectly impacted areas may include streams, wetlands, and aquatic, riparian, and meadow ecosystems.

Biological Resources

The document should identify all petitioned and listed threatened and endangered species and critical habitat that might occur within the project area. We recommend that NOAA quantify which species or critical habitat might be directly, indirectly, or cumulatively affected by each alternative. The EPA recommends engaging the U.S. Fish and Wildlife Service as early in the analysis as possible to ensure that the proposed alternatives account for the following:

- Impacts to special-status species found in the project area including the Hawaiian Monk seal, and green turtles;
- Migratory Bird Treaty Act compliance; and
- Protection from invasive species.

Clean Water Act

List of Impaired Waters under Clean Water Act, Section 303(d)

EPA added Tern Island to the 303(d) list based on a review of data and information that the Center for Biological Diversity provided to the State of Hawaii for its 2018 Integrated Report. EPA determined that waters around Tern Island are not meeting Hawaii's water quality standards for trash based on this review.

States are required to develop a Total Maximum Daily Load for every pollutant/waterbody combination that are on its 303(d) list. States assign a priority ranking to waterbodies/pollutants on the list for TMDL development. Tern Island trash is currently listed as a low priority for TMDL development on Hawaii's list. It is possible for a waterbody to come off the 303(d) list without a TMDL if other restoration activities occur and new data and information show the waterbody is meeting water quality standards. We recommend that NOAA consider strategies focused on minimizing trash and marine debris in the waters around Tern Island throughout the Marine Sanctuary designation and management process.

Improving Water Quality to Protect Coral Reefs

EPA protects coral reefs by implementing Clean Water Act programs that protect water quality in watersheds and coastal zones of coral reef areas. EPA also supports efforts to monitor and assess the condition of U.S. coral reefs and conducts research into the causes of coral reef deterioration. EPA is developing tools to help adapt coral reefs to better handle changing conditions.¹ Much of EPA's work to protect coral reefs is conducted in partnership with other federal agencies, states, and territories. For example, EPA is an active member of the interagency U.S. Coral Reef Task Force.² EPA is currently developing an evidence map identifying and organizing existing literature evaluating the impact of water quality stressors on coral reef habitats.

Legacy Hazardous Waste Cleanup at Tern Island

Tern Island is a US Fish and Wildlife Service Refuge within the Papahānaumokuākea Marine National Monument. It served as a US Naval Air Facility and Refueling Station during WWII before serving as a US Coast Guard Long-Range Navigation Station from 1952-1979, after which it was transferred to FWS. Today it is recognized as a World Heritage Site and an increasingly important terrestrial location for several threatened and endangered species and 18 species of nesting seabirds. Tern Island was placed on the Federal Agency Hazardous Waste Compliance Docket in 2004. Legacy military waste and associated hazardous substances remain buried on the island.

In 2012, EPA was petitioned by the CBD to conduct a CERCLA Preliminary Assessment (PA) of the Northwestern Hawaiian Islands, with a focus on the source and impact of plastic pollution on sensitive species. CBD agreed to EPA conducting a scaled down PA of Tern Island, which EPA completed in partnership with FWS in 2014. The PA confirmed that releases of hazardous substances--such as PCBs, lead, hydrocarbons, dioxins/furans, and heavy metals from onsite buried military wastes--have occurred in sensitive marine and terrestrial environments and further action is needed.

¹ <https://www.epa.gov/coral-reefs/what-epa-doing-protect-coral-reefs>

² EPA coral reef contact information: <https://www.epa.gov/coral-reefs/forms/contact-us-about-coral-reefs>

In 2019, EPA completed a removal assessment for hazardous substances on the island. Data from the report demonstrated elevated concentrations of metals, PCBs and PAHs in soil, groundwater, and surface water in the vicinity of the legacy “Bulky Dump” and the SE corner of the island. On November 9, 2021, CBD sent EPA a letter seeking an update on EPA's investigations at Tern Island, noting the September 2014 PA “indicated that further evaluation was warranted at Tern Island.”

Proposed Next Steps

EPA (in consultation with FWS) proposes to conduct a removal action on an emergency basis to mitigate threats posed by hazardous substances which remain unaddressed. FWS and DOI staff and solicitors met with EPA recently to discuss coordination on a proposed hazardous substances removal action. The proposed action would abate hazardous substance impacts due to the Bulky Dump (exposed during Hurricane Walaka) and other isolated areas of concern. The action decouples the emergency action from the larger effort to restore the island, including the construction of a seawall to shore up the eroding dump area.

Air Quality

General Conformity

EPA's General Conformity Rule, established under Section 176(c)(4) of the Clean Air Act, provides a specific process for ensuring that federal actions do not interfere with a state's plans to attain or maintain NAAQS. For any criteria pollutants in the air basin of the project area where the air quality status is in nonattainment or attainment – maintenance,³ complete a general conformity applicability analysis (i.e., a comparison of direct and indirect emissions for each alternative with *de minimis* thresholds of 40 CFR 93.153). We recommend including a draft general conformity determination in the Draft EIS to fulfill the public participation requirements of 40 CFR 93.156.

Consultation with Tribal Governments

Executive Order 13175 “Consultation and Coordination with Indian Tribal Governments” (November 6, 2000) was issued to establish regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications, and to strengthen the United States government-to-government relationships with Indian Tribes. In the Draft EIS, describe the process and outcome of government-to-government consultation between NOAA and each of the tribal governments within the project area, issues that were raised (if any), and how those issues were addressed in the selection of the proposed alternative. As a general resource, the EPA recommends the document *Tribal Consultation: Best Practices in Historic Preservation*, published by the National Association of Tribal Historic Preservation Officers.⁴

National Historic Preservation Act and Executive Order 13007

Consultation for tribal cultural resources is required under Section 103 of the National Historic Preservation Act (NHPA). Historic properties under the NHPA are properties that are included in the National Register of Historic Places (NRHP) or that meet the criteria for the National Register. Section 106 of the NHPA requires a federal agency, upon determining that activities under its control could affect historic properties, to consult with the appropriate State Historic Preservation Office/Tribal Historic Preservation Office (SHPO/THPO). Under NEPA, any impacts to tribal, cultural, or other treaty resources must be discussed. Section 106 of the NHPA requires that federal agencies consider the effects of their actions on cultural resources, following regulation in 36 CFR 800.

³ Maintenance areas redesignated to attainment more than twenty years in the past are no longer required to comply with general conformity.

⁴ See http://www.nathpo.org/PDF/Tribal_Consultation.pdf

Executive Order 13007 “Indian Sacred Sites” (May 24, 1996) requires federal land managing agencies to accommodate access to, and ceremonial use of, Indian sacred sites by Indian religious practitioners, and to avoid adversely affecting the physical integrity, accessibility, or use of sacred sites. It is important to note that a sacred site may not meet the National Register criteria for a historic property and that, conversely, a historic property may not meet the criteria for a sacred site. It is also important to note that sacred sites may not be identified solely in consulting with tribes located within geographic proximity of the project. Tribes located outside of the project area may also have religiously significant ties to lands within the project area and should, therefore, be included in the consultation process.

The EPA recommends that the Draft EIS address the existence of Native Hawaiian sacred sites in the project area. Explain how the proposed action would address Executive Order 13007, distinguish it from Section 106 of the NHPA, and discuss how NOAA would ensure that the proposed action would avoid adversely affecting the physical integrity, accessibility, or use of sacred sites. Provide a summary of all coordination with Native Hawaiians and with the SHPO/THPO, including identification of NRHP eligible sites and development of a Cultural Resource Management Plan.

Environmental Justice

Executive Order 12898 “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (February 11, 1994) and the “Memorandum of Understanding on Environmental Justice and Executive Order 12898,” released on August 4, 2011, direct federal agencies to identify and address disproportionately high and adverse human health or environmental effects on minority and low-income populations, allowing those populations a meaningful opportunity to participate in the decision-making process. CEQ guidance clarifies the terms low-income and minority population, which includes Native Americans, and describes the factors to consider when evaluating disproportionately high and adverse human health effects.

The EPA⁵ recommends that the Draft EIS include an evaluation of environmental justice populations within the geographic scope of the project area. If such populations exist, describe how the proposed action would address the potential for disproportionate adverse impacts to minority and low-income populations, and the approaches used to foster public participation and coordination with these populations. The EPA recommends the following for development of the EJ analysis:

- Consider *Promising Practices for EJ Methodologies in NEPA Reviews* when developing the EJ section of the EIS.
- Include a description of the area of potential impact used for the environmental justice impact analysis and provide the source of demographic information.
- Consider using EPA’s Environmental Justice screening and Mapping Tool EJScreen⁶
- Disclose whether the project will result in a disproportionate and adverse impact on minority or low-income populations.
- Discuss potential mitigation measures for any anticipated adverse impacts to community members that could result from the project.
- Include opportunities for incorporating public input to promote context sensitive design, especially in minority and low-income communities.

⁵ See *Promising Practices for EJ Methodologies in NEPA Reviews*, May 2016

https://www.epa.gov/sites/production/files/2016-08/documents/nepa_promising_practices_document_2016.pdf

⁶ <https://ejscreen.epa.gov/mapper/>



- Document the process used for community involvement and communication, including all measures to specifically involve low-income and minority communities. Include an analysis of results achieved by reaching out to these populations.
- Identify any specific actions proposed by NOAA to reduce emissions from the project, including use of low or zero-emissions construction equipment, and inclusion of alternative fuel and green technology infrastructure. Include an estimate of the air quality benefits and reduced adverse health effects that would result from each mitigation measure proposed. Identify any specific mitigation measures considered for sensitive populations (e.g., schools, daycare facilities, hospitals, senior centers, etc.).

Linda M. B. Paul Esq.
 A Limited Liability Law Corporation

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Phone: 808-262-6859
 Mobil: 808-347-8825

To: John Armor, Director of the Office of National Marine Sanctuaries
 c/o PMNM-Sanctuary Designation, NOAA/ONMS
 1845 Wasp Blvd., Bldg 176, Honolulu, HI 96818
 From: Linda M.B. Paul
 RE: Public Comment on National Marine Sanctuary Designation for the Northwestern Hawaiian Islands.

Aloha John,

As a member of the public I would like to offer the following comments on the designation of a National Marine Sanctuary in the Northwestern Hawaiian Islands.

I support the establishment of a National Marine Sanctuary in the Northwestern Hawaiian Islands as a means of improving the legal protections currently in place to preserve the endemic wildlife and ecosystems of this unique, remote and important marine area. In addition to complying with President William J. Clinton's Executive Order 13178 of December 4, 2000, which is still in effect, designating a NWHI National Marine Sanctuary will provide NOAA with the authorization under the National Marine Sanctuaries Act to carry out the following necessary management actions that it currently has no authority to take:

- a. Assess civil penalties for violations of Monument regulations and for damages to NWHI resources that occur due to actions within the sanctuary and actions from outside sanctuary boundaries. Some amount of any penalties collected will help fund resource protection efforts.
- b. Access Natural Resource Damage Assessment funds to recover costs associated with responding to and remediating the destruction, loss or injury (or potential destruction, loss or injury) to sanctuary resources.
- c. Enter directly into agreements with other agencies. Currently the Monument must go through the Pacific Island Region for all MOAs, MOUs, etc.
- d. Establish a mechanism to charge fees for commercial Special Ocean Use permits. This includes charging for permitting staff time, cost of vessel hull inspections, cost of providing Resource Monitors, etc. The revenue from these fees will stay with the site. The sanctuary implementation language can also provide that the Monument's current joint permitting system will continue.
- e. Establish a Sanctuary Advisory Council regulated by the NMSA that can provide consensus advice to sanctuary managers as representatives of various community constituencies.

Like many other marine areas Hawaii's coral reef ecosystems are being increasingly impacted by a whole host of threats including ocean warming, climate change, coral bleaching, sea level rise, habitat degradation and destruction, disease, invasive species and pollution, which includes marine debris, oil and chemical spills, sediment runoff, plastics, etc. Studies show that large marine protected areas (MPAs) increase biodiversity, abundance and the size and productivity of species, as well as protecting the structure and function of ecosystems.

I also think the boundaries of a NWHI NMS should include all waters and marine habitat out to 200 nautical miles from the baseline of the U.S. territorial sea for all marine areas northwest of the Main Hawaiian Islands and include the State Marine Refuge and all of the undersea volcano referred to on nautical charts a "Middle Bank". Middle Bank rises up to 60 meters below the water's surface and is a critically important biodiversity connectivity bridge between the Main Hawaiian Islands and the Northwestern Hawaiian Islands. Larvae from both these areas move in both directions. Middle Bank is also essential habitat for humpback whales. Recent research has determined that this species use it for feeding, breeding and navigation. It is also an important foraging area for the highly endangered monk seal.

Research also indicates that networks of fully protected reserves linked ecologically through currents are much more likely to work than a single isolated MPA. Networks provide insurance against catastrophic events such as oil spills, typhoons, ocean warming and acidification, invasive species, and population collapse due to overharvesting. Large and replicate MPAs maximize effectiveness and help mitigate damage from catastrophic events such as hurricanes by protecting similar habitats and biotic communities along the entire length of an archipelago.

Middle Bank is much closer to Nihoa, the first island in the Northwestern island chain, and is separated from Kauai in the Main Hawaiian islands by a very deep moat, providing a significant buffer from the impacts of over harvesting in the Main islands. Any regulations short of total closure will be very difficult to enforce due to the distance. Most of the older fishermen that used to fish Middle Bank have retired. According to a former State Division of Aquatic Resources staffer a skilled fisherman employing new fishing technology and a larger boat can easily fish out Middle Bank in two years. It's a natural boundary line and including it in the new Sanctuary is a once-in-a-lifetime opportunity to protect it as a biodiversity reserve and nursery area for fish stocks, which will benefit fishermen in the long run due to the spillover effect. Larval spillover helps replenish the ocean beyond a protected area; larvae dispersal distances of 20-50 kms or more are not uncommon. Protecting Middle Bank is consistent with the vision, mission, principles and goals of the Monument and those recommended for the new NWHI NMS by the NWHICRER Advisory Council.

Regarding a name for a National Marine Sanctuary in the NWHI, I don't support giving it the same name as the Papahanaumokuakea Marine National Monument. The Monument is its own thing and was established under a different and far weaker statute, which is likely to be amended to prevent using it in the future to protect large marine areas. It's important that the public, and Congress, do not confuse the Monument with the Sanctuary. I personally prefer giving the Sanctuary by its own unique and readily recognizable place name, namely the *Northwestern Hawaiian Islands National Marine Sanctuary*.

Thank you for the opportunity to submit comments on this important matter.

Linda M. B. Paul



MARINE MAMMAL COMMISSION

31 January 2022

Ms. Athlene Clark, NOAA Superintendent
 Papahānaumokuākea Marine National Monument
 1845 Wasp Blvd., Building 176
 Honolulu, HI 96818

ATTN: PMNM-Sanctuary Designation

Dear Ms. Clark:

On 19 November 2021, the National Oceanic and Atmospheric Administration's (NOAA) Office of National Marine Sanctuaries (ONMS) published in the *Federal Register* a Notice of Intent (86 Fed. Reg. 64904) to prepare a draft environmental impact statement (DEIS) and hold public scoping meetings to consider designating the marine portions of the Papahānaumokuākea Marine National Monument as a National Marine Sanctuary (NMS). That notice indicated that NOAA is working in cooperation with the U.S. Fish and Wildlife Service, the State of Hawai'i, and the Office of Hawaiian Affairs on the possible sanctuary designation and that "the DEIS will evaluate a reasonable range of alternatives that could include different options for management goals or actions, sanctuary regulations, and potential boundaries." NOAA is inviting comments on the scope of issues to be considered in the DEIS and their significance. The DEIS is expected to inform NOAA's decision on the sanctuary designation and development of a draft sanctuary management plan, proposed sanctuary regulations, and proposed terms of designation.

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors, has reviewed the *Federal Register* notice and other relevant documents and offers herein its comments and recommendations. The Commission's primary concern with a sanctuary designation is how it would affect marine mammals that occupy or travel through the Northwestern Hawaiian Islands and surrounding waters (NWHL), and the ecosystems that support those species. The Commission is especially interested in the impacts of potentially permitted human activities on Hawaiian monk seals (*Neomonachus schauinslandi*), the NWHL insular stock of false killer whales (*Pseudorca crassidens*), insular populations of other odontocetes, and the Central North Pacific stock of humpback whales (*Megaptera novaeangliae*) that winters in the Hawaiian Islands.

