

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

Don Schug
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

Emergency Meeting August 4, 2021

10:00 am – 12:00 pm

Via Google Meets

Meeting Minutes

ATTENDEES:

RAC Voting Members Present: William Ailā Jr. (State of Hawai'i, Chair), Thorne Abbott (Conservation Alternate for Morishige), Halealoha Ayau (Native Hawaiian), Rick Gaffney (Recreational Fishing, Secretary), Mark Hixon (Research), Heather Howard (Education Alternate for Kahape'a-Tanner), Solomon Kaho'ohalahala (Native Hawaiian Elder), Jean Kenyon (Research), Rick Lee (Ocean-Related Tourism), Audrey Newman (Conservation), Linda Paul (Conservation, Vice-Chair), and Don Schug (Research).

RAC Voting Members Absent: Pelika Andrade (Native Hawaiian), Judith Cucco (Citizen-At-Large), Bonnie Kahape'a-Tanner, and Kanoe Morishige (Conservation).

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), Maile Norman (USCG), Thorne Abbott (Conservation Alternate), Bob Leinau (Conservation Alternate), Doug Fetterly (Conservation Alternate), Heather Howard (Education Alternate), Neal Langerman (Research Alternate) and Bill Walsh (Research Alternate).

RAC Non-Voting Members Absent: Janice Fukawa (USDOD-USN), Brandon Jim On (NOAA/NMFS-OLE), Hoku Ka'aekuahiwi Pousima (NOAA/NMFS-PIR), Brian Neilson (State of Hawai'i/DLNR-DAR), Dan Polhemus (USFWS-ES), Allen Tom (NOAA/ONMS-HIHWNMS), Jared Underwood (USFWS-NWR), Cynthia Vanderlip (State of Hawai'i/DLNR-DOFAW), and Brad Wong (OHA).

ONMS Leadership and Staff: Kristina Kekuewa (ONMS Regional Director, Pacific Island Region). Staff: Camille Jones, Jenny Crawford, and Meg Price.

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. Representative Gaffney moved to accept the agenda, and Representative Paul 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 Google Meets platform and interface done by PMNM staff.

II. ACTION: Council to review draft letter to ONMS

Discussion:

Suggestion by Rep. Newman for the letter to be broken up into two sections. The first section will have statements rather than questions which confirm/clarify our assumptions (referring to Planning, Evaluation, and Sanctuary Designation Subcommittee meeting discussion). The second section will have the questions. Representatives Schug and Hixon in agreement.

Suggestion by Rep. Gaffney for a change of wording to sub-letter g) “Can the existing 2008 PMNM Management Plan serve as the basis for the new management plan under sanctuary designation, rather than the 2006 Draft Sanctuary Management Plan? Rep. Hixon in agreement.

Rep. Paul shared that the questions in the letter are for NOAA General Counsel to answer. She also shared that the RAC’s legal assumption may or may not be correct. This letter is not a RAC position letter as it is too early. The letter is intended to be an uncolored inquiry as to what the law is.

Rep. Hixon posed a question: Has anyone (with extensive RAC experience) thoroughly digested and evaluated the suggested revisions of the letter submitted by the NWHI Hui? Rep. Howard also asked this question.

Discussion paused for Public Comment.

III. PUBLIC COMMENT PERIOD

Written public comments were submitted by the NWHI Hui. These public comments were shared with the council via email just prior to the start of the public comment period.

Isaac Harp, NWHI Hui

- Posed a question to the RAC: Did you draft the letter or was it drafted by NOAA staff? To which William responded that the letter was drafted by subcommittee members and the entire RAC.
- The RAC was not given sufficient time to review this letter. Changes to the draft (submitted by the NWHI Hui) were sent to Jennifer Crawford [RAC

Advisory Coordinator]. We urge you not to weaken the RAC's role. By law, the RAC can only support the sanctuary designation process.

- The RAC does not have the necessary knowledge to support designation.
- RAC membership continues regardless of designation.
- Suggest you [the RAC] send it back to review again and not use creative interpretation.
- Wrong because at this point the RAC has it's own idea of what sanctuary designation will look like
- Concerned with the RAC jumping ahead of the process without full consideration of the process
- To be clear, the Reserve and the RAC continue to exist regardless of sanctuary designation. Monument expansion clearly states that it will not be taken over the Reserve

Chair Aila responded stating that the goal is to strengthen the draft questions and that there will be two categories: statements and questions.

