Office of National Marine Sanctuaries
National Oceanic and Atmospheric Administration

Papahānaumokuākea National Marine Sanctuary

Final Environmental Impact Statement Appendix K: Public Comment and Response

U.S. Department of Commerce
Gina Raimondo, Secretary

National Oceanic and Atmospheric Administration
Richard W. Spinrad, Ph.D., Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator

National Ocean Service
Nicole LeBoeuf, Assistant Administrator

Office of National Marine Sanctuaries
John Armor, Director

Cover Photos: NOAA diver investigates whaling shipwreck; native fish swim on a coral reef; Hawaiian voyaging canoe sails in Papahānaumokuākea; Hawaiian monk seal and ulua swim over the seafloor. Photos: NOAA

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Terms, Abbreviations, and Acronyms

A note on terminology: The term Papahānaumokuākea, when used alone, refers to the place, also historically known as the Northwestern Hawaiian Islands, including the land and all waters to 200 nmi from shore. Papahānaumokuākea Marine National Monument or PMNM refers to the area designated as a monument via Presidential Proclamations 8031 and 8112, extending 50 nmi from all islands and emergent lands of the Northwestern Hawaiian Islands. The Papahānaumokuākea Marine National Monument Expansion Area or MEA refers to waters from 50 to 200 nmi designated as a monument in 2016 by Presidential Proclamation 9478. PMNM and the MEA are referred to collectively as the "Monument." When describing the action alternatives, the term "Outer Sanctuary Zone" is used to describe the area of the sanctuary that is coextensive with the MEA.

BMP	Best Management Practice
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
CIA	Cultural Impact Assessment
Co-trustees	Term used in this document to refer to the State of Hawai‘i, the U.S. Department of Commerce, the U.S. Department of the Interior, and the Office of Hawaiian Affairs
CWG	Papahānaumokuākea Native Hawaiian Cultural Working Group
CZMA	Coastal Zone Management
DLNR	Hawai‘i Department of Land and Natural Resources
EEZ	Exclusive Economic Zone
EFH	Essential Fish Habitat
EIS	Environmental Impact Statement
ERP	State of Hawai‘i Environmental Review Program
ESA	Endangered Species Act
HAR	Hawaii Administrative Rules
HEPA	Hawaii Environmental Policy Act
HRS	Hawaii Revised Statutes
IMO	International Maritime Organization
MEA	Papahānaumokuākea Marine National Monument Expansion Area
MMB	Monument Management Board
Monument	Term used in this document to refer to the PMNM and MEA collectively
MSA	Magnuson-Stevens Fishery Conservation and Management Act
NCCOS	National Centers for Coastal and Ocean Sciences

NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
nmi	nautical miles
NMSA	National Marine Sanctuary Act
NOAA	National Oceanic and Atmospheric Administration
NWHI	Northwestern Hawaiian Islands
NWR	National Wildlife Refuge
NWRSAA	National Wildlife Refuge System Administration Act
OHA	Office of Hawaiian Affairs
OLE	Office of Law Enforcement
ONMS	Office of National Marine Sanctuaries
PMNM	Papahānaumokuākea Marine National Monument (Original Area)
PSSA	Particularly Sensitive Sea Area
RAC	Reserve Advisory Council
Reserve	Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve
SHPD	State of Hawai‘i Historic Preservation Division
SMCA	Sunken Military Craft Act
State	State of Hawai‘i
USFWS	U.S. Fish and Wildlife Service
USCG	U.S. Coast Guard
VMS	Vessel Monitoring System
WPRFMC	Western Pacific Regional Fishery Management Council

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Response to Comments

Introduction and Summary

NOAA and the State of Hawai‘i acknowledge and appreciate all 13,934 comments regarding the proposed Papahānaumokuākea National Marine Sanctuary. NOAA and the State of Hawai‘i (State) consolidated public comments from the draft environmental impact statement, draft sanctuary management plan, and Notice of Proposed Rulemaking, and collectively responded to those comments here and in the final rule. This appendix was prepared in compliance with National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq*.) and Hawai‘i Revised Statutes (HRS) §343, and Hawai‘i Administrative Rules (HAR) §11-200.1-27. Responses, including an acknowledgement of who provided the comment, are provided for all substantive comments.

In Appendix K1 of the final environmental impact statement (EIS), in accordance with Hawaii Administrative Rules, Chapter 11-200.1-27, copies of all written and oral comments received on the draft EIS are provided. Appendix K1 can be found on the Papahānaumokuākea webpage.

Comment Overview

NOAA and the State of Hawai‘i received 488 written comments, 61 oral comments, and 13,385 form letters, totaling 13,934 public comments received on the draft designation documents. Comments were collected during a 68-day public comment period from March 1 to May 7, 2024, via 1) electronic entries on the regulations.gov website; 2) postal mail; and 3) oral testimony at two virtual and nine in-person public meetings on O‘ahu, Kaua‘i, Hawai‘i Island, Maui, and Moloka‘i. All comments, including meeting transcripts, are publicly accessible as posted at regulations.gov (docket #NOAA-NOS-2021-0114). For more information on the public comment process, see final EIS Section 1.3.2.

Public comments were reviewed by NOAA and the State of Hawai‘i and organized into 12 categories (sections A to L), resulting in 137 summarized substantive comments presented in this appendix. Most comments focused on sanctuary access, permitting, prohibitions, enforcement, Kānaka ʻŌiwi (Native Hawaiian) cultural integration, Indigenous rights, fishing regulations, fishery management, co-management, interagency cooperation, sanctuary exemptions, community participation, purpose and need for a sanctuary, boundaries and alternatives, resource protection, education and outreach, Sanctuary Advisory Council, and administration and funding. Overall, strong support was expressed for designation of the proposed sanctuary and Alternative 1 (Agency-Preferred Alternative).

NOAA and the State’s responses to comments address substantive issues and concerns raised by members of the public, government agencies, stakeholder groups, non-profit organizations, and Kānaka ʻŌiwi community groups. All substantive comments were considered by NOAA and the State and, where appropriate, modifications were made to the final EIS, sanctuary management plan, and sanctuary rule. The responses to comments throughout this appendix reference numerous changes that were made between the draft and final documents to address issues raised in public comments. The final EIS Section 1.5 outlines changes that were made to the draft designation documents, subsequent to the public comment period. Copies of all written comments, and a transcript of oral comments are found in Appendix K1.

A. General Support and Opposition of Sanctuary Designation

(This section addresses broad comments of support or opposition to the designation that are not associated with a specific proposal, alternative, or area of analysis.)

A.1 Comment: The majority of comments NOAA received supported the proposed sanctuary designation, including Alternative 1 (Agency-Preferred Alternative), and encouraged NOAA to proceed with the designation process. Commenters who support the designation cited reasons including:

- Additional regulations, protections, enforcement, and programmatic and legal benefits for Papahānaumokuākea under the National Marine Sanctuaries Act
- Enhancing long-term protections for biological, cultural, and historical resources
- Comprehensive and coordinated management of the marine areas of Papahānaumokuākea
- Preserving Native Hawaiian culture, traditional practices, sacredness of waters, and connections to place for current and future generations
- Safeguarding marine biodiversity; coral reefs, pelagic, and deep-ocean ecosystems; and endemic, threatened, and endangered species
- Regulating, mitigating, or preventing threats such as invasive species, overfishing, illegal fishing, deep-sea mining, military activities, pollution, oil spills, marine debris, erosion, and climate change
- Additional sources of funding to support operations, research, emergency response, citizen science, education, and outreach
- Opportunities for recreation and tourism

Response: NOAA agrees that these are some of the main benefits of designating the marine areas of the Monument as a national marine sanctuary. NOAA notes that many of these comments specifically indicate a preference for Alternative 1, and NOAA has considered this in carrying Alternative 1 forward in the final EIS as the final Agency-Preferred Alternative.

A.2 Comment: A minority of commenters expressed opposition to sanctuary designation, citing concerns that designating a sanctuary:

- Is an overreach by the federal government
- Is an act of colonialism and/or infringes on the rights of Indigenous Peoples
- Would come at a cost to Native Hawaiian, American Samoan, and/or Pacific Islander well-being, including loss of the ability to practice cultural traditions and connections to ocean resources
- Would limit access to the ocean and resources for food, livelihood, and cultural sustenance, and limit Indigenous rights and their ability to freely fish in local waters
- Would decrease the amount of fishing waters across the Pacific
- Would lead to overfishing
- Adds unnecessary layers of bureaucracy, as the existing Monument management and protections are extensive and sufficient for the area, and that if new protections/management is needed, these should be enacted through the Monument

- Would relinquish the Monument title and co-management framework
- Would weaken current protections, and allow the Department of Commerce (DOC) to violate protections, opening the doors to deep-sea mining and recreational tourism, and taking away human and financial resources needed to manage the area
- Would be redundant of current management of the Monument, and therefore unnecessary. Some commenters also expressed that they felt current Monument management to be poor, or that current management capacity is lacking; and that a sanctuary would not improve this.

Commenters: Jesse Rosario, Ramon Tebuteb, Namele Naipo-Arsiga, Nana-Honua Manuel, Samuel Meleisea, Archie Soliai, Hawaii Longline Association, Rikki Torres-Pestana, Nalani Minton, Claire Iloprizi, Nā Iwi Kūpuna, Nahshon Lealofi, American Samoa Veterans, Lino Tenirio, Mike Fleming, Nonu TuiSamoa, Gil Kualii, Kaleo Cravalho, Native Hawaiian Gathering Rights Association, Abraham Albilado, Molly Lutcavage, Michael Gawel, Shannon Cummings, Louis Solaita, Jason Pritchard, Timothy Teleso, Klayton Kubo, Noah, Western Pacific Fishery Management Council, Ramon Tebuteb, Hawaii Longline Association, Charlie Blaney, Mary Shanahan-Reitz, Tuna2Oceans LLC and AhiHubKauai, Hawaii Goes Fishing, Charlie Blaney, Mary Shanahan-Reitz, Tammy Harp, Cha Smith, Northwestern Hawaiian Islands Hui, Puaʻāinahau Foundation, Hawaiʻi Wildlife Fund, Malu ʻAina, Life of the Land, Hālau Nā Mamo o Puʻuanahulu, Malama Makua, Isaac Harp, Dr. Pualani Kanahele Kanakaʻole, and anonymous commenter(s)

Response: Through the public sanctuary designation process, and from public input received during scoping and the proposed designation stage, NOAA has determined that this proposed action responds to the need to address threats to and discrepancies in management of nationally significant resources. NOAA has also determined that the current management regime would benefit from additional regulatory tools, as well as the first set of implementing regulations for the Monument Expansion Area (MEA). Chapter 2 of the final EIS and Section I.B of the final rule preamble describes the purpose and need for the sanctuary.

NOAA respects the views of the commenters, including those who expressed concern that a sanctuary designation is an overreach by the federal government; is an act of colonialism; would impact the livelihood of Pacific Islanders; and/or would limit Indigenous rights. NOAA seeks to support the rights of Kānaka ʻŌiwi and Pacific Islanders, and to support biocultural conservation and restoration work by growing collective kuleana and affirming respect and reciprocity for the place and people. The sanctuary management plan (final EIS Appendix A) objectives include managing the area as a sacred site consistent with Kānaka ʻŌiwi traditional knowledge, management concepts, and principles articulated within Mai Ka Pō Mai. Kānaka ʻŌiwi culture is foundational in the co-management legacy of Papahānaumokuākea (see final EIS, sections 1.2.4 and 4.5.1), and the designation aims to ensure ecological integrity and achieve strong, long-term protection and perpetuation of Northwestern Hawaiian Island ecosystems, Kānaka ʻŌiwi culture, and maritime heritage resources for current and future generations. Native Hawaiian access would continue under sanctuary designation. See also the responses to comments C.1, C.2, and E.7.

Regarding commenters who expressed concerns with the impact of sanctuary designation on the existing Monument, existing regulations, and or existing management of the area, see also the responses to E.1 and E.2. Regarding commenters who expressed concerns with the impact of sanctuary designation on fishing, see also the comments D.1, D.3, and D.5. NOAA also recognizes that some comments raise concerns that are outside the scope of this designation, including the ongoing process to designate a proposed national marine sanctuary in the Pacific Remote Islands. The underlying concerns of these comments were still considered in the context of Papahānaumokuākea National Marine Sanctuary.

NOAA also received other comments of concern regarding the sanctuary designation. Responses to specific points of concern and opposition are addressed in the following sections:

- Section B: Access, Permitting, Prohibitions, and Enforcement
- Section C: Native Hawaiian, Indigenous Rights, and Cultural Integration
- Section D: Fishing Regulations and Fishery Management
- Section E: Co-Management and Interagency Cooperation
- Section F: Exemptions
- Section G: Consultations and Community Participation in Sanctuary Designation
- Section H: Purpose and Need for Sanctuary Designation
- Section I: Boundaries
- Section J: Description and Analysis of Alternative
- Section K: Sanctuary Administration and Funding, Resource Protection, Education and Outreach, Partnerships, and Sanctuary Advisory Council
- Section L: Other Editorial Changes, Including Technical Edits

B. Sanctuary Access, Permitting, Prohibitions, and Enforcement

Access

B.1 Comment: Commenters expressed opposition to for-profit activities in the sanctuary. One commenter recommended that no human activity should be allowed in the sanctuary.

Commenters: ʻAlaea, Tammy Harp, Tina Marzan, Noelle C.

Response: The sanctuary regulations were drafted to supplement and complement existing management of the area. The existing Monument management regime allows for some for-profit activities such as professional film-making, and activities such as wildlife management, research, and Native Hawaiian practices. All are subject to permitting requirements. Consistent with the existing management of the area, NOAA would allow for regulated access to the sanctuary for these types of activities. As in the Monument, in order to receive a permit for a regulated activity, a number of findings criteria would need to be met, including that the proposed activity would be conducted consistent with the primary objective of protection of sanctuary resources.

B.2 Comment: Commenters expressed concern regarding access to Papahānaumokuākea, noting that the area can currently only be experienced by a select group of scientists, Native Hawaiian cultural practitioners, and wealthy individuals.

Commenters: ʻAlaea, Gil Kualii, Mahina Kapulani

Response: The sanctuary regulations and permit categories were drafted to supplement and complement existing management of the area. Consistent with the presidential proclamations designating the PMNM and MEA, and the Monument implementing regulations at 50 CFR part 404, NOAA would allow for regulated access. Anyone may apply for a permit to access the sanctuary. There are six categories of permitted activities: research, recreation, education, Native Hawaiian practices, conservation and management, and special use. In addition, a vessel may pass without interruption through the sanctuary without requiring a permit as long as the vessel does not stop or engage in prohibited activities within the sanctuary.

Additionally, the sanctuary management plan describes strategies to engage and support diverse communities who care for Papahānaumokuākea, including Indigenous and underserved communities. NOAA recognizes the constraints imposed by the vastness and remote nature of the proposed sanctuary (nearly 300 miles at its closest point from the main Hawaiian Islands), and therefore strives to provide education and outreach that brings the place to the people. Through the Mokupāpapa Discovery Center and collaborations with other interpretive centers, organizations, business agencies, and others, NOAA has expanded a network serving both local, regional, and international audiences.

B.3 Comment: Commenters provided recommendations that permits be easy to acquire through a streamlined process to minimize barriers and reduce redundant reviews under various authorities and regulations. One commenter suggested that the process to acquire a sanctuary/Monument Native Hawaiian practices permit, specifically, should be prioritized and streamlined.

Commenters: Friends of Midway Atoll National Wildlife Refuge, Carl Grundstrom, and anonymous commenter(s)

Response: The Monument joint permitting process has been in place and permits have been issued by the co-trustees since 2007. The proposed sanctuary includes a permitting system modeled after the existing Monument permitting system, and was developed to allow for integration with the Monument permitting system, to ensure continued joint permitting administered by Monument co-trustees. See final EIS Section 3.3.1 for an updated description of the proposed permitting process. Through sanctuary designation, NOAA strives to conduct seamless, integrated management, such that sanctuary permits, including Native Hawaiian practices permits, would go through the same streamlined process as currently exists for the Monument.

B.4 Comment: Commenters expressed concerns regarding activities that take place in the Northwestern Hawaiian Islands under claims of innocent passage, and requested that all activities in the area of the proposed sanctuary comply with the United Nations Convention on

the Law of the Sea, which the U.S. recognizes as customary international law, and applicable international treaties.

Commenters: Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council, Linda Paul

Response: In the preamble of the proposed rule, NOAA specified that the proposed access and ship reporting regulations would be applied in accordance with generally recognized principles of international law, in accordance with sections 305(a) and 307(k) of the National Marine Sanctuaries Act (NMSA) and the NMSA Regulations of General Applicability at 15 CFR 922.1(b). That is, no regulation shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States unless in accordance with generally recognized principles of international law. In accordance with 15 CFR 922.1(b), NOAA has long interpreted the text of NMSA Section 305(a) as encompassing international law, including customary international law.

In the preamble of the final rule, NOAA has clarified its intention that all regulations would be applied in accordance with generally recognized principles of international law, as well as in accordance with treaties, conventions, and other agreements to which the United States is a party.

B.5 Comment: A commenter provided a recommendation that the International Maritime Organization's (IMO) designation of the Monument as a Particularly Sensitive Sea Area (PSSA) apply to the MEA. The commenter also recommended that NOAA should determine, as part of the sanctuary designation process, if additional regulatory and management controls are necessary.

Commenters: Shark Stewards

Response: The IMO process for designating an area as a PSSA is outside the scope of this action. If the U.S. Government determines at a future time that designation of some or all of the Monument as a PSSA is warranted, the IMO process would remain available. Through sanctuary designation, NOAA would implement the ship reporting system (CORAL SHIPREP), which was adopted by the IMO as an associated protective measure to the designation of the Monument as a PSSA. The ship reporting system's reporting area extends outward 10 nautical miles from the PSSA boundary, as designated by the IMO, and therefore includes some portions of the MEA waters. After thorough analysis, NOAA concluded that additional regulatory measures are not necessary at this time, beyond the sanctuary regulations for ship reporting, access, and prohibited or otherwise regulated activities. Section IV.F of the final rule preamble provides details of the ship reporting system.

B.6 Comment: Commenters expressed support of access for recreational activities, including snorkeling and scuba diving; and allowing opportunities for the public to interact with Papahānaumokuākea in a safe and responsible manner. Commenters stated that allowing access for recreational activities may lead to increased awareness and support for the National Marine Sanctuary System. Commenters also provided recommendations for regulating recreational activities.

Other commenters expressed concern for the potential negative impacts to resources from allowing visitation, recreation, and tourism activities in the sanctuary, specifically Midway Atoll. A few commenters opposed recreational access to the sanctuary, noting that access should be limited to research and conservation activities and/or to the Midway Atoll Special Management Area.

Commenters expressing support for access for recreation: Ann Bell, Carl Grundstrom, Lee Oliver, Jane Jacobsmeyer, Myra Dehestani, Jonluke O'Cain, Maggie MacMullen

Commenters expressing concern or opposition for access for recreation: Andrea Eshelman, Namele Naipo-Arsiga, and anonymous commenter(s)

Response: For the sanctuary, consistent with existing regulations for PMNM, recreational activity would be defined as activities conducted for personal enjoyment that do not result in the extraction of sanctuary resources and that do not involve a fee-for-service transaction. This includes, but is not limited to, wildlife viewing, scuba diving, snorkeling, and boating. Recreation can provide significant educational opportunities, build constituencies, and provide assistance to natural resource managers. However, these activities can also lead to wildlife disturbance, habitat degradation, and pollution. It is a goal of the Monument to prevent, avoid, or minimize negative human impacts associated with recreation by allowing access only for those activities that do not threaten the natural character or biological integrity of the Monument or Native Hawaiian cultural, historic, or maritime heritage resources.

Midway Atoll Special Management Area is the only area of the Monument where recreational activities are permitted. Thus, while the sanctuary would allow for recreational activities via a permit, permits would only be issued for the Midway Atoll Special Management Area within the sanctuary, in coordination with the Monument Management Board and consistent with permitting for the existing Monument. Consistent with permit criteria for recreational activities within the Monument, recreation permits would not be issued for activities associated with any for-hire operation or for activities that involve extractive use.

B.7 Comment: Commenters expressed support of allowing a fee-for-service transaction for public visitation and recreational activities at Midway Atoll National Wildlife Refuge, and pointed out the existing authority of the U.S. Fish and Wildlife Service (USFWS) to charge fees for public visitation. Commenters requested that the EIS recognize the authority of the USFWS to charge fees for services.

Commenters: Ann Bell, Friends of Midway Atoll National Wildlife Refuge

Response: Consistent with existing permit criteria and regulations for recreational activities within the Monument, recreation permits would not be issued for activities associated with any for-hire operation, and recreational activities are defined as activities conducted for personal enjoyment that do not result in the extraction of sanctuary resources and that do not involve a fee-for-service transaction. However, NOAA acknowledges that the USFWS has the authority to charge fees for services including public visitation (50 CFR Part

25 Subpart E; Refuge Rules and Policies). Sanctuary designation would not change this authority, and the USFWS would still be able to charge fees for services, including public visitation to Midway Atoll. See also the response to E.3.

The EIS has been revised to acknowledge that the USFWS has the authority to charge fees for services including public visitation. See sections 3.2 and 4.6.2 of the final EIS.

B.8 Comment: Commenters requested that the USFWS consider a visitation program at Midway Atoll; and/or expressed support for recreation and visitation to Midway Atoll. Comments also requested that the final EIS describe the sanctuary permit process for public visitation and recreational activities at Midway Atoll National Wildlife Refuge.