Background

Threats to Marine Mammals

Because human activities in the Monument are currently limited to research, education, Native Hawaiian practices, and a small number of recreational trips to historical sites at Midway Atoll, current threats to marine mammals associated with those activities are being managed. However, the sanctuary designation process creates the potential for long-prohibited fishing to be

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permitted again, and the Commission considers fishing to be a significant threat to a number of marine mammals. In addition, there are at least two longstanding and ongoing significant human-caused threats to marine mammals in the Monument. First, large quantities of marine debris, including derelict fishing gear, can be found in Monument waters. Most of this debris comes from outside the Hawaiian Archipelago (Boland & Donohue 2003). Entanglement of endangered monk seals, especially young animals, is one of the largest sources of injury and mortality for the population in the NWHI. Second, global warming and its secondary and tertiary impacts (e.g., sea level rise, prey impacts) are potential threats to marine mammals in the Monument. The monk seal population relies on a relatively small amount of low-lying island habitat for giving birth, nursing young, and resting. Significant loss and degradation of this critical terrestrial habitat have already occurred and this is expected to continue, representing a threat to the persistence of monk seals in most of the NWHI (Baker et al. 2006, Reynolds et al. 2012, Baker et al. 2020).

Two dozen species of marine mammals are found in the NWHI. Because of the remoteness of the islands, we know relatively little about most of the species or stocks, with the exception of the endangered Hawaiian monk seals, which have been studied intensively for decades. Because the islands are largely uninhabited by humans, the number of threats to these species and stocks from human activities is low compared to archipelagoes with or near large population centers. As elsewhere in the nation and the world, fishing poses the greatest threat to most species and stocks of marine mammals in the NWHI. Almost all fishing is currently prohibited in the Monument, but fishing was a concern in the past and could be again should regulations change. We know from scientific studies and data gathered in the Main Hawaiian Islands and elsewhere where the same or similar species occur that cetaceans and monk seals are at considerable risk from a variety of fishing gear types. In the Hawaiian Islands, fisheries that pose the greatest threat include those that deploy various types of hook and line gear (e.g., long lines, short lines, bottom hook and line, trolling lures), gill nets, and trap gear. The deep-set long-line fishery is known to kill or seriously injure substantial numbers of odontocetes, and is especially a problem for the pelagic stock of false killer whales (Carretta et al. 2021). In recent decades, bycatch of pelagic false killer whales within the U.S. Exclusive Economic Zone (EEZ) has often exceeded NMFS's sustainability reference point, the potential biological removal level (PBR). If long-line fishing were to be allowed within Monument waters, then it certainly would pose a significant threat to the insular population of false killer whales that occurs there, and possibly to other insular populations of odontocetes (e.g., pantropical spotted (*Stenella attenuata*) and spinner (*Stenella longirostris*) dolphins) (Baird et al. 2015). In the early 1990's, monk seal injuries in the NWHI resulted from interactions with the longline fleet (Nitta and Henderson 1993). If once again permitted in the NWHI, bottomfish hook and line gear has the potential to hook, snag or entangle cetaceans and monk seals. A wide variety of gear types is used in fisheries in near-shore waters of the MHI, many of which are known to cause in hookings and entanglements of small cetaceans and monk seals. If such gear types were allowed to be used in the NWHI, they would pose a similar threat to the same species. Finally, elsewhere in the world, entanglement in gill nets and the buoy lines of trap gear is known to be a significant source of mortality for large whales, and the same could be true if certain types of these gears were allowed beyond the coral reefs in the NWHI.

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Protection of Marine Mammals in the NWHI

Early Fisheries Management Measures—In response to hookings and injuries of monk seals and other species, NMFS prohibited long-line fishing within 50 nm of the NWHI in 1991.¹ Commercial lobster fishing, which began in the NWHI in 1983, experienced declining catch rates over the next two decades, prompting the Western Pacific Fishery Management Council (WesPac) and NMFS to close the fishery temporarily several times in the 1990s. Apparently in response to a lawsuit brought by several environmental organizations and a recommendation from the Commission, NMFS set the annual harvest limit to zero for the 2000 season, and continued that policy through 2006, when the fishery closure was made permanent by a presidential proclamation (see below).

*Executive Order 13178*²—President Clinton issued E.O. 13178 on 4 December 2000, (subsequently amended by E.O. 13196)³ creating the Northwest Hawaiian Islands Coral Reef Ecosystem Reserve (the Reserve) under the authority of the NMSA (16 U.S.C. § 1431 et seq.). Section 3 of E.O. 13178 defined the Reserve to “include submerged lands and waters of the Northwestern Hawaiian Islands, extending approximately 1,200 nautical miles (nm) long and 100nm wide.” Section 2 stated that the Reserve’s purpose was “to ensure the comprehensive, strong, and lasting protection of the coral reef ecosystem and related marine resources and species (resources) of the Northwestern Hawaiian Islands.” The Reserve’s management principles, established in section 4, and its management plan, in section 5(b), provided for:

- “The long-term conservation and protection of the coral reef ecosystem and related marine resources and species of the Northwestern Hawaiian Islands in their natural character” as the Reserve’s principal purpose;
- Using “available science and applying a precautionary approach with resource protection favored when there is a lack of information regarding any given activity, to the extent not contrary to law;”
- “The restoration or remediation of any degraded or injured resources of the Reserve;”
- The “enforcement and surveillance” of the Reserve’s regulations;
- The “identification of potential tourism, recreational, and commercial activities within the Reserve and actions necessary to ensure that these activities do not degrade the Reserve’s resources or diminish the Reserve’s natural character;” and
- Promulgation of “any regulations, in addition to the conservation measures and Reserve Preservation Areas established under [E.O. 13178], that the Secretary determines are necessary to manage the Reserve....”

Of particular interest to the Commission are the Reserve’s fishing regulations. The E.O. allowed commercial and recreational fishing to continue at levels no greater than were occurring in

¹ 50 C.F.R. § 665.806(a)(1)

² <https://www.federalregister.gov/documents/2000/12/07/00-31313/northwestern-hawaiian-islands-coral-reef-ecosystem-reserve>

³ <https://www.federalregister.gov/documents/2001/01/23/01-2214/final-northwestern-hawaiian-islands-coral-reef-ecosystem-reserve>

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December 2000 (E.O. 13178 Section 7), except in the Reserve Preservation Areas established in Section 8 of the E.O., within which all fishing was prohibited.

*Presidential Proclamation 8031*⁴—President George W. Bush issued this proclamation on 15 June 2006 and a subsequent amendment later that year,⁵ using his authority under the Antiquities Act⁶ to establish the Papahānaumokuākea Marine National Monument (PMNM or the Monument).⁷ Presidential Proclamation 8031 required the Secretary of Commerce, in consultation with the Secretary of the Interior and the State of Hawaii, to develop a management plan for the Monument that would “preserve the marine area of the Northwestern Hawaiian Islands and certain lands as necessary for the care and management of the historic and scientific objects therein.” The PMNM management plan was based on a management plan then being developed for a prospective NMS in the NWHI. The proclamation prohibited a number of activities within the Monument, including:

- “Exploring for, developing, or producing oil, gas, or minerals”;
- “Removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging or attempting to remove, move, take, harvest, possess, injure, disturb, or damage any living or nonliving monument resource;” and
- “Possessing fishing gear except when stowed and not available for immediate use during passage without interruption through the monument.”

The proclamation set the lobster harvest limit within the Monument to zero, but allowed commercial fishing for bottom and pelagic species to continue, subject to harvest limits and other requirements, for a five-year period, after which all commercial fishing would be prohibited. The Monument’s fishing prohibitions superseded the Reserve provisions that had allowed limited fishing indefinitely. The proclamation also allowed the Secretary to issue permits for other activities regulated by the proclamation, such as research, education, Native Hawaiian practices, and those that “will assist in the conservation of the monument, provided that the activity meets certain requirements,” including that:

- “The activity can be conducted with adequate safeguards for the resources and ecological integrity of the monument;”
- “The activity will be conducted in a manner compatible with the management direction of this proclamation, considering the extent to which the conduct of the activity may diminish or enhance monument resources, qualities, and ecological integrity, any indirect, secondary, or cumulative effects of the activity, and the duration of such effects;”
- “There is no practicable alternative to conducting the activity within the monument;” and

⁴ <https://www.federalregister.gov/documents/2006/06/26/06-5725/establishment-of-the-northwestern-hawaiian-islands-marine-national-monument>

⁵ <https://www.govinfo.gov/content/pkg/WCPD-2007-03-05/pdf/WCPD-2007-03-05-Pg237-2.pdf>

⁶ 16 U.S.C. § 1431 et seq.

⁷ The boundaries of the Monument are defined by a map included with the proclamation (71 Fed. Reg. 36453)

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- “The end value of the activity outweighs its adverse impacts on monument resources, qualities, and ecological integrity.”

*Presidential Proclamation 9478*⁸—President Obama issued this proclamation on 25 August 2016, expanding the PMNM from the boundaries established in 2006 “to the extent of the seaward limit of the … U.S. EEZ.” Proclamation 9478 relied on the authority of the Antiquities Act and noted that the extended waters contain “objects of historic and scientific interest.” This proclamation specifically referenced the area’s “biological resources,” “75 seamounts,” “unique biodiversity,” and value as a “sacred cultural, physical, and spiritual place for the Native Hawaiian community.” Further, the proclamation recognized that 24 species of marine mammals are found within the expanded area, several of which are endangered, and that the Hawaiian monk seal forages well beyond the original boundaries in demersal habitats almost 2,000 feet deep, and therefore, would receive protection throughout its foraging range.

Proclamation 9478 preserved all of the protections created under Presidential Proclamations 8031 and 8112, required the Secretary of Commerce to “consider initiating the process under the National Marine Sanctuaries Act…to designate the [expanded monument]…as a National Marine Sanctuary to supplement and complement existing authorities,” and established that the “Monument Expansion shall be the dominant reservation.” Importantly, the proclamation clarified one portion of Proclamation 8031, stating that “the Secretaries may permit…non-commercial fishing, provided that the fish harvested, either in whole or in part, cannot enter commerce through sale, barter, or trade, and that the resource is managed sustainably.”

Sanctuary Designation Process

As explained by ONMS in the *Federal Register* notice, “the primary objective of the NMSA is to protect the resources of the National Marine Sanctuary System, including biological and cultural resources, such as coral reefs, marine animals, archaeological sites, historic structures and historic shipwrecks.” The notice further states that “any proposed sanctuary regulations would be separate from, but supplementary and complementary to, existing Monument regulations and management provisions from the establishing executive order and proclamations.”

An important element in designating most sanctuaries is the inclusion of effective regulations specifying whether and what fishing activities are permitted. Section 305(a)(5) of the NMSA provides the opportunity for the appropriate Regional Fishery Management Council to prepare draft regulations pertaining to fishing within the proposed NMS. The NMSA states that “regulations prepared by a Council…shall be accepted and issued as proposed regulations by the Secretary unless the Secretary finds that the Council’s action fails to fulfill the purposes and this chapter and the goals and objectives of the proposed designation.” Further, the Act states that “in preparing 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 the case where a council’s draft regulations are rejected by the Secretary, the Secretary is required to prepare fishing regulations for the sanctuary. However, in this case, the

⁸ <https://www.federalregister.gov/documents/2016/08/31/2016-21138/papahamacraumokuamakrea-marine-national-monument-expansio>

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Presidential Proclamations establishing the pre-existing PMNM, with which the sanctuary is expected to overlap, already address fishery issues in this area.

A 19 November 2021 letter from ONMS to WesPac describes the section 305(a)(5) consultation process and clarifies that, in this specific instance:

- “The goals and objectives of the sanctuary designation..., together with the purposes and policies of the National Marine Sanctuaries Act, as well as the existing Presidential Proclamations 8031, 8112, and 9478 specific to Papahānaumokuākea Marine National Monument, are the benchmarks against which the Council’s action shall ultimately be measured;”
- “For the area designated by Proclamation 8031, NOAA believes the current Magnuson-Stevens Fishery Conservation and Management Act regulations under 50 CFR 404 are consistent with both the relevant provisions of Proclamations 8031 and 8112 and the goals and objectives for the proposed sanctuary. However, in order to rely on Magnuson-Stevens Fishery Conservation and Management Act authority for sanctuary purposes within the Monument Expansion Area designated by Proclamation 9478, **NOAA recommends the Council propose regulations for the Monument Expansion Area that are consistent with both the fishing provisions of Proclamation 9478, and the goals and objectives of the proposed sanctuary**” (emphasis added).

In the documents described above, NOAA identifies the following elements, among others, as necessary components of this sanctuary designation:

- “develop objectives and actions that ensure lasting protections consistent with the existing Monument proclamations and regulations;”
- “safeguard natural and cultural values of the marine environment of the Monument;”
- “authorize NOAA to assess civil penalties for violations of sanctuary regulations or permits and to enforce provisions of the NMSA;”
- “prohibit destruction or loss of sanctuary resources and provide natural resource damage assessment authorities for loss of or injury to any sanctuary resource;”
- “require interagency consultation for any Federal agency action that is likely to destroy, cause the loss of, or injure any sanctuary resource;”
- “augment existing authorities under the Antiquities Act; Presidential Proclamations 8031, 8112 and 9478; Executive Order 13178; and 50 CFR 404 to provide additional regulatory and non-regulatory tools for management and protection of Monument resources.”

Summary of Existing Protections

The PMNM and the Reserve already are subject to a variety of protections under Executive Orders, Presidential Proclamations, and related documents. Key provisions are:

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- Ensure strong, comprehensive conservation and protection of the coral reef ecosystem and related marine resources and species in their natural character (E.O. 13196)
- Ensure that degraded or injured resources are restored or remediated, and that ongoing permitted activities do not degrade Reserve resources (E.O. 13196)
- Prevent the actual or attempted removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging of any living or nonliving Monument resource (Proclamation 8031)
- Ensure that permitted activities are subject to adequate safeguards, are compatible with provisions of applicable proclamations, consider the extent to which the activity may diminish or enhance Monument resources, have a value that outweighs any adverse impacts, and lack a practicable alternative (Proclamation 8031).

The *Federal Register* notice and other documents provided by NOAA indicate that these protections will form the foundation for any additional protections and regulatory or non-regulatory tools to be established pursuant to a sanctuary designation and that any new protections will augment the existing authorities. Key new provisions being considered by NOAA include:

- Ensuring lasting protections that safeguard the Monument's natural and cultural values and that are consistent with the Monument's existing proclamations and regulations;
- Prohibiting the destruction or loss of sanctuary resources;
- Requiring interagency consultation for any Federal action likely to destroy or injure any Sanctuary resource.

Further, NOAA's Papahānaumokuākea NMS web page⁹ states that: "Sanctuary designation will provide another layer of protection to continue honoring this place and **will not diminish any existing protections**" (emphasis added). Further, the web page states: "Designation...would **strengthen and increase the long term protections** already existing in the monument, **but cannot diminish them**" (emphasis added). An infographic available on the page adds that: "National marine sanctuary designation would **add the conservation benefits** to the marine areas of Papahānaumokuākea Marine National Monument by providing a stable regulatory framework and **additional protections** to safeguard living, cultural, and maritime heritage resources" (emphasis added).

Recommendations

The Commission supports the Reserve and Monument goals, objectives and regulations. The Commission also supports NOAA's intention to supplement, complement, strengthen and add to these protections through designation of the Papahānaumokuākea NMS. Moreover, from the Commission's perspective, the proposed sanctuary designation should adhere tightly to the principles identified by NOAA and the Reserve's and Monument's existing protections, which, relative to marine mammals and their ecosystems, should, at a minimum:

⁹ <https://sanctuaries.noaa.gov/papahanaumokuakea/>

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- Provide long-term, strong, comprehensive protections from anthropogenic threats;
- Prohibit any activity that would remove, injure or kill marine mammals, except as specifically authorized by a permit; and
- Allow for the issuance of permits for extractive activities or those with potentially adverse impacts only if the applicant, using the precautionary approach, demonstrates to NOAA's satisfaction that the proposed activities are compatible with Sanctuary and Monument goals and regulations, and will have only a negligible impact on sanctuary resources, including marine mammals.

Accordingly, the Commission recommends that these principles be reflected in the alternatives in the DEIS.

The Commission recommends that the DEIS alternatives, draft sanctuary designation and draft regulations explicitly 1) re-affirm that protections provided by the Monument and the Reserve will not be diminished, and 2) describe in detail how existing protections will be strengthened, increased and added to under those alternatives. In particular, the Commission recommends that the DEIS's preferred alternative permanently prohibit all commercial or recreational fishing in Sanctuary waters. As long as sustenance and traditional (subsistence) fishing by Native Hawaiians is accurately monitored, assessed and capped at minimal levels, those forms of fishing should not pose a serious threat to the NWHI marine environment or deplete resources important to marine mammals. As such, the alternatives in the DEIS should include their perpetuation.

