



February 14, 2024

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

Dear Ms. LeBoeuf,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Kitty".

Kitty Simonds
Executive Director

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