

**NORTHWESTERN HAWAIIAN ISLANDS CORAL REEF ECOSYSTEM
RESERVE ADVISORY COUNCIL**

January 27, 2005

T. Aulani Wilhelm
Acting Reserve Coordinator, Northwestern Hawaiian Islands
Coral Reef Ecosystem Reserve, National Ocean Service
6600 Kalanianaole Highway
Honolulu, Hawaii 96825

Dear Aulani:

This letter was written and is being sent pursuant to a resolution passed by the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council (the "RAC") at its October 2004 meeting. We ask that this letter be forwarded to Mr. Dan Basta, Director of the National Marine Sanctuary Program, for appropriate action.

The RAC has received and reviewed the document "Advice and Recommendations on Development of Fishing Regulations Under the National Marine Sanctuaries Act Section 304(a)(5) for the Proposed Northwestern Hawaiian Islands National Marine Sanctuary" (the "NOS 304(a)(5) Document"), that the National Ocean Service (NOS) transmitted to the Western Pacific Regional Fisheries Management Council ("WPRFMC") on September 20, 2004. We commend and endorse certain aspects of the NOS 304(a)(5) Document, including the accurate descriptions of the crustacean, coral harvesting, coral reef fish and pelagic longlining fisheries and their impacts, and the statement recognizing the importance of reversing the burden of proof under ecosystem-based management. We note, however, that these positive aspects occur in the non-binding sections of the document, but not in the Goals and Objectives statement. We also acknowledge the usefulness of a screening methodology for evaluating and comparing proposed fishing alternatives.

The RAC, representing a broad constituency, was tasked with using the best science and management practices available, as well as public opinion, in developing its recommendations for Goals and Objectives for the proposed Northwestern Hawaiian Islands ("NWHI") marine sanctuary. The RAC's Goals and Objectives were based on extensive scientific inquiry and public discussion, and they are consistent with the directives contained in Executive Orders 13178 and 13196 (the "Executive Orders") and the National Marine Sanctuaries Act ("NMSA").

Much of what the RAC recommended was adopted by NOS, but we are greatly concerned about, and object to, some of the changes that were made. The RAC's

concerns include the failure to apply the same precautionary standards for all fisheries, the uneven scoring of criteria in the screening ranking methodology, and certain factual errors and omissions.

Material Changes to Goals and Objectives Statement

The Goals and Objectives for the proposed sanctuary provide the framework, in addition to the NMSA, against which proposed fishery management plans for the proposed sanctuary are required, by law, to be measured. They provide the framework for the NMSA 304(a)(5) process, the evaluation of alternatives in the Draft Environmental Impact Statement (“DEIS”), and the drafting of a sanctuary management plan, based on the NWHI Coral Reef Ecosystem Reserve (the “Reserve”) Operations Plan. To be useful for those purposes, the Goals and Objectives should be stated as specifically and clearly as possible, as was the case in the version recommended by the RAC. However, changes made by NOS in the objectives for Goal 7 on page A-4 of the NOS 304(a)(5) Document, including the insertion of the words *“As appropriate to maintain the natural character or biological integrity of any ecosystem in the region”*, have eliminated that clarity and specificity. The elimination of language regarding limits to recreational fishing, caps on commercial pelagic fishing, caps on and a phase-out of bottomfish fishing, as well as the introduction of a new gear type (spearfishing)-- in violation of the Executive Orders -- represents a weakening of the clear language of the Executive Orders and the Reserve Operations Plan (e.g., caps on all existing permits and current levels of effort and take; no increase in number of permits; no permits issued for any particular type of fishing for which there were no permits issued in the year preceding the date of the Executive Orders, etc.)