The Commission notes that WesPac, at a recent Council meeting,¹⁰ expressed interest in exploring the potential for 'customary exchange' fishing to be permitted in the Sanctuary, and therefore in the Monument. The Commission believes that this practice would be contrary to the goals of the Sanctuary and the Monument, and Monument regulations. 'Customary exchange' is defined in the Magnuson-Stevens Act as:

"The non-market exchange of marine resources between fishermen and community residents, including family and friends of community residents, for goods, and/or services for cultural, social, or religious reasons. Customary exchange may include cost recovery through monetary reimbursements and other means for actual trip expenses, including but not limited to ice, bait, fuel, or food, that may be necessary to participate in fisheries in the western Pacific."

Given this definition, which would allow exchange of fish for goods or services 'customary exchange' does not differ substantively from commercial fishing, which includes not only selling fish, but barter and trade.¹¹ In addition, monetary reimbursements arguably involve, or could involve, commercial aspects. If the DEIS considers alternatives that would allow fishing for purposes of customary exchange, it should explain whether and how this would be consistent with fishing limits applicable to the Monument, examine closely distinctions between commercial fishing

¹⁰ <https://www.wpcouncil.org/press-release-fishery-management-council-recommends-a-new-%ef%bb%bfus-strategy-in-the-pacific-islands-with-the-wcpfc-9-december-2021/>

¹¹ The Magnuson-Stevens Act defines 'commercial fishing' as: "fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter, or trade."

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and customary exchange and consider limitations (e.g., gear restrictions) to minimize impacts on marine mammals and other Sanctuary resources.

The Commission recognizes that NOAA, in designating a national marine sanctuary within the PMNM, is in part seeking to:

- “provide a more stable regulatory framework and additional protections to safeguard living, cultural, and maritime heritage resources;”
- “develop objectives and actions that ensure lasting protections consistent with the existing Monument proclamations and regulations;” and
- “augment existing authorities...to provide additional regulatory and non-regulatory tools for management and protection of Monument resources.”

A national marine sanctuary arguably provides secure and lasting protections because, once designated, an act of Congress is needed to reverse it. However, applicable prohibitions and protections can be amended through periodic rulemaking. It remains an open question as to whether a marine national monument designation made under the Antiquities Act by Presidential Proclamation can be reversed or significantly downsized by a later President and subsequent Executive Order. Thus, there is some risk that the protections afforded the NWHI as a marine national monument could disappear or be curtailed through executive fiat. This being the case, the protections afforded via a sanctuary designation, even if duplicative of those applicable to the Monument, are necessary. For this reason, NOAA, in designating a Papahānaumokuākea NMS, should look beyond a designation that is merely “separate from, but supplementary and complementary to, existing Monument regulations and management provisions.” Those regulations and management provisions should independently protect the area’s resources at least at the existing level should those provided through national monument status be reduced or lost.

Although not necessarily the case, a marine national monument created by proclamation often is more restrictive in terms of what activities are and are not allowed than would be expected through a sanctuary designation. National marine sanctuaries generally allow multiple uses, including, routinely, the extraction of resources. In contrast, almost all forms of resource extraction and potentially destructive human activities are prohibited in the PMNM. Further, the NMSA explicitly invites the appropriate fishery management council to play a major role in developing fishing regulations. As such, it is not surprising that most national marine sanctuaries allow at least some commercial and recreational fishing, and several are not subject to any sanctuary-specific fishing restrictions. During reviews that led to designation and expansion of the PMNM in 2006 and 2016, WesPac recommended that fishing be allowed in those areas. Moreover, on several occasions since 2006, WesPac has advocated that PMNM fishing prohibitions be removed. Thus, unless specifically tailored to reinforce the precedent established by the Monument with respect to fishing, it is not clear that an independently generated sanctuary designation would provide the same level of protection against impacts from fishing as do the PMNM provisions.

The Commission is pleased that NOAA has advised WesPac that any draft fishing regulations it develops should be “consistent with both the fishing provisions of Proclamation 9478, and the goals and objectives of the proposed sanctuary.” However, given the desirability of bolstering the Monument’s protections and uncertainty surrounding the durability of those

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protections, The Commission recommends that NOAA, in developing the draft sanctuary designation and its regulations provide, at a minimum, the same levels of protections to marine resources, including fishery resources and marine mammals, as are afforded by the Monument.

The NWHI are subject to a range of threats beyond those that would come with renewed fishing in the Sanctuary. The Commission supports NOAA in the protections it has implemented against those threats, and for its intention to strengthen and add to those protections with the proposed sanctuary designation. The Commission recommends that NOAA, in its DEIS, provide a range of options for effectively addressing the threats posed to marine mammals and their ecosystems in the NWHI from marine debris and global warming.

Finally, in commenting on and generally supporting the proposal to designate the marine portions of the Papahānaumokuākea Marine National Monument as a National Marine Sanctuary (NMS), the Commission notes that there are other possible sanctuary designations under consideration around the United States. ONMS should consider giving higher priority to designating other areas nominated as sanctuaries (e.g., the St. George Unangan Heritage National Marine Sanctuary and the Chumash Heritage National Marine Sanctuary)¹² that currently lack any site-specific protections, before focusing on Papahānaumokuākea, which already is rather well-protected as a monument and reserve, and which is likely to receive only incremental benefits from the overlay of a sanctuary designation.

We hope these comments and recommendations are helpful. Please contact me if you have questions.

Sincerely,



Peter O. Thomas, Ph.D.,
Executive Director

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¹² The Commission's comment/recommendation letters on these two proposals will be posted to its web site soon.

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January 31, 2021

Mr. John Armor, Director
Office of National Marine Fisheries
National Ocean Service
National Oceanic and Atmospheric Administration

Dear Mr. Armor:

I am responding to the National Oceanic and Atmospheric Administration's proposal regarding establishing a proposed national marine sanctuary within the Papahānaumokuākea National Marine Monument. I am the President Emeritus of the Center for Marine Conservation (CMC). CMC has been renamed by the Board of Directors as the "Ocean Conservancy".

During my tenure with CMC we developed a robust program of work to support NOAA's marine sanctuary program, including for designations, appropriations, and general support for NOAA's program of work for the management of these important marine places under its administration. Recognizing marine sanctuaries were essentially designed to be multiple use management areas, our efforts to designate these areas resulted in establishing authority for improved management of these important sites for multiple purposes, including regarding commercial fisheries.

The Papahānaumokuākea National Marine Monument is a different management regime from the sanctuary designation in that it establishes a level of protection that prohibits commercial fishing. As noted by the NOAA website, the Papahānaumokuākea Marine National Monument is the single largest fully protected marine conservation area in the United States, and one of the largest marine protected areas in the world. It is in fact the largest area in the world for maintaining marine habitat without significant human impact.

As such, it is an invaluable marine protected area for not only protecting a marine ecosystem, but for conducting research on a major large marine ecosystem unimpacted by extractive fishery activities. It would seem that the Papahānaumokuākea National Marine Monument, as currently protected and potential additional protections to be gained through additional regulation and management plan updates, is an irreplaceable research site for assessing the impacts of global change in the marine environment.

In the November 19 Federal Register, NOAA gives notice that it will conduct scoping and prepare an Environmental Impact Statement for proposing designation of a National Marine Sanctuary within the existing National Monument. The notice indicates that the scoping process

will include securing information on possible draft fishing regulations for the Sanctuary in the Monument in which commercial fishing is currently prohibited.

In providing public information on the proposal, the Office of National Marine Sanctuaries indicates: the “National marine sanctuary designation would add conservation benefits to the marine areas of the Papahānaumokuākea Marine Management Monument by providing a stable regulatory framework and additional protections to safeguard living, cultural, and maritime heritage resources.” In an additional public statement, the Office notes “The designation would add conservation benefits and permanency of a national marine sanctuary to safeguard resources in the marine portions of the monument.” “The sanctuary designation process does not change the area’s status as a marine national monument. It would add the protections of a national marine sanctuary to the monument’s waters.”

In these and other public statements, NOAA suggests deficiencies in current existing legal authority for maintaining the protection and management of the Monument. The solution proposed is an overlapping or replacement of legal authority for managing the Monument that already exists. However, NOAA does not indicate any specific problems with the existing management regime in which there are deficiencies in authority needed for protection of what is now arguably the most comprehensively protected large marine area on the planet.

The problem seems to be that no commercial fishing is allowed in this world-class marine protected area. No other deficiencies are identified that are needed to be corrected to improve on the current protective management regime for the Monument – for which NOAA already shares management of the regime with other appropriate Federal management authorities.

I appreciate that commercial fishing interests would like to revisit and reopen the Monument to commercial fishing. By overlaying the “Sanctuary” management regime for the current Monument, the door is opened to new commercial fishing that would not otherwise be allowed. Is this not correct? The DEIS needs to analyze this issue in detail.

If there are substantive deficiencies in the management regime of the Monument currently that need to be corrected with increased legal authority for that protected area, these needs to be clearly indicated so the available alternatives for a course correction can be identified.

As currently presented, NOAA does not appear to be clearly forthcoming that the underlying purpose of the proposed action is to open up this world class marine protected area to commercial fishing at the expense and values of the current Monument regime.

Sincerely,

Roger E. McManus

President Emeritus for The Center for Marine Conservation



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January 30, 2022

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1845 Wasp Blvd, Building 176
Honolulu, HI 96818

Re: Docket NOAA-NOS-2021-0114

Dear Superintendent Clark,

We strongly support NOAA initiating the designation process for Papahānaumokuākea Marine National Monument as a National Marine Sanctuary, including preparation and release of draft designation documents, and developing alternatives for the DEIS. Per the request for specific comments in the referenced Federal Register Notice, we offer the following while recognizing that the stated need for designation is to “[d]evelop objectives and actions that ensure lasting protections consistent with the existing Monument proclamations and regulations.”

The sanctuary boundaries should mirror the current Monument boundaries, including the area originally designated in Presidential Proclamation 8041 of June 15, 2006 and Proclamation 9478 of August 26, 2016. The sanctuary should include all the waters, submerged lands, and living and non-living resources within these areas. The shoreward boundary should extend to the line of mean high tide. Alternatives that encompass a larger region (e.g., to the southeast) could enhance resource protection while not diminishing protections dictated in the Monument proclamations.

Management measures should maintain or enhance existing resource protections, increase regulatory compliance, ensure enforceability, and provide natural resources damage assessment authorities and interagency coordination of activities as provided in the National Marine Sanctuaries Act. The Presidential Proclamations for the Monument include prohibited activities which NOAA should incorporate into the sanctuary designation document, management plan, and regulations. Further, Presidential Proclamation 9478 provided a framework for managing the Monument Expansion Area, and NOAA should codify those protections in the designation document, regulations, and management plan. Integrating traditional Hawaiian knowledge systems, values, and practices into management, consistent with the provisions of the Proclamations, should be sustained.

Regional fisheries and fishery management plans are clearly managed under Magnuson authories. As part of the Monument and sanctuary management plan processes, fishery management plans will need to be ammended (by the Western Pacific Fishery Management Council) or by Secratarial action, to be consistent with protections directed by the Presidential Proclamation. While some discussions in the public arena suggest the sanctuary designation process opens a blank page to revisit fishery management of the area, proposing any alternatives that would decrease the current level of protection within the Monument and Monument Expansion Area would defy the logic of stated goals of the designation process. We oppose any such alternatives for future consideration.

The mission of Mystic Aquarium is to inspire people to care for and protect our ocean planet through conservation, education and research.

We support the Office of National Marine Sanctuaries in overlaying Sanctuary authorities to this Monument for "... continued or enhanced long-term protection of the Monument's natural, cultural and historic resources; improved planning and coordination of research, monitoring, and management actions; reducing disturbance of special status species; reducing threats and stressors to Monument resources; and minimal disturbance during research or restoration actions."

Thank you, in advance, for your consideration. We would be happy to discuss any of these issues with you in the future.

Sincerely,



Katie Cubina
Sr. VP for Mission Programs

January 31, 2022

Ms. Athline Clark
Superintendent
Papahānaumokuākea Marine National Monument and UNESCO World Heritage Site
1845 Wasp Blvd, Building 176
Honolulu, HI 96818

Re: NOAA-NOS-2021-0114

Dear Superintendent Clark,

We strongly support designating Papahānaumokuākea Marine National Monument as a national marine sanctuary to enhance protections and safeguard resources in the marine portions of the Monument. We believe sanctuary designation will complement the efforts of the Office of Hawaiian Affairs, the state of Hawaii, and other federal agencies to conserve this nationally significant area and its cultural resources and bolster strong and lasting protection for the marine environment.

Papahānaumokuākea is a sacred place with deep cosmological significance to Native Hawaiians who have a genealogical relationship to all living things in the Hawaiian archipelago. The Monument is a mixed (natural and cultural) World Heritage Site. It preserves sacred places, stories, artifacts, and strong Polynesian cultural ties to the land and seas, dating back more than a thousand years.

Coral islands, undersea volcanoes, flat-topped undersea mountains, banks, and shoals stretch 1,350 miles. The Monument supports a diversity of life, including over 7,000 species, many found nowhere else on earth. Threatened green sea turtles and endangered Hawaiian monk seals are among the rare species that inhabit the island chain.

The National Marine Sanctuaries Act established the National Marine Sanctuary System to protect areas of the marine environment that have special conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, or esthetic qualities. The monument is an area of national significance that merits this protection in addition to the protections provided by the Antiquities Act. *It is critical that sanctuary designation strengthen and enhance the protection of Papahānaumokuākea, as designated under the Antiquities Act and the Presidential Proclamations. Those efforts should include integrating traditional Hawaiian knowledge systems, values, and practices into management. We oppose any regulatory or management measures that would decrease the current level of protection within the Monument and Monument Expansion Area.*

In this letter, the terms "Papahānaumokuākea Marine National Monument" and "Monument" mean both the original Monument's boundaries and the Monument Expansion Area.

- **The role of scoping in the Environmental Impact Statement process.**

Scoping is a critical early step in the EIS process. It sets the boundaries of the analysis, helps to identify information sources, and helps to focus alternatives and identify issues to address within the EIS. A comprehensive scoping process is essential for identifying the "reasonable

range" of alternatives in the EIS to address the purpose and need of proposed agency action. Each reasonable alternative must be rigorously explored and objectively evaluated, and each alternative considered in detail so that reviewers may evaluate their comparative merits. NOAA has an obligation under NEPA to compare the protections currently in place with the complexities of managing a national marine sanctuary. The environmental impact statement should comprehensively explain the current protections and compare them to what would be changed by a sanctuary designation.

- **The spatial extent of the proposed sanctuary and boundary alternatives.**

The existing boundaries of Papahānaumokuākea Marine National Monument cover 582,578 square miles. We recommend that NOAA's preferred alternative for the sanctuary's boundaries follow the current Monument boundaries, including the Monument area originally designated in Presidential Proclamation 8041 of June 15, 2006, and the Monument Expansion Area as specified in Presidential Proclamation 9478 of August 26, 2016. The sanctuary should include all the waters, submerged lands, and living and non-living resources within these areas. The shoreward boundary should extend to the mean high tide.

- **The location, nature, and value of the resources to protect by a sanctuary.**

In 1999, President William J. Clinton established the Northwestern Hawaiian Island Coral Reef Ecosystem Reserve by Executive Order 13178. In 2006, President George W. Bush established Papahānaumokuākea Marine National Monument by Presidential Proclamation 8031. The proclamation included the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, the Midway National Wildlife Refuge, the Hawaiian Islands National Wildlife Refuge, and the Battle of Midway National Memorial. In 2010, UNESCO designated the monument as a mixed World Heritage site for its natural and cultural significance. In 2016, President Barak Obama expanded the monument to protect historic and scientific interest objects, geological and biological resources part of a highly pristine deep-sea and open ocean ecosystem, and an area of cultural significance to the Native Hawaiian community. The monument has significant living and non-living resources, cultural and natural seascapes, and geological features which deserve protection through sanctuary designation.