Commenters: Dawn Marie Barraza, Narrissa Spies (Brown), Ken Gill, Ann Bell, Friends of Midway Atoll National Wildlife Refuge

Response: A visitation program to Midway Atoll is outside the scope of this action. NOAA will share these comments with the USFWS, a cooperating agency for this action, who has operated a Visitor Services Program for Midway Atoll. The USFWS' Midway Atoll Comprehensive Master Plan (2022)[1] affirms the goals, objectives, and strategies of the previous 2008 Midway Atoll Visitor Services Plan, and USFWS' intent to implement a Visitor Services Program.

Permitting

B.9 Comment: A commenter suggested that standards for permitting should be strengthened significantly, prioritizing Native Hawaiian practices without opening the door to other types of activities.

Commenters: Council for Native Hawaiian Advancement

Response: Consistent with the presidential proclamations designating PMNM and the MEA, and PMNM implementing regulations at 50 CFR part 404, NOAA would allow for regulated access to the sanctuary. The sanctuary regulations include a permitting system modeled after the existing Monument permitting system, and was developed to allow for integration with the Monument permitting system to ensure continued joint permitting administered by the Monument Management Board (MMB). NOAA has adopted the same permit criteria as currently required for Monument permits, including the additional criteria for Native Hawaiian practices and recreation permits.

For additional information regarding Native Hawaiian practices permitting, see the responses to B.14 and C.1.

B.10 Comment: Commenters recommended that NOAA hold mandatory public hearings for all permit applications, that there should be a permanent public record for all permits granted, and that there should be no multiple-year permits allowed.

[1] USFWS. 2022. Midway Atoll Comprehensive Master Plan. 119 pp.

Commenters: Zahz Hewelen, Alisha Chauhan, Isaac Harp, Cha Smith, Friends Of Midway Atoll National Wildlife Refuge, Northwestern Hawaiian Islands Hui, Puaʻāinahau Foundation Hawaiʻi Wildlife Fund, Malu ʻAina, Life of the Land, Hālau Nā Mamo o Puʻuanahulu, Malama Makua, Jim Kastner

Response: The sanctuary regulations include a permitting system modeled after the existing Monument permitting system, and was developed to allow for integration with the Monument permitting system to ensure continued joint permitting administered by MMB. Therefore, NOAA intends to continue with the existing public notification process for the Monument, which does not include mandatory public hearings for all permit applicants. Instead, the existing permit system for the Monument includes a Permit Application Unified Public Notification Policy to engage and inform the public of activities proposed to occur within the Monument. Posting of a permit application does not equate to permit approval. After posting, each application is thoroughly reviewed by the Monument Management Board. Final permitted activities may differ from the proposed activities.

Some of the public notification practices for the existing Monument include:

- Within 10 calendar days of receipt of application, a summary of an applicant's proposed activities are posted for public viewing.
- Within 40 calendar days of receipt of application, full permit applications are posted for public viewing.
- Permit applications that include proposed activities within the Northwestern Hawaiian Islands State Marine Refuge are also posted to the Board of Land and Natural Resources (BLNR) website for seven days prior to the scheduled BLNR meeting as part of the overall BLNR submittal process. The BLNR hearings and review process are open to the public.

All information provided in the application is reviewed by the Monument co-trustees to evaluate the potential benefits of the activity, determine whether the proposed methods would achieve the proposed results, evaluate any possible detrimental environmental impacts, and determine if issuance of a permit is appropriate. Factored in is a consideration of whether the timeframe of the proposed action is appropriate. Actions occurring within State waters are subject to a maximum permit duration of one year, while multi-year permits may only be issued outside of State waters. Therefore, consistent with existing management, multi-year permits may be granted in areas of the proposed sanctuary that do not overlap with state waters.

Additionally, permits granted are documented within an annual permitted activities report, published by the Monument. Reports for previous years may be viewed on the Permitted Activities Annual Reports website.

B.11 Comment: Commenters recommended that independent cumulative impact assessments be required for all permit applications.

Commenters: Northwestern Hawaiian Islands Hui, Puaʻāinahau Foundation Hawaiʻi Wildlife Fund, Malu ʻAina, Life of the Land, Hālau Nā Mamo o Puʻuanahulu, Malama Makua, Isaac Harp

Response: Permit decisions are federal actions which are subject to the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq*. In accordance with NEPA, NOAA considers possible cumulative environmental impacts when considering federal actions, including a decision of whether to issue a permit.

B.12 Comment: Commenters expressed concern that a special use permit (SUP) would introduce commercial activities.

Commenters: Jim Kastner

Response: In the Monument, some forms of commercial activity are currently permitted under special ocean use permits. The existing regulations at 50 CFR 404 for PMNM include permit criteria and regulations for special ocean use, which means an activity or use of the Monument that is engaged in to generate revenue or profits for one or more of the persons associated with the activity or use, and does not destroy, cause the loss of, or injure Monument resources. This includes ocean-based ecotourism and other activities such as educational and research activities that are engaged in to generate revenue, but does not include commercial fishing.

Likewise, before issuing a SUP in the sanctuary, NOAA would also ensure, among other things, that the requested activity is compatible with the purposes for which the sanctuary is designated and with protection of sanctuary resources, and is conducted in a manner that does not destroy, cause the loss of, or injure sanctuary resources (16 U.S.C. 1441(c)). NOAA can place conditions on SUPs specific to the activity being permitted. Individual permit applications that would require a SUP are also reviewed with respect to all other pertinent regulations and statutes, including NEPA (42 U.S.C. 4321 *et seq*.), and any required consultations, permits, or authorizations. Accordingly, there are sufficient safeguards in place for any activity proposed for a SUP in the sanctuary, whether of a commercial or non-commercial nature.

In addition, NOAA is not proposing any new SUP categories as part of this designation. In order to do so, NOAA would be required to provide appropriate public notice before identifying a new category of activity subject to a SUP (16 U.S.C. 1441(b)).

B.13 Comment: Commenters asked why the sanctuary permit would not allow for appeals of permit decisions.

Commenters: Narrissa Spies (Brown)

Response: The permitting system for the sanctuary is modeled after the existing Monument permitting system. The permitting system would not supplant the joint permitting system for the Monument, and was developed to ensure a continued joint permitting system administered by the MMB. The existing permit system for the Monument does not include a process to appeal a permit decision. Instead, a permit applicant may seek reconsideration of a permitting decision by filing a new permit application that redresses the issue(s) in the initial application that caused the denial. To ensure consistency with the existing permit system for the Monument, the National Marine Sanctuary Program regulations at 15 CFR 922.37 for appeals of permitting decisions would not apply to

Papahānaumokuākea National Marine Sanctuary. This will ensure that permit application decisions are not made solely by NOAA, but in consideration with the other Monument co-trustees. See the final EIS, Section 3.3.1 and the preamble of the final rule for discussion of appeals of permitting decisions.

B.14 Comment: A commenter stated that the proposed rule's definition of "Native Hawaiian Practices" provides a solid foundation, but is concerned that "Native Hawaiian" is not defined. The commenter requested that the definition should narrowly reference Indigenous practices and only those practices of the kānaka maoli, who lived and thrived in Hawai'i prior to European and American arrival.

Commenters: Office of Hawaiian Affairs

Response: NOAA will not define "Native Hawaiian" in the sanctuary regulations because the issuance of Native Hawaiian practices permit is based on evaluating the activity against the permit criteria. To be consistent with the types of activities permitted for the Monument, and allow for an integrated permit process, NOAA would issue Native Hawaiian practices permits based on the same permit review procedures and additional evaluation criteria as the Monument:

- The activity is non-commercial and would not involve the sale of any organism or material collected;
- The purpose and intent of the activity is appropriate and deemed necessary by traditional standards in the Native Hawaiian culture (pono), and demonstrates an understanding of, and background in, the traditional practice and its associated values and protocols;
- The activity benefits the resources of the Northwestern Hawaiian Islands and the Native Hawaiian community;
- The activity supports or advances the perpetuation of traditional knowledge and ancestral connections of Native Hawaiians to the Northwestern Hawaiian Islands; and
- Any living sanctuary resource harvested under this permit would be consumed or utilized in the sanctuary.

The permitting system for the sanctuary is modeled after the existing Monument permitting system. The permitting system would not supplant the joint permitting system for the Monument, and was developed to ensure a continued joint permitting system administered by the MMB. The existing permit system for the Monument does not define Native Hawaiian, and instead provides a specific set of findings criteria for a Native Hawaiian practice permit. The criteria for the Monument Native Hawaiian practice permit were developed following a workshop in 2004 facilitated by Kia'i Kai, a graduate program at the Kamakakūokalani Center for Hawaiian Studies at the University of Hawai'i at Mānoa, collecting input from Native Hawaiian cultural practitioners, fishermen, and others to create criteria for culturally-appropriate activities in Papahānaumokuākea. Presidential Proclamation 8031 subsequently applied these criteria in providing for additional findings for Native Hawaiian practice permits, as did the Monument's implementing regulations at 50 CFR part 404.

However, while Native Hawaiian will not be defined in the regulations, the final EIS recognizes a definition for the term Native Hawaiian per existing federal law as important background information for the reader. See also the response to C.8

Prohibitions

B.15 Comment: Commenters requested that wind turbine activity, in addition to mining and exploratory activities related to energy development, be prohibited.

Commenters: Office of Hawaiian Affairs, Papahanaumokuākea Native Hawaiian Cultural Working Group, Andy Ku, and anonymous commenter(s)

Response: Consistent with the presidential proclamations establishing the Monument, NOAA would prohibit exploring for, developing, or producing oil, gas, or minerals to protect sanctuary resources. NOAA would also prohibit "any energy development activities" to further the underlying intent of the prohibition on oil, gas, and mineral development by accounting for technological advances in other forms of energy development. This includes, but is not limited to, wind turbines and exploratory mining activity.

B.16 Comment: Commenters requested that submarine activity be prohibited, with several comments specifically requesting prohibitions to military submarine use.

Commenters: Abdine Ouedraogo, Miranda Scarola, Lily Monte, Matthew Murasko, Brandon Mindoro, Mariana Loaiza, Susan Kiskis, Djedi Alliance, Rainbow Warrior Collective, Tiare Ka'ōlelopono, Alisha Chauhan

Response: Access to the sanctuary, and therefore submarine use within the sanctuary, would be prohibited and thus unlawful except under the following circumstances: for emergency response actions, law enforcement activities, and activities and exercises of the Armed Forces; pursuant to a sanctuary permit; and when passing through the sanctuary without interruption. Further, all regulations would be applied in accordance with generally recognized principles of international law, as well as in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law, or applicable treaties, conventions, and other agreements.

The sanctuary regulations allow activities and exercises of the U.S. Armed Forces. This is consistent with the existing management of the Monument, as both Presidential Proclamation 8031 and Presidential Proclamation 9478 provided broad exemptions for activities of the U.S. Armed Forces. However, all activities and exercises of the Armed Forces must be carried out in a manner that avoids, to the extent practicable and consistent with operational requirements, adverse impacts on sanctuary resources and qualities.

B.17 Comment: Commenters expressed concern regarding the potential spread of invasive species and diseases from vessel transit and biofouling, and requests that the prohibition on introducing invasive species apply to all vessels, including those passing without interruption.

Commenters: Robin Girard, Curtis Mahon

Response: The proposed sanctuary regulations would prohibit introducing or otherwise releasing an introduced species from within or into the sanctuary. The sanctuary regulations would also prohibit discharging or depositing any material or other matter into the sanctuary. These prohibitions are consistent with prohibitions identified in the presidential proclamations establishing the Monument. These prohibitions would apply to all vessels, including those passing without interruption. A vessel may only pass without interruption through the sanctuary without requiring a permit, as long as the vessel does not stop or engage in prohibited activities within the sanctuary.

B.18 Comment: Commenters stated that the provisions of Presidential Proclamation 8031, 50 CFR 404, Executive Order 13178 for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, and the State of Hawai‘i Northwestern Islands Marine Refuge should be applied to the sanctuary regulations for the Monument Expansion Area and the full sanctuary, and specifically the prohibitions regarding fishing. Commenters also stated that Presidential Proclamation 9478 is too weak and provides "loopholes."

Commenters: ʻAulani Wilhelm, Isaac Harp, Marine Mammal Commission, Northwestern Hawaiian Islands Hui, Pua‘āinahau Foundation, Hawai‘i Wildlife Fund, Malu ʻAina, Life of the Land, Hālau Nā Mamo o Pu‘uanahulu, Malama Makua, Shark Stewards, Dave Raney, Jim Kastner, Cha Smith, Stephanie Fried, and anonymous commenter(s)

Response: In drafting the sanctuary regulations, NOAA reviewed the executive orders, presidential proclamations, and regulations that currently guide Monument management. NOAA adopted the management measures from these benchmarks, and, in a few areas, added to those measures to allow for consistency in regulation and management across the sanctuary. The sanctuary regulations are largely consistent with Executive Order 13178, establishing the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve). Where the sanctuary regulations do not align with Executive Order 13178, the regulations comply with other applicable law including Presidential Proclamations 8031 and 9478 establishing PMNM and MEA, respectively, which succeeded the 2000 executive order establishing the Reserve. For example, while Executive Order 13178 sets caps on commercial fishing, the sanctuary regulations prohibit commercial fishing across the sanctuary, consistent with the presidential proclamations. In addition, the MEA’s location outside the reserve, and other applicable law for that area such as Presidential Proclamation 9478, account for differences in management, including for non-commercial fishing.

NOAA also considered that while the Monument is managed as a unit, several State and federal conservation areas exist within it, where specific authorities apply. For example, the State of Hawai‘i has primary responsibility for managing the State waters of the Monument, including the State of Hawai‘i Northwestern Islands Marine Refuge. If designated as a sanctuary, these existing authorities would still remain in effect. The State of Hawai‘i also served as a cooperating agency for this EIS, allowing consideration and input into the draft documents. Further, as the proposed sanctuary overlaps with State waters, the State would co-manage the sanctuary with NOAA, and the governor of Hawai‘i will also review NOAA’s designation documents before the sanctuary designation is final.

B.19 Comment: A commenter expressed support for the prohibition on altering the seabed by modification or placement of materials, except for scientific instruments, providing new protections for the limited and sensitive habitats of the Outer Sanctuary Zone. The commenter noted that access through permitting would allow managers to review methodologies and monitor permittees, and that while minimal user contact with the seafloor occurs or is anticipated in the Outer Sanctuary Zone, these resources are rare and extremely vulnerable to disturbance.

Commenters: Papahanaumokuākea Native Hawaiian Cultural Working Group

Response: NOAA agrees. In the MEA, Presidential Proclamation 9478 prohibits this type of activity, except for when conducted for the use of scientific instruments, which is allowed only with a permit, subject to such terms and conditions as the Secretaries of Commerce and Interior deem appropriate. Therefore, in the sanctuary, NOAA is proposing that these activities are prohibited unless conducted pursuant to a sanctuary permit, and in the Outer Sanctuary Zone, such a permit may only be issued for scientific instruments.

B.20 Comment: A commenter expressed concern for the prohibition on anchoring a vessel, noting that for safety reasons, there are some scenarios when a vessel should be able to anchor.

Commenters: Jamie Barlow

Response: Anchoring a vessel is prohibited unless conducted pursuant to a sanctuary permit. While this activity may be permitted via a sanctuary permit, anchoring on living or dead coral may never be permitted. NOAA is proposing to regulate anchoring a vessel for consistency with a regulated activity identified in Presidential Proclamation 8031 for PMNM and because there is the potential for sanctuary resources, other than corals, to be impacted by anchoring. This prohibition is new for the area of the sanctuary that overlaps with the MEA. NOAA recognizes that there may be scenarios where anchoring a vessel is necessary for safety. Consistent with existing management of this area, the prohibitions for the proposed sanctuary, including the prohibitions on anchoring, would not apply to any activity necessary to respond to emergencies that threaten life, property, or the environment, or to activities necessary for law enforcement purposes.

Enforcement

B.21 Comment: Commenters expressed concerns regarding the sufficiency of enforcement in the sanctuary and the need for improved monitoring and enforcement to protect sanctuary resources. Some commenters specifically pointed out the need for increased monitoring of pollution to prevent entanglement of marine life. Suggestions and recommendations included improved or expanded monitoring and surveillance, use of technology to aid enforcement including Automatic Information Service and satellite monitoring, promulgation of strict regulations, dedicated funding, a risk assessment framework for vulnerable ecosystems, and increased collaboration with the National Environmental Satellite, Data, and Information Service and the State of Hawai‘i for satellite management. Commenters also requested that enforcement be conducted by traditional vessels or new technologies to eliminate noise pollution that may impact marine life.

Commenters: Maggie MacMullen, Robert Pecoraro, Alisha Chauhan, Abdine Ouedraogo, Helen Raine, Miranda Scarola, Lily Monte, Matthew Murasko, Brandon Mindoro, Mariana Loaiza, Susan Kiskis, Djedi Alliance, Rainbow Warrior Collective, Tiare Kaʻōlelopono, Susan Olson, Pacific Whale Foundation, Deep Ocean Stewardship Initiative, Madison Young, Jamie Barlow, Roxane Keliʻikipikāneokolohaka, Isaac Harp, Northwestern Hawaiian Islands Hui, Puaʻāinahau Foundation, Hawaiʻi Wildlife Fund, Malu ʻAina, Life of the Land, Hālau Nā Mamo o Puʻuanahulu, Malama Makua

Response: With sanctuary designation, the NMSA provides various regulatory tools and authorities for the protection of sanctuary resources. This includes the authority to conduct enforcement activities; assess civil penalties for violations of sanctuary regulations or permits; impose liability for destruction, loss of, or injury to sanctuary resources and provide natural resource damage assessment authorities for destruction, loss of, or injury to any sanctuary resource; and issue emergency response regulations. In addition, consistent with the existing management of the Monument, the sanctuary implements regulations requiring vessel monitoring system units (VMS) for an owner or operator of a vessel that has been issued a permit, as well as a ship reporting system for vessels that pass without interruption through the reporting areas. Both regulatory tools are intended to increase monitoring, in order to assist enforcement activities by the U.S. Coast Guard and NOAA's Office of Law Enforcement and further the protection of sanctuary resources. Additionally, as described in the sanctuary management plan (final EIS, Appendix A), NOAA would continue to monitor ecosystems and seek out and develop new tools and technologies for resource protection and monitoring (Strategy 1.2, Strategy 2.2, Strategy 2.3); and to work with the existing interagency Law Enforcement Coordination Team to enhance communication and coordination among enforcement personnel in order to facilitate responses to incidents and uphold sanctuary regulations and policies (Strategy 1.9).

NOAA would continue to actively work and advocate inside the ecosystem protection framework established for the Monument, to minimize risks and damages to sanctuary resources. For example, ongoing research aims to identify derelict fishing gear and other marine debris through unique spectral signatures that can be visualized from space to record locations and provide that information back to partners for removal. This technology has the potential to greatly reduce the effort to locate these hazards so that they can be removed from the environment. Some broad risk assessment investigations have been conducted by the Monument co-trustees (e.g., Climate Change Vulnerability Assessment for the Papahānaumokuākea Marine National Monument (Wagner & Polhemus, 2016)[2]), however, much more remains to be done. Challenges include the vast geographic extent of ecosystems and seasonal access limitations. Conducting such assessments would require substantial time, as well as the participation of all Monument co-trustee agencies.

Regarding reducing noise pollution from vessels to minimize wildlife disturbances, uncrewed surface vehicle (USV) technology is constantly improving and NOAA is exploring

[2] Wagner, D. & Polhemus, D.A. 2016. Climate Change Vulnerability Assessment for the Papahānaumokuākea Marine National Monument. Marine Sanctuaries Conservation Series ONMS-16-03. U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Office of National Marine Sanctuaries, Silver Spring, MD. 99 pp.

ways to utilize sail drones and other vessel systems in order to maintain a physical presence in sanctuary waters without having to dedicate staffed assets. These uncrewed platforms can utilize satellites to transmit location, vessel identification, and photographic evidence back to law enforcement officials in order to expand the geographic capacity of their limited resources.

B.22 Comment: Commenters recommended harsh penalties for those who violate the regulations, including requests for permit violators to be banned from receiving future permits.

Commenters: Susan Olson, Mary Shanahan-Reitz, Cha Smith

Response: The NMSA authorizes NOAA to assess civil penalties for violations of provisions of the NMSA, including sanctuary regulations and permits. Each violation of the NMSA, any NMSA regulation, or any permit issued pursuant thereto, is subject to a civil penalty. Each day of a continuing violation constitutes a separate violation. The NMSA has a statutory maximum of $216,972 per violation, per the December 27, 2023 annual adjustment for inflation (see 88 Federal Register 89300).

Additionally, the NMSA regulations provide a list of findings, in addition to site-specific permit review criteria, which must be made before issuing a permit, such as whether the activity would be compatible with the primary objective of protection of sanctuary resources and qualities. The NMSA regulations also provide for the denial of a permit application based on various determinations, including that the applicant has acted in violation of the terms and conditions of a permit in a sanctuary in which the proposed activity is to take place, or has acted in violation of any sanctuary regulation, or for other good cause.

C. Native Hawaiian, Indigenous Rights, and Cultural Integration

C.1 Comment: Commenters expressed support of Native Hawaiian rights, including statements that access to the sanctuary should be allowed for Native Hawaiians to connect with ancestors and ʻāina and to perpetuate cultural practices based on pilina (relationships), kuleana (responsibilities), and genealogical connections to Papahānaumokuākea. This includes voyaging, which is vital for health, well-being, and in keeping Hawaiian culture and language alive. Commenters also stated that the allowance of Native Hawaiian traditional and customary practices should not be diminished or limited through sanctuary designation.

