

NORTHWESTERN HAWAIIAN ISLANDS CORAL REEF ECOSYSTEM RESERVE
RESERVE ADVISORY COUNCIL

Non-Government (Voting)

William Aila, Jr (Chair)
State of Hawai'i

Linda Paul (Vice Chair)
Conservation

Rick Gaffney (Secretary)
Recreational Fishing

Solomon Kahoolalahala
Native Hawaiian Elder

Halealoha Ayau
Native Hawaiian

Pelika Andrade
Native Hawaiian

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Research

Jean Kenyon
Research

Mark Hixon
Research

Bonnie Kahapea-Tanner
Education

Richard Lee
Ocean-Related Tourism

Audrey Newman
Conservation

Kanoe Morishige
Conservation

Judith Cucco
Citizen-At-Large

Government (Non-Voting)

Athline Clark
Papahānaumokuākea MNM

Allen Tom
HIHW National Marine Sanctuary

Hoku Kaaekuahiwi-Pousima
NOAA Fisheries PIRO

Brandon Jim On
NOAA OLE

Brad Kaaleleo Wong
Office of Hawaiian Affairs

Janice Fukawa
U.S. Department of Defense

Maile Norman
U.S. Coast Guard

Joshua DeMello
WESPAC

Jared Underwood
U.S. Fish and Wildlife Service

Dan Polhemus
U.S. Fish and Wildlife Service

Brian Neilson
State of Hawaii - DLNR

Meeting June 30, 2021

9:00 am – 1:00 pm

Via GoToWebinar

Meeting Minutes

ATTENDEES:

RAC Voting Members Present: William Ailā Jr. (State of Hawai'i, Chair), Judith Cucco (Citizen-At-Large), Rick Gaffney (Recreational Fishing, Secretary), Nakoa Goo (Native Hawaiian Alternate for Ayau), Mark Hixon (Research), Heather Howard (Education Alternate for Kahape'a-Tanner), Jean Kenyon (Research), Kanoe Morishige (Conservation), Audrey Newman (Conservation), Linda Paul (Conservation, Vice-Chair), and Don Schug (Research).

RAC Voting Members Absent: Pelika Andrade (Native Hawaiian), Halealoha Ayau (Native Hawaiian), Rick Lee (Ocean-Related Tourism), and Solomon Kaho'ohalahala (Native Hawaiian Elder).

RAC Non-Voting Members Present: Athline Clark (NOAA/ONMS-PMNM), Cindy Among-Serrao (NOAA/ONMS-HIHWNMS for Tom), Malia Chow (NOAA/NMFS-PIRO for Ka'aekuahiwi Pousima), Joshua DeMello (WPRFMC), Janice Fukawa (USDOD-USN), Brandon Jim On (NOAA/NMFS-OLE), Maile Norman (USCG), Jeannine Rosa (State of Hawai'i/DLNR-DAR for Neilson), Cynthia Vanderlip (State of Hawai'i/DLNR-DOFAW), Thorne Abbott (Conservation Alternate), Bob Leinau (Conservation Alternate), Doug Fetterly (Conservation Alternate), Heather Howard (Education Alternate), Neal Langerman (Research Alternate), Haunani Kane (Research Alternate), Bill Walsh (Research Alternate), and Rick Hoo (Recreational Fishing Alternate).

RAC Non-Voting Members Absent: Allen Tom (NOAA/ONMS-HIHWNMS), Hoku Ka'aekuahiwi Pousima (NOAA/NMFS-PIR), Jared Underwood (USFWS-NWR), Dan Polhemus (USFWS-ES), and Brian Neilson (State of Hawai'i/DLNR-DAR).

ONMS Leadership and Staff: Kristina Kekuewa (ONMS Regional Director, Pacific Island Region), Eric Robers (ONMS-PMNM Deputy Superintendent). Staff: Alyssa Miller, Andy Collins, Jenny Crawford, Justin Umholtz, Kalani Quiocho, and Malia Evans.

I. CALL TO ORDER (Ailā)

Chair Ailā called the meeting to order. Protocol, roll call and introductions followed. Review and approval of the agenda were conducted by Chair Ailā. There were concerns raised about the time allotted for public comment. With four individuals signed up for public comment, it was concluded that the allotted 15 minutes would suffice. Representative Gaffney moved to accept the agenda, and Representative Newman seconded the motion. The agenda was adopted unanimously. The agenda is posted on the RAC webpage of the PMNM website. A short orientation of the GoToWebinar platform and interface done by PMNM staff.