Papahānaumokuākea Marine National Monument is unique. The Monument is one of the few intact, large-scale predator-dominated reef ecosystems left in the world. It is home to more than 7,000 marine species. The islands and atolls—Kure (Hōlānikū), Midway (Kuaihelani), Pearl and Hermes (Manawai), Lisianski (Kapou), Laysan (Kamole), Maro Reef (Kamokuokamohoali'i), Gardner Pinnacles ('Ōnū nui and 'Ōnū iki), French Frigate Shoals (Lalo), Mokumanamana, and Nihoa—provide breeding areas for Hawaiian monk seals and four species of sea turtles, nesting sites for more than 14 million seabirds, and more than 5,000 square miles of coral reefs. Because this region is remote—nearly 3,000 miles from the nearest continent—life forms evolved here that exist nowhere else on earth. Researchers working in Papahānaumokuākea Marine National Monument continue to encounter new species: since 2000, scientists have discovered scores of new species of fish, coral, invertebrates, and even algae. Remarkably, on a 2015 expedition, scientists from NOAA and other institutions found that some deep reefs in Papahānaumokuākea were inhabited only by endemic species. This is the only known marine area where all resident species are endemic.

At least 23 species protected under the US Endangered Species Act inhabit the Monument, two national wildlife refuges, and two state-protected areas within its boundaries. For example, Papahānaumokuākea provides nearly the entire Hawaiian nesting habitat for the threatened green turtle. On the undisturbed beaches, the turtles come ashore to bask in daylight, a behavior not seen in most other parts of the world.

Critical geological features include seamounts and a non-volcanic ridge that extends southwest towards the Johnston Atoll, which are biodiverse hotspots that provide habitat for deep-sea species. Seamounts, ridges, and other undersea topographic features enable marine organisms to range throughout the Hawaiian Archipelago and between Hawaii and other archipelagoes. Further, these features are home to species unknown to humans, with possible implications for research, medicine, and other uses.

The Monument provides critical foraging habitats for marine species and birds. Laysan albatross, Black-footed albatross, Bonin petrels, shearwaters, petrels, tropicbirds, Short-tailed albatross, and other seabird species forage in the Monument, along with five species of protected sea turtles. Twenty-four species of whales and dolphins have been sighted in the Monument. Three species are threatened or endangered: sperm whales, fin whales, and sei whales. Acoustic evidence also shows that endangered blue whales visit the area and may migrate past the Hawaiian Islands twice a year. Sharks, including tiger sharks and Galapagos sharks, are key species in the Monument's ecosystems

Native Hawaiians regard the Monument's atolls, islands, and waters as sacred places from which all life springs and ancestral spirits return after death. The Native Hawaiian belief systems regarding this genealogical relationship inform a set of responsibilities, rights, and privileges that Hawaiian people inherited to honor and protect their ancestors. The Kumulipo describes the Hawaiian universe as comprising two realms, Pō and Ao. Ke ala polohiwa a Kāne (the dark shining path of Kāne), also known as the Tropic of Cancer, is considered the border between Pō and Ao. The island of Mokamanamana is located on this boundary and is the center of convergence between the two realms; the island sits near the entrance of Papahānaumokuākea Marine National Monument, as only the second island in the northwestern part of the chain. The Monument's name commemorates the union of Papahānaumoku and Wākea, the divine parents of the island chain, the taro plant, and the Hawaiian people. Some islands have several names: one or more Hawaiian names that highlight a natural feature such as an abundance of sharks or a sacred quality ascribed to the place in traditional teachings, and an English name that often commemorates a historic shipwreck nearby.

Long-distance voyaging and wayfinding is a unique and valuable traditional practice that the Native Hawaiian community developed and advanced. Wayfinding relies on celestial, biological, and natural signs, such as winds, waves, currents, and the presence of birds and marine life. The Monument's open ocean ecosystem and its natural resources continue to be important in the Hawaiian Archipelago's cultural voyaging seascape and training ground for new generations of wayfinders.

Shipwrecks and aircraft in the Monument are of great historical interest and importance. The Monument is the final resting place of thousands of people lost during World War II battles. The submerged sites and scattered artifacts tell the stories of sailors and navigators who

ventured throughout the Pacific. Interpretation of these shipwreck sites and the broader maritime heritage of Papahānaumokuākea Monument further our understanding of our connection to this place and our role in protecting its natural and cultural resources.

The sanctuary designation should protect all living, non-living, cultural, and maritime resources of the Monument and the cultural and natural seascapes of which they are an integral part.

- **Management measures for the sanctuary and any additional regulations that should be added under the NMSA to protect Monument Resources.**

Overall - Resource protection is the highest priority of the Monument, and the designation document, management plan, and regulations must be consistent with this priority. The sanctuary designation must augment and strengthen existing resource protections, increase regulatory compliance, ensure enforceability, and provide natural resources damage assessment authorities and interagency coordination of activities as provided in the National Marine Sanctuaries Act.

Presidential Proclamations 8031 and 9478 include prohibited activities which NOAA should incorporate into the sanctuary designation document, management plan, and regulations. Further, Presidential Proclamation 9478 provided a framework for managing the Monument Expansion Area, and NOAA should codify those protections in the designation document, regulations, and management plan.

Integration of Native Hawaiian cultural values and principles - "Mai Ka Pō Mai is a collaborative management framework intended to guide the Monument's co-trustees integration of traditional knowledge systems, values, and practices into management. Based on Hawaiian cosmology and worldview, the framework includes five management domains, four of the management domains are referred to as Kūkulu, and the central management domain is the Ho'oku'i. We strongly urge NOAA to embrace the framework and work with the Native Hawaiian Cultural Working Group, OHA, and the Native Hawaiian community to include the Mai Ka Pō Mai framework into the designation document, management plan, and regulations.

Fishing - The Magnuson–Stevens Fishery Conservation and Management Act (MSA) is the primary law that governs marine fisheries management in US federal waters. Its objectives are to prevent overfishing, rebuild overfished stocks, increase long-term economic and social benefits, and ensure a safe and sustainable seafood supply. ONMS Director John Armor's letter of November 19, 2021, to Chairperson Soliai of the Western Pacific Regional Fishery Management Council stated that the MSA is the appropriate statute for managing fisheries within the proposed sanctuary. We strongly disagree and urge NOAA to adopt a joint regulatory approach at a minimum.

As mentioned above, the cultural and natural landscape of Papahānaumokuākea, their services, and the living and non-living resources in the Monument deserve protection under the sanctuary designation. Fish species are a critical part of the landscape, and their management must be part of the ecosystem. The National Marine Sanctuaries Act is the only ecosystem-based act that can achieve this goal through regulation. The ONMS regulations should be in addition to MSA regulations and not a backstop.

Should ONMS choose not to regulate fisheries under the NMSA (a point we strongly disagree with), then the Secretary of Commerce must ensure the proposed regulations from the Western Pacific Fishery Management Council are consistent with Executive Order 13178 and Presidential Proclamations 8031 and 9478. If they are not, the Secretary of Commerce must reject the draft regulations.

Maritime Transportation - In 2008, the International Maritime Organization (IMO) designated the Monument a "Particularly Sensitive Sea Area." The Monument Management Board put additional domestic measures and best practices into place to protect the original Monument area. We recommend that the IMO designation applies to the Monument Expansion Area. Further, as part of the sanctuary designation process, ONMS should determine if additional regulatory and management controls are necessary.

Thank you for the opportunity to comment on the proposed sanctuary designation. We look forward to working with NOAA to enhance and strengthen protections for the Monument.

National Marine Sanctuary Foundation
Azul
Brown Girl Surf
Center for Biological Diversity
Creation Justice Ministries
EarthEcho International
Earthjustice
Environment America
Friends of the Earth
GreenLatinos
Greenpeace USA
Healthy Ocean Coalition
Inland Ocean Coalition
League of Conservation Voters
Marine Conservation Institute
National Ocean Protection Coalition
National Parks Conservation Association
Oceana
Ocean Conservation Research
Ocean Defenders Alliance
Ocean Preservation Society
Only One
Patagonia
SeaLegacy
Shark Stewards
Sol Kaho'ohalahala
Surfrider Foundation
The Ocean Project
Tribal Trust Foundation
Virginia Aquarium & Marine Science Center
WILDCOAST
WILD Foundation

NORTHWESTERN HAWAIIAN ISLANDS CORAL REEF ECOSYSTEM RESERVE RESERVE ADVISORY COUNCIL

Non-Government (Voting)

William Ailā, Jr. (Chair)

State of Hawai'i

Linda Paul (Vice Chair)

Conservation

Rick Gaffney (Secretary)

Recreational Fishing

Pelika Andrade

Native Hawaiian

Edward Halealoha Ayau

Native Hawaiian

Judith Cucco

Citizen-at-Large

Mark Hixon

Research

Bonnie Kahapea-Tanner

Education

Solomon Pili Kaho'ohalahala

Native Hawaiian Elder

Richard Lee

Ocean-Related Tourism

Audrey Newman

Conservation

Donald Schug

Research

William Walsh

Research

Government (Non-Voting)

Athline Clark

Papahānaumokuākea MNM

Allen Tom

HIHW NMS

Brandon Jim On

NOAA-OLE

Maile Norman

U.S. Coast Guard

Janice Fukawa

U.S. Department of Defense

Joshua DeMello

WESPAC

Brian Neilson

State of Hawai'i

Jared Underwood

U.S. Fish & Wildlife Service

Malia Chow

NOAA Fisheries PIRO

Dan Polhemus

U.S. Fish & Wildlife Service

Na'u Kamali'i

Office of Hawaiian Affairs

January 19, 2022

Mr. John Armor, Director
NOAA-Office of National Marine Sanctuaries
1305 East-West Highway, 11th Floor
Silver Spring, MD 20910

c/o Athline Clark, Superintendent
Papahānaumokuākea Marine National Monument
NOAA/DKIRC/NOS/ONMS/PMNM
1845 Wasp Boulevard, Building 176
Honolulu, HI 96818

RE: RAC Response to Federal Register 86 FR 64904: NOAA's Notice of Intent to Conduct Scoping and to Prepare an EIS for the Proposed Designation of a National Marine Sanctuary within Papahānaumokuākea Marine National Monument.

Aloha mai Director Armor,

On December 9, 2020, the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council (RAC) sent a letter to the Office of National Marine Sanctuaries (ONMS) requesting NOAA to move forward with the designation of a National Marine Sanctuary in the Northwestern Hawaiian Islands pursuant to President William J. Clinton's Executive Order (EO) 13178 of December 4, 2000, (Federal Register/Vol.65, No. 236/Thursday, December 7, 2000/Presidential Documents). We are pleased that ONMS has initiated the process and would like to reaffirm that ONMS has the full support of the RAC in proceeding with the process of sanctuary designation. Over the past few months, two RAC subcommittees have been working to formulate a set of recommendations for the public scoping phase of the sanctuary designation process.

The RAC offers the following recommendations on sanctuary designation for the management plan's framework and content. These recommendations are focused mainly on the subcommittee review of the 2008 Monument Management Plan. The recommendations are summarized as follows:

General Recommendations:

- In all sanctuary and management plan documents, consider the use of 'PMNM' vs. 'NWHI.'
- Ensure Mai Ka Pō Mai guidance is considered in the revision process.

Vision Statement:

The 2008 Monument Management Plan vision statement is:

"To forever protect and perpetuate ecosystem health and diversity and Native Hawaiian cultural significance of Papahānaumokuākea."

- The RAC recommends revisiting the vision statement for clarity and impact.

Examples for consideration include:

- a. That the vast coral reefs, diverse ecosystems and historical, cultural and natural resources of the Northwestern Hawaiian Islands - unique in the world - be preserved and protected forever.
- b. To forever protect and perpetuate the rich diversity, ecosystem health, and Native Hawaiian cultural resources of Papahānaumokuākea.

Mission Statement

The 2008 Monument Management Plan mission statement is:

"Carry out seamless integrated management to ensure ecological integrity and achieve strong, long-term protection and perpetuation of NWHI ecosystems, Native Hawaiian culture and heritage resources for current and future generations."

- The RAC recommends retaining this mission statement as-is.

Management Plan Principles

The RAC recommends minor revisions to six of the existing principles, and proposes an additional principle, as follows:

Principle 1. *"Management actions are consistent with the mission and vision."*

- The RAC recommends keeping this principle as is.

Principle 2. *"Management actions recognize the resources of Papahānaumokuākea are administered by the Co-Trustees for the benefit of present and future generations."*

- The RAC recommends revising Principle 2 to clarify the meaning of 'benefit'.

Principle 3. *"Management actions affirm Papahānaumokuākea and its resources are important, unique and irreplaceable."*

- The RAC recommends keeping this principle as is.

Principle 4. *"Management actions honor the significance of the region for Native Hawaiians."*

- The RAC recommends incorporating reference from Mai Ka Pō Mai.

Principle 5. *"Management actions honor the historic importance of the region."*

- The RAC recommends keeping this principle as is.

Principle 6. *"Management actions incorporate best practices, scientific principles, traditional knowledge and an adaptive management approach."*

- The RAC recommends keeping this principle as is.

Principle 7. *"Management actions err on the side of protection when there is uncertainty in available information on the impacts of an activity."*

- The RAC recommends keeping this principle as is.

Principle 8. *"Management actions enhance public appreciation of the unique character and environment of the Northwestern Hawaiian Islands."*

- The RAC recommends incorporating additional language to the effect of, 'bringing the place to the people instead of the people to the place.'

Principle 9. *"Management actions authorize only uses consistent with Presidential Proclamation 8031 and applicable laws."*

- The RAC recommends updating Principle 9 to include reference to new Presidential Proclamations and laws.

Principle 10. *"Management actions coordinate with federal, state and local governments, Native Hawaiians, relevant organizations and the public."*

- The RAC recommends keeping this principle as is.

Principle 11. *"Management actions carry out effective outreach, monitoring, & enforcement to promote compliance."*

- The RAC recommends revising the ending of this principle as follows: ... to promote management effectiveness and compliance.

NEW Principle 12. Co-management Principle

- The RAC recommends that a new co-management principle be developed that highlights the cooperative multi-agency aspect of PMNM management.

Management Plan Goals

The RAC recommends minor revisions to two of the goals, and proposes two new goals, as follows:

Goal 1. *"Protect, preserve, maintain, and where appropriate restore the physical environment and the natural biological communities and their associated biodiversity, habitats, populations, native species, and ecological integrity."*

- The RAC recommends keeping this goal as is.

Goal 2. *"Support, promote, and coordinate research, characterization and monitoring that increase understanding of the NWHI, improve management decision making, and are consistent with conservation and protection."*

- The RAC recommends revising Goal 2 to incorporate 'cumulative impact assessment.'

Goal 3. *"Manage and only allow human activities consistent with Proclamation 8031 to maintain ecological integrity and prevent or minimize negative impacts for long-term protection."*

- The RAC recommends updating Goal 3 to reflect 'applicable proclamations and laws.'

NWHI CRERAC Management Plan Recommendations
Page 4

Goal 4. *"Provide for cooperative conservation including community involvement that achieves effective Monument operations and integrated management."*

- The RAC recommends keeping this goal as is.

Goal 5. *"Enhance public understanding, appreciation, and support for protection of the natural, cultural and historic resources."*

- The RAC recommends keeping this goal as is.

Goal 6. *"Support Native Hawaiian practices consistent with long-term conservation and protection."*

- The RAC recommends keeping this goal as is.

Goal 7. *"Identify, interpret, and protect Monument historic and cultural resources."*

- The RAC recommends keeping this goal as is.

Goal 8. *"Offer visitor opportunities at Midway Atoll to discover and appreciate the wildlife and beauty of the NWHI, enhance conservation and honor its unique human history."*

- The RAC recommends keeping this goal as is.

NEW Goal 9. Threats

- The RAC supports a goal recognizing and addressing threats: climate change, marine debris, invasive species, maritime transportation, and others.

NEW Goal 10. Evaluation and Adaptive Management

- The RAC supports a goal that supports evaluation and adaptive management as described in the 2008 Monument Management Plan.

Mahalo for the opportunity to provide initial input. The RAC looks forward to assisting NOAA in moving forward with the sanctuary designation process for Papahānaumokuākea Marine National Monument.