Commenters: Roxane Keliʻikipikāneokolohaka, Dan Haifley, Sydney Warren, Andrea Eshelman, Claire Iloprizi, Matthew Murasko, Tiare Kaʻōlelopono, Mark Giese, Alisha Chauhan, Pacific Whale Foundation, Shark Stewards, Aria, Roberta Hickey, Office of Hawaiian Affairs, Evan McDonnell, Evan Manini, Hoku Cody, Kalamaʻehu Takahashi, Hui o Kuapā, Kaipulaumakaniolono Baker, Lee Oliver, Maggie MacMullen, and anonymous commenter(s)

Response: NOAA recognizes the importance of Native Hawaiians' access to the proposed sanctuary. Consistent with the presidential proclamations designating PMNM and MEA, NOAA would allow for regulated access to the sanctuary. Access would continue through a

permit process. The sanctuary includes a permitting system modeled after the existing Monument permitting system, and was developed to allow for integration with the Monument permitting system, to ensure continued joint permitting administered by the MMB. The sanctuary has adopted the same permit criteria as currently required for the Monument, including for Native Hawaiian practices permits. See also the response to B.14.

The criteria for the Monument Native Hawaiian practices permit were developed following a workshop in 2004 facilitated by Kiaʻi Kai, a graduate program at the Kamakakūokalani Center for Hawaiian Studies at the University of Hawaiʻi at Mānoa, collecting input from Kānaka ʻŌiwi cultural practitioners, fishermen, and others to create criteria for culturally-appropriate activities in Papahānaumokuākea. For more than 20 years, the Papahānaumokuākea Native Hawaiian Cultural Working Group (CWG) has provided guidance and advice. The CWG is a group of Kānaka ʻŌiwi kūpuna (elders), researchers, cultural practitioners, educators, and community members that have deep connections and historical ties to Papahānaumokuākea through a living pilina (relationship), bound by genealogy, cultural protocols, and values building contemporary multi-disciplinary research and practice. Although the group is not a formalized advisory body, the CWG and many of its members have been involved for over two decades since the establishment of the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve in 2000, and provide an important Kānaka ʻŌiwi perspective that continues to inform Monument management. Since 2007, there have been 34 Native Hawaiian practices permits issued to perpetuate cultural practices ranging from traditional voyaging navigator apprenticeship and training, Hawaiian-led archaeological and cultural resource research, integrated cultural and scientific ecosystem monitoring, resource gathering including bird feathers/bones, and subsistence harvesting of fish, algae, and invertebrates. The growing number of Native Hawaiian permits submitted and issued provides significant support for and interest in conducting Hawaiian cultural practices, with at least eight ongoing cultural initiatives occurring on 27 separate expeditions.

C.2 Comment: Commenters stated the importance of involving Native Hawaiians and their perspectives in decision making, planning, and promulgation; building partnerships with Native Hawaiian practitioners; and integrating Hawaiian knowledge, values, and practices into management, including Mai Ka Pō Mai.

Commenters: Chelsea Tanimura, Doug Krause, Mahina Kapulani, Roxane Keliʻikipikāneokolohaka, Ashley Wong, Cindy Freitas, Dan Haifley, Sarah Brandt, Dallin Marsh; Naomi Himley, Karyn Bigelow, Kalamaʻehu Takahashi, Hoku Cody, Claire Iloprizi, Isaac Harp, Hui o Kuapā, Roberta Hickey, Maggie MacMullen, National Marine Sanctuary Foundation, Blue Nature Alliance, Blue Planet Strategies, Center for American Progress, Conservation International, Creation Justice Ministries, EarthEcho International, Environment America, Friends of the Earth, Friends of the Mariana Trench, Healthy Ocean Coalition, Hispanic Access Foundation, Inland Ocean Coalition, Maritime Museum of San Diego, National Aquarium, National Ocean Protection Coalition, National Parks Conservation Association, National Wildlife Federation, Northern Chumash Bear Clan, Ocean Defenders Alliance, Shark Team One, Shark Stewards, Sustainable Ocean Alliance, The Florida Aquarium, The Ocean Project, Turtle Island Restoration Network, Waitt

Foundation, Waitt Institute, Council for Native Hawaiian Advancement, American Civil Liberties Union of Hawai‘i, ‘Aha Pūnana Leo, Bishop Museum, Boys & Girls Club of Hawai‘i, Hawai‘i Land Trust, ‘Iolani Palace, Kanaeokana, Native Hawaiian Education Council, Papa Ola Lōkahi, Partners in Development Foundation, Pouhana O Nā Wāhine, Kaipulaumakaniolono Baker, Rainbow Warrior Collective, Djedi Alliance, Papahanaumokuākea Native Hawaiian Cultural Working Group, and anonymous commenter(s)

Response: Growing long-lasting partnerships with existing Kānaka ʻŌiwi community partners, including the CWG, is integral to the co-management of Papahānaumokuākea. This priority is highlighted in the proposed sanctuary management plan under the Kūkulu Hoʻoulu, one of the pillars of co-management, and is reflected overall in the framing of the plan. Additionally, NOAA has a dedicated Native Hawaiian Program Specialist position, which is a current NOAA position for the Monument, would continue after sanctuary designation to further support the building of these partnerships and the integration of Hawaiian knowledge, values, and practices into co-management, through the guidance provided in Mai Ka Pō Mai and in the sanctuary management plan.

C.3 Comment: Commenters expressed support for increases in Native Hawaiian representation on the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council (RAC). Commenters also recommended that Native Hawaiians comprise a majority of the council seats, and stated that the current RAC excludes Native Hawaiian perspectives.

Commenters: Roxane Keliʻikipikāneokolohaka, Evan Hamaoka

Response: Advisory councils are established, and seats are determined, to address the management needs of the individual sanctuary. Seven types of seats are common to most, if not all, advisory councils in the National Marine Sanctuary System: education, research, conservation, citizen-at-large, fishing (and, at some sites, seats specifically for commercial or recreational fishing), tourism, and business/industry. On the RAC, there are three Native Hawaiian representatives with two Native Hawaiian seats and one Native Hawaiian elder seat. Native Hawaiians are encouraged to apply to all seats on the RAC, including seats that represent other focal areas of management. Upon sanctuary designation, NOAA would revisit the existing charter for the RAC and discuss if revisions to the seat allocation for the advisory council are needed.

C.4 Comment: Commenters requested that ONMS and the State of Hawaiʻi (State) require staff to engage in ongoing professional development conducted by qualified and credible Native Hawaiians to build foundational understanding of kuanaʻike Hawaiʻi, a critical lens needed to properly care for our kūpuna islands.

Commenters: Roxane Keliʻikipikāneokolohaka

Response: NOAA and the State of Hawaiʻi agree that ongoing professional development for staff is essential to build foundational cultural understanding. Many NOAA staff participate in initiatives to facilitate cultural inreach through the Native Hawaiian program specialist position in PMNM.

At the State of Hawai‘i, this sentiment from stakeholders has been recognized for a long time and the State is currently in the process of building its capacity within the Division of Aquatic Resources (DAR). Just in the past few months, the State has made huge strides with the hiring of two new positions dedicated solely to review and development of, among other things, culturally relevant and accurate inreach and outreach activities and materials for DAR. The State is hopeful that this is the beginning of a cultural (re)awakening within DAR that would be a positive step forward towards bridging the cultural divide that has existed for far too long between DAR and Kānaka ʻŌiwi communities.

Additionally, the following strategies in the sanctuary management plan (final EIS Appendix A) would guide sanctuary management actions:

- Strategy 3.2. Culturally Integrated Management Approach, which calls for programs and initiatives to increase internal cultural capacity and proficiency;
- Strategy 1.5. Native Hawaiian Resource Protection and Conservation, emphasizing biocultural resource protection mechanisms and programs that weave in Native Hawaiian culture as a system of knowledge, values, and practices;
- Strategy 2.7. Native Hawaiian/Cultural Integration, which emphasizes employing multiple knowledge systems, values, and practices in science and research, and employing multi-disciplinary methods; and
- Strategy 5.4. Native Hawaiian Culture and Heritage Education, which calls for educational programs and initiatives that are based on Hawaiian cultural values, concepts, and traditional resource management stewardship.

C.5 Comment: Commenters expressed support for Hawaiian-focused research completed by and with Native Hawaiians and funding to support this initiative.

Commenters: Roxane Keli‘ikipikāneokolohaka

Response: NOAA works closely alongside the co-managing agencies on the Monument Management Board and would continue to discuss funding options to support research led by Kānaka ʻŌiwi (Native Hawaiians). As described in the sanctuary management plan (final EIS Appendix A), NOAA would work to prioritize Hawaiian-focused research through other practices, including facilitating Kānaka ʻŌiwi access and research, and supporting partnerships with academic institutions to build upon the opportunities for collaborative research, curriculum development, and mentoring. Specifically, strategies in the Kūkulu 1 Hoʻomana (Resource Protection); Kūkulu 2 Hōʻike (Research and Monitoring); and Kūkulu 4 Hoʻoulu (Partnerships and Constituent Engagement) speak to these priorities:

- Strategy 2.6, Native Hawaiian/Cultural Research Program, calls for supporting, facilitating, and conducting Kānaka ʻŌiwi access and research;
- Strategy 1.5, Native Hawaiian Resource Protection and Conservation, calls for biocultural resource protection mechanisms and programs that weave in Native Hawaiian culture as a system of knowledge, values, and practices;
- Strategy 2.7, Native Hawaiian/Cultural Integration, emphasizes employing multiple knowledge systems, values, and practices in science and research, and employing multi-disciplinary methods;

- Strategy 2.8, Native Hawaiian/Cultural Capacity Building, calls for the development and support of research initiatives that focus on next-generation capacity building for leadership succession of Kānaka ʻŌiwi and Pacific Islanders who are severely underrepresented in STEM fields and ocean sciences;
- Strategy 4.3, Academic Partnerships, emphasizes partnerships with academic institutions to build upon the opportunities for collaborative research, curriculum development, and mentoring; and
- Strategy 4.4, Native Hawaiian Partnerships, emphasizes internal and external processes to create diverse, inclusive, and equitable partnerships that enhance our ability to serve Native Hawaiian, underserved, and underrepresented communities.

C.6 Comment: A commenter requested the removal of the word "empower" as it relates to Native Hawaiians in the draft EIS. The commenter emphasized that the use of the term is out of sync with the standards set forth by the Biden Administration in terms of equity and justice.

Commenters: ʻAulani Wilhelm

Response: NOAA and the State of Hawaiʻi agree, and have made revisions to the following sections in the final EIS: 4.5.1 Native Hawaiian Cultural Resources and 4.6.2 Human Uses of the Monument.

C.7 Comment: A commenter expressed concern that the findings of the Cultural Impact Assessment *E Hoi I Ke Au A Kanaloa* were not integrated in the draft EIS and the Western Pacific Regional Fishery Management Council's (WPRFMC) draft fishing regulations.

Commenters: Narrissa Spies (Brown)

Response: Findings of the Cultural Impact Assessment *E Hoi I Ke Au A Kanaloa* relating to the sanctuary proposal were addressed in Section 2.3.2, and in Chapter 5, of the draft EIS. Additional details have been added to section 5.1.4 of the final EIS.

NOAA is preparing a separate proposed rule for regulations governing fishing in the MEA under the authority of the MSA. Therefore, development and analysis of non-commercial fishing regulations for the MEA is not part of this proposed action and was not analyzed in the draft or final EIS. NOAA and the State encourage commenters to participate in the future public review process for non-commercial fishing regulations in the MEA under the authority of the MSA and any associated NEPA and/or other environmental compliance documentation.

C.8 Comment: A commenter expressed concern that "Native Hawaiian" is not defined. The commenter recommended the following language and definition be adopted and integrated into the final EIS: Native Hawaiian is defined as "any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaiʻi." The commenter also recommended the incorporation of other self-identification names, including but not limited to Kānaka Maoli, Kānaka ʻŌiwi, and Indigenous Peoples or Indigenous Native Hawaiians.

Commenters: Office of Hawaiian Affairs

Response: In this final EIS, NOAA recognizes a definition for the term Native Hawaiian, as it is commonly defined, per existing federal law as any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawai‘i. See Section 1.2.4. Throughout the EIS, NOAA also uses Kānaka ʻŌiwi and/or Kānaka Maoli as terms that refer to Native Hawaiians.

D. Fishing Regulations and Fishery Management

Commercial Fishing

D.1 Comment: Commenters expressed opposition to any new fishing closures, citing reasons that included:

- Fishing becomes more difficult and expensive for fishermen, including the Hawai‘i longline fishery. The small boat fishing industry will slowly go away.
- No scientific evidence that large marine reserves provide conservation benefits to fish stocks.
- Fishing areas should be managed under Magnuson-Stevens Fishery Conservation and Management Act (MSA), and closures do not support MSA Standard 1: Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.
- Fishing closures do not meet the administration's mandate for equity and justice for underserved communities.
- Fishing closures affect food security and well-being of Native Hawaiians.
- Intergenerational transmission of fishing traditions will be impeded or lost.
- Native Hawaiians should be able to fish for food.
- Sanctuaries and fishing should be able to coexist.

Commenters: Nate Ilaoa, Vincent Silva, Tim Perez, Virjean Etelagi, Shyla Moon, Ray Tulafono, Roy Morioka, Craig Severance, Taulapapa William Sword, Kekoa Seward, Archie Soliai, Gil Kualii, Native Hawaiian Gathering Rights Association, Klayton Kubo, Abraham Albilado, and anonymous commenter(s)

Response: NOAA is not proposing any new fishing closures through sanctuary designation. The sanctuary regulations regarding commercial and non-commercial fishing are consistent with the existing Monument and its management of the area. The presidential proclamations establishing the Monument broadly restrict the harvest of fishery resources by prohibiting removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging any living or nonliving Monument resource, as well as attempts to do the same, except as may be allowed with a permit. Presidential Proclamations 8031 and 9478 further specify prohibitions on commercial fishing and the possession of commercial fishing gear. The presidential proclamations also identify certain types of non-commercial fishing that may be regulated (i.e., allowed pursuant to a permit or incidental to a permitted activity). Presidential Proclamation 8031, for example, authorizes sustenance fishing incidental to an activity permitted in PMNM. Presidential Proclamation 9478, for example, provides that non-commercial fishing is a regulated activity (i.e., allowed only with a permit) in the MEA.

In the sanctuary, NOAA is only proposing fishing regulations that are consistent with Presidential Proclamation 9478 and the existing management of the area. This includes prohibiting commercial fishing and regulating non-commercial fishing pursuant to a sanctuary permit or authorized under the MSA in the Outer Sanctuary Zone. The final rule provides the first set of implementing regulations consistent with directives in Presidential Proclamation 9478, Presidential Proclamation 9478, which has the force of law.

D.2 Comment: Commenters provided suggestions and recommendations that appropriately regulated and monitored commercial fishing, including longline fishing and trolling, should be allowed in the sanctuary, as well as the "small boat community." One commenter stated that regulated traditional small boat fisheries should have a place. One commenter also inquired whether opportunities/mechanisms for future re-evaluation and allowance of commercial fishing in the sanctuary exist. One commenter also stated that there should be fishing line limits to reduce overfishing.

Commenters: Vincent Silva, Michael Gawel, Native Hawaiian Gathering Rights Association, Jamie Barlow, Roy Morioka, Aitofi Lomu, and anonymous commenter(s)

Response: In the sanctuary, NOAA is only proposing fishing regulations that are consistent with existing applicable law in the Monument. Existing applicable law in the area of the proposed sanctuary prohibits commercial fishing. Presidential Proclamation 8031, and its implementing regulations at 50 CFR part 404, prohibits commercial fishing for bottomfish and associated pelagic species in the Monument after June 15, 2011. Presidential Proclamation 9478 also prohibits commercial fishing in the MEA. Therefore, any consideration of regulations allowing commercial fishing in the sanctuary would not alter existing fishing prohibitions in the area. See the response to D.1 for more detail.

D.3 Comment: Commenters expressed opposition to allowing commercial fishing in Papahānaumokuākea.

Commenters: Abdine Ouedraogo, Tammy Harp, Isaac Harp, National Parks Conservation Association, Birgit Winning, Helen Raine, Namele Naipo-Arsiga, Owen, Hugo, Miranda Scarola, Lily Monte, Mary Shanahan-Reitz, Cruz, Kai, Reign, Ty, ʻAulani Wilhelm, Native Hawaiian Cultural Working Group, William J. Aila Jr. and Melva N. Aila, Pacific Whale Foundation, Jim Kastner, Cha Smith, Isaac Harp, Stephanie Fried, Dave Raney, Mike Nakachi, Maggie MacMullen, Leah Kocher, and anonymous commenter(s)

Response: For consistency with existing regulations and the presidential proclamations establishing the Monument, NOAA is proposing a sanctuary-wide prohibition on commercial fishing. See also the responses to D.1 and D.2.

D.4 Comment: Commenters requested increased support for monitoring and enforcing fishing prohibitions, and requesting that international fishing vessels be prohibited.

Commenters: American Samoa Veterans, Clayton Ching, Maggie MacMullen

Response: Existing applicable law in the area of the proposed sanctuary prohibits commercial fishing. NOAA and the State agree that monitoring and enforcement of fishing prohibitions is critical to protecting sanctuary resources. NOAA's Office of Law Enforcement

and the U.S. Coast Guard support enforcement efforts across the National Marine Sanctuary System. To assist in this coordinated effort for Monument enforcement, ONMS facilitates a Monument Law Enforcement Coordination Team which is composed of law enforcement representatives from NOAA, USFWS, U.S. Coast Guard, and Hawai‘i Division of Conservation and Resource Enforcement. This group meets regularly to coordinate joint enforcement efforts in the Monument.

The designation of a national marine sanctuary provides the first set of implementing regulations for the directives in Presidential Proclamation 9478, including the prohibition on commercial fishing and regulation on non-commercial fishing. By establishing these new implementing regulations, NOAA would have new tools for enforcement, including the enforcement of fishing regulations. Sanctuary designation imparts a specific set of new benefits afforded by the NMSA, including the authorization to assess civil penalties for violations of the NMSA, including sanctuary regulations and permits.

Additionally, foreign fishing has remained prohibited in U.S. waters since the introduction of the Magnuson-Stevens Fishery Conservation and Management Act of 1976. This prohibition was enacted on February 28, 1977 and remains in effect today with limited exceptions related to international fishery agreements that predated the MSA. There are no such allowances for foreign fishing activities within the U.S. EEZ that surrounds Hawai‘i.

Regarding monitoring, see also the responses to B.21 and K.2.

Non-commercial Fishing

D.5 Comment: Commenters expressed opposition to allowing non-commercial fishing and to the exemption (for non-commercial fishing in the MEA) in the proposed sanctuary rule, based upon biological, cultural, or co-management considerations. Out of concern for the proposed exemption of non-commercial fishing permits, one commenter suggested that non-commercial fishing permits should only be rarely granted, and carry strict catch limits.

Commenters: Nicholas Anderson, Birgit Winning, Erica Elona, Helen Raine, Lily Monte, ‘Aulani Wilhelm, Northwestern Hawaiian Islands Hui, Pua‘āinahau Foundation Hawai‘i Wildlife Fund, Malu ‘Aina, Life of the Land, Hālau Nā Mamo o Pu‘uanahulu, Malama Makua, Narrissa Spies (Brown), Abdine Ouedraogo, Miranda Scarola, Chloe Berridge, Marine Mammal Commission, Jake Ruby, U.S. Fish and Wildlife Service, Papahanaumokuākea Native Hawaiian Cultural Working Group, and anonymous commenter(s)

Response: The presidential proclamations that established the Monument (8031 and 9478) served as benchmarks for drafting regulations for the proposed sanctuary. The presidential proclamations identify certain types of non-commercial fishing that may be regulated (i.e., allowed pursuant to a permit or incidental to a permitted activity). Presidential Proclamation 8031 authorizes sustenance fishing incidental to an activity permitted in PMNM. Presidential Proclamation 9478 provides that non-commercial fishing is a regulated activity (i.e., allowed only with a permit) in the MEA, provided that the fish harvested, either in whole or in part, cannot enter commerce through sale, barter, or trade, and that the resource is managed sustainably. In the sanctuary, NOAA is proposing, for

consistency with the proclamations, that "non-commercial fishing" be prohibited unless conducted pursuant to a sanctuary permit or through an exemption for non-commercial fishing authorized under the MSA in the Outer Sanctuary Zone (the area that overlaps with the MEA).

In response to comments of concern for this exemption, NOAA has made changes to the proposed exemption for non-commercial fishing to ensure that a non-commercial fishing permit authorized under the MSA is only exempt from a limited subset of prohibited or otherwise regulated activities, and that these exempted activities are only conducted as incidental to and necessary to a lawful non-commercial fishing activity. NOAA has also clarified that this narrow exemption from the sanctuary's permitting requirements is only applicable provided that the fish harvested, either in whole or in part, are neither intended to enter commerce nor enter commerce through sale, barter, or trade and that the resource is managed sustainably, consistent with Presidential Proclamation 9478. Moreover, for the exemption to apply, the fish harvested, either in whole or in part, must not be intended to be sold and shall not be sold for any purposes, including, but not limited to, cost-recovery. Corresponding changes have been made in the final EIS Section 3.3.1.

NOAA is preparing a separate proposed rule for regulations governing fishing in the MEA under the authority of the MSA, and will invite the public to provide comments on the proposed non-commercial fishing regulations for the MEA. NOAA and the State encourage commenters to participate in the future public review process for non-commercial fishing regulations in the MEA under the authority of the MSA, including on the issuance of permits and catch limits, as those are outside the scope of this action.