II. APPROVAL OF PREVIOUS MEETING MINUTES FROM MARCH 24TH AND APRIL 2ND (Ailā)

Representative Cucco suggested amending the March 24 minutes to correct several typographical errors. Representative Cucco moved to accept the minutes as amended, and Representative Gaffney seconded the motion. The minutes for the March 24th and April 2nd meetings were adopted unanimously. The March 24th meeting minutes are posted on the RAC webpage of the PMNM website.

III. BRIEF REVIEW & SUMMARY: PREVIOUS ISSUES, ACTION ITEMS AND STATUS

1. State of Hawai‘i Action: Keep RAC informed on the *30 x 30 Initiative*. Update deferred to DLNR agency update.
2. ONMS Action: Keep RAC informed of NFWF funding and activities. Update deferred to ONMS agency update.
3. NMFS Action: Keep RAC informed of any changes to the Magnuson-Stevens Fishery Conservation and Management Act. No updates.

IV. MONUMENT CO-TRUSTEE/MANAGEMENT AGENCY UPDATES

1. NOAA-ONMS (Clark): See PowerPoint presentation and written report archived at PMNM RAC website.
Recent ONMS NAPA report (March 2021) highlights seven major areas of achievement and identifies three key themes for the system: expanding the vision and long-term goal, expanding engagement with non-traditional external stakeholders, and adequate resources for ONMS.
Two new NMS sites were established within the last 2 years: Mallows Bay (Potomac); Wisconsin Shipwreck Coast.
2. NOAA-NMFS (Chow):
NMFS Action: Keep RAC informed of any changes to the Magnuson-Stevens Fishery Conservation and Management Act – no proposed changes of note.
Listed Coral Species: a new report identifies one species of listed *Acropora* as being present in the NWHI. NMFS will share full information when it becomes official and will provide an update presentation at the next RAC meeting.
3. U.S. Fish and Wildlife Services – Refuges (Clark shared updates submitted by USFWS):
Currently hiring a new Deputy Supervisor to start in the late summer. Deputy Supervisor to assist Supervisor Ric Lopez.

Currently working with the EPA to have a clean-up of contaminants on Tern Island as early as next fall.

The Seabird Restoration Project on Midway is still planning to move forward for the next year. A final decision will be made this fall, USFWS will notify the council of its final decision.

In June, a team of four biologists headed to Lisianski to map invasive sandbur grass, *Cenchrus echinatus*, and island vegetation communities. In May, a team went to Nihoa to control the *Cenchrus echinatus*. Another trip is planned for September for follow-up control effort.

4. U.S. Fish and Wildlife Service – Ecological Services (Clark shared highlights of the report submitted by USFWS): See Hawai‘i Climate Change Indicators presentation archived at PMNM RAC website. Key takeaway: There is some risk of thermal stress to reefs as we head into late summer and early fall, with this risk increasing progressively as one moves from Hawaii Island up the chain to Kure. USFWS had a multi-agency meeting on the new model outputs at the beginning of the month, and there was some cautious concern all around.
5. State of Hawai‘i DLNR-DAR (Rossa): 30 x 30 Initiative – DAR will hold statewide talk story sessions this summer and network with communities. There will be a second round of scoping on herbivore goals for management. Hawai‘i Community Foundation created a fund to support 30x30, supporting the work of DAR, TNC and Arizona State University, including community-based planning. New Ocean Legislation: Ocean Stewardship special fund and user fee (whale watching tours); new recreational marine license for nonresidents of Hawai‘i, including fishing charter customers; new special license plates may be issued, revenues to support environmental conservation and management; new commercial marine vessel license, single commercial license will now cover everyone on a boat; DOCARE officers now have enforcement authority to inspect licenses, gear and coolers; new authority for lay-net permit; new bills enable adaptive management by DAR; now illegal to intentionally kill a shark in State waters.

Governor Ige issued a proclamation celebrating the 15th Anniversary of PMNM. Link to the proclamation:

<https://nmsspahanaumokuakea.blob.core.windows.net/papahanaumokuakea-prod/media/archive/new-news/pdfs/15anniversary-proclamation.pdf>

6. State of Hawai‘i DLNR-DOFAW (Vanderlip): See written report archived at PMNM RAC website. DOFAW seeks volunteer crew and field camp leaders for the upcoming summer 2021 Kure field season. See the announcement with description on the KAC website at <http://www.kureatollconservancy.org/>
7. OHA (Wong): Voices of Papahānaumokuākea premier event on July 10th. Link to the video is posted on the home page of the PMNM website at papahanaumokuakea.gov. Mai Ka Pō Mai presentation will be given later on during this meeting. The new document and a previous webinar recording are available at OHA’s [website](#) and Facebook page. OHA to participate in a late-July trip to Lalo with intertidal monitoring team (Andrade). OHA is supporting Haunani Kane’s research on the impact of weather events on East Island, French Frigate Shoals (FFS).

