

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

November 25, 2013

Dear David,

On November 13, 2013, the RAC discussed at length possible recommendations it could provide the NMSO with regard to the continuation of the process of designating the Reserve as a national marine sanctuary pursuant to Executive Order 13178 of December 4, 2000. Before we can complete formulating our recommendations we need some clarification and guidance from the NMSO. The EO provides the following mandates regarding designation of the Reserve as a national marine sanctuary:

Executive Order 13178 of December 4, 2000, Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, provides:

Sec. 5. Implementation.

(a) *Management of the Reserve.* The Secretary [of Commerce] shall manage the Reserve under the National Marine Sanctuaries Act and in accordance with this order.

(b) *Reserve Operations Plan.*

The Secretary, in consultation with the Secretary of the Interior and the Governor of Hawaii, shall develop an operations plan to govern the management of the Reserve. In developing the Reserve Operations Plan the Secretary shall consider the advice and recommendations of the Reserve Council established pursuant to paragraph (c) of this section. The Reserve Operations Plan shall be directed at priority issues and actions that, at a minimum, provide for: . . .

(12) Coordination of all relevant activities with the process to designate the Reserve as a National Marine Sanctuary, as provided under paragraph (f) of this section. . . .

(e) *National Marine Sanctuary.* The 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 (16 U.S.C. 1433, 1434). In doing so **the Secretary shall supplement or complement the existing Reserve.** [emphasis added] The Secretary shall, in consultation with the Governor of the State of Hawaii, determine whether State submerged lands and waters should be included as part of the sanctuary. In designating and managing the sanctuary, the Secretary shall consider the advice and recommendations of the Reserve Council established pursuant to paragraph (f) of this section.

(f) *Council.* After considering input from the Secretary of the Interior and Governor of the State of Hawaii, the Secretary shall establish a Coral Reef Ecosystem Reserve Council pursuant to section 315 of the National Marine Sanctuaries Act (16 U.S.C. 1445a) to provide advice and recommendations on the Reserve Operations Plan and designation and management of any sanctuary. The Council shall include: . . .

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

In 2004 the RAC began working with the Reserve staff to develop a sanctuary management plan and DEIS alternatives regarding fishing and zoning. In 2005 the RAC submitted its final recommendations regarding the management plan for the sanctuary and its preferred DEIS alternative for fishing and other activities. The Reserve staff passed on its final draft of the management plan and the DEIS alternatives to the NMSP in the Fall of 2005, although it later amended its recommendation at its January 2006 meeting and sent a letter to the agency to that effect. The DEIS alternatives and draft management plan were scheduled to go out for public hearings in late Spring, 2006.

On June 15, 2006, President George W. Bush was expected to announce the release of the Draft Management Plan and DEIS to go out for public hearings. Instead he unexpectedly signed a proclamation that created the NWHI Marine National Monument, later renamed the Papahānaumokuākea Marine National Monument. The Proclamation included language from the regulations that had been drafted for the proposed sanctuary. However the NWHI Marine National Monument did not replace the existing Hawaiian Islands National Wildlife Refuge, the State Marine Refuge and/or the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve. Rather it served as a overlying trust managed by the Department of Commerce, the Department of the Interior, and the State of Hawaii as co-trustees, with the Department of Commerce designated as the lead agency.

It is the RAC's understanding that the 2006 Proclamation did not supplant the 2000 Executive Order. EO 13178 Sec. 5 (e) provides that the Secretary of Commerce "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 (16 U.S.C. 1433, 1434)." While the EO does not set a deadline for the completion of the process, it does not allow it to be permanently discontinued either. We also understand that in addition to the mandate to morph the Reserve into a national marine sanctuary, there are administrative advantages that go with sanctuary designation. We are willing to take up again our responsibilities pursuant to EO sec. 5 and provide advice and recommendations regarding the designation of the Reserve as a NWHI National Marine Sanctuary and the drafting of its final draft management plan. However we are concerned about timing and whether the resource protection measures now in place might become compromised when the sanctuary designation process resumes.

We would like some clarification and guidance from the NMSO about the process that was interrupted in June 2006. We understand that the "final draft of the management plan and the DEIS alternatives" will need to be updated and sent out for public hearing. Could you let us know what the NMSO envisions as the designation process? When the process is reopened, would an updated management plan and DEIS alternatives be all that is required? If not, what else would be required?

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

While it seems very unlikely that Sanctuary designation would diminish existing protections, it is always a possibility. More likely would be additional protections. How would those additional protections impact our co-managing partners? How would adding protections impact various constituencies like the Native Hawaiian community or the research community, some of whom feel that the permitting process is already too onerous?

If we resume the sanctuary designation process, are we required to start over or can we continue from where we left off in 2006? We are concerned that if that if we return to where we were in 2004, many issues that were essentially closed with the establishment of the Monument will be reopened and potentially give groups that are not big fans of the Monument an opportunity to make a run at diminishing existing resource protections.

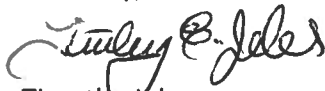
How do we get past opposition to sanctuary designation from our own PMNM co-managing partners, especially NOAA Fisheries? We are already in the throes of a battle over Wilderness designation that could potentially undo the joint permitting process and years of progress in building effective co-management.

Another way to gain the benefits of NMSA coverage, presumably without going through the full designation process, would be to include PMNM in the NMSA when it's reauthorized. Is this a possibility at all? It is highly likely to be opposed by the same agencies that would oppose sanctuary designation.

Finally, is the political climate right? We know this is not a question you can answer, but it is one we are struggling with. NOAA has been a very visible presence in Hawaii in the past couple of years and not all of its actions have been fully supported, i.e. critical habitat, coral and false killer whale listings, HIHW MMPR and potential boundary adjustment, shark predation mitigation, etc. Nevertheless, the political climate could become less favorable in the future and the EO does not permit sanctuary designation to be postponed forever.

We look forward to receiving your response at your earliest convenience.

Sincerely,



Timothy Johns

Chair

Northwestern Hawaiian Islands Reserve Advisory Council