D.6 Comment: Some commenters stated that fishing should not be restricted for Native Hawaiians and Indigenous populations and/or cultural practices. One commenter emphasized that it is culturally important to be able to bring fish home to share with family.

Commenters: Mark Oyama, Clayton Ching, American Samoa Veterans, Archie Soliai, Joe Hamby, Ben Walin, Cruz, Council for Native Hawaiian Advancement, Office of Hawaiian Affairs, Walter Ritte, Maggie MacMullen

Response: Consistent with the existing management of the Monument and the proclamations that established the Monument, NOAA would continue to allow for regulated access to the sanctuary. Kānaka ʻŌiwi and Indigenous communities may apply for a permit to fish within the sanctuary. In the sanctuary, NOAA is proposing, for consistency with the proclamations that established the Monument, to prohibit "non-commercial fishing" unless conducted pursuant to a sanctuary permit or authorized under the MSA in the Outer Sanctuary Zone. See the response to D.5.

In the Outer Sanctuary Zone (MEA), the sanctuary regulations would not restrict the sharing of fish from non-commercial fishing activities authorized under the MSA.

D.7. Comment: A commenter requested that sustenance fishing be the only form of fishing allowed in the proposed sanctuary; and that there be a requirement that fish caught be consumed within the sanctuary, and not taken outside of the sanctuary. Others requested that sustenance fishing be allowed conditionally. Suggested conditions include by location; by permit

type, and by sustainability criteria: 1) the activity must be "pono;" 2) the activity must benefit the resources of the Northwestern Hawaiian Islands and the Native Hawaiian community; and 3) any resource harvested from the Monument must be consumed in the Monument. Finally, one commenter supported defining sustenance fishing as a Native Hawaiian practice.

Commenters: Pacific Whale Foundation, Papahānaumokuākea Native Hawaiian Cultural Working Group, William J. Aila Jr. and Melva N. Aila, Narrissa Spies (Brown), U.S. Fish and Wildlife Service, and anonymous commenter(s)

Response: Sustenance fishing is currently allowed incidental to an activity permitted in PMNM, pursuant to Presidential Proclamation 8031, and the implementing regulations at 50 CFR part 404. Sustenance fishing was not specifically identified in Presidential Proclamation 9478 governing the MEA, but is considered a form of non-commercial fishing which may be regulated. For consistency in management and permitting, NOAA proposes managing this activity as a term or condition of a general permit or special use permit for the proposed sanctuary, outside of any special preservation area. NOAA's sanctuary permit would follow the conditions of the existing Monument permitting system, including the considerations that sustenance fishing must be conducted only for the purpose of providing sustenance in support of activities otherwise allowed under an established permit and that the harvested resource must be consumed within the Monument.

In the Outer Sanctuary Zone, other types of non-commercial fishing may be allowed, consistent with the proper care and management of sanctuary resources and monument objects. Sanctuary designation would provide the first set of implementing regulations for many of the directives in Presidential Proclamation 9478, including the regulation of non-commercial fishing in the MEA. Presidential Proclamation 9478 stated that non-commercial fishing may be regulated "provided that the fish harvested, either in whole or in part, cannot enter commerce through sale, barter, or trade, and that the resource is managed sustainably." Consistent with this proclamation, some forms of non-commercial fishing beyond sustenance fishing may be allowed in the MEA/Outer Sanctuary Zone.

NOAA is preparing a separate proposed rule for regulations governing fishing in the MEA under the authority of the MSA, and will invite the public to provide comments on the proposed non-commercial fishing regulations for the MEA. NOAA and the State encourage commenters to participate during that process.

D.8 Comment: Some commenters suggested that only subsistence fishing be allowed in the proposed sanctuary.

Commenters: Robin Girard, Epenesa Jennings, Maggie MacMullen

Response: In State of Hawai‘i waters, extending three miles seaward of any coastline (excluding Midway Atoll), Native Hawaiian subsistence fishing, as defined by the State of Hawai‘i, may be allowed. NOAA acknowledges that the Monument's managing agencies define sustenance and/or subsistence fishing in different ways. Regardless, in PMNM, all fish caught shall be consumed within the Monument. Within the sanctuary, sustenance fishing would continue to be allowed (outside of the special preservation areas) to provide sustenance in support of activities otherwise allowed under an established permit.

D.9 Comment: Commenters asked why regulations have not been issued for the MEA to manage non-commercial fishing.

Commenters: Roger McManus, Lois Schiffer and Dinah Bear

Response: President Obama issued Presidential Proclamation 9478 on August 31, 2016, which established the MEA. On September 23, 2016, NOAA Fisheries requested that the Western Pacific Regional Fishery Management Council (WPRFMC) develop recommendations to establish fishing regulations under the MSA, including the prohibition on commercial fishing and the regulation of non-commercial fishing within the MEA. However, no further action was taken by the WPRFMC in response to Presidential Proclamation 9478 at that time. NOAA cannot speculate as to why WPRFMC decided not to take action at that time.

NOAA is preparing a separate proposed rule for regulations governing fishing in the MEA under the authority of the MSA to reflect the outcome of the WPRFMC recommendation and the NMSA Section 304(a)(5) process. Appendix C provides further details of this consultation process.

D.10 Comment: Commenters expressed concern regarding the exemption of non-commercial fishing in the MEA, and that the issuance of non-commercial fishing permits will open the door to other types of fishing in Papahānaumokuākea. Commenters also expressed concern that a sanctuary designation would remove existing protections that prohibit various forms of fishing. One commenter recommended removing the exemption of non-commercial fishing to allow for more dialogue with the Native Hawaiian community.

Commenters: Birgit Winning, Kanoe Semas, Mary Shanahan-Reitz, Cha Smith, Narrissa Spies (Brown), 'Aulani Wilhelm, Roberta Hickey, Kaipulaumakaniolono Baker, Isaac Harp, Dave Raney, Marine Mammal Commission, and anonymous commenter(s)

Response: See the responses to D.5 and F.4. Sanctuary designation does not remove any existing protections that prohibit fishing. For consistency with the presidential proclamations establishing the Monument and the regulations at 50 CFR part 404, the sanctuary regulations would authorize limited forms of fishing.

D.11 Comment: Commenters expressed support for allowing recreational fishing, to sustain the community and to allow for cultural and traditional practices. One commenter recommended that recreational fishing be monitored and regulated; that recreational fishers be required to attend courses to receive permits; and that NOAA and the State of Hawai‘i update methods of data collection for recreational fishing. Another commenter suggested imposing fees for recreational fishing. Other commenters requested that NOAA implement measures to prevent recreational fishers from targeting “trophy” fish, and to limit fishing in general, to stem overfishing.

Commenters: Madison Young, Audrey Toves, Riku

Response: In the sanctuary, NOAA is proposing, for consistency with the proclamations, that “non-commercial fishing” be prohibited unless conducted pursuant to a sanctuary permit or, as discussed below, through an exemption for non-commercial fishing authorized

under the MSA in the Outer Sanctuary Zone. The proposed rule adopts the definition of "non-commercial fishing" from the regulations for fisheries in the Western Pacific, which is defined as "fishing that does not meet the definition of commercial fishing in the Magnuson–Stevens Fishery Conservation and Management Act, and includes, but is not limited to, sustenance, subsistence, traditional indigenous, and recreational fishing" (50 CFR 665.12). NOAA would periodically evaluate the effect of non-commercial fishing activities on sanctuary resources. Such evaluations would take into consideration the best scientific information available and evaluate whether additional actions are necessary for the proper care and management of sanctuary resources, including fishery resources, consistent with goals and objectives of the sanctuary.

Any requirements for non-commercial fishing permits authorized by NOAA Fisheries under the MSA are outside the scope of this action. NOAA is preparing a separate proposed rule for regulations governing fishing in the MEA under the authority of the MSA, and will invite the public to provide comments on the proposed non-commercial fishing regulations. NOAA and the State encourage commenters to provide input during the public review process for non-commercial fishing in the MEA.

D.12 Comment: A commenter expressed opposition to issuance of permits for recreational fishing in the MEA.

Commenters: ʻAulani Wilhelm, Cha Smith

Response: Please see the response to D.11. As required by Section 304(a)(5) of the NMSA, NOAA consulted with the WPRFMC to recommend any draft fishing regulations it deemed necessary to implement the sanctuary designation. The WPRFMC determined it was necessary to develop non-commercial fishing regulations, including for recreational fishing, for the area of the proposed sanctuary that overlaps with the MEA.

Western Pacific Regional Fishery Management Council Recommended Regulations

D.13 Comment: Commenters expressed support for non-commercial fishing in the MEA proposed by WPRFMC, including allowing sale and/or cost recovery.

Commenters: Jesse Rosario, Craig Severance, Joe Hamby, Gil Kualii, Native Hawaiian Gathering Rights Association, and anonymous commenter(s)

Response: In accordance with Section 304(a)(5) of the NMSA, NOAA provided the WPRFMC with the opportunity to recommend any draft fishing regulations it deemed necessary to implement the proposed sanctuary designation. NOAA accepted the majority of the WPRFMC's recommendation, including those parts that were found to fulfill the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary designation. However, the WPRFMC's recommendation providing Native Hawaiian subsistence practices fishing permit applicants the ability to request limited cost recovery by selling their catch failed to fulfill the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary designation (see NOAA Response Letter dated on May 31, 2023, in the final EIS Appendix C.1). NOAA is preparing a separate proposed rule under

the MSA to reflect the outcome of the NMSA Section 304(a)(5) consultation process. Appendix C to the final EIS provides further details on this consultation process.

D.14 Comment: Commenters expressed opposition to the annual catch limits proposed by WPRFMC. Several comments expressed concern that it does not align with Native Hawaiian cultural or subsistence practices. One commenter suggested additional involvement from the Native Hawaiian community and the Office of Hawaiian Affairs (OHA) on this matter.

Commenters: Isaac Harp, Tammy Harp, Roxane Keliʻikipikāneokolohaka, Leimomi Fisher, Naiʻa Ulumaimalu Lewis, Pelikaokamanaoio Andrade, William Quinlan, Mina Elison, Linda Elliott, Jill Williams, Lydia Garvey, Calley O'Neill, Megan Dalton, Markus Faigle, Les Welsh, Papahānaumokuākea Native Hawaiian Cultural Working Group, William J. Aila Jr. and Melva N. Aila, Ryze, Christine, Ty, Leah Kocher, Kaipulaumakaniolono Baker, Hui o Kuapā, Narrissa Spies (Brown), Carol Wilcox, Christine, Mike Nakachi, Jim Kastner, Marine Mammal Commission

Response: Any requirements and conditions for non-commercial fishing permits authorized by the MSA are outside the scope of this action. NOAA is preparing a separate proposed rule for regulations governing fishing in the MEA under the authority of the MSA, and will invite the public to provide comments on the proposed non-commercial fishing regulations, including the catch limits. NOAA and the State encourage commenters to participate in the future public review process for non-commercial fishing in the MEA.

D.15 Comment: Commenters expressed opposition to any sale, barter, or trade and the cost recovery mechanism proposed by WPRFMC. Comments also expressed concern regarding WPRFMC's definition of "customary exchange" and that it does not align with Native Hawaiian cultural or subsistence practices.

Commenters: Nai'a Ulumaimalu Lewis, Roxane Keliʻikipikāneokolohaka, Carol Wilcox, Leimomi Fisher, Pelikaokamanaoio Andrade, William Quinlan, Mina Elison, Linda Elliott, Jill Williams, Lydia Garvey, Calley O'Neill, Megan Dalton, Markus Faigle, Glenn Metzler, Les Welsh, ʻAulani Wilhelm, Papahānaumokuākea Native Hawaiian Cultural Working Group, William J. Aila Jr. and Melva N. Aila, Leah Kocher, Hui o Kuapā, Marine Mammal Commission, Tucker, Hawaii Fishing and Boating Association, Expand Papahānaumokuākea Coalition, Isaac Harp, Kaipulaumakaniolono Baker, Marine Mammal Commission, Narrissa Spies (Brown)

Response: NOAA agrees with some aspects of this comment. See the response to D.13 for information on NOAA's consideration of the WPRFMC's recommended fishing regulations, and the response to D.5 for details of the exemption for non-commercial fishing. NOAA has narrowed this exemption, making it only applicable provided that the fish harvested, either in whole or in part, are neither intended to enter commerce nor enter commerce through sale, barter, or trade and that the resource is managed sustainably, consistent with Presidential Proclamation 9478. Moreover, for the exemption to apply, the fish harvested, either in whole or in part, are not intended to be sold and shall not be sold for any purposes, including, but not limited to, cost-recovery. See the final EIS, Section 3.3.1. The WPRFMC's final recommendation (April 23, 2023) did not include a definition of "customary exchange,"

and NOAA ONMS has not included a definition of customary exchange in the proposed sanctuary regulations.

D.16 Comment: Commenters requested that NOAA reject the proposed non-commercial fishing regulations by NOAA Fisheries and WPRFMC.

Commenters: William J. Aila Jr. and Melva N. Aila, Marine Mammal Commission, Kaipulaumakaniolono Baker, Mike Nakachi, Expand Papahānaumokuākea Coalition, Hawai'i Fishing & Boating Association, Rick Gaffney, Shark Stewards, and anonymous commenter(s)

Response: NOAA accepted the majority of the WPRFMC's recommendation as it was found to fulfill the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary designation. However, NOAA did reject a portion of the WPRFMC's recommendation that would have allowed sale of catch under a Native Hawaiian subsistence fishing practices permit, as it was not found to fulfill the goals and objectives of the sanctuary designation. See the response to D.13, as well as Appendix C to the final EIS, for further details of this consultation process.

D.17 Comment: Commenters expressed concern for a portion of the WPRFMC's recommendation on "research fishing," and definition that would include "research fishing" as a form of non-commercial fishing.

Commenters: Papahānaumokuākea Native Hawaiian Cultural Working Group, Stephanie Fried

Response: NOAA is preparing a separate proposed rule for regulations governing fishing in the MEA under the authority of the MSA, based on the WPRFMC's recommendations. NOAA and the State encourage commenters to provide additional input, including on research fishing, to the future public review process for non-commercial fishing regulations in the MEA.

D.18 Comment: A commenter expressed concern that while resources in the Monument are a co-management trust responsibility, the proposed fishing regulations for the MEA have been developed without adequate inclusion of the perspectives of the Monument co-managers.

Commenters: U.S. Fish and Wildlife Service, Narrissa (Spies) Brown, Kaipulaumakaniolono Baker

Response: NMSA Section 304(a)(5) required NOAA to consult with the WPRFMC to recommend any draft fishing regulations it deemed necessary to implement the sanctuary designation. The State of Hawai'i maintains voting seats, and the USFWS maintains non-voting seats on the WPRFMC. The WPRFMC determined it was necessary to develop non-commercial fishing regulations under the MSA, for the area of the proposed sanctuary that overlaps with the MEA. In accordance with the Section 304(a)(5) process, NOAA accepted those parts of the WPRFMC's recommendation that fulfilled the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary designation, and rejected those parts that did not. Under the MSA's rulemaking process, the WPRFMC will transmit

its recommendation to NOAA Fisheries, who will then prepare a proposed rule for non-commercial fishing regulations in the MEA under the MSA.

Analysis of Fishing Effects

D.19 Comment: Commenters expressed concern regarding the separation of the NOAA Fisheries fishing regulations from the sanctuary designation process, which lacks transparency and thorough analysis of potential impacts. Commenters also requested an additional EIS and a public review of the proposed fishing regulations for the MEA. Commenters expressed concern that the proposed fishing regulations were developed in an improper sequence and there was no timeline included. Commenters also stated that impacts of WPRFMC's proposed non-commercial fishing regulations should have been analyzed within the draft EIS.

Commenters: William Quinlan, Mina Elison, Linda Elliot, Jill Williams, Lydia Garvey, Calley O'Neill, Megan Dalton, Papahanaumokuākea Native Hawaiian Cultural Working Group, Pew Charitable Trust, Lois Schiffer and Dinah Bear, Hui o Kuapā, Hawaii Fishing & Boating Association, Expand Papahānaumokuākea Coalition, ʻAulani Wilhelm, Marine Mammal Commission, William Quinlan, Kaipulaumakaniolono Baker, Narrissa Spies (Brown), Office of Hawaiian Affairs, U.S. Fish and Wildlife Service

Response: NOAA acknowledges the confusion regarding the timeline of proposed fishing regulations for the MEA. NOAA Fisheries is responsible for fisheries management under the MSA and is preparing a separate proposed rule for regulations governing fishing in the MEA under the authority of the MSA. NOAA Fisheries will analyze the environmental impacts of the non-commercial fishing regulations in the MEA under the authority of the MSA in a manner consistent with NEPA. NOAA has made revisions in sections 1.4 and 3.7.2 of the final EIS to clarify this. NOAA and the State encourage commenters to participate in the future public review process for non-commercial fishing regulations in the MEA under the authority of the MSA.

D.20 Comment: Commenters expressed concern regarding the lack of review and analysis of the socioeconomic effects of commercial fishing closures to fisheries, as well as underserved and underrepresented communities. Some commenters requested that the EIS analyze cumulative impacts related to prohibitions on fishing, specifically commercial fishing, and specifically mentioned the effects of the Monument expansion in 2016, the Pacific Remote Islands monument expansion in 2014, the foreseeable future impacts of the proposal to further expand the fishing closures in the Pacific Remote Islands area via a sanctuary designation, and reasonably foreseeable future impacts of high seas fishing closures under the auspices of the United Nations Agreement on the Conservation and Sustainable Use of Marine Biodiversity of Areas beyond National Jurisdiction (2023). One commenter expressed that the draft EIS makes the assumption that the national monument designation is permanent and thus the proposed sanctuary regulations are only modest additional restrictions, and therefore fails to recognize that any national monument and associated regulations can be eliminated via an executive action.

Commenters: Hawaii Longline Association, Western Pacific Regional Fishery Management Council, Klayton Kubo

Response: In the sanctuary, NOAA is not proposing any new commercial fishing closures. The sanctuary regulations regarding commercial fishing are consistent with the existing Monument and its management of the area. The effects of commercial fishing regulations in the proposed sanctuary are not considered in the final EIS. Commercial fishing has been prohibited in the PMNM since June 15, 2011, in accordance with Presidential Proclamation 8031 and regulations at 50 CFR § 404.10(b)(3). Commercial fishing is prohibited in the MEA in accordance with Presidential Proclamation 9478. These existing restrictions on fishing would not be changed under any of the alternatives, including the No Action Alternative. See Section 1.4 of the final EIS. For the purposes of the analysis, the primary focus is on the impacts caused by the differences between the action alternatives compared to existing management under the No Action Alternative.

Regarding comments requesting that the EIS analyze the cumulative impacts related to prohibitions on commercial fishing, NOAA notes that the temporal scope of the cumulative analysis is from five years prior to the publication of the draft EIS to 10 years after designation. The two prior instances mentioned by the commenter in 2014 and 2016 are outside of this temporal scope. The future instances mentioned by the commenter are outside the geographic scope of the cumulative effects analysis, which were defined as the boundaries of the proposed sanctuary under each action alternative.

NOAA disagrees with the comment suggesting that certain assumptions were or should have been made about the status of Monument designation. The No Action Alternative, consistent with NEPA, describes the baseline or current level of management in the area against which the proposed action and its alternatives may be compared. Likewise, the NEPA analysis compares the impacts of the proposed action and alternatives with the current and expected impacts for the existing management of the area. Changes to the status of a Monument's designation, through executive action, is not within the scope of that analysis.

D.21 Comment: A commenter requested that the final EIS include a discussion on the potential abuse of the non-commercial fishing exemption.

Commenters: Nicolas Anderson

Response: Both NOAA and the State disagree that this analysis is required within the final EIS. NOAA's analysis of the environmental consequences of the alternatives is based on changes to the human environment that are reasonably foreseeable, including direct, indirect, and cumulative effects. The type of discussion identified by the commenter is speculative and outside the scope of this analysis. Please note that in the event of a violation of a provision of the NMSA, or a regulation or permit issued pursuant to the NMSA, NOAA is authorized under the NMSA to assess civil penalties.

D.22 Comment: Commenters requested that ONMS periodically evaluate the effects of fishing activities on sanctuary resources in the portion of Middle Bank currently open to fishing (similarly to how ONMS proposed conducting evaluations of fishing effects in the Outer Sanctuary Zone).

Commenters: Linda Paul, Donald Schug, Neal Langerman, William Walsh, Mark Hixon, Robin Baird, Rick Hoo, Thorne Abbott, Doug Fetterly

Response: Although NOAA conducts regular assessments of the condition and trends of national marine sanctuary resources (i.e., condition reports, or, in the case of PMNM, the State of the Monument report), this portion of Middle Bank is outside the boundaries of the Monument and proposed sanctuary. See also the responses to K.14 for information about condition reports and J.22 for information on managing fishing at Middle Bank.

Other Fishing Comments

D.23 Comment: A commenter recommended that any activity relating to the extraction of fish be led by Native Hawaiians.

Commenters: Papahānaumokuākea Native Hawaiian Cultural Working Group

Response: The permitting system and regulations for the sanctuary is modeled after the existing Monument regulations and permitting system. The permitting system would not supplant the joint permitting system for the Monument, and was developed to ensure a continued joint permitting system administered by the MMB. While the presidential proclamations establishing the Monument broadly restrict the harvest of fishery resources, and identify certain types of non-commercial fishing that may be regulated (i.e., allowed pursuant to a permit or incidental to a permitted activity), there are no restrictions as to who may apply for a permit. Sanctuary designation would not change this.

D.24 Comment: Commenters expressed opposition to allowing any form of fishing in the proposed sanctuary. Some associated comments stated opposition to the removal of any wildlife from the proposed sanctuary.