While the NOS 304(a)(5) Document clearly states on page ii of the Executive Summary that precious coral fishing, coral reef species fishing, and non-subsistence crustacean fishing are fishing activities that will be "prohibited sanctuary-wide," the wording added to Goal 7 (as quoted above) may be interpreted by some as providing a loophole whereby such fishing could be allowed. This issue has already been analyzed by two contractors hired by NOS (Sustainable Resources Group International Inc. and Tetra Tech EM Inc.), the RAC, the U.S. Marine Mammal Commission, and the Hawaiian Monk Seal Recovery Team. In all cases the resulting recommendation was that commercial fishing for crustaceans, precious corals, and coral reef species would be incompatible with a NWHI sanctuary. There is no need for additional analysis, and this apparent loophole should be closed by removing the wording that was inserted into the Objectives under Goal 7.

The RAC stipulated in Goal 7 that resource harvesting would be restricted “to areas where interactions with endangered Hawaiian monk seals, migratory seabirds, and other protected wildlife have been demonstrated as being very low, and the harvest can be monitored to collect data for ongoing evaluation of impacts.” This wording – requiring the burden of proof to lie with those proposing extraction in the NWHI – has been eliminated and replaced with substantially weaker language.

We also note that within the Objectives of Goal 7, the RAC's Objective D, which would phase out commercial fishing within one year, has been replaced with NOS Objective E, "***Allow bottomfishing to continue except within sensitive habitats.***" This change effectively eliminates the RAC's recommended Alternative 5, as it would no longer be consistent with the Objectives of Goal 7 and would thereby receive a lower ranking than the NOS Preferred Alternative. In addition, NOS concludes¹ that the Executive Order Alternative and the NOS version of the "public input alternative" (Fishing Alternative 6) fail to meet "all objectives of Goal 7." We urge NOS to utilize the language provided, after careful deliberation, by the RAC.

Range of Alternatives:

The RAC notes that NOS has not provided a proposed sanctuary alternative that accurately reflects the bulk of public input. Over the past four years, there have been 31 federal and state hearings and scoping sessions on the NWHI, and over 94,000 written comments have been received by federal and state agencies calling for strong limits to extraction and vessel traffic in the NWHI as well as recognition for culturally significant, noncommercial subsistence, cultural and religious uses by Native Hawaiians, consistent with long term conservation. However, Fishing Alternative 6, described by NOS as a reflection of public input, calls for the prohibition of fishing and, in addition, bans Native Hawaiian subsistence fishing associated with cultural practices. There is no alternative proposed which allows for Native Hawaiian use, as well as the closure of fisheries. The RAC recommends that a full range of fishing alternatives be provided in the DEIS, including those reflecting public input and a variety of closure strategies.

Screening Methodology

The RAC notes that a screening methodology was developed for the purpose of ranking the fishing and sanctuary alternatives. However, the derivation of the screening criteria, and the assignment of particular scores to them, was flawed in a number of important instances. Correcting these flaws would result in the selection of a different fishing alternative more consistent with the NMSA and Goals and Objectives statement for the proposed sanctuary.

Most importantly, a major inconsistency with the NMSA Purposes and Policies was created when Sec. 301 (b)(6) of the NMSA was over-simplified by removing the essential requirement that all public and private uses of a sanctuary be compatible with the primary objective of resource protection. A complete and accurate interpretation of this section would preclude socioeconomic benefits from becoming a stand-alone screening criterion as used in Criterion 8. The development of a criterion in which the facilitation of public and private uses of the resources is contingent on compatibility with the objective of resource protection would substantially change the alternative rankings. For example, alternatives allowing commercial bottomfishing would not have received a +1 because of uncertainty about the ecosystem impacts of this fishery.

¹ Table 14, page C 69: "Evaluation of Alternatives Based on Management Goal 7 Objectives."

Illogical applications of the scoring range also contributed to incorrect Alternative rankings. For example, the WPRFMC alternative (Alternative 2) is said to protect 2% of monk seal foraging habitat and received a -1 for Criterion 10. The Status Quo Alternative protects 27% of monk seal foraging habitat (an order of magnitude greater than the WPRFMC alternative) yet also received a -1 for Criterion 10. Alternative 3 provides only 15% more protection (43%) than the Status Quo Alternative and yet received a +1, the same score as Alternative 5, which is stated to protect 100% of monk seal foraging habitat as is Alternative 6 which closes the area entirely to fishing. Alternative 3 protects an area more commensurate with the Status Quo than with the 100% protection of Alternative 6, and, consequently, it should have received a score lower than +1.