Sincerely,



William Ailā Jr., Chair

NORTHWESTERN HAWAIIAN ISLANDS CORAL REEF ECOSYSTEM RESERVE RESERVE ADVISORY COUNCIL

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William Aiā, Jr. (Chair)
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Recreational Fishing
 Pelika Andrade
Native Hawaiian
 Edward Halealoha Ayau
Native Hawaiian
 Judith Cucco
Citizen-at-Large
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Research
 Bonnie Kahapea-Tanner
Education
 Solomon Pili Kaho‘ohalahala
Native Hawaiian Elder
 Richard Lee
Ocean-Related Tourism
 Audrey Newman
Conservation
 Donald Schug
Research
 William Walsh
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 Athline Clark
Papahānaumokuākea MNM
 Allen Tom
HHW NMS
 Brandon Jim On
NOAA-OLE
 Malia Norman
U.S. Coast Guard
 Janice Fukawa
U.S. Department of Defense
 Joshua DeMello
WESPAC
 Brian Neilson
State of Hawai‘i
 Jared Underwood
U.S. Fish & Wildlife Service
 Malia Chow
NOAA Fisheries PIR
 Dan Polhemus
U.S. Fish & Wildlife Service
 Na‘u Kamali‘i
Office of Hawaiian Affairs

January 28, 2022

John Armor, Director
 NOAA-Office of National Marine Sanctuaries
 1305 East-West Highway, 11th Floor
 Silver Spring, MD 20910

c/o Athline Clark, Superintendent
 Papahānaumokuākea Marine National Monument
 NOAA/DKIRC/NOS/ONMS/PMNM
 1845 Wasp Boulevard, Building 176
 Honolulu, HI 96818

Re: Additional RAC scoping recommendations for the proposed National Marine Sanctuary for Papahānaumokuākea Marine National Monument.

Aloha mai Director Armor,

The Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (NWHICRER) Advisory Council (RAC) wishes to provide additional recommendations for a proposed national marine sanctuary. These recommendations extend and supplement those recommendations provided by the RAC in our January 19, 2022 letter. The new recommendations consist of six potential boundary options to be considered for analysis in the sanctuary environmental impact statement (EIS), and two recommendations aimed at increasing protections within the Monument and the proposed national marine sanctuary.

These recommendations were drafted by the RAC's Planning, Evaluation, and Sanctuary Designation Subcommittee, with input from the Research Subcommittee and were thoroughly discussed and deliberated before being forwarded to the greater RAC for consideration at its January 12th meeting.

After focused discussions, the RAC achieved its desired outcome of consensus to put forward most of the items. However, approval of one proposed boundary option that included Middle Bank was controversial and was not achieved by consensus; instead it was approved based on a majority vote of council members present at the meeting.

RAC Recommendations on Sanctuary Boundaries and Related Items

1. The RAC recommends that the following six boundary alternatives be considered in the EIS.

The boundary options A-E were agreed upon by RAC consensus.

- A. No action (no sanctuary, no boundary);
- B. Only the original Monument area waters; no state waters; and not Midway;
- C. Original Monument area waters; state waters; and not Midway;
- D. Original Monument area waters; state waters; Monument Expansion Area (MEA); and not Midway.
- E. Any combination of B-D above that is inclusive of Midway marine waters;
- F. Original Monument area; state waters; MEA; not Midway; and some larger portion of Middle Bank, that is, incorporate an area that is presently outside of the eastern PMNM boundary.

Diverse perspectives were shared in the RAC's discussion of boundary option F. Proponents mainly cited biological reasons for incorporating Middle Bank within a sanctuary. Dissenting opinions tended to focus more on socio-cultural and political aspects, including some they felt had the potential to derail a sanctuary process and that there were promises made to some of the Kauai fishermen during expansion that needed to be considered. Since the RAC did not achieve consensus on this item, a roll-call vote was taken. The inclusion of this boundary option as a recommendation to ONMS was approved based on a majority vote of 5:4

- 2. The RAC unanimously recommends that the biological, cultural & historic significance of each option be explored and documented by the Co-Trustees and appropriate partners, to develop clear recommendations for effective management of important resources.
- 3. The RAC unanimously recommends that sanctuary planning examine opportunities for comprehensive management inclusive of Midway Atoll due to its connections as a critical part of the ecosystem and its cultural connection to the archipelago; and explore the feasibility of including Midway waters in the new sanctuary.

The council is an advisory body to the Reserve/NOAA Monument superintendent. The opinions and findings of this document do not necessarily reflect the position of the Reserve, the Monument, or the National Oceanic and Atmospheric Administration.

Mahalo for the opportunity to provide this additional input on a sanctuary designation for Papahānaumokuākea Marine National Monument. Do not hesitate to contact us if you have questions.

Sincerely,



William Ailā Jr., Chair

The council is an advisory body to the Reserve/NOAA Monument superintendent. The opinions and findings of this document do not necessarily reflect the position of the Reserve, the Monument, or the National Oceanic and Atmospheric Administration.





January 30, 2022

Ms. Athline Clark
Superintendent
Papahānaumokuākea Marine National Monument and UNESCO World Heritage Site
1845 Wasp Blvd, Building 176
Honolulu, HI 96818

Re: NOAA-NOS-2021-0114

Dear Superintendent Clark,

Re: NOAA-NOS-2021-0114

In behalf of Sharks Stewards, a non profit shark and marine conservation organization based in California and Hawai'i, we strongly support designating Papahānaumokuākea Marine National Monument as a national marine sanctuary to enhance protections and safeguard resources in the marine portions of the Monument. We believe sanctuary designation will complement the efforts of the Office of Hawaiian Affairs, the state of Hawaii, and other federal agencies to conserve this nationally significant area and its cultural resources and bolster strong and lasting protection for the marine environment.

Papahānaumokuākea is a sacred place with deep cosmological significance to Native Hawaiians who have a genealogical relationship to all living things in the Hawaiian archipelago. The Monument is a mixed (natural and cultural) World Heritage Site and preserves sacred places, stories, artifacts, and strong Polynesian cultural ties to the land and seas, dating back more than a thousand years.

The island system supports a diversity of life, including over 7,000 species, many found nowhere else on earth. Threatened green sea turtles and endangered Hawaiian monk seals are among the rare species that inhabit the island chain.

It is critical that sanctuary designation strengthen and enhance the protection of Papahānaumokuākea, as designated under the Antiquities Act and the Presidential Proclamations. Those efforts should include integrating traditional Hawaiian knowledge systems, values, and practices into management. We oppose any regulatory or management measures that would decrease the current level of protection within the Monument and Monument Expansion Area.

- **The spatial extent of the proposed sanctuary and boundary alternatives.**

The existing boundaries of Papahānaumokuākea Marine National Monument cover 582,578 square miles. We recommend that NOAA's preferred alternative for the sanctuary's boundaries follow the current Monument boundaries, including the Monument area originally designated in Presidential Proclamation 8041 of June 15, 2006, and the Monument Expansion Area as specified in Presidential

Proclamation 9478 of August 26, 2016. The sanctuary should include all the waters, submerged lands, and living and non-living resources within these areas. The shoreward boundary should extend to the mean high tide.

- **The location, nature, and value of the resources to protect by a sanctuary.**

The Papahānaumokuākea Marine National Monument providea breeding areas for Hawaiian monk seals and four species of sea turtles, nesting sites for more than 14 million seabirds, and more than 5,000 square miles of coral reefs. Because this region is remote—nearly 3,000 miles from the nearest continent—life forms evolved here that exist nowhere else on earth. The Monument is one of the few intact, large-scale predator-dominated reef ecosystems left in the world. Researchers working in Papahānaumokuākea Marine National Monument continue to encounter new species: since 2000, scientists have discovered scores of new species of fish, coral, invertebrates, and even algae. The monument has significant living and non-living resources, cultural and natural seascapes, and geological features which deserve protection through sanctuary designation.

At least 23 species protected under the US Endangered Species Act inhabit the Monument, two national wildlife refuges, and two state-protected areas within its boundaries including endangered monk seals and green sea turtles.

The Monument provides critical foraging habitats for marine species and birds, including endangered Laysan albatross, Black-footed albatross, Bonin petrels and other seabird species that forage in the Monument. Three species of whales are threatened or endangered: sperm whales, fin whales, and sei whales, along with five species of protected sea turtles been sighted in the Monument. Sharks, including tiger sharks and Galapagos sharks, are key species in the Monument's ecosystems.

Native Hawaiians regard the Monument's atolls, islands, and waters as sacred places from which all life springs and ancestral spirits return after death. The Native Hawaiian belief systems regarding this genealogical relationship inform a set of responsibilities, rights, and privileges that Hawaiian people inherited to honor and protect their ancestors. Some islands have several names: one or more Hawaiian names that highlight a natural feature such as an abundance of sharks or a sacred quality ascribed to the place in traditional teachings, and an English name that often commemorates a historic shipwreck nearby.

Long-distance voyaging and wayfinding is a unique and valuable traditional practice that the Native Hawaiian community developed and advanced. Wayfinding relies on celestial, biological, and natural signs, such as winds, waves, currents, and the presence of birds and marine life. The Monument's open ocean ecosystem and its natural resources continue to be important in the Hawaiian Archipelago's cultural voyaging seascapes and training ground for new generations of wayfinders.

Shipwrecks and aircraft in the Monument are of great historical interest and importance. The Monument is the final resting place of thousands of people lost during World War II battles. The submerged sites and scattered artifacts tell the stories of sailors and navigators who ventured throughout the Pacific. Interpretation of these shipwreck sites and the broader maritime heritage of Papahānaumokuākea Monument further our understanding of our connection to this place and our role in protecting its natural and cultural resources.

The sanctuary designation should protect all living, non-living, cultural, and maritime resources of the Monument and the cultural and natural seascapes of which they are an integral part.

- **Management measures for the sanctuary and any additional regulations that should be added under the NMSA to protect Monument Resources.**

Overall - Resource protection is the highest priority of the Monument, and the designation document, management plan, and regulations must be consistent with this priority. The sanctuary designation must augment and strengthen existing resource protections, increase regulatory compliance, ensure enforceability, and provide natural resources damage assessment authorities and interagency coordination of activities as provided in the National Marine Sanctuaries Act.

Presidential Proclamations 8031 and 9478 include prohibited activities which NOAA should incorporate into the sanctuary designation document, management plan, and regulations. Further, Presidential Proclamation 9478 provided a framework for managing the Monument Expansion Area, and NOAA should codify those protections in the designation document, regulations, and management plan.

Integration of Native Hawaiian cultural values and principles - "Mai Ka Pō Mai is a collaborative management framework intended to guide the Monument's co-trustees integration of traditional knowledge systems, values, and practices into management. Based on Hawaiian cosmology and worldview, the framework includes five management domains, four of the management domains are referred to as Kūkulu, and the central management domain is the Ho'oku'i. We strongly urge NOAA to embrace the framework and work with the Native Hawaiian Cultural Working Group, OHA, and the Native Hawaiian community to include the Mai Ka Pō Mai framework into the designation document, management plan, and regulations.

Fishing - The Magnuson–Stevens Fishery Conservation and Management Act (MSA) is the primary law that governs marine fisheries management in US federal waters. Its objectives are to prevent overfishing, rebuild overfished stocks, increase long-term economic and social benefits, and ensure a safe and sustainable seafood supply. ONMS Director John Armor's letter of November 19, 2021, to Chairperson Soliai of the Western Pacific Regional Fishery Management Council stated that the MSA is the appropriate statute for managing fisheries within the proposed sanctuary. We strongly disagree and urge NOAA to adopt a joint regulatory approach at a minimum.

As mentioned above, the cultural and natural landscape of Papahanaumokuakea, their services, and the living and non-living resources in the Monument deserve protection under the sanctuary designation. Fish species are a critical part of the landscape, and their management must be part of the ecosystem. The National Marine Sanctuaries Act is the only ecosystem-based act that can achieve this goal through regulation. The ONMS regulations should be in addition to MSA regulations and not a backstop.

Should ONMS choose not to regulate fisheries under the NMSA (a point we strongly disagree with), then the Secretary of Commerce must ensure the proposed regulations from the Western Pacific Fishery Management Council are consistent with Executive Order 13178 and Presidential Proclamations 8031 and 9478. If they are not, the Secretary of Commerce must reject the draft regulations.

Maritime Transportation - In 2008, the International Maritime Organization (IMO) designated the Monument a "Particularly Sensitive Sea Area." The Monument Management Board put additional

domestic measures and best practices into place to protect the original Monument area. We recommend that the IMO designation applies to the Monument Expansion Area. Further, as part of the sanctuary designation process, ONMS should determine if additional regulatory and management controls are necessary.

Thank you for the opportunity to comment on the proposed sanctuary designation. We look forward to working with NOAA to enhance and strengthen protections for the Monument.

Sincerely,

David McGuire,, Director
Shark Stewards

F.3.2 Oral Comments

The text below may contain errors, as it is taken from auto-generated transcripts, and has not been reviewed by the speakers.

U.S. Environmental Protection Agency (EPA) (via Andrew Zellinger)- December 16, 2021 Meeting

“Hi, thank you for the opportunity to comment. I appreciate the opportunity to work with you throughout the planning process. I represent US EPA Region 9 based in San Francisco.

I don't have any other formal comments at this time, just wanted to make myself available if you have any questions for the kinds of resources that we work on. Our focuses include environmental justice, air, and water quality, and I'll be here throughout the process.”

Surfrider Foundation Hawaii Region (via Kaitlyn Jacobs)- December 8, 2021 Meeting

“Hi everyone, my name is Kaitlyn Jacobs, and I am here on behalf of the Surfrider Foundation Hawaii region. I'm just going to keep it short here we're in the initial stages still but at Surfrider, we definitely support this movement from monument to sanctuary, especially because of the additional protections and benefits, while still maintaining the co-management structure.

We're really excited to be involved as an organization in the designation process and follow along with the management plans, as everything moves forward. So I would love to thank you guys for all your hard work on this and we're really excited to keep moving forward.”

Godfrey Akaka- December 8, 2021 Meeting

“I'm, I live, I reside on Molokai. I represent the Native Hawaiian Gathering Rights Association I am native Hawaiian And I guess, I had a question, is it possible for somebody to give me just a brief is it possible for me to ask a question and then I can continue comment. Hello?... I'm trying to, I'm trying to get more information regarding this one thing that I failed to hear from William Ailā was what you guys trying to protect. The area from I never catch that, you know I heard need to protect, but from what Protect them from what. We are in the State of Hawaii, we are getting constantly bombarded by your fishing restrictions, constantly to the point where people are just participating and making rules, just because. There's no science behind it, no data behind it. And then, even when data is provided, it's used against a fisherman. So if you use fish, if you eat fish, consider where the impacts that is being made when whenever you close off one area, but I'm just curious to know, what is this area being protected from? So at this time, we cannot support this, this proposal. And I think hopefully, somebody can get back with me with that answer in the discussion. Mahalo.”

Klayton Kubo- December 8, 2021 Meeting

“Okay, so at this point in time, I don't know if I can support this measure I need way more information and about six or seven years ago, we had an agreement Yes, again I want to reiterate, we had an agreement That the monument was not going to get closer to the island

and county of Kaua'i Nor does, it's going to encompass the two weather buoys that is out there to the northwest of the island of Kaua'i. So please remember that agreement and that is why the expansion did not come closer to county of Kaua'i nor Ka'ula Rock, nor [unintelligible], nor [unintelligible]. And I want to reiterate, please remember that. Because let's put it this way: Why is the monk seal coming from the northwest Hawaiian Islands, why were they relocated to the main Hawaiian Islands? If it is a monument up there, some protected area to begin with, so that is what I don't understand, why is it that the calculation of monk seals that NOAA wanna bring is looking like 500 in the main Hawaiian Islands. And that, I cannot understand that one there. Unless if Malia or Jeff Walters, or Athline Clark, you guys can give me the answers. Athline, you know my phone number. Malia, you know my phone number. I don't know if Jeff is on but it's all good, so just remember the agreement that was made six or seven years ago. Please remember that. A year, I've been hearing talk about encompassing the whole middle banks in between [unintelligible] and the county of Kaua'i. I don't know if that is true, but remember again, the agreement that was made six or seven years ago, and Athline, you know what I'm talking about. That's all I'd like to say for now. I might you know come on to some other meetings, and I might have more to say later on. Thank you very much for your time, mahalo nui, again, Klayton Kubo. [Hawaiian language] aloha."

Devin Silva- December 8, 2021 Meeting

"Just to start I do make, you know, a substantial part of my livelihood off commercial fishing so that's where I'm coming from and I'm, thank you Godfrey for your last comment

in support of the fishermen but uh I was just wondering what is happening what are we looking at as far as like Godfrey said, science and what are we protecting it from? My vision, would be to grant us, you know, Hawaiian fishermen not to get into the issue of the foreign crews out of Oahu allow us to respectfully provide to our communities through you know regulation and monitored fishery I don't see why, if it's monitored and regulated, why we can't provide to our community. I've worked in the, also in the air cargo industry for like five or five years, and I see thousands of pounds of fish being brought into Hawaii and you do have to look at where your fish is coming from. You know it's coming from factories, is being processed with copper oxide, which is another issue when we can provide fresh fish here through regulation, that's sustainable. So, I mean, I'll leave it at that, hopefully that's something that you guys can consider when you're closing off this section of the ocean to us. Thank you."