Commenters: Tammy Harp, Valerie Weiss, Erica Elona, Abdine Ouedraogo, Miranda Scarola, Isaac Harp, Matthew Murasko, Brandon Mindoro, Mariana Loaiza, Susan Kiskis, Djedi Alliance, Tiare Kaʻōlelopono, Rainbow Warrior Collective, Alisha Chauhan, Susan Olson, Aloe, Tucker, Jim Kastner, and anonymous commenter(s)

Response: See the response to D.1. The presidential proclamations establishing the Monument broadly restrict the harvest of fishery resources and further specify prohibitions on commercial fishing and identify certain types of non-commercial fishing that may be regulated in the sanctuary, NOAA is only proposing fishing regulations that are consistent with the proclamations and existing management of the area.

D.25 Comment: A commenter requested that, in the event of a natural disaster occurring with severe impacts to the food supply of Hawaiʻi, the proposed sanctuary should allow for sustenance fishing and sharing of fish with community.

Commenters: Roy Morioka

Response: NOAA cannot speculate about how the NMSA and other authorities may or may not be used in the future scenario described by the commenter. However, in the Outer Sanctuary Zone (MEA), the sanctuary regulations would not restrict the sharing of fish from non-commercial fishing activities authorized under the MSA.

D.26 Comment: A commenter emphasized that new sanctuary regulations should be limited to those relating to the seafloor and islands within the MEA, and/or that the Magnuson Stevens Fishery Conservation and Management Act (MSA) should be used for the management of fisheries in all U.S. waters.

Commenters: Joe Hamby, Taulapapa William Sword

Response: NOAA may regulate fishing under the MSA and the NMSA. See also the response to D.9. While NOAA may regulate fishing under NMSA, and has proposed some fishing regulations for this sanctuary consistent with the existing management of the area, per section 304(a)(5) of the NMSA, NOAA also provided the WPRFMC with the opportunity to recommend any draft fishing regulations it deemed necessary to implement the proposed sanctuary designation. NOAA is preparing a separate proposed rule for regulations governing fishing in the MEA under the authority of the MSA to reflect the outcome of the NMSA section 304(a)(5) process.

D.27 Comment: A commenter expressed opposition to any prohibitions that may affect existing community-based subsistence fishery areas, and requested that NOAA incorporate language that explicitly includes community- and cultural-based subsistence-based fishing practices as part of protected Native Hawaiian customs and practices.

Commenters: Office of Hawaiian Affairs

Response: Community-based subsistence fishery areas are locally based, legally designated areas in the Main Hawaiian Islands where communities and the state government work together to protect and support traditional Hawaiian fishing practices. To date, there have been no community-based subsistence fishery areas established within Papahānaumokuākea. Since these areas are typically initiated at the local level by communities seeking enhanced protection of their nearshore resources, the future establishment of a community-based subsistence fishery area within Papahānaumokuākea is unlikely. As such, a discussion of such areas is beyond the scope of this action. For a description of how culturally-based subsistence fishing practices are addressed within the sanctuary proposal, please see the response to D.8.

E. Co-Management and Interagency Cooperation

E.1 Comment: Commenters asked how a proposed sanctuary would modify the existing co-management structure for the Monument. Commenters requested articulation of roles of OHA, USFWS, and the State of Hawai‘i, specifically who has jurisdiction in which areas, as well as requested that the EIS provide a detailed governance framework and a dispute resolution process for the proposed sanctuary.

Commenters also stated that the draft EIS and/or draft sanctuary management plan did not clearly articulate how the sanctuary would function in coordination with the existing Monument, nor articulate how the Monument co-trustee’s authorities could be used to supplement and complement NOAA authorities. One commenter suggested that NOAA provide a graphic depicting the relationship of the proposed sanctuary with existing Monument management. Finally, some commenters questioned if there are deficiencies in the existing

Monument management framework, while one commenter stated that the proposed sanctuary rule has led to confusion over the legitimacy of the Monument co-management framework.

Commenters: Meyer Cummins, Roger McManus, Mary Shanahan-Reitz, Tammy Harp, Namele Naipo-Arsiga, U.S. Fish and Wildlife Service, Friends Of Midway Atoll National Wildlife Refuge, Western Pacific Regional Fishery Management Council, Lois Schiffer and Dinah Bear, Office of Hawaiian Affairs

Response: The existing Monument is jointly administered by the four co-trustees (Department of Commerce, Department of the Interior, State of Hawai‘i, and OHA) through the seven-member Monument Management Board (MMB). ONMS and NOAA Fisheries collaborate to fulfill DOC's co-trustee responsibilities under the Monument, and ONMS serves on the seven-member MMB. A graphic of the existing management structure is described in the final EIS Section 3.2. Sanctuary designation would not change the existing management structure, and ONMS' role within the management framework would remain, with the added authority provided by the NMSA. Additional information has been added to the sanctuary management plan in sections 1 (About This Document) and 2 (Cooperative and Coordinated Management) and Acknowledgements to clarify this. NOAA has also made revisions to the description of the No Action Alternative in Section 3.2 of the final EIS to better articulate the existing roles of each Monument co-trustee, including their jurisdiction and authorities that guide their role in managing the Monument. Existing authorities, including management authorities of all Monument co-trustees, would remain in effect under all action alternatives.

As a result of the existing Monument management framework, of which ONMS is a critical part, the final rule and sanctuary management plan have been specifically designed to be consistent with the current management framework, and to allow for seamless operations between the Monument and proposed sanctuary. The proposed sanctuary would supplement and complement existing management of the Monument, and it would not replace or diminish the existing management of the Monument. In accordance with the NMSA, in designating a sanctuary, NOAA determines if existing authorities should be supplemented to ensure coordinated and comprehensive conservation and management of the area.

NOAA has provided additional details clarifying consistency with the management framework in Section 3.3.1 of the final EIS. Specifically, NOAA would work in cooperation with the Monument co-trustees to update the existing memorandum of agreement (MOA) for the Monument with the State of Hawai‘i, Department of the Interior/USFWS, and OHA to reflect the addition of the sanctuary. Further, the existing Monument MOA includes a provision that states that "in the event of the designation of the Monument or any portion of the Monument as a National Marine Sanctuary under the National Marine Sanctuaries Act, nothing herein shall be construed as automatically terminating or otherwise amending this Agreement."

E.2 Comment: Commenters expressed concerns regarding the exclusion of some of the Monument co-trustee agencies from co-management of the sanctuary. Commenters requested that NOAA co-manage the sanctuary with all of the Monument co-trustees (DOI, OHA, and the State of Hawai‘i), and that NOAA should receive approval from and/or collaborate with the

other co-trustees regarding decision making for the sanctuary. Commenters also requested that a MOA be developed to articulate the governance framework for the sanctuary, and any co-management agreement.

Commenters: Tammy Harp, Papahānaumokuākea Native Hawaiian Cultural Working Group, Aulani Wilhelm, Lois Schiffer and Dinah Bear, Narrissa Spies (Brown), Office of Hawaiian Affairs, Isaac Harp, Stephanie Fried, Jim Kastner, Alisha Chauhan, Meyer Cummins, U.S. Fish and Wildlife Service

Response: NOAA has clarified in the final rule and the final EIS (see final EIS Section 3.3.1, final rule Section IV.D, and sanctuary management plan Section 2) how the sanctuary would be managed in partnership with USFWS and OHA. In the proposed rule, NOAA proposed that the sanctuary would be co-managed with the State of Hawai'i. Recognition of the State of Hawai'i as a co-manager was not meant to exclude the other Monument co-trustees, USFWS and OHA. To the contrary, partnerships with other federal and state agencies with overlapping jurisdiction are critical to the success of the National Marine Sanctuary System. In the proposed regulations, NOAA was trying to explain the specific role that states may have in co-managing a sanctuary under the NMSA if all or part of the proposed sanctuary is within the territorial limits of any state. In the final regulations and management plan, NOAA has added new text regarding how NOAA would manage the sanctuary in partnership with the other Monument co-trustees, DOI/USFWS and OHA, as the existing co-management structure of Papahānaumokuākea Marine National Monument is critical to the success of the sanctuary.

NOAA intends to, in cooperation with the Monument co-trustees, update the existing MOA for the Monument between the State of Hawai'i, Department of the Interior/USFWS, and OHA to reflect the addition of the sanctuary. NOAA is developing an MOU with the USFWS to provide details on using supplemental authority under the NMSA to protect resources where the sanctuary would overlap with national wildlife refuges. Finally, the draft sanctuary management plan was developed in consultation with the State, USFWS, and OHA to explicitly ensure concurrence of plans between the proposed sanctuary and the Monument. Additional language has been added to the sanctuary management plan (Appendix A) to better reflect the goal of cooperative management with the Monument co-trustees.

E.3 Comment: Commenters requested that the final EIS should include a clear description of the permitting system for the proposed sanctuary and how it would relate to the existing Monument permitting system, including how sanctuary permits would be reviewed, approved, and conditioned. Commenters expressed that NOAA should not have sole authority over permitting for activities in the area of the sanctuary and Monument; that only one permitting system should apply to the area; that permits should be approved by all Monument co-trustees; and that the Monument permit process should be amended to include sanctuary permitting.

One commenter expressed concern regarding the proposed special use permit, which allows for fee collection for permit processing. The commenter questioned how this would work alongside the Monument permit process, and asked if NOAA would keep fees internally, or divide fees received equitably amongst Monument co-managers.

Commenters: Friends of Midway Atoll National Wildlife Refuge, U.S. Fish and Wildlife Service, Naia Ulumaimalu Lewis, Papahānaumokuākea Native Hawaiian Cultural Working Group, Aulani Wilhelm, Lois Schiffer and Dinah Bear, Narrissa Spies (Brown), U.S. Fish and Wildlife Service, Ann Bell, Kaipulaumakaniolono Baker

Response: The Monument's joint permitting system has been in place and permits have been issued by the co-trustees since 2007. The unified Monument permitting process includes a unified Monument permit application, instructions, and template (see final EIS Section 3.2). All permitted activities in PMNM are authorized under the issuance of a single Monument permit signed by the USFWS, NOAA, and the State of Hawai'i, in cooperation with the Office of Hawaiian Affairs. The sanctuary permitting system would complement the existing Monument permitting system, and was developed to allow for integration with the Monument permitting system, to ensure continued joint permitting administered by the MMB, which includes ONMS. The proposed permitting system would not supplant the joint permitting system for PMNM. The proposed sanctuary permit categories were designed to provide the same management function and permittee interface as the current Monument permit categories. The sanctuary would adopt the same permit criteria as currently required for Monument permits, including the additional criteria for Native Hawaiian practices and recreation permits. To provide more clarity, NOAA has updated its description of the proposed sanctuary permitting process in the final EIS, Section 3.3.1.

Regulations to issue permits in the MEA have not yet been established. Until a formal permitting process is developed, activities in the MEA have been approved via a Letter of Authorization signed by USFWS. The co-trustees agreed to implement this USFWS process as an interim measure. Sanctuary designation would provide the first set of implementing regulations consistent with directives in Presidential Proclamation 9478, including regulations for permitting, in addition to governing the sanctuary.

Regarding special use permits, NOAA intends for any issuance of special use permits to be done so in coordination with the existing permit process. NOAA points out that while the Monument is jointly administered, some areas are also guided by other specific authorities. For example, USFWS has the authority to charge fees for services including public visitation (50 CFR Part 25 Subpart E) in areas of the Monument that also fall within a national wildlife refuge. If a sanctuary is designated, NOAA's authority to collect fees for special use permits would provide Monument managers with a larger area, beyond the national wildlife refuges, for which permit fees may be collected for specific activities. In accordance with the NMSA, NOAA may recover administrative costs for staff time to review and take action on the permit, and for a fair market value for use of the sanctuary.

While this authority may be used, the collection of fees is not required. Further, NOAA is not proposing any new category of activity subject to a special use permit as part of this designation, and due to the existing regulations for the Monument and the proposed sanctuary, the issuance of special use permits is expected to be limited.

E.4 Comment: Commenters expressed concern regarding the proposed process for permitting non-commercial fishing in the MEA. Commenters specifically stated that any fishing permits should also require a consistency review by the Monument co-managers. Some commenters

suggested that non-commercial fishing in the MEA should be part of a single permitting process for the sanctuary and/or Monument, and not done through a separate process, noting that any permits that authorize resource extraction should be reviewed by the MMB.

Commenters: Papahānaumokuākea Native Hawaiian Cultural Working Group, Narrissa Spies (Brown), ʻAulani Wilhelm, Kaipulaumakaniolono Baker, U.S. Fish and Wildlife Service

Response: NOAA's ONMS does not propose to issue non-commercial fishing permits as part of the sanctuary regulations. NOAA only proposes to allow sustenance fishing as a term or condition of a permit, consistent with existing management of the Monument. In response to a recommendation for fishing regulations in the MEA by the WPRFMC, NOAA Fisheries is preparing a separate proposed rule for regulations governing fishing in the MEA under the authority of the MSA, will complete the environmental compliance requirements, and will accept public comment on the proposal. NOAA and the State of Hawai‘i encourage the commenter to review and participate in the future public review process for the proposed rule and any associated NEPA and/or other environmental compliance documentation for non-commercial fishing regulations in the MEA.

E.5 Comment: Commenters expressed concern regarding potential conflicts between the proposed sanctuary permitting process and permitting authorized by the USFWS for the Midway Atoll and Hawaiian Islands National Wildlife Refuges. One commenter stated that the USFWS has an existing process to review and issue permits to regulate use of the national wildlife refuges for research, education, management, and recreation. A commenter suggested the development of a MOU among USFWS, NOAA, and the State of Hawai‘i to clarify the permit process, which should include provisions for dispute resolution and for emergency situations when actions are necessary to protect human health and safety on Midway Atoll.

Commenters also expressed concern regarding the permitting of activities in the MEA, including questioning why NOAA does not recognize DOI's authority to issue permits in the MEA, and requested that any new permitting in the MEA should be done following agreement with the MMB. Finally, one commenter questioned if the USFWS would need to acquire permits from NOAA for management activities in the national wildlife refuge waters.

Commenters: Friends of Midway Atoll National Wildlife Refuge, Narrissa Spies (Brown), U.S. Fish and Wildlife Service

Response: NOAA has added additional clarification in the final rule and the final EIS (see Section 3.3.1 and Section IV.D in the preamble of the final rule) regarding how the sanctuary would be managed in partnership with other agencies. In addition to co-management with the State, NOAA would manage the sanctuary in partnership with the USFWS and OHA consistent with the management of the Monument. NOAA would work in cooperation with Monument co-trustees to update the memorandum of agreement for the Monument with the State of Hawai‘i, DOI/USFWS, and OHA that reflects the addition of the sanctuary, and specifically addresses how the addition of a sanctuary would supplement and complement, and not supplant, the existing Monument management framework. NOAA and USFWS are developing an agreement to provide details on the execution of sanctuary management where the national marine sanctuary overlaps with Midway Atoll National Wildlife Refuge

and Hawaiian Islands National Wildlife Refuge, and will consider if provisions are needed for dispute resolution and for emergency situations when actions are necessary to protect human health and safety on Midway Atoll.

Management of the MEA is governed by Presidential Proclamation 9478. Regulations to issue permits in the MEA have not yet been established. Until a formal permitting process is developed, activities in the MEA have been approved via a Letter of Authorization signed by USFWS. The co-trustees agreed to implement this USFWS process as an interim measure. Sanctuary designation would provide the first set of implementing regulations, including regulations for permitting, in the MEA.

E.6 Comment: Commenters requested that NOAA co-manage the sanctuary specifically with the USFWS, and/or that NOAA consult with USFWS for decision making and environmental analysis in the proposed sanctuary. Some commenters also requested that NOAA recognize the authority of the USFWS, that NOAA not supersede the authority of the USFWS, and that NOAA acknowledge that the USFWS has sole authority for certain decisions in the national wildlife refuges. Some commenters expressed concern that the proposed sanctuary would give NOAA and the State of Hawai‘i precedence over USFWS management of refuge waters.

One commenter recommended that a MOA be developed and signed by the Secretaries of Interior and Commerce, and that a 3rd party neutral facilitator be selected to oversee implementation of the MOA. The commenter specified that the MOA should be reviewed and updated, as needed, every five years.

Commenters: Friends of Midway Atoll National Wildlife Refuge, U.S. Fish and Wildlife Service, ‘Aulani Wilhelm, Cha Smith, Ann Bell

Response: NOAA would manage the sanctuary in partnership with the USFWS. Nothing in the establishment of the national marine sanctuary would diminish USFWS’ authority to administer Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge under the National Wildlife Refuge System Administration Act. Where Papahānaumokuākea National Marine Sanctuary overlays Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge, NOAA would implement the National Marine Sanctuaries Act to provide supplemental authority to protect resources.

In other sanctuary sites when there is jurisdictional overlap between NOAA and USFWS, the agencies have worked to implement their respective authorities in a manner that complements, but does not diminish or interfere with, existing authorities and strengthens existing protections and management. NOAA and USFWS are developing an agreement to provide details on the execution of sanctuary management where the national marine sanctuary overlaps with Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge. Any agreement developed between NOAA and the USFWS would be updated as needed, as determined by the agencies.

E.7 Comment: Commenters requested that NOAA co-manage the sanctuary specifically with the OHA. Commenters emphasized that excluding OHA would be akin to suppressing Native Hawaiian voices and/or usurping the sovereignty of OHA. Commenters requested that NOAA consider temporarily halting sanctuary designation until federal law allows for explicit co-

management structures that include native governing bodies as equal decision-makers, and requested that NOAA work with OHA and the Native Hawaiian community to achieve the ability for Indigenous governing bodies to be eligible to be named as co-managers for marine sanctuaries under the NMSA. One commenter also pointed out that for National Marine Sanctuary of American Samoa, the American Samoa Department of Commerce has been designated as a co-manager to assist NOAA with the administration of the sanctuary, and therefore, OHA should be able to serve as a co-manager of the proposed sanctuary.

Commenters: Chloe Berridge, Council for Native Hawaiian Advancement, Papahānaumokuākea Native Hawaiian Cultural Working Group, ʻAulani Wilhelm, Ashley Wong, The Pew Charitable Trust, Narrissa Spies (Brown), William J. Aila Jr. and Melva N. Aila, Office of Hawaiian Affairs, Isaac Harp, Ryan King, and anonymous commenter(s)

Response: NOAA would manage the sanctuary in partnership with OHA, consistent with the management of the Monument. The existing co-management structure of the Monument and cooperation with OHA would be critical to the success of the sanctuary. NOAA would work in cooperation with Monument co-trustee to update the Memorandum of Agreement for Promoting Coordinated Management of Papahānaumokuākea Marine National Monument with the State of Hawaiʻi, Department of the Interior/USFWS, and OHA that reflects the addition of the proposed sanctuary, and specifically addresses how the addition of a sanctuary would supplement and complement, and not supplant, the existing Monument management framework. Under Monument management, OHA has primary responsibility for representing the interests of the Kānaka ʻŌiwi community in the perpetuation of Hawaiian cultural resources and practices. Sanctuary designation would not change this, and NOAA intends to consult with OHA on all matters related to the perpetuation of Hawaiian cultural resources and practices.

Pursuant to the NMSA, a "state" as defined under the act, may have a role in co-managing a sanctuary if all or part of the proposed sanctuary is within the territorial limits of any state. For this reason, NOAA has proposed to co-manage the sanctuary with the State of Hawaiʻi. In addition, pursuant to the NMSA, the "state" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States. As the NMSA also defines "state" to include American Samoa, they may be a co-manager of National Marine Sanctuary of American Samoa, and the American Samoa Department of Commerce acts as the lead territorial agency.

E.8 Comment: Commenters requested that NOAA co-manage the sanctuary with Native Hawaiians, noting that it is critical for Native Hawaiians to be present, participatory, and empowered in all decision-making aspects regarding Papahānaumokuākea. Commenters requested that Native Hawaiians should direct and oversee plans for the sanctuary, and that NOAA should defer to opinions of Native Hawaiian groups and agencies. Some commenters suggested that management with Native Hawaiians go beyond co-management with OHA.

Commenters: Sarah Brandt, Maribel Ybanez, Council for Native Hawaiian Advancement, American Civil Liberties Union of Hawaiʻi, ʻAha Pūnana Leo, Bishop Museum, Boys & Girls

Club of Hawai‘i, Hawai‘i Land Trust, ʻIolani Palace, Kanaeokana, Native Hawaiian Education Council, Papa Ola Lōkahi, Partners in Development Foundation, Pouhana O Nā Wāhine, Alisha Chauhan, Roxane Keli‘ikipikāneokolohaka, Ryan King, Ashley Wong, Cindy Freitas, Naomi Himley, and anonymous commenter(s)

Response: See the response to E.7, regarding how NOAA would manage the sanctuary in partnership with OHA, but NOAA also agrees that there are opportunities for co-stewardship with the Kānaka ʻŌiwi community beyond OHA. NOAA agrees that it is important to have Kānaka ʻŌiwi expertise in management, including in leadership roles and that growing long-lasting partnerships with existing Kānaka ʻŌiwi community partners is integral to management of the proposed sanctuary (see the responses to C.2 and K.1).

NOAA has a responsibility to, and takes opportunities to work through equitable partnerships with all Indigenous Peoples. The Imila-alpa Commitments demonstrate ONMS' dedication to strengthening partnerships with Indigenous governments, organizations, and communities and ensuring that ONMS' intentions align with its actions. The commitments also state that ONMS will work to implement White House and NOAA guidance on integrating Indigenous knowledge into processes and approaches.