8. USCG (Norman): See written report archived at PMNM RAC website. In June, USCG supported the transport of an underweight Hawaiian monk seal pup from Midway to Kona (Ke Kai Ola facility) for rehabilitation.

V. PMNM Marine Debris Cruise Presentation (O'Brien)

1. Papahānaumokuākea Marine Debris Project activities include 2 cleanup projects in the monument: Hurricane Walaka debris cleanup with USFWS – a 10-day cleanup removed infrastructure debris (82,600 lbs) across Tern Island in Oct 2020; and a 23-day shoreline cleanup at Lisianski, Midway, Kure, and FFS in partnership with DOFAW, NFWF, PIFSC, and others that were recently completed.
2. Update on marine debris accumulation in PMNM: anecdotal evidence indicates increasing accumulation, especially derelict fishing gear. The PMDP team is conducting focused surveys to better understand trends.
3. Shipping container spill: PMDP discovered a section of a shipping container at Pearl and Hermes Atoll, and noted Styrofoam packaging, helmets, medical items and shoes.
4. Upcoming project: 30 day in-water derelict fishing gear removal effort in partnership with NOAA to remove gear from reefs in PMNM in August-September 2021.

Full information is available at the PMDP website –

<https://www.pmdphawaii.org/>

VI. MAI KA PŌ MAI PRESENTATION (WONG and QUIOCHO)

1. Mai Ka Pō Mai (MKPM) was recently released. It is a guidance document for PMNM managers and others that was created with extensive input from the community. The framework incorporates oral (genealogical) traditions, and geospatial elements including pō and ao and kumuhonua (celestial sphere), kūkulu (pillars), and ke ala (pathways). The document describes in detail how Native Hawaiian perspectives, values and practices can inform and enrich monument management. This document advances OHA's Mana I Maui Ola Strategic Plan, and can inform the updated Monument Management Plan.

2. Q & A:

Q: How can this document inform the State 30x30 Initiative?

A: DAR is familiar with the document and there will be further discussions.

Q: How can this help communities incorporate the values of MKPM into local efforts in the MHI?

A: Document is available to download, and outreach with KUA and others will be happening in the future. The CWG will also be conducting outreach.

The Mai Ka Pō Mai document is available at <https://www.oha.org/maikapomai/>

Full presentation recording is available at

<https://www.facebook.com/111104088916258/videos/359175365601540>

VII. RESEARCH SUBCOMMITTEE – MEETING DEBRIEF (SCHUG)

1. The subcommittee was reconvened in May, with several new members. The subcommittee currently is composed of Don Schug (Chair), Jean Kenyon, Mark

Hixon, Bill Walsh, Neal Langerman, Nakoa Goo, Kanoë Morishige, Pelika Andrade and Haunani Kane.

2. The subcommittee work plan was updated at the May meeting. Newly added priorities include providing support for a national marine sanctuary designation process and Monument (sanctuary) Management Plan. The subcommittee will create a virtual library of national marine sanctuary designation literature for the council's use.
3. The subcommittee also will support and inform the council's input in development and implementation of the Lalo (French Frigate Shoals) Resilience Project. The MMB and NOAA PIR are supporting this project to develop short and long-term management and research strategies for Lalo.
4. The revised RAC Research Subcommittee work plan is posted on the RAC's web page.

VIII. SANCTUARY DESIGNATION AND SUBCOMMITTEE WORK (Clark and Roberts)
ONMS Superintendent Clark gave a presentation on sanctuary designation. NOAA has been tasked with initiating the sanctuary designation process. Directives for this are found in Executive Order 13178, Proclamation 9478, and Public Law 116-260 (2020).

Honoring the work and foundation laid by the community in establishing the NWHICRER (under the NMSA) in Executive Order 13178 also includes sanctuary designation.