Dave Raney, NWHI Hui

- We agree that it is good to answer the question from WESPAC
- Concerned about the question format. Despite clear language, the questions provide NOAA the latitude to interpret the law. This is a record of this occurring in the past. For example, sub-letter (g) calls for a recommendation for a sanctuary management plan to serve as the basis. Concern that this is a way to shoehorn the 2006 management plan back in. The 2006 plan was rejected. The MMP should be the basis for the sanctuary.
- Executive Order 13178 created the purpose for the RAC. The EO requirement is misinterpreted in the letter. There is not a transition from a RAC to a SAC.
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Stephanie Fried, NWHI Hui

- The introduction paragraph – cut out the sentence that the RAC fully supports designation, would be premature/pre-decisional for the RAC to say that.
- Sub-letter (g) – strongly recommend eliminating all mention of the 2006 management plan. Agree with Audrey's comment that this should be a comment and not a question.
- Change questions to assertions:
 - Does the Reserve stay there if there is sanctuary designation? → Any sanctuary must complement the existing Reserve; this is not a mystery, the language in the letter does not state this.
- The introduction – Agrees with Audrey that the RAC approves the sanctuary process and not an unknown designation.
- The RAC recommends an updated plan serve as the basis for sanctuary designation.
- Sub-letter (h) – no need to change the name of the RAC
- Sub-letter (i) the language as is.
- Include an appendix to include citations to legal documents. Show the legal

language what the RAC is referring to. More time to review drafts or have RAC draft themselves.

- The RAC has no sunset clause. There is clear language that the RAC is not phased out.
- A Cumulative Impact Assessment is missing. Mandated by the EO. NOS will provide documentation of the direct and indirect cumulative impacts.

Doug Fetterly

- Agreeing with Audrey's comments and understands that crafting statements (instead of interrogatories) would be the preferred approach. Also agree with Linda in that we need to have legal language. Making statements where we are looking for confirmation is appropriate.

IV. ACTION: Council to review draft letter to ONMS (con't discussion)

The council discussed the introduction paragraph of the letter and concerns were raised regarding the following statement, "the NWHI CRER Advisory Council remains in full support of the proposed designation of Papahānaumokuākea Marine National Monument as a national marine sanctuary." After further discussion, the council agreed to amend this statement to state the council is "in support of the designation process" and to remove "in full support of the proposed designation". In the last sentence where it says "to request your feedback," the council agreed to amend this to say "to request your legal opinion."

Rep. Newman posed the question on whether or not the RAC needs or wants confirmation of what is in vs out? The interpretation presented to us is fine, does it need to be confirmed at the NOAA level? Chair Aila responded that this may be something the RAC does down the line. Ms. Clark added that according to the NMSA there is a 45-day opt-in/out for the process and that the final decision happens at the end of those 45 days.

Rep. Schug posed the question on the current legal status of the 2006 expansion area and whether or not it is different from the rest of the monument as this will help to inform regulations and boundaries going forward. Ms. Clark added that we [ONMS] have not yet reached what the boundary options are. Rep. Howard asked if the goal is to have the expansion area included. Chair Aila responded that this question will be answered during public scoping. Rep. Paul asked what are the legal requirements to incorporate the MEA? Rep. Kaho'ohalahala responded saying that this questions should have been asked at the time of the proclamation expansion and during it's implementation. It appears to muddy the waters relating to our sanctuary designation pursuit. Rep. Ayau stated that both Paka's concerns and Stephanie's comments [members of the public] resonate. If we [the RAC] are talking about protections and they are raising concerns about the need for further protections, why would be delay the vetting of those concerns and the incorporation of all protections? Ms. Clark added that this discussion on the MEA will be added into the regulatory process.

The following are the suggested revisions for each of the sub-letters:

Sub-letter a): to be rephrased as a statement and not a question

Sub-letter b): leave as is

Sub-letter c): to be rephrased with more assertiveness

Sub-letter d): to be rephrased as a statement and to be assertive in saying that the 'Reserve will continue to exist'

Sub-letter e): to be rephrased as a statement and to be assertive in saying that the 'RAC will continue regardless of sanctuary designation'

Sub-letter f): leave as is

Sub-letter g): to be rephrased as a statement that the RAC is recommending that the 2008 PMNM Management Plan will serve as the basis for a new management plan under sanctuary designation.

Sub-letter h): to be rephrased as a statement

Sub-letter i): leave as is

In the conclusion of the letter, the council agreed to amend the sentence "in support of designation and management of a sanctuary" to say "in support of the sanctuary designation process". The council also agreed that, moving forward, they will use this language in their communications regarding the sanctuary designation process.

Suggested revisions were voted upon and approved unanimously by the council. The revisions will be made by the Executive Leadership Committee (Reps. Aila, Paul, & Gaffney) and the revised draft letter will be sent out to the council. It was noted in the meeting that the draft letter will be sent out after revisions are made and any concerns or issues raised by councilmembers regarding the revised letter will be addressed at the next RAC meeting scheduled for September 22, 2021.

V. Wrap-Up and Closing Remarks (Aila)

The Executive Leadership Committee will take the approved revisions and revise the draft letter. The letter will be circulated to the council prior to sending to ONMS Director John Armor.

VI. NEXT RAC MEETING: September 22, 2021

Meeting adjourned at 12:17 p.m.