E.9 Comment: Commenters suggested or requested that the Native Hawaiian Cultural Working Group (CWG) be granted authority in reviewing and approving permits to access Papahānaumokuākea and/or be granted authority to vet the permit applications. Some commenters suggested that the Native Hawaiian Cultural Working Group should be included as a fifth co-trustee of the Monument.

Commenters: Roxane Keli‘ikipikāneokolohaka, Native Hawaiian Cultural Working Group, William J. Aila Jr. and Melva N. Aila, Isaac Harp

Response: For more than 20 years, the CWG, which advises OHA as a co-trustee of the Monument, has provided guidance and an important Native Hawaiian perspective to inform Monument management. The CWG is a group of Kānaka ʻŌiwi kūpuna (elders), researchers, cultural practitioners, educators, and community members that have deep connections and historical ties to Papahānaumokuākea through a living pilina (relationship) bound by genealogy, cultural protocols, and values building contemporary multi-disciplinary research and practice. The CWG and many of its members have been involved since ONMS created the CWG following the establishment of the Northwest Hawaiian Islands Coral Reef Ecosystem Reserve in 2000. The CWG has a permit subcommittee that reviews Monument permits and provides input to OHA, a Monument co-trustee who also sits on the Monument permit working group. The sanctuary permitting system would complement the existing Monument permitting system, and was developed to allow for integration with the Monument permitting system, to ensure continued joint permitting administered by the MMB. Therefore, NOAA intends for the CWG to continue to provide advice and guidance on permitting for Papahānaumokuākea.

Consideration of the CWG as a co-trustee of the Monument is outside the scope of the proposed action to designate a national marine sanctuary, because a sanctuary designation would not alter the underlying Monument management structure.

E.10 Comment: Commenters expressed concerns regarding NOAA being the primary manager of the proposed sanctuary, and questioned what role the State of Hawai‘i had in developing the proposed sanctuary. One commenter requested that there be a checks and balance system with the State of Hawai‘i and Native Hawaiian groups when reviewing the objectives, actions, regulations, exceptions, permits, and penalties.

Commenters: Meyer Cummins, Ryan King

Response: The NMSA provides authority for NOAA, among other things, to designate a sanctuary and promulgate regulations implementing the designation. Pursuant to the NMSA, states may choose to have a role in co-managing a sanctuary if all or part of the proposed sanctuary is within the territorial limits of any state. As the sanctuary includes state waters, NOAA would co-manage the proposed sanctuary with the State of Hawai‘i. NOAA establishes the framework for co-management in Section 922.242 of the proposed rule and may update existing agreements or develop additional agreements with the State of Hawai‘i to clarify the terms of co-management. Any future proposed changes to sanctuary regulations or boundaries would be coordinated with the State and subject to public review as mandated by the NMSA and other federal statutes.

The State of Hawai‘i is also in support of the sanctuary proposal. While NOAA was the lead federal agency in the preparation of the EIS, the State of Hawai‘i served as a cooperating agency and co-developed the draft EIS and final EIS, which was also developed in accordance with the Hawai‘i Environmental Policy Act (HEPA, Chapter 343 HRS, HAR Chapter 11-200.1). The State of Hawai‘i also co-developed the sanctuary management plan.

F. Exemptions

F.1 Comment: Some commenters opposed the exemption for “scientific exploration or research activities by or for the Secretary of Commerce or the Secretary of the Interior when the activity occurs in the Outer Sanctuary Zone." Commenters stated that the exemption may provide a loophole to permit large-scale take/extraction of resources. Commenters felt that the Department of Commerce and the Department of the Interior should still be required to obtain sanctuary permits.

Commenters: Robin Girard, Isaac Harp, Jim Kastner, Northwestern Hawaiian Islands Hui, Pua‘āinahau Foundation, Hawai'i Wildlife Fund, Malu ‘Aina, Life of the Land, Hālau Nā Mamo o Pu‘uanahulu, Malama Makua, Maka‘ala Ka‘aumoana, Jim Kastner, Stephanie Fried

Response: Presidential Proclamation 9478, which designated the MEA, specifically states that the prohibitions “shall not restrict scientific exploration or research activities by or for the Secretaries and nothing in this proclamation shall be construed to require a permit or other authorization from the other Secretary for their respective scientific activities.” Presidential Proclamation 9478 further highlights the significant scientific value of the MEA and underscores the opportunities for research and discovery to occur in that area, including understanding the impacts of climate change on deep-sea communities and identifying new species. NOAA is exempting scientific exploration or research activities from the sanctuary’s prohibitions and permitting requirements for both the Department of Commerce and the

Department of Interior within the Outer Sanctuary Zone, to be consistent with Presidential Proclamation 9478. However, such activities must still comply with other federal environmental laws such as the NEPA, the Endangered Species Act, the NMSA section 304(d), and the Marine Mammal Protection Act.

F.2 Comment: Commenters requested that Hawaiian-focused research conducted by Hawaiians be prioritized by providing an exemption for these activities.

Commenters: Roxane Keliʻikipikāneokolohaka

Response: The sanctuary permitting system and the exemptions were modeled after the existing Monument permitting system. The proposed permitting system would not supplant the existing permitting system for the Monument and was developed to ensure a continued joint permitting system administered by the MMB. Therefore, rather than introducing a new exemption, NOAA and the State would work to prioritize Hawaiian-focused research through other practices, as described in the draft sanctuary management plan (final EIS Appendix A), including:

- supporting and facilitating Kānaka ʻŌiwi (Native Hawaiian) access and research (Strategy 2.6);
- weaving together multiple knowledge systems, values, practices, and methods, in science and research (Strategy 2.7); and
- supporting research initiatives that focus on next-generation capacity building for leadership succession of Kānaka ʻŌiwi (Native Hawaiian) and Pacific Islanders who are severely underrepresented in STEM and ocean sciences (Strategy 2.8).

F.3 Comment: Some commenters opposed the exemption for the activities and exercises of the U.S. Armed Forces, noting specific concern for military sonar activity.

Commenters: Namele Naipo-Arsiga, Alisha Chauhan, Zahz Hewelen, Susan Olson, Council for Native Hawaiian Advancement, Nā Iwi Kūpuna, Office of Hawaiian Affairs, Claire Iloprizi

Response: The proposed sanctuary regulations and both Presidential Proclamations 8031 and 9478 include a broad exemption to allow activities and exercises of the U.S. Armed Forces, including those carried out by the U.S. Coast Guard. The proposed sanctuary regulations specify that all activities and exercises of the Armed Forces shall be carried out in a manner that avoids, to the extent practicable and consistent with operational requirements, adverse impacts on sanctuary resources and qualities. For any federal agency actions, including actions of the Armed Forces that are likely to destroy, cause the loss of, or injure sanctuary resources, the Armed Forces must comply with the consultation requirements outlined in Section 304(d) of the NMSA, regardless of whether those actions are exempted from the proposed sanctuary's regulations.

F.4 Comment: Commenters expressed opposition to the exemption for non-commercial fishing activities authorized under the MSA. Commenters stated that non-commercial fishing permit holders should not have exemptions to conduct the otherwise prohibited and regulated activities of the sanctuary and that any non-commercial fishing activities should still require a

separate sanctuary permit. One commenter stated that ONMS should promulgate regulations under the National Marine Sanctuaries Act as a backstop and not rely solely on the Magnuson-Stevens Fishery Conservation and Management Act application. Commenters stated that the exemption for non-commercial fishing is counter to Mai Ka Pō Mai. Commenters also requested that NOAA gather more input from the Native Hawaiian community, including the OHA and the Native Hawaiian Cultural Working Group on this topic.

Commenters: Nicolas Anderson, Narrissa Spies (Brown), Council for Native Hawaiian Advancement, Marine Mammal Commission, Shark Stewards, and anonymous commenter(s)

Response: As required by Section 304(a)(5) of the NMSA, NOAA provided the WPRFMC with the opportunity to recommend any draft fishing regulations it deemed necessary to implement the proposed sanctuary designation. NOAA participated in six public meetings hosted by the WPRFMC on November 1st, 3rd, 4th, 5th, 8th, and 10th of 2022, which were focused on the development of fishing regulations for the area of the proposed sanctuary that overlaps with the MEA. In December 2022, the WPRFMC provided a recommendation for non-commercial fishing regulations for the area of the proposed sanctuary that overlaps with the MEA. NOAA accepted the majority of the WPRFMC's recommendations, as it was found to fulfill the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary designation. However, the WPRFMC's recommendation to provide Native Hawaiian subsistence practices fishing permit applicants the ability to request limited cost recovery by selling their catch in the permit application process through a statement of need for cost recovery along with expected costs, failed to fulfill the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary designation. Additionally, NOAA found that the allowance of "sale" under a Native Hawaiian subsistence practices fishing permit is inconsistent with the State's constitutional protection of Native Hawaiian traditional and customary rights.

Accordingly, the sanctuary regulations proposed that prohibitions in paragraphs (a)(7) through (14) in Section 922.244 would not apply to non-commercial fishing activities in the Outer Sanctuary Zone authorized under the MSA, provided that no sale of harvested fish occurs. In response to comments of concern for this exemption, NOAA has made changes to ensure that a non-commercial fishing permit authorized under the MSA is only exempt from a limited subset of prohibited or otherwise regulated activities that may only be conducted as incidental to and necessary to a lawful non-commercial fishing activity. NOAA has also clarified that this narrow exemption from the sanctuary's permitting requirements is only applicable provided that the fish harvested, either in whole or in part, are neither intended to enter commerce nor enter commerce through sale, barter, or trade and that the resource is managed sustainably, consistent with Presidential Proclamation 9478. Moreover, consistent with the outcome of the NMSA Section 304(a)(5) process, for the exemption to apply, the fish harvested, either in whole or in part, are not intended to be sold and shall not be sold for any purposes, including, but not limited to, cost-recovery. See the final EIS, Section 3.3.1.

NOAA is preparing a separate proposed rule for regulations governing fishing in the MEA under the authority of the MSA, and will accept public comment on the proposal. NOAA and the State of Hawai‘i encourage the commenter to participate in the future public review process for the proposed rule and any associated NEPA and/or other environmental compliance documentation for non-commercial fishing regulations in the MEA. Until a public process is conducted, and a final rule is issued for fishing regulations under the authority of the MSA, non-commercial fishing permits would not be issued for the MEA/Outer Sanctuary Zone. Consistent with existing Monument management, the sanctuary may authorize sustenance fishing outside of any special preservation area as a term or condition of any sanctuary permit.

F.5 Comment: Commenters requested a prohibition on mining, and/or stating opposition to mining activities, or any exemption allowing them.

Commenters: Abdine Ouedraogo, Helen Raine, Miranda Scarola, Lily Monte, Matthew Murasko, Mariana Loaiza, Susan Kiskis, Tiare Ka‘ōlelopono, Alisha Chauhan, National Parks Conservation Association, Brandon Mindoro, Djedi Alliance, Rainbow Warrior Collective, Michael Gawel

Response: Consistent with the presidential proclamations establishing the Monument, NOAA would prohibit exploring for, developing, or producing oil, gas, or minerals to protect sanctuary resources. NOAA would also prohibit “any energy development activities” to further the underlying intent of the prohibition on oil, gas, and mineral development by accounting for technological advances in other forms of energy development. Likewise, NOAA is not providing an exemption for mining activities.

F.6 Comment: A commenter stated that scientific or management activities undertaken by the USFWS within the Monument are not subject to any additional sanctuary requirements or authorization from NOAA.

Commenters: U.S. Fish and Wildlife Service

Response: Nothing in the establishment of the national marine sanctuary would diminish USFWS’ authority to administer Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge under the National Wildlife Refuge System Administration Act. Where Papahānaumokuākea National Marine Sanctuary overlays Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge, NOAA would implement the National Marine Sanctuaries Act to provide supplemental authority to protect resources. In other sanctuary sites when there is jurisdictional overlap between NOAA and USFWS, the agencies have worked to implement their respective authorities in a manner that would complement, but does not diminish or interfere with, existing authorities and would strengthen existing protections and management. NOAA and USFWS are developing an agreement to provide details on the execution of sanctuary management where the national marine sanctuary overlaps with Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge.

The sanctuary permitting system was modeled after the existing Monument permitting system to ensure a single joint permitting system continues to be administered by the MMB.

NOAA has not proposed a separate or additional permit process. In addition, NOAA has not proposed to include authorization authority for the sanctuary. Consistent with Presidential Proclamation 9478, the proposed sanctuary regulations would exempt both the Department of Commerce/NOAA and the Department of the Interior/USFWS from the prohibitions, including the need to obtain a permit or authorization from the Secretary of Commerce in order to conduct scientific exploration or research activities in the MEA. NOAA has clarified the proposed framework for management and permitting in partnership with USFWS and the other Monument managers in the final EIS, Section 3.3.1.

G. Consultations and Community Participation in Sanctuary Designation

G.1 Comment: Some commenters requested an extension of the public comment period and/or additional virtual public meetings. Some commenters expressed concern that there was not adequate public education, engagement, and notification for the public comment period and meetings; that the methods for comment were not accessible for all and/or not an adequate way to gauge support or opposition; and that all communities, specifically the fishing community, were not properly engaged in the comment period. One commenter expressed concern that the public meetings did not allow for agency responses or answers to oral testimony and requested that the NOAA webpage provide responses to frequently asked questions from the public meetings.

Commenters: Lori Buchanen, Nani Kawaa, Alisha Chauhan, Narrissa Spies (Brown), Roberta Hickey, Kaleo Cravalho, Isaac Harp, Molly Lutcavage, David Cabrera, Jerome Ierome, Samuel Meleisea, Nalani Minton, Luwella Leonardi, Kaipulaumakaniolono Baker, and anonymous commenter(s)

Response: Both NOAA and the State disagree. NOAA followed the designation processes and procedures as required pursuant to the NMSA and NEPA, both of which require broad public participation, as well as the Administrative Procedure Act's notice requirements. The public comment period took place over the course of 68 days from March 1 to May 7, 2024. NOAA accepted public comments through the federal eRulemaking Portal and by traditional mail. NOAA also encouraged public comments in both English and ʻŌlelo Hawaiʻi (Hawaiian language). NOAA and the State held 11 public comment meetings (nine in-person and two virtual). Additionally, prior to the public comment meetings, the State of Hawaiʻi Division of Aquatic Resources held a virtual public informational meeting to engage the public. NOAA and the State of Hawaiʻi provided question and answer sessions at the in-person public meetings, prior to and following the formal oral comment portion of the meeting.

NOAA also posted sanctuary designation process information and FAQs on the ONMS website in response to questions received during public meetings. NOAA believes that it has fairly engaged with and considered input from local communities, Kānaka ʻŌiwi, government, and other stakeholders through extensive consultations, meetings, and discussions about sanctuary designation, and that draft designation documents and process steps have complied with applicable laws and policies, including the NMSA, NEPA, Administrative Procedure Act, and Section 106 of the National Historic Preservation Act. For

more details regarding the public engagement process, see the final EIS, sections 1.3.1 and 1.3.2.

NOAA also specifically engaged with the fishing community and consulted with the WPRFMC as required by Section 304(a)(5) of the NMSA. Through this consultation, NOAA provided the WPRFMC with the opportunity to recommend any draft fishing regulations it deemed necessary to implement the proposed sanctuary designation. NOAA and the State of Hawai‘i also participated in six public meetings hosted by the Council on November 1st, 3rd, 4th, 5th, 8th, and 10th of 2022, which were focused on the development of fishing regulations for the area of the proposed sanctuary that overlaps with the MEA.

G.2 Comment: A commenter expressed concern that the State of Hawai‘i did not fulfill its requirements for publishing and responding to the EIS Preparation Notice (EISPN) and public scoping comments. Specifically:

- According to Hawaii Administrative Rules (HAR), 11-200.1-23(c): Written comments and responses to substantive comments in response to an EISPN shall be included in the draft EIS.
- Per HAR 11-200.1-24(s)(1), the draft EIS shall include “reproductions of all written comments submitted during the consultation period required in section 11-200.1-23.” The draft EIS does not provide reproductions or copies. Rather, comments are “recreated” without original letterheads or formatting.
- According to HAR 11-200.1-24(s)(6), the draft EIS shall include “a representative sample of the consultation request letter.” There is no representative sample consultation letter within the draft EIS.

Commenters: Office of Hawaiian Affairs

Response: The State and federal scoping processes, including comment-gathering, were combined. The State’s EISPN was developed based upon the federal Notice of Intent, and the comments were collected via the web-based regulations.gov system and through a series of joint virtual scoping meetings. NOAA and the State of Hawai‘i provided both the text of written comments and responses to substantive comments in response to the State’s EISPN in Appendix F for the draft EIS and the final EIS. NOAA and the State of Hawai‘i recognize that the commenter has requested to see exact copies of mailed letters or emailed attachments received in response to the State’s EISPN. NOAA and the State of Hawai‘i have updated Appendix F in the final EIS to include exact copies of these comments.

The State of Hawai‘i consulted with parties listed in Appendix H via memoranda and other means, and did not issue a formal consultation request letter, therefore a representative copy of a letter is not included in the draft or final EIS. The State of Hawai‘i also widely distributed public notifications and other information through multiple channels (flyer, web resources, social media) during scoping, to solicit public participation. A joint State-NOAA distribution list for the draft EIS is included within the draft EIS and the final EIS as Appendix I.

G.3 Comment: Some commenters expressed concerns and confusion regarding who served as a cooperating agency for this action, and the role of the cooperating agencies for the

development of the draft EIS, including the opportunities and sequencing for engagement, input, and review from the cooperating agencies in advance of public release.

Commenters: Office of Hawaiian Affairs, Narrissa Spies (Brown), 'Aulani Wilhelm, Lois Schiffer and Dinah Bear

Response: Cooperating agencies for the draft EIS included the USFWS, the State of Hawai‘i, and the Department of the Navy. See the “About this Document” section of the final EIS. NOAA also extended an invitation for the OHA to serve as a cooperating agency in advance of preparation of the draft EIS. OHA did not accept that invitation. However, as a co-trustee of the Monument, OHA was still provided with opportunities to engage and provide input on the sanctuary proposal in advance of the release of the draft EIS, as NOAA developed the sanctuary proposal in coordination with the MMB. In June 2024, NOAA extended another invitation to OHA to serve as a cooperating agency for the preparation of the final EIS. OHA accepted that invitation and is now listed as a cooperating agency in the final EIS (“About this Document”).

In extending cooperating agency invitations, NOAA delineated lead and cooperating agency roles and responsibilities. Cooperating agency responsibilities included: participating in the NEPA process and development of the draft EIS; providing comments on draft sections of the draft EIS and final EIS; and preparing or contributing to any portions of the NEPA analysis relevant to the agency’s special expertise, authorities, jurisdiction by law, or management oversight. Throughout the NEPA process, cooperating agencies predominantly provided background information and considerations for the environmental analysis, reviewed and provided comments on the draft documents, and met with ONMS staff to discuss the sanctuary proposal. Regarding comments that questioned why more cooperating agency staff were not listed as document preparers, Appendix J reflects the roles of the lead federal agency and the state agency, who were primarily responsible for preparing an EIS that meets the requirements of both NEPA and HEPA (42 U.S.C. 4336a; 40 CFR § 1502.18).

H. Purpose and Need for Sanctuary Designation

H.1 Comment: Commenters emphasized that Chapter 2 of the draft EIS, “Purpose and Need for Action” (1) does not provide a compelling argument that a sanctuary is needed to supplement and complement existing authorities; (2) does not provide a legally sufficient justification for designating a national marine sanctuary; and (3) does not address the purpose and need for action in the presentation of the alternatives. Some commenters stated that the proposal lacked goals and objectives, and the proposal did not articulate what is lacking from current Monument management.

Commenters: Klayton Kubo, Roger McManus, Linda Paul, Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council, Donald Schug, Neal Langerman, William Walsh, Mark Hixon, Robin Baird, Rick Hoo, Thorne Abbott, Doug Fetterly, Alisha Chauhan, and anonymous commenter(s)

Response: Both NOAA and the State disagree with the premise of this comment, and have concluded that the draft designation documents, including the EIS, are legally sufficient. In

Chapter 2, NOAA briefly specified the underlying purpose and need for the proposed action in accordance with NEPA (42 U.S.C. § 4336a(d)). NOAA also documented the anticipated beneficial impacts of the proposed sanctuary in Chapter 5 of the EIS. NOAA has determined that the sanctuary would effectively manage and conserve nationally-significant biological, physical, and cultural resources, among others, consistent with NOAA's mandate under the NMSA. In particular, Chapter 1 and Chapter 4 of the EIS describe the national significance of the resources in the sanctuary area. NOAA's documentation of the affected environment demonstrates the presence of and importance of conserving nationally-significant resources throughout the Agency-Preferred Alternative boundary.

NOAA, consistent with NEPA, also considered how the proposed action and its alternatives meet the purpose and need. NOAA believes that the Agency-Preferred Alternative in the draft EIS, and the Final Agency-Preferred Alternative in the final EIS, best meets the purpose and need for the proposed sanctuary. Specifically, the final EIS provides sufficient detail on how sanctuary designation would provide additional regulatory and non-regulatory tools to supplement and complement existing management of the area, in comparison to other alternatives. The benefits provided by designation also support the State's fulfillment of its legal duties to protect and conserve natural resources outlined in Chapter 2 of the EIS.

H.2 Comment: A commenter recommended that, in describing the purposes and policies of the NMSA, and specifically, 16 U.S.C 1431 (b)(4), NOAA should define "sustainable use" as "to provide enhanced protections for pristine marine waters," and prohibit use of the waters or marine ecosystems.