Kenton Geer- December 8, 2021 Meeting

"I'm good, I unfortunately missed part of, the beginning part of the meeting here, but this has been a subject that has, you know, getting passed around, and I know that it concerns a lot of people in different walks of the industry. I'm personally concerned with the expansion, because of, there's two weather buoys that could potentially encompass up to the northwest

that at in the past had been part of our fishing grounds. And what I worry about is that I have watched historically that nothing ever comes back, aside from I can think of one time in history of maybe giving a little bit of Kona crab quota back like years after the, most of the fleet that was doing it. It's pretty much gone. I have historically watched that when you take

something away it just never comes back, and I just watched more and more and more regulations get put on the little guy in Hawaii while the lobbyists and Wespac and the bigger groups continue you know, really advocating for bigger boats that have vessels and the capability to go other places, as you encroach further and further into the Hawaiian Islands, you're, you're basically going after the people that don't have an option and that's what I'm concerned about, especially if you're talking about up towards middle bank, Kaua'i. You know those guys, everyone, mostly smaller range boats, have boats that are designed purposely for what they have. As you talk about taking away fishing grounds from people, you're literally taking away full livelihoods, with no, there's no talk of reimbursement and stuff because our State fisheries for the most part, you've never had a good bailout because it's not Federally regulated. So the problem is, is that you guys continue to take away, but you're not offering anything back to the people that you're taking the jobs from. And I would just really like to emphasize that although oftentimes monuments, have the best, you know, feel good story in mind, the reality is often the people that are doing the least amount of damage or no damage at all, are the people who become the sacrificial lambs on this. And I will just really ask that they, you know, you try to remember the rules, or the agreements that have come up with in the past, and try and honor, particularly the smaller boat fleet because those are the people that you're going to hurt the most so that's all I have to say. Thank you."

Kolomona Kaho'ohalahala- December 11, 2021 Meeting

"Aloha kakou.

I am here and I, in my capacity as an individual who's residing on the island of Lanai, and so I would like to make my comments as a native Hawaiian and thank you for this opportunity. I registered but did not expect to make the comment, so I'm happy for this opportunity. I'm,

the one thing that I would like to speak to is this idea of the boundaries that are potential for the sanctuary designation, and it's clear that in the map that was displayed earlier by the superintendent that there are two specific boundaries, one which was the 2006

boundaries which created the monument designations that I believe at 50 miles off from the land outward to sea, and the the second was the monument expansion boundaries of 2016

which go out to the 200-mile boundaries. But I would like to comment that it would be in my opinion as a native Hawaiian that separating the authority within a sanctuary that would be within the 50-mile and not include the expanded area of 200 miles would not be how I would view the connection between the people, the place, the culture, and the resources. That all of this area should be, continue to be viewed as one place, and if we're going to be managing this place, then we should not try to separate and divide any more than we have been divided in many other instances, so I would hope that moving forward, that the view of the newly proposed sanctuary designation would be inclusive of the 50 to the 200-mile expansion boundaries, and at the same time protecting the fishing rights that had been established by the expanded boundary areas in 2016 for those fisher families that have, access the area close to Papahānaumokuākea

and keep that intact, but again I want to emphasize that as a native Hawaiian, we view all things as interrelated, and if we're going to be managing an area of this kind of magnitude in

the sanctuary, then I would want to ensure that we could continue to view the sanctuary as a single unit that integrates not only the resources within these boundaries, but also with the people and the place as related and not separated because of political jurisdictions or authorities. But if we're truly going to help to support a native Hawaiian perspective to be inclusive, in the, not only the co-management through the Office of Hawaiian affairs, but also in our view of how ecosystems are managed, then I would like us to consider not separating this but keeping it intact and then I think when we advance and move forward with that kind of designation

that's all inclusive, it will help us to understand best the interrelationship between what matters for any particular time or any particular issues that may arise in the future, and that we give it a total comprehensive view from a native Hawaiian perspective that is inclusive of all things, and not just separate and divide into individual components which make it impossible to try and find the true relationships and perhaps even finding better solutions if they were considered separate individual and divided in terms of authority. So that is my hope is that we will continue to view it in that manner. So I thank you for this opportunity. As I said, I had not expected to speak but I'm hoping that this will be helpful in this process so mahalo. Thank you."

Doug Fetterly- December 14, 2021 Meeting

"Papahānaumokuākea stands as a beacon of hope, one that must continue to be protected if we have any chance of saving the dwindling numbers of sea life, along with the integrity of the ocean itself, if not human life. A mere 7% of ocean waters have some degree of protection, while extraction of fish for one has accelerated and at an unsustainable read, one that regeneration of the fish populations cannot keep up with. Fishing methods have advanced far beyond those of recent decades. We are mistaken if we think we can continue business as usual. We must all come together and give serious thought to what we leave or don't leave for future generations, we ask ourselves, will we be the cause of continued extinctions? I stand behind Papahānaumokuākea becoming to protect marine sanctuary with no loss of the protections and boundaries put forth in the Monument. I also recognize that the voices of the native Hawaiians, the lifelong stewards of conservation here in the islands, must be an integral part of the associated economic, socioeconomic, and cultural consultations and considerations moving forward, and we must contribute to, not detract from, the goal of protecting 30% of the world's ocean by 2030. Without question life as we know it depends on healthy oceans and ecosystems. Mahalo."

Tammy Harp- December 16, 2022 Meeting

"I'll just say some few lines, and I'll probably write in more than I want to speak.

I like the supplement and compliment, because I was, I was very leery about the you know slacking of protections up there, you know, over the years and those who know me know that I really was you know troubled by you know, seeing it, not seeing it become less you know

protected up, though, but anyway um I just wanted to say that previous management of fisheries have negatively impacted the NWHA, which is the monument but to you know I'll say NWHI

marine resource through mismanagement. And also too that you know I am unsure sure why the long-line permits weren't subjected to the use it or lose it quota set by the Fishers Council for the bottom fisheries and not for the long-line fishers. This is like around nine, late 1990s and as for now, that's pretty much you know, give kitty time for justify why they want to come and fish in there, but you know nowadays, there's talk about harvesting of Honu for consumption and

you know I never was privileged to eat Honu growing up. It's because we had other things we ate. And mostly the Honu went for commercial like, the sale to restaurants and for home consumption, too, but it was like unregulated and everything just went downhill for true mismanagement, and so that's not a concern about the, I want protection because we get the,

honu you know they can travel far from up there, it can take them six days to get from FFS, oh I forgot the Hawaii name right now and French Frigate Shoals shows down to Maalaea, took only 6 days for that Honu, so you know, we know that they're traveling back and forth and

you know, so when the time comes to make the decision to harvest for home consumption

see which that is not in the language, everything is noncommercial, subsistence, sustenance, all those words but nothing says home consumption. But meanwhile, with the, you know, throughout the whole marine resource language, there you know there's some stuff missing. But anyway um and then we see long-term sustainability talking, you know that kind of stuff, which is good, but then we forget about the long time, the old time, long time families that resides still in the same places of you know, for generations and and, and we hardly have any say in know, in management of turtle, the resource actually crashed [Hawaiian language] actually not really [Hawaiian language] but in a sense, it is because we have to know, you know, is this, I call them if the meek is to inherit the earth, you know it's like we inherit the failure of commercialism because they drained us out. They like took our ecosystem, our juvenile habitat away from us because of overfishing for black coral and things like that so yeah. Sorry about getting off track, but I can't help but go back to the 'Au 'au Channel. But my love for that place is just as much as I do under the Monument or the NWHI. And you know Uncle Buzzy, he epitomizes who we are, you know, we have this innate ability to try to fix what we kind of like damaged, you know and,

I'm glad that he came into our lives because he made me more aware of you know what is really happening out there, especially like in fisheries, but anyway, yes, I am for the supplement and compliment and I And I really, you know and there's this one thing that really gets me. I don't mind all the high resolution you know pictures and things that go on up there in the water up in the Monument. But I am dismayed and disappointed in seeing those things happening in the 'Au 'au Channel, and it's been like 20 years since I had expressed my concern about things like that and I felt that time you know, in the front of the coral reef task force, that they brought more damage to the place and so Isaac, my husband, he mentioned that at that same meeting ..., and he said oh look in under my mom, mother's dress, and I thought what is that? What's he saying, And then, on the way home, after all that meetings, went home and coming over towards Lahaina, I looked over and looked at our channel, and I thought, and I yelled out they made it, made her naked. So yeah you know I, you know it's like, science is good for some stuff and science is good for you know, and sometimes they're not good, because they

get so overzealous and excited that they're exposing more than what the people actually really want exposed and that's one hang up for me about you know the bad part of science

And now okay, so I guess I did enough preaching. So I wish everybody a safe holiday season, and I'll go and submit my written testimony. Mahalo."

[second comment- same meeting]

...Aloha again, I just wanted to just leave a quote that Isaac had said in front of the coral reef task force. 'One thousand years of knowledge is better than one hundred years of assumptions', and you know, the room roared and a lot of scientists were in there and the room roared in laughter because everybody knew that was the truth so anyway, again mahalo and pleasant evening to you folks."

Brian Bowen- December 16, 2021 Meeting

"My name is Brian Bowen B-R-I-A-N B-O-W-E-N And I work as a marine biologist for the University of Hawaii, but today I speak as a private citizen. And I want to say that that there's a universal consensus among scientists that the northwest Hawaiian Islands, not only is it desirable to be protected it must be protected, and the reasons are so many. I'm talking about Laysan albatross. They nest almost exclusively in the northwest Hawaiian Islands. If that area isn't protected, they could be gone. The Green turtle, Honu, nest almost exclusively at French Frigate Shoals. If that area isn't protected, they're gone. And the other thing that scientists know is that the, is the lesson of Uncle Buzzy Agard, that the area is relatively fragile. There was a gold rush in the lobster fishery 40, 50 years ago that provided a great livelihood for some fishermen, fisher persons, but by 40 years ago, it was fished out And in 2021, 30, 40 years later it hasn't recovered. The lobsters are still scarce there, so not only is it a precious place, a necessary place for our endemic Hawaiian wildlife, it's a fragile place that deserves the fullest protection we can give it. That's all, thank you."

F.4. Response to Scoping Comments

This section provides responses from the State of Hawai‘i and NOAA to substantive comments received on the NOI and EISPN during the public comment period. As discussed in Section F.2, comments were considered substantive if they pertained directly to the development of the EIS.

Statements considered to not be substantive were general comments with no specific information, such as those that stated preferences for or against the Proposed Action. Those comments are not further addressed here.

A total of 51 comments were deemed substantive and were subsequently placed into 1 of 4 categories pertaining to the development of the draft EIS:

- 1) Purpose and Need
- 2) Alternatives
- 3) Affected Environment
- 4) Environmental Consequences

Multiple people commented on each of the topics and those who commented on each topic are listed below the heading. The responses to the substantive comments raised is provided under each topic.

F.4.1 Purpose and Need for the Proposed Action

Response to comments received from: Dinah Bear and Lois Schiffer

DLNR would like to clarify that this EIS review process is for the initiation of a *potential* national marine sanctuary designation and that the analysis, public scoping, and consultation done through both the HEPA and NEPA processes will inform State and federal decision makers whether a sanctuary *should* be designated in this area. The assumption has not been made that a sanctuary will certainly be designated. The scoping and EIS review process will include analyses on whether a sanctuary should be designated in this area as well as what the potential alternatives for the sanctuary and its management would be. DLNR and NOAA acknowledge that it is possible the language used within the EISPN may have been vague or unclear in this regard and will edit any future public information documents to better elucidate the intent of the EIS.

Additionally, DLNR and NOAA acknowledge the request to explicate and clarify the needs which will be achieved through potential sanctuary protections (through the National Marine Sanctuaries Act) which cannot be achieved through the existing Monument Proclamation (Antiquities Act) including tools for management and protection. DLNR and NOAA will address these requests that purpose and need statements of the EIS include the specification of needs and reflect an intent to evaluate and determine whether an added sanctuary designation supplements and complements the existing protections.

F.4.2. Alternatives to the Proposed Action

Response to comments received from Shark Stewards, Marine Mammal Commission, Center for Marine Conservation, Cruise Line Industry, the U.S. Navy, the American Sportfishing Association, National Marine Sanctuary Foundation (and partners) Deep Ocean Stewardship Initiative, Mystic Aquarium, Dave Treichel, Linda M.B. Paul, NWHI Coral Reef Ecosystem Reserve Advisory Council (RAC), Dinah Bear and Lois Schiffer, Center for Sportfishing Policy, Sol Kaho 'ohalahala:

An EIS analyzes potential impacts from implementation of the Proposed Action via a range of reasonable alternatives. This EIS will include reasonable alternatives to both the Proposed Action of designating a national marine sanctuary, and reasonable alternatives within the context of designating a national marine sanctuary. There will be a robust discussion of protections associated with a sanctuary designation, and whether they will replicate or differ from the current Monument protections. This includes the effects of a “no action” (legal status quo) alternative versus the range of protections which may be afforded by a marine sanctuary designation.

Some of the resources which will be considered when analyzing the range of environmental protection needs and alternatives include but are not limited to marine mammals and protected species, sustainability and accessibility of fisheries, coral reefs, deep sea environments, and

living and non-living Native Hawaiian cultural and maritime cultural resources. Additional economic, sociological, ecological and cultural topics to be analyzed include but are not limited to discharge restrictions within potential sanctuary boundaries, the spatial extent of the proposed sanctuary and various boundary alternatives, permitting, national defense and Armed Forces activities, and potential IMO designation in the proposed sanctuary.

As part of the 304(a)(5) process, NOAA will assess whether fishing regulations proposed by the Western Pacific Fishery Management Council for the sanctuary are consistent with Executive Order 13178 and Presidential Proclamations 8031 and 9478 and with the goals and objectives of the proposed sanctuary.

F.4.3 Affected Environment

Response to comments received from Christopher Kelley, Marine Mammal Commission, Shark Stewards, EPA, Linda M.B. Paul, and U.S. Navy:

The Agencies knowledge and put great importance on the fact that Papahānaumokuākea is a place of sacred cultural, historical, cosmological, and ecological resources including threatened and endangered wildlife species, high-density marine communities on substrates at all depths, fish and other marine life and reef communities, sunken military aircraft and various other World War II heritage and artifacts, Native Hawaiian traditional areas and artifacts, and more. Many of these are subject to a host of threats including ocean warming, climate change, invasive species, and marine pollution. DLNR acknowledges the various comments that highlighted their importance and that suggested the protections would be maintained and/or enhanced with the designation of a national marine sanctuary. The draft EIS will describe the significance of the affected environment as well as the threats to resources.

F.4.4 Environmental Consequences of the Proposed Action

Response to comments received from Anonymous, EPA, Deep Ocean Stewardship Initiative, Marine Mammal Commission, Dinah Bear and Lois Schiffer, and Michele Paularena.

The draft EIS analysis will describe how the environment within proposed sanctuary waters may be impacted directly, indirectly, or cumulatively by the Proposed Action.

Information received through consultation with co-managing agencies cultural practitioners scientists and others regarding potential impacts of proposed action will be taken into account. Actions that would be taken to mitigate or reduce any adverse impacts discovered will be described within the draft EIS and final EIS, and specific cultural impacts will be closely evaluated and described within the Cultural Impact Assessment (CIA) and through the National Historic Preservation Act Section 106 process.

The various provisions, resources and consequences of the Proposed Action that have been suggested from commenters has been acknowledged and will be considered through the HEPA/NEPA draft EIS process include but are not limited to broadening representation for an Advisory Council, and addressing permits. DLNR will recommend that NOAA consider strategies within a sanctuary management plan that include ensuring adherence to the Clean Air Act, Clean Water Act, and other applicable acts, and an evaluation of environmental justice

populations within the scope of the project area. The protection of any sunken military aircraft in the project area and the rights, freedoms, and lawful uses of the sea recognized in customary international law also will be addressed in the draft EIS.

Appendix G:

Heritage and Historic Resources Supplemental Information

This appendix presents information on heritage and historic resources in Papahānaumokuākea and a summary of known maritime heritage resources within the proposed sanctuary. This information is supplementary to the environmental impact statement and provides documentation of the substantial resources that will benefit from the proposed sanctuary.

The National Oceanic and Atmospheric Administration (NOAA) Maritime Heritage Program, created in 2002, is an initiative of the Office of National Marine Sanctuaries. The program focuses on maritime heritage resources within the National Marine Sanctuary System, and also promotes maritime heritage appreciation throughout the entire nation.

