November 18, 2022

John Armor, Director
NOAA Office of National Marine Sanctuaries
1305 East-West Highway, 11th Floor
Silver Spring, MD 20910

Re: RAC recommendations regarding draft non-fishing regulations for sanctuary designation.

Aloha mai Director Armor,

The Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (NWHICRER) Advisory Council (RAC) herein provides recommendations for draft non-fishing regulations for a proposed national marine sanctuary in Papahānaumokuākea.

These recommendations were drafted for the original monument and Monument Expansion Area (MEA) waters by the RAC's Planning, Evaluation, and Sanctuary Designation (PES) subcommittee, after thorough analysis of monument regulations, executive orders and presidential proclamations, and other documents. They were discussed and deliberated on by the PES subcommittee before being presented to the RAC for consideration at its November 18, 2022 meeting. After thorough discussions, the RAC decided by consensus vote to forward the recommendations to ONMS through the monument superintendent.

These recommendations are mainly focused on aligning regulations across the two monument areas to the extent possible, and ensuring that the sanctuary regulations provide protections to the MEA that are equal or greater than current regulations for the original monument boundary. Please see the recommendations enclosed.

Mahalo for the opportunity to provide input. The RAC looks forward to assisting ONMS in moving forward with the sanctuary designation process for Papahānaumokuākea Marine National Monument in the new year.

Sincerely,

William Ailā Jr., Chair

Base Assumptions

- Sanctuary regulations will apply to marine waters only.
- Sanctuary regulations will mirror and complement existing monument regulations, providing durability.
- Since all current proclamation and regulatory requirements are not applicable everywhere, zones or areas of the sanctuary may have slight differences.

General Recommendations

- Original Monument Waters: The sanctuary regulations should mirror existing regulations (50 CFR 404) to the extent possible.
- Expansion Area Waters (MEA): New regulations need to be developed for the expansion area zone based on preexisting presidential proclamations and 50 CFR 404.
- To the extent possible, regulations for the original monument and MEA should be in alignment, while ensuring that regulations provide the same or greater protection to MEA resources as original monument regulations.

Specific Recommendations

- Prohibitions
    - The RAC proposes including language in the sanctuary regulations to supplement an existing 50 CFR 404 prohibition on 'Exploring for, developing, or producing oil, gas, or minerals."
    - The proposed prohibition language for the new regulations is as follows:
        - "Exploring for, developing, extracting, processing or producing oil, gas or minerals within the sanctuary."
- Permit Categories
    - The existing permit categories from the original monument should be applied to the MEA, except for the Special Ocean Use (SOU) and Recreation permit categories. Neither of these categories is included as a regulated activity in Presidential Proclamation 9478. Additionally, public perception may be that SOU weakens protections in the MEA.
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- Findings Criteria for Permits
    - To the extent possible, the regulations should employ common findings criteria across all areas and waters of the sanctuary.
    - *Note: Findings criteria are a list of defined criteria in the regulations that must be met by all permit applicants, ensuring that their proposed activities are consistent with Proclamation 8031 and the goals of the monument. Findings are used in decision making as a basis for approving or denying a permit request.*

- Vessel Monitoring System (VMS) Requirements
    - The regulations should incorporate a VMS requirement for permitted vessels in the MEA, updating the content found in current monument regulations to reflect current technology.

Addendum Regarding Fishing Recommendations

The RAC has also made clarifications to one of the fishing regulations recommendations made in our previous letter of September 8, 2022. The revised recommendation is as follows:

- The RAC has provided ONMS and WPRFMC with a recommendation that non-commercial fishing in the MEA be limited to sustenance fishing, which Proclamation 8031 defined as "fishing for bottomfish or pelagic species that are consumed within the Monument, and that is incidental to an activity permitted."
- The PESS recommends additional language defining non-commercial fishing in the MEA as follows:
    - Any resource harvested in the MEA during sustenance fishing:
        - must be a sustainably managed resource;
        - must be consumed or utilized within the MEA;
        - either in whole or in part, may not enter commerce through sale, barter or trade; and
        - must be harvested incidental to a permitted activity.