Commenters: Alisha Chauhan

Response: The NMSA authorizes the Secretary of Commerce to designate national marine sanctuaries that meet the purposes and policies of the NMSA, including 16 U.S.C. 1431(b)(4), which focuses, in part, on the sustainable use of the marine environment. The proposed sanctuary regulations build upon the existing protections for the Northwestern Hawaiian Islands, which provide for both restricted access to the area and responsible use subject to strict permitting terms and conditions. Given this management model, NOAA does not see a need for the proposed sanctuary regulations to define "sustainable use" at this time.

I. Boundaries

I.1 Comment: Some commenters recommended that NOAA select Alternative 3, a boundary which excludes the waters of Midway Atoll and Hawaiian Islands National Wildlife Refuges. Commenters provided several reasons for supporting Alternative 3, including that the USFWS should have sole jurisdiction to manage the national wildlife refuges; that a sanctuary that overlaps with the national wildlife refuges would be inconsistent with presidential proclamations that created the Monument; that a sanctuary that overlaps with the national wildlife refuges would not comply with the National Wildlife Refuge System Administration Act; and that a sanctuary that overlaps with the national wildlife refuges may negatively impact the USFWS management of the national wildlife refuges.

Commenters: Don Palawski, U.S. Fish and Wildlife Service

Response: NOAA identified Alternative 1 (which would include the waters of Midway Atoll and Hawaiian Islands National Wildlife Refuges in the proposed sanctuary) as the Agency-Preferred Alternative based on its comparative merits. Nothing in the establishment of the national marine sanctuary would diminish USFWS' authority to administer Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge under the National Wildlife Refuge System Administration Act. Where Papahānaumokuākea National Marine Sanctuary overlays Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge, NOAA would implement the National Marine Sanctuaries Act to provide supplemental authority to protect resources. NOAA and USFWS are developing an agreement to provide details on the execution of sanctuary management where the national marine sanctuary overlaps with Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge.

In addition, the existing Monument is already jointly administered through a seven-member Monument Management Board, which includes NOAA's ONMS. ONMS and the USFWS have been cooperatively managing the area of the proposed sanctuary for nearly 20 years. As a result of the existing Monument management framework, of which ONMS is a critical part, this sanctuary rule has been specifically designed not to create any regulatory inconsistencies, and to ensure consistent management between the Monument, the national wildlife refuges, and the sanctuary.

Further, both NOAA and the State disagree that the designation would be inconsistent with the directives that established the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve and the Monument. In part, the purpose of the designation is to specifically implement the provisions of Executive Order 13178, Presidential Proclamation 9478, and the Joint Explanatory Statement accompanying the Consolidated Appropriations Act, 2021, that directed NOAA to consider initiating the sanctuary designation process.

I.2 Comment: Commenters expressed opposition to any sanctuary that would include additional portions of Middle Bank, beyond the areas that are included in the Monument.

Commenters: Abraham Albilado, Klayton Kubo, Gil Kualii, Isaac Harp, Hoku Cody, Lori Buchanen

Response: NOAA considered designating a sanctuary that expanded beyond the southeastern portion of the Monument boundary to include Middle Bank. However, NOAA eliminated this alternative from detailed study, as described in the draft and final EIS, Section 3.7.

I.3 Comment: Commenters requested that NOAA consider including most or all of Middle Bank in the proposed sanctuary boundary, because of the scientific, ecological, and commercial benefits of the area. Commenters also requested that NOAA consider expanding the boundary to include more area.

Commenters: Sydney Warren, Maggie MacMullen, Neil Frazer, Linda Paul, Neal Langerman, William Walsh, Mark Hixon, Robin Baird, Rick Hoo, Thorne Abbott, Doug Fetterly, Donald Schug, Andy Ku

Response: NOAA identified Alternative 1 (which is coextensive with marine portions of the Monument) as the Agency-Preferred Alternative based on its comparative merits, and therefore does not include all of Middle Bank or any additional areas that are not part of the Monument. This is consistent with the defined purpose and need and with the provisions of Executive Order 13178, Presidential Proclamation 8031, Presidential Proclamation 9478, and the Joint Explanatory Statement accompanying the Consolidated Appropriations Act, 2021.

Although NOAA considered sanctuary boundary alternatives that included Middle Bank, NOAA concluded that aligning the boundary of the sanctuary with that of the Monument best fulfills the purposes and policies of the NMSA. In addition, the NMSA directs NOAA that it may designate any discrete area of the marine environment as a national marine sanctuary and promulgate regulations implementing the designation if it is determined that the area is of a size and nature that will permit comprehensive and coordinated conservation and management. NOAA concluded that any boundary alternative that expands beyond the existing boundaries of PMNM and the MEA would not be practicable in light of the need for comprehensive and coordinated management in a manner which complements the existing Monument management framework. NOAA has added these clarifications to the draft and final EIS, Section 3.7.1.

I.4 Comment: Commenters recommended Alternative 2 as the preferred alternative, a boundary which excludes the MEA. Some commenters expressed support for this alternative, emphasizing that excluding the MEA may allow for more fishing, including commercial fishing, in that area.

Commenters: Craig Severance, Jason Helyer, Gil Kualii

Response: NOAA identified Alternative 1 as the Agency-Preferred Alternative, which includes the MEA, based on its comparative merits. The proposed sanctuary is consistent with directives in Presidential Proclamation 9478, which has the force of law. Presidential Proclamation 9478, which designated the MEA, prohibits commercial fishing and provides that non-commercial fishing may be a regulated activity (i.e., allowed only with a permit). Selection of Alternative 2 would not alter the directives provided in Presidential Proclamation 9478, including the prohibition on commercial fishing in the MEA.

I.5 Comment: A commenter requested the inclusion of a legal definition of shoreline delineation in relation to iron seawall ruins and rubble at Tern Island, and questioned if the seawall and debris would be included in the sanctuary boundary.

Commenters: George Balazs

Response: The shoreline in the State of Hawai‘i as defined by the Hawai‘i Department of Land and Natural Resources is “the upper reaches of the wash of the waves, other than storm or seismic waves, at high tide during the season of the year in which the highest wash of the waves occur, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves” (HAR §13-222). The Coastal Lands Program of the Hawai‘i Department of Land and Natural Resources, Office of Conservation and Coastal Lands maintains the State of Hawaii Shoreline Certification Program (see Shoreline

Certification Rules in HAR §13-222). It is this program that would determine where the shoreline is delineated in the location of the iron seawall on Tern Island when necessary. Therefore, under the current definitions, any debris or rubble or portion of the Tern Island iron seawall that occurs seaward of this shoreline as defined by the State of Hawai‘i would be within the sanctuary, and that which occurs upland of the shoreline would be outside the sanctuary.

I.6 Comment: A commenter requested that the shoreward boundary be extended to the mean high tide.

Commenters: Shark Stewards

Response: NOAA considered an alternative that designated the mean high tide line as the shoreward boundary, but eliminated this alternative from detailed study (see Section 3.7.1 of the EIS). NOAA typically uses the shoreline as legally defined by the State within which the national marine sanctuary occurs, because the shoreline delineates the boundary between public and private land. The shoreline in the State of Hawai‘i as defined by the Hawai‘i Department of Land and Natural Resources is “the upper reaches of the wash of the waves, other than storm or seismic waves, at high tide during the season of the year in which the highest wash of the waves occur, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves” (HAR §13-222). NOAA strives to designate a sanctuary which supplements and complements existing authorities, and this designation adheres to both the State’s definition as well as the current landward boundary designation of the Monument.

J. Description and Analysis of Alternatives

General Analysis

J.1 Comment: Commenters requested a supplemental draft EIS that describes the governance framework of the proposed sanctuary, including a detailed description of the role and authorities of each Monument co-manager. Commenters also requested that an analysis consider how each may be used in support of the purpose and need for a sanctuary identified in the draft EIS.

Commenters: Lois Schiffer and Dinah Bear

Response: NOAA disagrees. The draft EIS adequately described the management framework of the proposed sanctuary, considering all aspects that are relevant to environmental impacts and useful to make a reasoned choice amongst the alternatives. However, NOAA has revised the final EIS to further address requests for information regarding the existing Monument governance framework, including by expanding the description of the No Action Alternative in Chapter 3 (see Section 3.2) and describing how the sanctuary framework may be integrated into the existing Monument governance framework (see Section 3.3) See also the response to E.1. NOAA, consistent with NEPA, considered how the proposed action and its alternatives—which are inclusive of varying levels of management and applicable authorities—met the purpose and need. Based on this

information, NOAA has determined that the draft EIS is sufficient, and a supplemental draft EIS is not necessary.

J.2 Comment: A commenter noted that the draft EIS claims there would be adverse potential impacts on the protection of the resources if refuge areas were excluded from a proposed sanctuary, but does not mention nor analyze existing comprehensive refuge regulations (50 CFR, subchapter C). This commenter recommended that the final EIS acknowledge and analyze the management of Midway Atoll National Wildlife Refuge and the Hawaiian Islands National Wildlife Refuge, and the authorities of the USFWS.

Commenters: U.S. Fish and Wildlife Service

Response: In the final EIS, NOAA acknowledges USFWS' authority to administer Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge throughout the document, including in the description of the No Action Alternative and the action alternatives (see Chapter 3). For the purposes of the analysis, the primary focus is on the impacts caused by the differences between the action alternatives compared to existing management under the No Action Alternative. NOAA, pursuant to the NMSA, would provide supplemental authority to strengthen protection of resources where the national marine sanctuary and national wildlife refuge overlap. In other sanctuary sites when there is jurisdictional overlap between NOAA and USFWS, the agencies have worked to implement their respective authorities in a manner that complements, but does not diminish or interfere with existing authorities and strengthens existing protections and management. NOAA and USFWS are developing an agreement to provide details on the execution of sanctuary management where the national marine sanctuary overlaps with Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge.

In the final EIS, in analyzing the impact of an alternative that excluded the national wildlife refuges from the proposed sanctuary boundary, NOAA concluded that there may be only minor adverse impacts to laws and existing management (see Section 5.5). Specifically, under Alternative 3, NOAA concluded that the exclusion of the Hawaiian Islands National Wildlife Refuge imparts an adverse impact based on the potential ambiguity of where NMSA regulations can be enforced, as the Hawaiian Islands National Wildlife Refuge boundary is not agreed upon. The adverse impact is not due to the lack of management or authority for the area, but rather the impact that an ambiguous boundary may have on users and managers.

J.3 Comment: Commenters expressed concerns that there was an insufficient justification for designating a new national marine sanctuary and a mischaracterization of social, cultural, and economic impacts of designating a sanctuary. Several commenters requested that the final EIS include additional research and information on the impacts to Kānaka ʻŌiwi communities and Hawaiʻi residents. One commenter stated that the draft EIS is not legally sufficient because the analysis does not properly distinguish among, and analyze, impacts to environmental resources resulting from the No Action Alternative and each of the action alternatives.

Commenters: Hawaii Longline Association, Klayton Kubo, Linda Paul, Roger Mcmanus

Response: NOAA believes that Chapter 2 of the draft EIS adequately explains the need for the proposed sanctuary, citing the globally significant interconnected set of marine ecosystems in the action area, and threats from factors such as climate change, marine debris, invasive species, and marine traffic.

The action alternatives and scope of the impact analysis focus on implementing relatively minor changes to existing restrictions, regulations, and protections for the action area. These changes are designed to improve consistency of regulations across the area of the proposed sanctuary and to impart additional protections. The existing protections in the area of the proposed sanctuary would not be changed under any of the alternatives, including the No Action Alternative. Therefore, the EIS analyzes the effective differences between the action alternatives and the existing management framework under the No Action Alternative. In many cases, the impacts of the alternatives are broadly similar in nature and extent, because a primary goal for all alternatives is to improve regulatory consistency across the action area while minimizing new restrictions and requirements on users. Accordingly, the analysis of environmental impacts of the alternatives, including the social, cultural, and economic impacts of designating a sanctuary is limited, and only the effective differences between the action alternatives and the No Action Alternative are analyzed. For example, no alternative (including No Action) would remove the Monument or its accompanying regulations. An action alternative, if selected, would give NOAA the authority to supplement the existing protections and management.

In addition, due to the action area's remote location and the low level of human activity, available data from human impacts are sparse. When there is incomplete or unavailable information during the evaluation of impacts, the agency may make evaluations based upon reasonably foreseeable causations and impacts (42 U.S.C. § 4332(2)(C), 40 CFR § 1502.21).

J.4 Comment: Commenters stated that the action alternatives are insufficiently differentiated and fail to recognize alternatives to the proposed management strategy. Commenters recommended that NOAA analyze different management strategies and the environmental and related social, cultural, and economic effects of those alternatives.

Commenters: Lois Schiffer and Dinah Bear, Western Pacific Regional Fishery Management Council

Response: In accordance with NEPA, NOAA evaluated a reasonable range of alternatives that meet the proposed action's purpose and need. Given the purpose to provide comprehensive and coordinated conservation and management of the marine areas of Papahānaumokuākea to protect nationally significant resources, NOAA determined that alternatives that supplement and complement existing management would most effectively achieve that purpose and need.

NOAA determined, given the extensive existing management scheme for the area, that it was not appropriate to consider different management alternatives. Through sanctuary designation, NOAA would manage the sanctuary in partnership with Monument co-trustees. As a result of the existing Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, which is managed under the National Marine Sanctuaries Act, and the existing Monument

management framework, which includes ONMS, the proposed sanctuary has been specifically designed to complement and supplement other State and federal resource protection laws to manage the nationally significant resources of Papahānaumokuākea. Further, the draft sanctuary management plan was developed in consultation with the State, U.S. Fish and Wildlife Service, and the Office of Hawaiian Affairs. This collaborative approach was followed to explicitly ensure concurrence of plans between the proposed sanctuary and the Monument.

In addition, one of the NMSA's purposes and policies is to "develop and implement coordinated plans for the protection and management of these areas with appropriate federal agencies, state and local governments, etc." As a result of the existing Monument management framework, of which ONMS is a critical part, proposed sanctuary management has been specifically designed to not create inconsistencies, and to ensure seamless operations between the Monument and proposed sanctuary. NOAA believes designating a sanctuary with a management strategy that differs from the existing Monument would not fulfill the purposes and policies of the NMSA, and therefore not meet the purpose and need for the proposed designation.

J.5 Comment: Commenters stated that it is unclear how the Agency-Preferred Alternative, Alternative 1 would alleviate the existing impacts, and asked about the options for effectively addressing the threats to marine mammals, sea turtles, and their ecosystem from marine debris and global warming. Another commenter specifically requested that the final EIS and sanctuary management plan provide detailed information and analysis on the importance of biodiversity associated with deep-water corals and related habitats.

Commenters: Birgit Winning, Deep Ocean Stewardship Initiative

Response: In the final EIS, as required by NEPA, NOAA provides detailed information and an impact analysis for a reasonable range of alternatives for the proposed sanctuary. NEPA does not require that an agency's action alleviate impacts, but requires a comparative analysis of what the impacts would be. Note that the No Action Alternative references the existing protections and efforts provided under current management of the Monument, including marine debris removal, protected species habitat restoration, and best management practices for invasive species prevention. These existing protections and efforts would remain in effect under all action alternatives, including the Agency-Preferred Alternative.

The purpose of this action is to provide comprehensive and coordinated conservation and management of the marine areas of Papahānaumokuākea to protect nationally significant biological, cultural, and historical resources and to "maintain the natural biological communities in the national marine sanctuaries, and to protect, and, where appropriate, restore and enhance natural habitats, populations, and ecological processes." Alternative 1 would meet these goals through additional regulatory tools provided by the NMSA for management and protection of resources. In addition, sanctuary designation would provide the first set of implementing regulations for the provisions of Presidential Proclamation 9478 which created the MEA. Section 5.3.1 of the final EIS describes the beneficial impacts of Alternative 1 on both physical and biological resources. Specifically, sanctuary designation

would address threats by creating stronger deterrents to permit and regulatory violations through the supplemental authority to issue civil penalties, as well as providing a mechanism to conduct damage assessments and hold the permittee or vessel liable for response costs and damages resulting from such destruction, loss, or injury. Under Alternative 1, discharge would be regulated throughout the proposed sanctuary, extending the existing regulation from PMNM to the area of the proposed sanctuary that overlaps with the MEA. The regulation of vessel discharge would benefit water quality in the MEA, and subsequently benefit biological resources.

Regarding the request for further analysis, the scope of the EIS impact analysis focuses on minor changes proposed to improve consistency of regulations and management across the area of the proposed sanctuary and the additional protections imparted by a sanctuary designation. Therefore, the EIS focuses solely on the effective differences between the action alternatives and the existing management framework under the No Action Alternative.

For decades, scientists have been conducting surveys to characterize marine biodiversity in Papahānaumokuākea. Additionally, as part of the National Marine Sanctuary System, condition reports would be prepared in advance of any management plan review, approximately every 10 years. As referenced in Chapter 4 of the final EIS, the *State of the Monument Report* (or condition reports) are used by NOAA to assess the condition and trends of national marine sanctuary resources and ecosystem services. These reports provide a standardized summary of resources in NOAA's sanctuaries, driving forces and pressures on those resources, and current conditions and trends for resources and ecosystem services. These reports also describe existing management responses to pressures that threaten the integrity of the marine environment. Condition reports include information on the status and trends of water quality, habitat, living resources, maritime heritage resources, and the human activities that affect them. The reports also rate the status and trends of ecosystem services. Recent research since 2017 has revealed much new information about the diverse ecosystems in the deep-sea areas of Papahānaumokuākea.

J.6 Comment: A commenter pointed to a statement in the draft EIS that, under the Agency-Preferred Alternative, "there would be no anticipated change in the number of permits issued because permits are required under the current management regime and an increase in permitted activity is not anticipated under sanctuary designation." The commenter felt that this seemed inaccurate in two respects: 1) the draft EIS argues that the biggest impact of the proposed sanctuary would be additional authority by NOAA to, among other things, issue permits, and 2) it does not account for what presumably would be some number of non-commercial fishing permits applied for in the MEA.

Commenters: Lois Schiffer and Dinah Bear

Response: NOAA reaffirms the statement made in the draft EIS that there is no anticipated change in the number of permits. Sanctuary designation is unlikely to increase the amount of visitation, research, or other activities within the area. NOAA also affirms that one of the benefits of sanctuary designation is that it would provide the first set of implementing regulations, including regulations for permitting, in the MEA. Currently, activities in the MEA have been approved via a Letter of Authorization signed by USFWS. The use of Letters

of Authorization was developed as an interim measure following designation of the MEA, until a formal permitting process could be implemented through regulations. In addition to these implementing regulations, National Marine Sanctuary Program regulations offer new tools for enforcement of permits issued pursuant to the NMSA.

Regarding the commenter's second point, NOAA does not propose to issue non-commercial fishing permits as part of the sanctuary regulations. NOAA only proposes to allow sustenance fishing as a term or condition of a permit, consistent with existing Monument management in the PMNM. In response to a recommendation for fishing regulations in the MEA by the WPRFMC, NOAA is preparing a separate proposed rule for regulations governing fishing in the MEA under the authority of the MSA, completing the environmental compliance requirements, including the consideration of the number of permit requests for non-commercial fishing in the MEA, and will accept public comment on the proposal.

J.7 Comment: Commenters noted that the draft EIS emphasized the need for "penalty schedules." They felt that the draft EIS implies NOAA would only have the authority to issue penalties under the NMSA. The commenters stated that NOAA may seek to issue penalties under the MSA and develop penalty schedules for violating specific provisions or issued fishing regulations. They also felt there was no analysis of what matters have occurred since PMNM and the MEA were established, which have caused unaddressed problems because of lack of authority and cannot be easily remedied, such as by issuance of fishing regulations for the MEA.

Commenters: Lois Schiffer and Dinah Bear

Response: NOAA agrees that penalties for violations under MSA may be sought, but there are currently no fishing regulations for the area. Designating a sanctuary would provide the first set of implementing regulations for the provisions of Presidential Proclamation 9478, which include prohibitions that go beyond fishing, for which violations may be penalized under the NMSA.

Regarding the comment that there was no analysis of matters that have occurred since Monument establishment, NOAA directs the commenter to Chapter 4 of the EIS, where the agency identifies a number of past events that have impacted resources, including examples of illegal fishing.

Further, in Section 5.1.1, NOAA provides important information regarding the limits of the impact analysis for the proposed sanctuary. Due to the remote location and the corresponding low level of activity across the proposed sanctuary, there is very little data on human impacts available. When there is incomplete or unavailable information during the evaluation of impacts, the agency may make evaluations based upon reasonably foreseeable causations and impacts (42 U.S.C. § 4332(2)(C), 40 CFR § 1502.21). As the occurrence of illegal activity, permit violations, and loss or injury to sanctuary resources in the future cannot be predicted, the impacts of enhanced enforcement and authority to respond to and hold financially liable any person who destroys, causes the loss of, or injures any sanctuary resource are described qualitatively rather than quantitatively.

J.8 Comment: One comment takes issue with the draft EIS characterization of certain benefits accruing from adding sanctuary authorities. The commenters pointed to a draft EIS statement

that sanctuary status, unlike Monument status, would provide a way to obtain response costs and hold liable those responsible for destruction of sanctuary resources. The commenter disagrees with that statement and takes issue with the examples provided—specifically of lost cargo containers in Section 4.6.2; and vessel groundings in Section 4.3.1—concluding that these examples are both incorrect and misleading.

Regarding the example of lost cargo ships, the commenter states that the Sanctuary Natural Resource Damages provision provides that injury to a sanctuary resource caused solely by an act of God is a defense to liability, and states that the Oil Pollution Act and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) may already be used to provide resource damage liability. Regarding the examples of groundings, the commenter takes issue with the acknowledgement that National Weather Service buoys, broken free of their moorings, have been a cause of damage to resources. Finally, the commenter expresses that vessel groundings that lead to oil and/or chemical spills may be addressed by CERCLA. Ultimately, the commenters expressed that sanctuary designation is not likely to significantly enhance the ability of the government to address natural resource damages to resources.