NOAA is legally responsible for the management of maritime heritage resources within sanctuary boundaries. Congress directs NOAA, through the National Marine Sanctuaries Act, to comply with the Federal Archaeological Program, a collection of laws and regulations that pertain to the protection of historical and archaeological properties on federal and federally managed lands. These resources also are impacted by natural factors such as storms, currents and corrosion. Therefore, responsible, informed decisions must be made on how to manage these resources for the enjoyment and appreciation of current and future generations. Maritime heritage resources, unlike living resources, are nonrenewable, so it is especially important that we protect these important links to our past.

Background on Maritime Heritage Resources within Papahānaumokuākea

Papahānaumokuākea not only features unique natural ecosystems, the area possesses important cultural, historical, and archaeological significance as well. The Hawaiian Archipelago's history consists of hundreds of years of intensive maritime activity, resulting in shipwrecks and other types of maritime heritage resources across Papahānaumokuākea.

Responsibilities under the National Historic Preservation Act of 1966

When federal agencies propose undertakings that may affect the cultural landscape, the potential impacts to these values must be taken into consideration. The National Historic Preservation Act of 1966 (NHPA), specifically NHPA Section 106, is one part of this process. Section 106 review requires federal agencies to consider the effects of their undertakings on certain cultural, historical, and archaeological resources which the Act defines as "historic properties."²

Historic properties as defined by the NHPA means any prehistoric or historic districts, sites, buildings, structures, or objects included in, or eligible for, inclusion in the National Register of Historic Places maintained by the Secretary of Interior. The term includes properties of traditional religious and cultural importance to Native Hawaiian Organizations and that may be

² Under NHPA, all ONMS sites are responsible for known "historic properties." ONMS sites may also have maritime heritage resources that may not meet the definition of NHPA "historic properties."

eligible for listing in the National Register of Historic Places. As part of sanctuary designation, these values are also considered within the framework of the National Environmental Policy Act (e.g., within the environmental impact statement, management plan, and the State's Cultural Impact Assessment).

Historic properties as defined by NHPA also include historical and archaeological resources that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and exhibit one or more criteria:

- That are associated with events that have made a significant contribution to the broad patterns of our history;
- That are associated with the lives of persons significant in our past;
- That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- That have yielded, or may be likely to yield, information important in prehistory or history.

Management activities conducted in support of maritime heritage protection

NOAA, the State of Hawai‘i, and the U.S. Fish and Wildlife Service share statutory responsibility to inventory, evaluate, and protect these resources, guided by the NHPA and other preservation laws. Archaeological survey within Papahānaumokuākea was begun during the Northwestern Hawaiian Islands Coral Reef Assessment and Monitoring Program research expedition in 2002 and continued opportunistically through 2018. In addition to the terrestrial archaeological resources of the atolls and islands, there are more than 60 reported vessel losses in the historic record, and hundreds of sunken naval aircraft lost within the monument's currently existing marine boundaries. NOAA's Maritime Heritage Program maintains the database on these maritime heritage resources within the monument.

This section acknowledges the cultural significance of Papahānaumokuākea and, additionally, provides a brief summary of the subset of currently known (discovered/located) maritime heritage shipwreck and aircraft resources within the marine environment of Papahānaumokuākea. A map showing approximate locations of known maritime heritage properties is presented as Figure G.1.

Whaling Vessels

Western whaling activities represent a global industrial pursuit, one which brought European and American voyagers into the Pacific in the late 18th/early 19th centuries. Whaling was often the context for cultural contacts with the foreigners. At the peak of historic whaling activity, hundreds of whaling vessels called in Hawai‘i annually. Ships not only needed provisions, they needed crews; whaling captains constantly needed to recruit for labor. Hawaiians quickly adapted the skills necessary to sail and work these foreign vessels, and many young Hawaiian

men found employment on board whalers, venturing again for the first time in hundreds of years beyond the waters of the Hawaiian Kingdom.

The wrecks of whaling vessels can preserve aspects of ship construction and fitting out for the voyage, the tools and whale craft of the 19th century, and evidence of the wrecking event and subsequent rescue and salvage itself. Certain individuals, such as carpenter James Robinson, had an important influence on the history of the islands (opening the first modern shipyard) following the dual shipwrecks of the British whalers Pearl and Hermes in 1822. There are ten recorded losses of British and American whaling vessels in Papahānaumokuākea, five of which have been located by NOAA and assessed (Table G.1). These whaler wrecks are scattered archaeological sites composed generally of heavy ceramics and iron/copper artifacts (e.g., bricks, anchors, try pots, ballast, cannon, hull sheathing); the wooden structure having deteriorated long ago, subject to powerful shallow water surf, surge, and storm effects. The predominantly low integrity ratings for all sites reflect the dynamic environment of Papahānaumokuākea. The whaler *Two Brothers*, discovered in 2008, is now listed on the National Register of Historic Places.

Table G.1. Known Whaling Vessels within Papahānaumokuākea

Site Name (whalers)	Atoll Location	Year Lost	Property Type	NRHP status and criteria (ONMS)	Description	Defining Features	Site Integrity	Survey Date(s)/Record
Parker	Kure	1842	arch site	TBD	406-ton American whaling ship; built New Bedford	ship's equipment elements (windlass, anchors, rigging, ship's bell); whalecraft (blubber hook, tryworks bricks)	low; scattered artifact site	Discovered 2003; survey complete in 2006; site plan, cruise report, web content, digital images
Gledstanes	Kure	1837	arch site	TBD	428-ton British whaling ship; built 1827 Leith, Scotland	ship's equipment elements (ballast, anchor, cannon)	low; scattered artifact site	Discovered/surveyed 2008; site plan, cruise report, web content, digital images
Pearl	Pearl and Hermes	1822	arch site	eligible (D)	British whaling vessel	ship structure (keel/keelson); ship's equipment elements (anchors, rigging, fasteners, cannon, grinding wheel, pindle/gudgeon); whalecraft (tryworks bricks, trypots)	medium; confined scatter site	Discovered 2005; surveyed 2006-2007; site plan, cruise report, web content, digital images
Hermes	Pearl and Hermes	1822	arch site	eligible (D)	British whaling vessel	ship's equipment elements (anchors, rigging, fasteners, cannon; whalecraft (tryworks bricks, trypots))	medium; scattered arch site	Discovered 2005; surveyed 2006-2007; site plan, cruise report, web content, digital images
Two Brothers	French Frigate Shoals	1823	arch site	listed NRHP (A, B, D)	217-ton whaling ship out of Nantucket, Captain George Pollard Jr.	ship's equipment elements (rigging, anchors, cast iron cooking pots, ceramics, and glass); whalecraft (blubber hooks, lances, try pots, tryworks bricks, harpoon tips)	low; large arch scatter site	Discovered 2008; site plan, cruise report, web content, digital images; possible associated site east of original location discovered 2021

Merchantmen

Even after they had been placed on Western charts, the low islands and atolls of the Hawaiian Archipelago (without navigational aids) presented hazardous obstacles for commercial vessels transiting the Pacific (Table G.2). Ships that strayed off course and fell prey to these shallow and unseen reefs included iconic Pacific lumber schooners and iron-hulled square-rigged tall ships of a bygone age. Wooden sailing vessels like *Carrollton* and *Churchill* are archaeological sites of scattered iron and steel artifacts and features (e.g., anchors, windlass, ship's pumps, chain), while iron and steel-hulled ships like *Dunnottar Castle*, *Quartette*, and *Mission San Miguel*, have greater site integrity, exhibiting more complete site structure. Even relatively modern ships like *Mission San Miguel*, a former 500-foot WWII T2 tanker, are subject to the forces of nature. The steel ship's aft section lies crushed on its side, the ship's forward section broken and lost altogether.

Table G.2. Known Merchant Vessels within Papahānaumokuākea

Site Name (merchants)	Atoll Location	Year Lost	Property Type	NRHP status and criteria (ONMS)	Description	Defining Features	Site Integrity	Survey Date(s)/Record
Carrollton	Midway	1906	arch site	not eligible	1450-ton American sailing bark; built Bath, Maine 1872	ship's equipment elements (windlass, aux boiler, ship's pump, hawse pipes, rigging, pintle/gudgeon, anchors, anchor chain, fasteners)	low; scattered artifact site	Surveyed 2003; site plan; site photographs; historical docs
Dunnottar Castle	Kure	1886	arch site	eligible (D)	1750-ton British iron-hulled tall ship; built Glasgow 1874	hull sections, deck machinery, anchors, cargo (coal blocks), mast sections, rigging	high; large area major site, hull portions, features, artifacts	Discovered 2006, survey 2007 and 2008; site plan, cruise report, web content, digital images
Churchill	French Frigate Shoals	1917	arch site	TBD	four-masted wooden merchant lumber schooner built	deck machinery, ships pumps, hawse pipes, wire rigging, fasteners, blocks	medium; large arch scatter site	Surveyed 2007; site plan, cruise report, web content, digital images
Quartette	Pearl and Hermes	1952	arch site	TBD	former WWII Liberty ship built	major engine shaft propeller features and large steel hull/cargo mast sections	high; arch confined scatter site both inside/outside reef crest	Surveyed 2002, follow up 2006; GPS survey started 2007, survey outside reef 2008; site photographs; historical photographs; historical docs
USNS Mission San Miguel	Maro Reef	1957	structure	TBD	523-foot WWII T2 tanker built	gun tubs, cargo masts	medium; intact stern on port side; mangled midships area	site photographs; ship plans; historic photographs; salvage and assessment docs

Fishing/Miscellaneous Vessels

Fishing in the Northwestern atolls has a long and varied history, from Native Hawaiians making regular canoe trips to Holaniku for turtles and seabirds and traditional resources, to Western sailing ship exploits in the area in the 19th century for seals, reef fish, turtles, sharks, birds, pearl oysters, and sea cucumbers. The history of some of these shipwrecks remains unknown, but the types of propulsion make it very likely that some were long-range fishing sampans.

Known fishing vessels within Papahānaumokuākea are listed at Table G.3. Distinctive Hawaiian fishing sampans, a local hybrid of original Japanese traditional watercraft design with modernized diesel engines, are historically associated with Hawaii's commercial tuna fishery, centered at Kewalo Basin on O'ahu, and Hawaiian Tuna Packers Ltd. established in 1916.

Table G.3. Known Fishing and Miscellaneous Vessels within Papahānaumokuākea

Site Name (fishing vessels)	Atoll Location	Year Lost	Property Type	NRHP status and criteria (ONMS)	Description	Defining Features	Site Integrity	Survey Date(s)/Record
<i>Mimi</i>	Pearl and Hermes	1989	arch site	not eligible	possible fishing vessel	engine component	low; single object	2006
"Oshima" wreck	Pearl and Hermes	UNK	arch site	not eligible	possible fishing sampan	engine house cover and stack; engine, anchors, hawse pipes	low; partial structure and discrete features	Surveyed 2006-2007; site plan, cruise report, web content, digital images
<i>Kaiyo Maru</i>	Laysan	1959	arch site	not eligible	possible fishing sampan	bow structure on beach	low; partial hull	2005
steel bow wreck site	Kure	UNK	structure	not eligible	modern (fishing) vessel?	cabin house	low; partial hull	assessed 2002
<i>Hoei Maru</i>	Kure	1976	structure	not eligible	diesel powered steel fishing vessel	bow structure (ashore)	low; bow and stern sections intact	assessed 2002
sailing vessel	Pearl and Hermes	UNK	object	not eligible	modern sloop	fiberglass hull/cabin	medium; intact hull portion	assessed 2002
motorized vessel	Pearl and Hermes	UNK	arch site	not eligible	possible fishing sampan	single engine block	low; single object	2002; 2005 site photographs;
<i>Paradise Queen-II</i>	Kure	1998	object	not eligible	longline steel fishing vessel	single deck	low; partial structure	assessed 2002

Sunken Military Craft

The military's activities within the Northwestern atolls dates back to the survey of the Civil War-era sloop-of-war USS *Lackawanna* at Midway Atoll in 1867, and extends through the closure of Midway Naval Air Station in 1993. Information on known sunken military craft is presented in Table G. 4. Sunken military craft range in time from USS *Saginaw* lost at Kure Atoll in 1870 to a Sikorsky helicopter of more recent years. However, the significance of World War II and the Battle of Midway overshadow resources associated with other periods.

The bulk of wartime preparations took place in the main Hawaiian Islands, but the strategic location of Midway and the other islands and atolls within Papahānaumokuākea was clear. Tern Island at French Frigate Shoals was developed as a staging point for flights. French Frigate Shoals had been used before World War II for seaplane maneuvers, and the shoals were a staging point for two Japanese seaplane attack/reconnaissance patrols between December 1941 and June 1942. Construction of the landing strip on Tern Island began in July 1942, but by late 1942, expendable wing tanks became available, making the intermediate staging at French Frigate Shoals unnecessary.

Midway had previously been an important stop for PanAmerican transpacific commercial flights. Initial naval plans included support for one squadron of seaplanes at the atoll. War-construction PNAB contract work began at Midway in March 1940. Three runways and two hangars were constructed on Eastern Island. Sand Island featured seaplane ramps and hangar, ordnance, radio, engine, and repair shops, communication facilities, a naval hospital, and housing. Following the Battle of Midway, plans for Midway intensified. By the spring of 1943 Midway's role was changed from a defensive to an offensive base, and construction of a major submarine base was begun. By 1944, three 471-foot piers, a 769-foot tender pier, and an ARD wharf had been completed.

The Battle of Midway, June 4–7 1942, was one of the major watershed moments of World War II and a significant historical factor in the designation of the marine national monument in 2006. The monument's expansion in 2016 likely encompasses the many Japanese and American vessels and aircraft lost in the conflict. American losses totaled one fleet carrier (USS *Yorktown*) and one destroyer (USS *Hamman*) sunk, along with approximately 150 aircraft and 307 casualties. Japanese losses totaled four fleet carriers (IJN *Kaga*, *Akagi*, *Hiryu*, *Soryu*) and one heavy cruiser (IJN *Mikuma*) sunk, along with approximately 248 aircraft and 3,057 casualties. USS *Yorktown* was discovered and recorded by Robert Ballard/National Geographic in 1998. IJN *Kaga* and *Akagi* were discovered and recorded by Rob Kraft/Vulcan Inc. in 2019. In September 2023, a collaborative joint-agency expedition, including the Ocean Exploration Trust and NOAA's Office of Ocean Exploration and Naval History and Heritage Command, returned to the area and conducted a non-invasive survey of USS *Yorktown*, IJN *Kaga* and IJN *Akagi*. Data from the survey is currently being interpreted. Note: the NRHP status of sunken military craft (Table G.4 and G.5 below) represent ONMS recommendations at this time; formal evaluations have not been completed.

Table G.4. Known Sunken Military Craft within Papahānaumokuākea

Site Name (military)	Atoll Location	Year Lost	Property Type	NRHP status and criteria (ONMS) ³	Description	Defining Features	Site Integrity	Survey Date(s)/Record
USS <i>Macaw</i>	Midway	1944	structure	eligible (A, D)	Naval submarine rescue/salvage vessel built	salvage machinery, naval auxiliary fittings, anchors	high; large area major site, hull portions, features, artifacts	Surveyed 2003; site plan; site photographs; site mosaic; salvage docs; historical docs; monograph published 2022
LCVP landing craft	Midway	UNK	structure	not eligible	naval amphibious craft	ramp	medium; intact	assessed 2002
navy water barge	Midway	UNK	structure	not eligible	ferro-concrete barge	ferro-concrete construction	medium; intact	assessed 2002, 2005
navy barge	Midway	UNK	structure	not eligible	steel barge	hull	medium; intact	assessed 2002, 2007
navy landing craft	French Frigate Shoals	UNK	structure	not eligible	inverted LC	ramp	medium; relatively intact	Noted 2002
IJN <i>Akagi</i>	Midway	1942	structure	eligible (A, D)	Japanese Amagi-class battlecruiser converted to WWII aircraft carrier	hull, flight deck, gunnery, primary flight control, aircraft, assoc aircraft in vicinity (presumably)	high; intact vessel	Vulcan Inc. video and survey data 2019; joint agency survey 2023
IJN <i>Kaga</i>	Midway	1942	structure	eligible A, D)	Japanese Amagi-class battlecruiser converted to WWII aircraft carrier	hull, flight deck, gunnery, primary flight control, aircraft, assoc aircraft in vicinity (presumably)	high; intact vessel	Vulcan Inc. video and survey data 2019; joint agency survey 2023

³ ONMS preliminary assessment of eligibility, sites have not been formally evaluated

Site Name (military)	Atoll Location	Year Lost	Property Type	NRHP status and criteria (ONMS) ³	Description	Defining Features	Site Integrity	Survey Date(s)/Record
USS <i>Saginaw</i>	Kure	1870	arch site	eligible (A, B, D)	508-ton U.S. Civil War-era Navy steam sloop; built Mare Island 1859	boiler face, anchors, cannon, engine components, rigging components	medium; large scattered artifact site	Survey complete in 2006; site plan, cruise report, web content, digital images, historical documents, 2010 monograph published University Press of Florida
USS <i>Yorktown</i>	Midway	1942	structure	eligible A, D)	Yorktown-class aircraft carrier	hull, flight deck, gunnery, primary flight control,	high; intact vessel	video and survey data 1998; joint agency survey 2023

Naval Aircraft

It would be difficult to overemphasize the impact of naval aviation on Hawai‘i and in the Pacific. Hawai‘i evolved very quickly from a few small seaplane bases to six major naval air stations operating during World War II, not to mention the aviation training activities conducted from aircraft carriers in Hawaiian waters. Naval aviation exercises in the Northwestern Hawaiian Islands began in the early 1930s, and activity at French Frigate Shoal and Midway Atoll increased during wartime preparations. Losses during the Battle of Midway June 4–7, 1942, and subsequent intensive aviation activities at Midway during subsequent decades, have added to the submerged aircraft resource.