Current Assumptions underpinning the sanctuary designation process include:

- Revision to the Monument Management Plan and sanctuary designation processes are collaborative and coordinated among all MMB members.
- Sanctuary designation is for waters, not terrestrial areas. Midway not included, for example.
- Monument and NWHICRER remain.
- Existing Monument regulatory framework is the basis ("floor") for future sanctuary regulations and will not change. Sanctuary will supplement and complement existing protections, not supplant them.
- Sanctuary designation builds on the Monument's resource protection framework as specified in the Executive Orders, original and expansion Proclamations.
- Co-management remains the same, as does the joint permitting system.
- RAC will become the SAC, as sanctuary boundaries may change from what is currently within the NWHICRER. RAC framework remains the same. The Council would still advise ONMS on the NWHICRER area.

The current process includes concurrent production of a NEPA-HEPA document and revised Monument Management Plan, into which a sanctuary designation process is enfolded. All documents will be co-produced by the MMB. The new version of the Monument Management Plan will draw from the existing plan (approximately 80% of the existing plan is implemented), Mai Ka Pō Mai, the State of the Monument Report, the PMNM Climate Change Vulnerability

Assessment, adjunct plans and other sources. It will also include OHA as a Co-Trustee, any FWS CCP requirements and include the Monument Expansion Area.

The proposed timeline is to initiate scoping later this fall through a public comment period, with draft documents in the following year followed by another round of public comment, and completion of final documents approximately summer of 2024.

The National Marine Sanctuary Act 304(a)(5) process requires consulting with the Western Pacific Regional Fishery Management Council (WPRFMC) and providing them the first opportunity to promulgate regulations for the sanctuary under the Magnuson-Stevens Fishery Conservation and Management Act. The WPRFMC would have 120 days to make a determination (either promulgate regulations or not promulgate them, or say they aren't necessary). If they opt not to create regulations, NOAA-NMFS and/or ONMS may do so.

The RAC's role under the Executive Orders is to provide advice and recommendations to ONMS. The RAC was instrumental in the development of the Reserve Operations Plan. The Executive Orders also calls for the RAC to be part of any dialogue regarding fishing regulations.

Initial guidance to the Sanctuary Designation and Planning Subcommittee was provided by Clark. (See presentation slides posted on the RAC webpage of the PMNM website)

Q&A:

Q: Can Congress create the sanctuary unilaterally without going through the entire process?

A: Congress has done so in the past (FKNMS, HIHWNMS) however, it has directed ONMS to move forward with this designation process. ONMS is charged to do this as a full public process.

Q: How can the various subcommittees weigh in on this process?

A: There will be a number of opportunities to provide input as we move forward with management planning and proposed sanctuary designation.

Q: What are some potential sanctuary boundary options?

A: Option 1) No action; Option 2) Expanded and/or original area, or some subset; Option 3) Middle Bank or not.

Q: Will terrestrial areas in the high water mark be excluded from consideration?

A: TBD, State waters could be considered for inclusion though it is up to the State to decide and define. Terrestrial areas will not be included. Midway Atoll National Wildlife Refuge would not be included; nor would Kure Atoll Wildlife Refuge.

Q: Is there a downside or risk to pursuing sanctuary designation?

A: Perhaps the opportunity cost of all the staff/leadership time required for this effort. As we are also revising the Monument Management Plan at the same time, there is a chance that there will be confusion on the process.

Q: Are the existing regulations and authorities the floor of this process?

A: Proclamations are the floor, just need to make sure proposed boundaries and regulations are in conformance with the existing EOs, Proclamations and regulations (as well as sanctuary goals and objectives). No regulations currently exist within the MEA; sanctuary would require fishery regulations as they were defined by Proclamation 9478. To date, these regulations have not been drafted or established.

Q: Will an EIS be prepared in-house?

A: Yes, with the MMB agencies.

Q: If a future presidential order removes the Monument, will a future sanctuary be like most others (i.e. poorly protected)?

A: We have seen rollbacks of protections in monuments by presidential order or by Congress, for example NE Canyons and Seamounts. Sanctuary designation would safeguard protections because it cannot be removed or changed with a stroke of a pen and is approved by Congress.

Q: What happens if you don't do this?

A: Congress has directed us to do so and this is now an agency priority.

IX. PUBLIC COMMENT PERIOD

Isaac Harp, NWHI Hui

- Invited the RAC to a detailed Zoom briefing on sanctuary designation July 15th at 10 a.m. at www.NWHIhui.wordpress.com Contact the NWHI Hui at NWHIhui@pm.me
- Regarding the proposal to convert the NWHICRER to sanctuary, elimination of the Reserve would be in violation of federal law.
- Replacing the RAC with a SAC is also unlawful, and raises conflict-of-interest issues.
- It is false to say that enforcement will only occur with sanctuary designation. Executive Order 13178 establishing the NWHICRER includes monitoring, enforcement and a penalty schedule.
- Sanctuary disregards the precautionary principle.
- Suggested title if a sanctuary is designated, "Pu'uhonua o Ko Hawai'i Pae 'Āina National Marine Sanctuary."
- Need full public transparency in the process.