In addition, the application of the scoring methodology accorded inordinate weight to claims of socioeconomic benefits of bottomfishing, and negligible weight to other important economic, ecological, and cultural benefits traditionally assessed in economic evaluations of reef ecosystems.² The NOS economic model of the bottomfish fishery simply multiplies fish weight by a \$25 per plate price to arrive at an extraordinarily high “value added” for the fishery – and makes the claim that this fishery, which landed approximately \$700,000 of fish in 2003, has a value added of well over 500% or \$5 million.³ New data, including an October 2004 WPRFMC economic assessment, however, indicate a value added of less than 32% over the bottomfish price.⁴

Precautionary Standards

We commend NOS for applying certain precautionary standards to the analyses of the lobster, coral harvesting, coral reef fish, and pelagic longlining fisheries in the section titled, “Fishing Activities That Do Not Meet Screening Criteria,” on pages C35 – C40. We note that NOS identifies the following factors leading to the rejection of these fisheries, including: “boom and bust” nature of the fishery (rapid decrease in landings, value, and effort), high bycatch rates, little knowledge “about the size of the standing stock, habitat requirements, growth rates, and many life history traits of targeted species,” the importance of fishery areas “as monk seal foraging habitats is unresolved and may be significant to the management and health of the critically endangered Hawaiian monk seal population,” coincidence of shallow-water environment with “primary habitat and foraging grounds for endangered Hawaiian monk seals, fledgling seabirds, and nesting threatened green sea turtles,” the fact that a “metapopulation structure is considered

² According to H. Cesar, P. van Beukering, S. Pintz, J. Dierking, “The total economic value of coral reef functions, goods, and services includes direct uses producing extractive and non-extractive values as well as indirect use values (biological support to seabird, turtle, monk seal); and non-use values (endangered species, traditional “way of life”). Economic valuation of Hawaiian reefs, NOAA/U.H/HCRI, 2002.

³ Ehler, R. “Socio-economic assessment of commercial bottomfishing in the NWHI,” NOS, October 2004. pg. 27

⁴ Coffman, M. “The Value of NWHI Bottomfish to Hawai`i’s Restaurants,” October 2004, WPRFMC. Pg 11.

highly vulnerable to rapid depletion under the combined strain of environmental variability and fishing pressure," and the "minimal economic value" of the fishery.

We note, however, that NOS has not applied the above factors equally to all fisheries. We call the attention of NOS to a January 2004 WPRFMC Bottomfish Stock Assessment Workshop expert panel report which concludes that NWHI bottomfish metapopulations are "particularly susceptible to overfishing."⁵ This report underscores the "completely unknown" meta-population structure of the bottomfish stocks, the lack of knowledge of the location and characteristics of nursery grounds for juvenile deep slope snappers and groupers, the fact that basic biological data is still needed for key species in the catch.

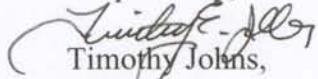
U.S. Fish and Wildlife Refuge

The RAC notes with concern that the NOS maps of existing and proposed protections for the NWHI fail to depict the existing boundaries of the Hawaiian Islands and Midway Atoll Wildlife Refuges. In accordance with existing U.S. Fish and Wildlife Service regulations, these Refuges remain closed to commercial fishing. We urge NOS to rectify this oversight.

We trust that our comments and recommendations will be useful in the development of the DEIS. We request that NOS reevaluate the process for the formulation, analysis, and selection of the range of alternatives and of a preferred fishing alternative in light of our comments, and reevaluate our recommended alternative accordingly.

We thank you for the opportunity to advise your agency and look forward to working with you as the NWHI Sanctuary designation process proceeds.

Respectfully,


Timothy Johns,
Chair

NWHI Reserve Advisory Council

⁵ WPRFMC, Bottomfish Stock Assessment Workshop Panel Report, January 2004.