The wrecks of naval aircraft are a specific subset of archaeological resources. Even though mass produced in great numbers, with interchangeable engines and components, submerged aircraft wreck sites are still capable of revealing details of aircraft construction, modifications over time, and even use by aircrews. Like sunken military vessels, submerged aircraft may be war graves as well. Sunken aircraft can exhibit evidence of water ditching and emergency escape, engine failure, or combat loss events that led to the crash. Except for heavier features like machine guns, rotary engines, and landing gear, naval aircraft are relatively fragile (composed of lightweight aluminum skin). Aircraft which ditched in “low impact” events and lost in deep waters are often amazingly intact on the seafloor. However, aircraft which crashed in “high impact” events or sunk in shallow waters are impacted by surf and surge and a very scattered archaeological sites, sometimes consisting only of a few landing gear components, or propeller, or single machine gun. A summary of known sunken naval aircraft is presented in Table G.5.

Table G.5. Known Naval Aircraft within Papahānaumokuākea

Site Name (aircraft)	Atoll Location	Year Lost	Property Type	NRHP status and criteria (ONMS) ⁴	Description	Defining Features	Site Integrity	Survey Date(s)/Record
F4U-1 Corsair	Kure	1945	object	TBD	single-seat navy fighter aircraft		low; partial feature	survey complete in 2008
Sikorsky helicopter	Kure	UNK	arch site	not eligible	partial rotor and engine elements	engine part	low; feature partially buried	Noted in 2008
F4U Corsair	Midway	UNK	structure	TBD	single-seat navy fighter aircraft	wing/landing gear design	low; wing/partial fuselage only (inverted); engine nearby	Surveyed 2002, 2007; site plan, cruise report, web content, digital images
P-40K Warhawk	Midway	1943	arch site	not eligible	single-seat army fighter aircraft		low; few artifacts	Surveyed 2014;
F2A Brewster Buffalo	Midway		arch site	not eligible	single-seat navy fighter aircraft	landing gear	low; only partial landing gear	Surveyed 2015; cruise report, web content, digital images

⁴ ONMS preliminary assessment of eligibility, sites have not been formally evaluated

Miscellaneous Features

Flotsam and jetsam have deposited numerous items on the seafloor. Debris which has drifted into the PMNM or been left randomly behind (e.g., timbers from elsewhere, isolated anchors, fishing gear, discarded materials) is to be expected and, while included in research records, is without context and generally not associated with archaeological sites or historic resources. The exceptions to this are those artifacts that may be evidence of more complex properties or wreck sites, and artifacts associated with specific locations (context), such as multiple anchors within a known historic anchorage (Table G.6). Anchors in particular are multifunctional and tend to be used and reused once being lost or abandoned by a ship (for moorings, navigational markers, stored on reefs for later use, etc.).

Table G.6. Miscellaneous Features within Papahānaumokuākea

Site Name (misc features)	Atoll Location	Year Lost	Property Type	NRHP status and criteria (ONMS)	Description	Defining Features	Site Integrity	Survey Date(s)/ Record
3 anchors near landing site	Laysan	UNK	features	not eligible		historic iron admiralty- style anchors in context	low; features	2002
2 anchors and debris	Laysan	UNK	features	not eligible	possible wreck site	historic iron admiralty- style anchors in context	low; features	2002
anchor in Welles Harbor lagoon anchorage	Midway	UNK	object	TBD		historic iron admiralty- style anchor in context	low; features	2003

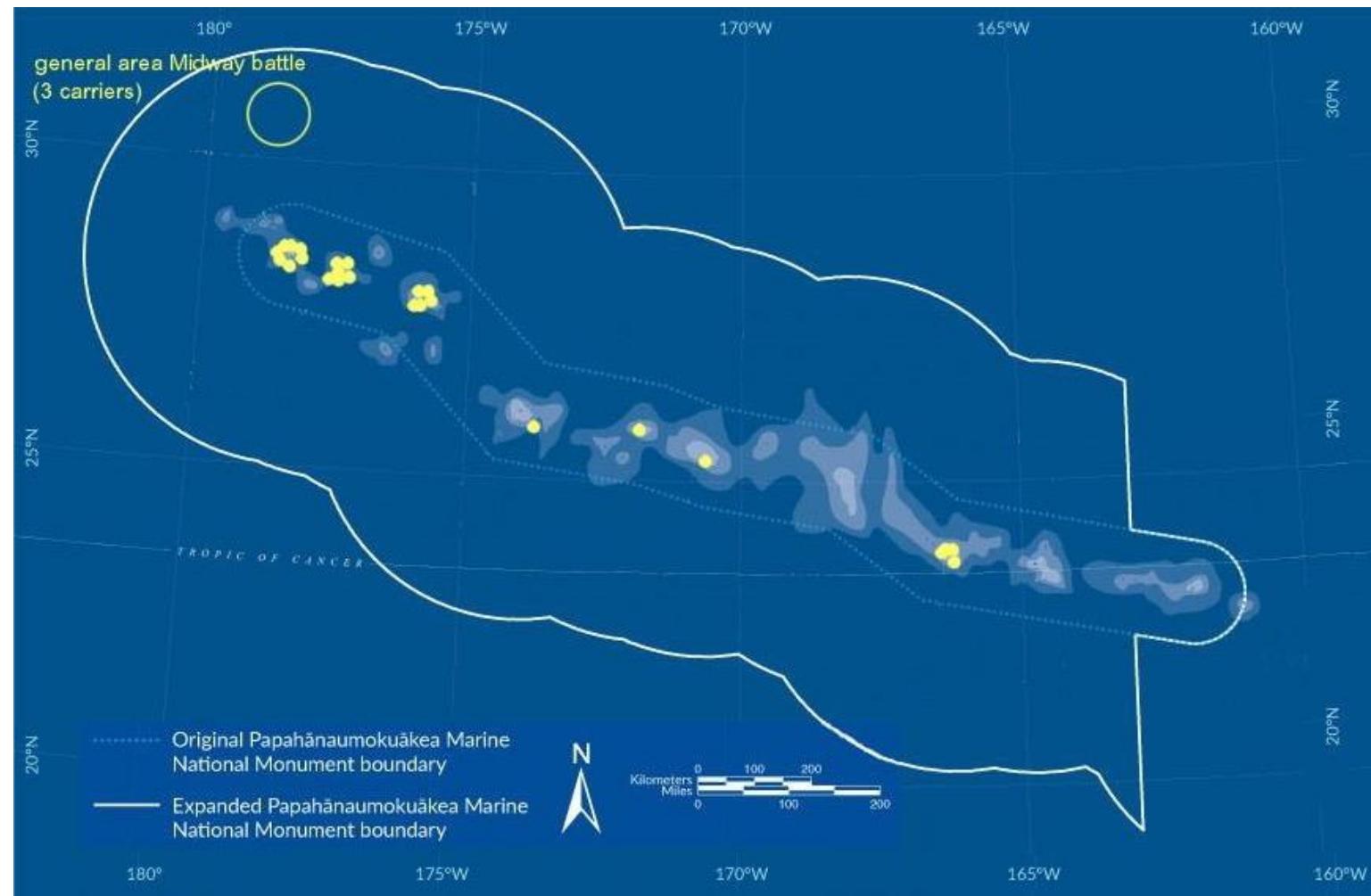


Figure G.1. Known maritime heritage properties within the Action Area, 2022 (ONMS Maritime Heritage Program)

Appendix H: Agencies, Organizations, and Persons Consulted⁵ in Preparing the EIS

Name	Affiliation
Elected Officials	
David Ige	Governor of Hawai'i
Josh Green	Governor of Hawai'i
Brian Schatz	U.S. Senator
Ed Case	U.S. Representative
Government Agencies	
Department of Land and Natural Resources, Office of the Chair	State of Hawai'i
Department of Land and Natural Resources, Division of Aquatic Resources	State of Hawai'i
Department of Land and Natural Resources, Division of Forestry and Wildlife	State of Hawai'i
Department of Land and Natural Resources, State Historic Preservation Division	State of Hawai'i
Department of Land and Natural Resources, Office of Conservation and Coastal Lands	State of Hawai'i
Office of Planning and Sustainable Development, Environmental Review Program	State of Hawai'i
Department of Accounting and General Services, Land Survey Division	State of Hawai'i
Department of Education, Office of Hawaiian Education	State of Hawai'i
Office of Planning and Sustainable Development, Hawai'i Coastal Zone Management Program	State of Hawai'i
Office of Hawaiian Affairs*	State of Hawai'i, and Native Hawaiian Organization
Environmental Protection Agency, Region 9	Federal
U.S. Fish and Wildlife Service*	Federal
U.S. Fish and Wildlife Service, Environmental Services	Federal
U.S. Fish and Wildlife Service, National Wildlife Refuges	Federal
U.S. Fish and Wildlife Service, Pacific Islands	Federal
NOAA Fisheries, Pacific Islands Regional Office	Federal
Advisory Council on Historic Preservation	Federal

⁵ Consulted parties include federal and state agencies, subject matter experts and other individuals who provided relevant information for the EIS and appendices. Many of the above parties participated in the federal and state historic preservation consultation process and the state cultural impact assessment and legal analysis processes.

Name	Affiliation
U.S. Department of Defense*	Federal
U.S. Department of the Navy, Cultural Resources Team	Federal
U.S. Department of the Navy, Naval History and Heritage Command	Federal
U.S. Department of the Navy, Chief of Naval Operations Office, Infrastructure, Posture and Environmental Planning Branch	Federal
Western Pacific Regional Fishery Management Council	Federal
Organizations/Groups/Individuals	
Papahānaumokuākea Native Hawaiian Cultural Working Group	Native Hawaiian Organization
Āina Momona	Native Hawaiian Organization
Daughters of Hawai'i	Native Hawaiian Organization
Hale Halawai 'Ohana o Hanalei	Native Hawaiian Organization
Kai Palaoa	Native Hawaiian Organization
Society for Hawaiian Archaeology	Native Hawaiian Organization
Kanehunamoku Voyaging Academy	Native Hawaiian Organization
'Ohana Hāpai	Native Hawaiian Organization
'Ohana Kahaunaele	Native Hawaiian Organization
'Ohana Ayau	Native Hawaiian Organization
Nā Maka Onaona	Native Hawaiian Organization
Kiamanu Project - Nā Kia'i Nihokū	Native Hawaiian Organization
Mālama Manō	Native Hawaiian Organization
Moana 'Ohana	Native Hawaiian Organization
Lawai'a Pono	Native Hawaiian Organization
Mauliola Endowment	Native Hawaiian Organization
Pi'ihonua Hawaiian Homestead Community Association/Sovereign Council of Hawaiian Homestead Associations	Native Hawaiian Organization
Mauna Kea Anaina Hou	Native Hawaiian Organization
Tokyo University of Marine Science and Technology	Organization
Tokai University School of Humanities	Organization
Honolulu Community College	Organization
Pacific Agricultural Land Management Systems	Organization
International Midway Memorial Foundation	Organization
NWHI Coral Ecosystem Reserve Advisory Council	Group

Name	Affiliation
Isaac Harp	Individual
Tammy Harp	Individual
Lineal Descendant	Individual

*Cooperating Agency

Appendix I:

EIS Distribution List

Name	Affiliation
Elected Officials	
Natural Resources Committee	U.S. House of Representatives
Committee on Commerce, Science, and Transportation	U.S. Senate
David Ige	Governor of Hawai'i
Josh Green	Governor of Hawai'i
Brian Schatz	U.S. Senator
Ed Case	U.S. Representative
Government Agencies	
Department of Land and Natural Resources, Office of the Chair	State of Hawai'i
Department of Land and Natural Resources, Division of Aquatic Resources	State of Hawai'i
Department of Land and Natural Resources, Division of Forestry and Wildlife	State of Hawai'i
Department of Land and Natural Resources, Division of Historic Preservation	State of Hawai'i
Office of Planning and Sustainable Development, Environmental Review Program	State of Hawai'i
Department of Education, Office of Hawaiian Education	State of Hawai'i
Office of Hawaiian Affairs	State of Hawai'i, Native Hawaiian Organization
U.S. Environmental Protection Agency, Region 9	Federal
U.S. Fish and Wildlife Service, Environmental Services	Federal
U.S. Fish and Wildlife Service, National Wildlife Refuges	Federal
U.S. Fish and Wildlife Service, Pacific Islands	Federal
NOAA Fisheries, Pacific Islands Regional Office	Federal
U.S. Department of Defense	Federal
U.S. Department of the Navy	Federal
U.S. Department of the Navy, Cultural Resources Team	Federal
U.S. Department of the Navy, Naval History and Heritage Command	Federal
Advisory Council on Historic Preservation	Federal
U.S. Department of State	Federal

Name	Affiliation
U.S. Department of Transportation	Federal
U.S. Department of the Interior	Federal
U.S. Army Corps of Engineers	Federal
U.S. Geological Survey	Federal
U.S. Coast Guard	Federal
Organizations/Groups/Individuals	
‘Āina Momona	Native Hawaiian Organization
Mauliola Endowment	Native Hawaiian Organization
Na Maka Onaona	Native Hawaiian Organization
Kai Palaoa	Native Hawaiian Organization
Mauna Kea Anaina Hou	Native Hawaiian Organization
Mālama Manō	Native Hawaiian Organization
Moana ‘Ohana	Native Hawaiian Organization
Lawai'a Pono	Native Hawaiian Organization
Kiamanu Project - Nā Kaia‘i Nihokū	Native Hawaiian Organization
Kānehūnāmoku Voyaging Academy	Native Hawaiian Organization
Kua ‘āina Ulu ‘Auamo	Native Hawaiian Organization
Daughters of Hawaii	Native Hawaiian Organization
Pacific Agricultural Land Management Systems	Native Hawaiian Organization
Papahānaumokuākea Native Hawaiian Cultural Working Group	Native Hawaiian Organization
Hale Halawai ‘Ohana O Hanalei	Native Hawaiian Organization
Piihonua Hawaiian Homestead Community Association/Sovereign Council of Hawaiian Homestead Associations	Native Hawaiian Organization
‘Ohana Hāpai	Native Hawaiian Organization
‘Ohana Kahaunaele	Native Hawaiian Organization
‘Ohana Ayau	Native Hawaiian Organization
Honolulu Community College	Organization

Name	Affiliation
Society for Hawaiian Archaeology	Organization
International Midway Memorial Foundation	Organization
Tokai University, School of Humanities	Organization
Tokyo University of Marine Science and Technology	Organization
NWHI Coral Ecosystem Reserve Advisory Council	Group
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Tammy Harp	Individual
Brad Wong	Individual
Kepo'o Keli'ipa'akaua	Individual
Devin Forrest	Individual
Lei Wann	Individual

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Kanoe Morishige – EIS Cultural Resources and Management Plan Text, Technical Review

Kalani Quicho – Technical Review

Jesi Quan Bautista – Misc. Text and Review

Catherine Tanaka – Misc. Text and Review

Brian Hauk – Invasive Species and Monument Logistics Text

Hans Van Tilberg, Ph.D. – Maritime Heritage and NHPA Section 106 Text

Randy Kosaki, Ph.D. – Biological Resources Text

NOAA ONMS Headquarters

Ellie Roberts, MPA, Policy Analyst (9 years of experience) – EIS Text, Regulatory Text, Technical and Editorial Review

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Troy Sakihara – Biological Technical Review

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NATIONAL MARINE
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AMERICA'S UNDERWATER TREASURES