Cha Smith, NWHI Hui

- Not really opposing sanctuary, but sanctuaries are not a great way to attain protection. Subject to possible erosion. Suggest use of the Refuges Act.

- If sanctuary is designated, ensure existing protections remain the same. The sanctuary ‘template’ allows everything except what is prohibited. Should be no commercial or recreational fishing in the entire area.
- The RAC must remain as it is, its independence is critical.
- Need to complement and supplement existing protections, add OHA, address the expanded area. All must be based on the original EO 13178 and protections.
- Meeting on July 15th at 10 a.m. NWHIhui.wordpress.com Open for participation by the RAC.

Dave Raney, NWHI Hui

- Proclamation specifies limited entry, no-take reserve, all by permit.
- Robust public involvement should include 120 days advance notice of any drafts or decisional materials, minimum 60 days notice for meetings or seeking input on plan. Use track changes to show changes made to existing plan in the new plan. Provide full documentation of public comments.
- Prior to drafting plan, agency should do analysis of cumulative impacts already occurring (vessel traffic, recreational fishing take, special use permits, interactions with protected species, logs of dumping of wastes into refuge waters, history of enforcement in the monument).
- Post all previous permit applications on the website.
- Post all enforcement actions related to monument activities.
- Use working groups, not only relying on sub-committees.
- Include language that does not alter the existing protections of EO 13178.

Stephanie Fried, NWHI Hui

- EO 13178 does not mandate designation, the EO merely requires “initiation” not “designation.” We will submit written comments, but the statement that EO 13178 mandates designation is materially factually wrong.
- Virtual library of the previous sanctuary process is being compiled by the NWHI Hui; we are looking for input, corrections, and comments on the library.
- Inviting RAC to review previous documents, including what happened with the sanctuary process.
- EO 13178 should be included in, and the foundation for, the regulatory ‘floor’.
- Alarmed about permits being issued to 1,000 people and potential associated cumulative impacts.
- Worried that public involvement and retention of protections won’t be properly addressed/honored in a sanctuary process.
- Need to ensure that the original EO 13178 conditions are retained, and the RAC is retained as-is.

- Need a fully transparent process. If starting with existing MMP, adding OHA, MEA, will allay concerns. But if starting with an original sanctuary plan, it will raise major concerns.
- 120-day public comment period is needed on any document and a 60-day advance notice of any hearing is needed.

X. SANCTUARY DESIGNATION (con't discussion)

Representative Paul recommended that the RAC request NOAA legal counsel address assertions about what the law is that were raised by the four speakers. Representative Paul suggested a letter to ONMS requesting clarification on minimum protections and definition of the regulatory 'floor'. The following bullet points will be used to draft the letter.

- "Shall complement and supplement": What exactly is the NWHI resource protection "base" given that there are multiple overlapping resource protection jurisdictions?
- What are the legal requirements regarding incorporating the Monument expansion area into a NWHI Sanctuary?
- "Monument and Sanctuary Plan": can the Management Plan be given this title to clarify that both will continue to exist?
- Will the current MMP serve as the basis or template for the NWHI NMS Management Plan and not the 2006 Draft Sanctuary Management Plan?
- Does the Reserve continue to exist once a sanctuary is designated or does it morph into/become the sanctuary? EO 13178 does not specifically say. (See section 5€).
- Does EO 13178, which created the Reserve and the RAC imply that the RAC will transition to a SAC with the same makeup or with a different makeup given that commercial fishing is not currently allowed in the Reserve and not likely to be allowed in the new Sanctuary?
- If a Sanctuary is not designated, will the Reserve and the RAC continue unless Congress says otherwise?
- Sanctuary designation timing: what are the options?
- Can WESPAC adopt any fishing regulation that conflicts with the restrictions in the EOs and Proclamations?

As the Council lost quorum at this point, it was agreed that council will set another emergency meeting to vote on a letter based off these bullet points which will then be submitted to ONMS.

XI. DECISION-MAKING, WRAP-UP, CLOSING REMARKS

2021 MEETING DATES

Emergency Meeting August 4, 2021

September 22, 2021