Commenters: Lois Schiffer and Dinah Bear

Response: First, NOAA acknowledges other authorities exist that may be used to address resource damages in the area of the proposed sanctuary. In the EIS, NOAA only asserts that sanctuary designation imparts a specific set of new benefits afforded by the NMSA. Specifically, the NMSA allows ONMS to supplement existing authorities through the following:

- Emergency regulations (§ 922.7). Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all such activities are subject to immediate temporary regulation, including prohibition.
- Penalties (§ 922.8(a)) Each violation of the NMSA, any NMSA regulation, or any permit issued pursuant thereto, is subject to a civil penalty. Each day of a continuing violation constitutes a separate violation.
- Response costs and damages (§ 922.9) Under Section 312 of the NMSA, any person who destroys, causes the loss of, or injures any Sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss, or injury. Any vessel used to destroy, cause the loss of, or injure any Sanctuary resource is liable in rem to the United States for response costs and damages resulting from such destruction, loss, or injury.
- NMSA Section 304(d) requires interagency consultation for any federal agency action that is likely to destroy, cause the loss of, or injure any sanctuary resource. This requirement applies to all federal agencies, including agencies that are otherwise exempt from sanctuary prohibitions.

The examples provided in Chapter 4, and referenced by the commenter, are simply examples of previous instances that have caused damages to resources, and which may be better addressed by one of the NMSA program regulations, not just an authority to hold liable those who destroy, cause loss of, or injure sanctuary resources. Instances of damage to

sanctuary resources may also prompt the use of emergency regulations, civil penalties, or interagency consultations, all of which serve as a supplemental tool that may enhance resource protection.

Regarding the example of the lost cargo containers in Section 4.6.2, NOAA disagrees that this example is incorrect and misleading. To date, there have been confirmed lost shipping containers within other sanctuaries. In 2004, 15 intermodal steel cargo containers fell overboard from the M/V *Med Taipei* as the vessel transited through Monterey Bay National Marine Sanctuary during a winter storm. Taking into consideration NOAA's assessment, as well as potential fines, government legal fees and costs to date, the shipping company agreed to pay NOAA a total compensation of $3.25 million.

Regarding the example of grounding incidents, NOAA did not imply that the incidents of unmoored National Weather Service buoys would warrant natural resource damage response costs. It simply provided this as an example of a real instance of resource damage, where sanctuary designation may provide any number of management and/or regulatory tools to help address. Finally, NOAA does not state that other authorities, such as CERCLA and/or the Oil Pollution Act, do not apply to the area. The EIS only states that sanctuary designation may apply additional regulatory and non-regulatory tools to augment and strengthen existing protections for the area. The other authorities mentioned by the commenter are authorities that may be applicable in many other existing national marine sanctuary sites, but does not diminish the value provided by the NMSA, which provides authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities.

J.9 Comment: A commenter requested that the final EIS document explain the means and mechanisms by which "land-based legacy pollutants" are currently threatening marine resources given the remediation that has occurred under the Comprehensive Response, Compensation, and Liability Act over the past several decades. The commenter also stated that the EIS should state that the U.S. Navy is responsible for monitoring and maintaining Land Use Control Areas (the draft EIS describes these as landfills), and that the final EIS should clarify what is meant by "ongoing environmental remediation."

Commenters: Friends of Midway Atoll National Wildlife Refuge

Response: NOAA has made minor revisions to Section 4.3.1 of the final EIS to include information on the means and mechanisms by which land-based legacy pollutants may impact water quality. The terrestrial areas of the Monument are, and would remain, outside of NOAA's jurisdiction. The USFWS, a Monument co-trustee, oversees the Midway Atoll National Wildlife Refuge and the Hawaiian Islands National Wildlife Refuge. The USFWS in partnership with other entities are attempting to remediate natural areas that have been affected by anthropogenic activities including the removal of hazardous contamination and deteriorated military infrastructure that pose a threat to marine resources. NOAA will share this comment with the USFWS, a cooperating agency for the sanctuary designation.

J.10 Comment: Commenters stated that the draft EIS statement that NOAA needs additional authority to prohibit and address introduced (invasive) species is also faulty. The commenters note the joint NOAA/USFWS regulations issued in 2006 covering the original Monument expressly prohibit such introduced species and that, using the same authority as in 2006, the agencies could extend that prohibition to the MEA. The commenters summarize that the failure is one of management, not authority.

Commenters: Dinah Bear and Lois Schiffler

Response: Throughout the EIS, NOAA frequently mentions threats to resources of the proposed sanctuary, including the threat of invasive species. NOAA acknowledges that other authorities exist which may be used to address invasive species, including the prohibition on introducing or otherwise releasing an introduced species from within or into the Monument, provided by both presidential proclamations establishing the Monument and MEA. NOAA has revised Section 5.2.3 to include a description of the existing management actions taken to address invasive species. Despite current management, regulations to implement the provisions of Presidential Proclamation 9478 for the MEA have not been promulgated. Sanctuary designation would provide the first set of implementing regulations, along with penalties for the provisions of Presidential Proclamation 9478, including the prohibition on releasing an introduced species.

J.11 Comment: A commenter requested that NOAA develop a detailed report outlining the access rights of the Department of Defense, and the practical ramifications of any national defense exceptions awarded to the Department of Defense with respect to military training within and around the proposed sanctuary.

Commenters: Ryan King

Response: Consistent with existing management of this area and in accordance with international law, as provided by Presidential Proclamations 8031 and 9478, NOAA proposes a broad exemption to allow activities and exercises of the U.S. Armed Forces, including those carried out by the U.S. Coast Guard. As the U.S. Department of Defense (DoD) already has a broad exemption for activities in the area of the proposed sanctuary, the analysis did not include DoD activities. However, a complete description of the U.S. Navy's activities that occur within and around the Monument (a relatively small percentage of their area of operations) and an analysis of their impacts can be found at Hawaii-Southern California Training and Testing Final Environmental Impact Statement/Overseas Environmental Impact Statement (U.S. Department of the Navy, 2018)[3]. The Navy is in the process of preparing a follow-on NEPA analysis for future military readiness activities in the Hawai'i and California area in support of renewal of current federal regulatory permits and authorizations that expire in December of 2025. See Section 4.6.2 of the final EIS.

J.12 Comment: Commenters expressed concerns regarding the lack of analysis and description on NOAA's ability to issue "emergency regulations" to prevent or minimize the loss or injury to a sanctuary resource. The commenter stated that the regulations issued jointly by

[3] U.S. Department of the Navy. 2018. Hawaii-Southern California Training and Testing Final Environmental Impact Statement/Overseas Environmental Impact Statement. October 2018.

NOAA and USFWS in 2006 for the original Monument contain an exemption from prohibitions for emergency actions, and that Presidential Proclamation 9478 specifically exempts from prohibitions activities "necessary to respond to emergencies threatening life, property, or the environment, or to activities necessary for law enforcement purposes." The commenters questioned why sanctuary authority to issue sanctuary regulations is necessary given existing provisions and regulations for the Monument.

Commenters: Lois Schiffer and Dinah Bear

Response: NOAA acknowledges that the existing management of the area includes exemptions for any activity necessary to respond to emergencies that threaten life, property, or the environment, or to activities necessary for law enforcement purposes. These exemptions are also proposed for the sanctuary. However, NOAA's references to "emergency regulations" throughout the EIS are not referring to this exemption, but to NOAA's authority pursuant to 15 CFR 922.7, which states that "where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all such activities are subject to immediate temporary regulation, including prohibition." This authority may be useful in implementing immediate temporary regulations to protect resources following incidents of resource damages, such as vessel groundings or disease. NOAA has added information regarding emergency regulations in the final rule, Section IV.O.

J.13 Comment: A commenter asked if the timeline for the seawall removal at French Frigate Shoals is listed (in Table 5.1 of Section 5.6.2) as unknown because there are no funding appropriations for the priority, or if there is another reason.

Commenters: Birgit Winning

Response: This project is outside the scope of the sanctuary designation, as infrastructure at French Frigate Shoals falls under the jurisdiction of the USFWS. NOAA will share this comment with the USFWS, a cooperating agency for the sanctuary designation.

J.14 Comment: A commenter noted that throughout the document, the claim is made that "At present, there are no regulations to authorize permitting or enforce the prohibitions in the MEA as outlined in Presidential Proclamation 9478." Similarly, "Sanctuary designation provides the authority for a permitting system to manage waters of PMNM and the MEA in coordination with the Monument permitting system, eliminating potential gaps in management", or that, "the MEA currently has no access restrictions." The commenter does not believe this characterization of the current management is accurate. The commenter states that existing authorities enable the Monument co-managers to manage the MEA, and any gap area is merely NOAA-specific and not reflective of management as a whole.

Commenters: U.S. Fish and Wildlife Service

Response: NOAA disagrees with this comment. There are currently no implementing regulations, including regulations for permitting in the MEA for the provisions of Presidential Proclamation 9478. While Presidential Proclamation 9478 states that the Secretary of Commerce and the Secretary of the Interior shall share management

responsibility of the MEA, regulations to issue permits have not yet been established. Until a formal permitting process is developed, activities in the MEA have been approved via a Letter of Authorization signed by USFWS. The use of letters of authorization is only temporary until a formal permitting process is implemented and should not be considered precedent setting. The co-trustees agreed to implement this USFWS process as an interim measure. Sanctuary designation would provide the first set of regulations for permitting in the area of the MEA. Regarding the statement that the MEA has no access restrictions, NOAA maintains that statement. Presidential Proclamation 9478, which establishes the MEA, does not address access. The proposed sanctuary regulations would provide the first regulation for access to the area of the MEA. While interim measures, such as the letter of authorization, have been used since the designation of the MEA, enforcement of the provisions of Presidential Proclamation 9478 is limited because regulations have not yet been codified.

No Action Alternative Analysis

J.15 Comment: Commenters requested a more detailed description and analysis of the No Action Alternative, that would compare the protections currently in place, as well as the existing MOA that governs Monument management amongst the Monument co-trustees, with the changes implemented through sanctuary designation. One commenter specifically requested a comparative analysis of the proposed sanctuary permitting structure with the existing permitting process for the Monument. Commenters stated that a comparison of the potential effects of the No Action Alternative and the action alternatives requires an accurate description of the No Action Alternative.

Commenters: Lois Schiffer and Dinah Bear, Shark Stewards, Isaac Harp

Response: See also the response to J.1. In response to this comment, NOAA made revisions to the description of the No Action Alternative in Section 3.2. NOAA has added more detail on the existing management framework and authorities that govern the area of the proposed sanctuary, as well as a description of the existing prohibited and regulated activities, exemptions, and permitting process. NOAA also specifically acknowledges the existing Monument MOA in Section 3.2.2 of the final EIS. Section 3.3 of the final EIS states that NOAA would work in cooperation with the Monument co-trustees to update the Memorandum of Agreement for Promoting Coordinated Management of Papahānaumokuākea Marine National Monument with the State of Hawai‘i, Department of the Interior/USFWS, and OHA to reflect the addition of the proposed sanctuary, and specifically address how the addition of a sanctuary would supplement and complement, and not supplant, the existing Monument management framework. NOAA also mentions that the existing Monument MOA includes a provision, stating “In the event of the designation of the Monument or any portion of the Monument as a National Marine Sanctuary under the National Marine Sanctuaries Act, nothing herein shall be construed as automatically terminating or otherwise amending this Agreement.” In sections 3.3.1 and 3.4.2, NOAA has also revised the description of proposed permitting for the sanctuary, and clarified that the sanctuary permitting regulations were developed to allow for integration with the

Monument permitting system, to ensure continued joint permitting administered by the MMB.

J.16 Comment: Commenters emphasized that NOAA fails to explain why the agency cannot issue regulations or take other actions of a legal nature for the MEA outside of sanctuary designation. The commenters ask why NOAA had the authority to issue regulations for the original Papahānaumokuākea Marine National Monument and yet does not have that authority for the MEA. Commenters also stated that the draft EIS fails to identify pertinent authorities of the co-trustees that may fill in any gaps in NOAA's legal authorities.

Commenters: Lois Schiffer and Dinah Bear

Response: NOAA does not dispute that NOAA Fisheries has the authority to issue fishing regulations for the MEA under the authority of the MSA. However, no such regulations have been issued. (Please see the responses to D.9 and J.14.) Further, there are additional provisions of Presidential Proclamation 9478 that are outside the scope of the MSA. The NMSA is the most comprehensive NOAA authority to conserve and manage areas of the marine environment which are of special national significance, and to implement the provisions of Presidential Proclamation 9478. NOAA has a variety of other potentially applicable authorities, but each of those authorities is resource specific and does not cover the scope of the proclamation. The NMSA provides authority for comprehensive and coordinated conservation and management of marine areas, and activities affecting them, in a manner which complements existing regulatory authorities.

NOAA has revised the description of the No Action Alternative in Section 3.2, adding more detail on the existing management framework and authorities that govern the area of the proposed sanctuary (see the response to J.15).

J.17 Comment: Commenters expressed concern regarding NOAA's conclusion that the No Action Alternative will have "neither beneficial nor adverse effects." The commenters emphasized the primary discussion of the impacts of the No Action Alternative imply that NOAA believes there would be adverse effects of the No Action Alternative.

Commenters: Lois Schiffer and Dinah Bear

Response: NOAA has made some revisions to the analysis, but it does not change the conclusion that selection of the No Action Alternative would not result in any change to existing or expected future management or uses of the area, and therefore no new beneficial or adverse impacts would occur from the No Action Alternative. However, impacts, both adverse and beneficial, presently occurring would continue to occur and would continue to be addressed to a certain degree through existing Monument management and existing federal and State authorities and programs. In Section 5.1 of the final EIS, NOAA has specifically clarified no new beneficial or adverse impacts would occur from the No Action Alternative, beyond what is presently occurring.

Analysis of an Alternative that includes Middle Bank

J.18 Comment: Commenters expressed that NOAA should consider a sanctuary which includes all of Middle Bank, and felt the EIS failed to analyze an alternative that included Middle

Bank. Commenters expressed there was a lack of data to inform the potential effects of the inclusion of Middle Bank in the proposed sanctuary, and requested a literature review compiled by a subcommittee of the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council, synthesizing information on the conservation value of Middle Bank and the implications for a sanctuary boundary decision, be incorporated into the final EIS. Commenters requested that the final EIS fully analyze the biological/ecological, economic, social, and cultural impacts of a sanctuary boundary alternative encompassing all of Middle Bank, specifically on the potential effects the inclusion of Middle Bank would have on traditional practices and livelihoods of local fishers.

Other comments requested that the final EIS provide data to support the statement that Middle Bank is important to Kauaʻi fishers and should include a summary of the economic, social, and cultural benefits of maintaining access to the fishery resources in the portion of Middle Bank currently open to fishing. Commenters expressed that the EIS analysis should identify and assess alternative ways to enhance subsistence and Indigenous access to the area of Middle Bank currently open to fishing, thereby helping protect Native Hawaiian traditional and customary fishing practices.

Finally, commenters also requested that if a detailed analysis of Middle Bank is not completed, the final EIS should provide a detailed explanation of why this alternative is inconsistent with the stated purpose and need of sanctuary designation and the NMSA. Commenters expressed that the elimination of a Middle Bank alternative from detailed study because of the State's opposition is inconsistent with the guidance in response to Question 2A in the Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations (46 Federal Register 18026); and the decision to eliminate the Middle Bank alternative also did not consider what the draft EIS reported to be the guiding questions that directed ONMS' analysis, including the question: How does the spatial extent of the proposed sanctuary affect the resources, natural environment, cultural heritage, and human uses in and around the proposed sanctuary?

Commenters: Linda Paul, Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council, Donald Schug, Neal Langerman, William Walsh, Mark Hixon, Robin Baird, Rick Hoo, Thorne Abbott, Doug Fetterly

Response: When developing the draft EIS, NOAA considered analyzing an alternative that included all portions of Middle Bank in the proposed sanctuary boundary, but eliminated this alternative from detailed study. The State of Hawaiʻi opposed a sanctuary that expanded towards the main Hawaiian Islands. The purposes and policies of the NMSA state that ONMS "develop and implement coordinated plans for the protection and management of these areas with appropriate federal agencies, state and local governments, etc." As the State of Hawaiʻi is a co-trustee for the Monument and a co-manager for the proposed sanctuary, NOAA concluded that designating a sanctuary that disregards the State's opposition of expanding towards the main Hawaiian Islands would not fulfill the purposes and policies of the NMSA, and therefore not meet the purpose and need for the proposed designation. Therefore, NOAA disagrees that elimination of this boundary from further consideration, in part, due to the State's opposition, is inconsistent with NEPA guidance.

NOAA has provided additional reasoning for its elimination of a boundary that included all of Middle Bank in Section 3.7.1 of the final EIS. See also the response to I.3. Specifically, in accordance with the NMSA, NOAA may designate any discrete area of the marine environment as a national marine sanctuary and promulgate regulations implementing the designation if it is determined that the area is of a size and nature that will permit comprehensive and coordinated conservation and management. NOAA concluded that any boundary alternative that expands beyond the existing boundaries of PMNM and the MEA would not be practicable in light of the need for comprehensive and coordinated management in a manner which complements the existing Monument management framework.

Therefore, NOAA has not completed an analysis of the biological, economic, social, and cultural impacts of a sanctuary boundary that includes all portions of Middle Bank, and has not analyzed the impact of this alternative, and any variations of this alternative, on traditional practices and livelihoods of local fishers. The literature review provided by the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council has not been summarized in the EIS; however, the original comment and the literature review are available in this appendix (Appendix K), as the appendix includes all comments received in full.

J.19 Comment: Commenters expressed concern that NOAA is unable to enforce the commercial fishing prohibition at Middle Bank and requested Alternative 1 describe the potential adverse biological effects of current and future fishing at Middle Bank.

Commenters: Donald Schug

Response: See the response to D.22. NOAA Fisheries and the State of Hawai‘i have authority for fisheries management in this area. Regarding enforcement, see the response to B.21. Regarding the analysis of adverse biological effects of current and future fishing at Middle Bank, the geographic scope of the analysis only includes areas of the marine environment within the Monument, and does not include the portion of Middle Bank that falls outside the Monument, where fishing occurs.

J.20 Comment: Commenters requested that the final EIS acknowledge the public support for the inclusion of Middle Bank within the proposed sanctuary, noting that only three of 25 individuals consulted for the Cultural Impact Assessment expressed opposition to the inclusion of Middle Bank.

Commenters: Linda Paul, Donald Schug, Neal Langerman, William Walsh, Mark Hixon, Robin Baird, Rick Hoo, Thorne Abbott, Doug Fetterly

Response: In Section 3.7.1, NOAA has added an acknowledgement that NOAA did receive comments of support, as well as opposition, for an alternative that included all of Middle Bank.

J.21 Comment: Commenters requested that the final EIS remove any reference of assurances from NOAA to Kaua‘i fishers during public meetings regarding the 2016 Monument Expansion that the Monument boundary would not extend further towards Kaua‘i. There is concern that

the sanctuary boundary alternative (regarding Middle Bank) was pre-determined before the sanctuary designation process began. Commenters also noted that the draft EIS stated "there was significant opposition, including from fishers, to expand the boundary and include all of Middle Bank." Commenters requested that the word "significant" be removed, as it suggests that public opposition to the inclusion of all of Middle Bank outweighs support for inclusion.

Commenters: Linda Paul, Donald Schug, Neal Langerman, William Walsh, Mark Hixon, Robin Baird, Rick Hoo, Thorne Abbott, Doug Fetterly

Response: In the EIS, NOAA acknowledges comments of support and opposition for an alternative that included all of Middle Bank. This includes comments referencing assurances provided to Kauaʻi fishers during public meetings regarding the 2016 Monument Expansion that the Monument boundary would not extend further towards Kauaʻi (Nohopapa Hawaiʻi, 2023).[4] NOAA has added clarification that a boundary alternative that would include Middle Bank received significant opposition during the sanctuary designation process, during both scoping and public comment review of draft designation documents. This boundary alternative was considered, but eliminated for multiple reasons (see Section 3.7.1), including opposition expressed during the sanctuary designation process.

J.22 Comment: Commenters requested that the final EIS remove the statement that the State of Hawaiʻi manages fishing at Middle Bank, as Middle Bank is located entirely within federal waters, and therefore, fishing activity at Middle Bank should be managed by the federal government.

Commenters: Linda Paul, Donald Schug, Neal Langerman, William Walsh, Mark Hixon, Robin Baird, Rick Hoo, Thorne Abbott, Doug Fetterly

Response: In the final EIS Section 3.7, NOAA has clarified that Middle Bank is managed by both NOAA Fisheries and the State. Although there are no Middle Bank specific fishing regulations, State regulations and management actions do apply. The area is mainly known for its deep-7 and uku fishery, originating primarily from the island of Kauaʻi. Both uku and deep-7 are managed under state and federal co-management. Following the requirements of the MSA, both are managed under a stock assessment which determines stock status at a regular interval. Stock assessments are managed at a Main Hawaiian Islands-wide level, not a finer scale. Both fisheries are held to a specified Annual Catch Limit over which the Main Hawaiian Islands catch cannot exceed per year. Both fisheries are currently assessed as neither overfished nor experiencing overfishing. Other examples of state and federal co-managed fisheries include deepwater shrimp, kona crab, precious corals, and various pelagic species. In addition, commercial marine license holders are required to report all landings, which would include those at Middle Bank. These catches, which are based on commercial reporting grid, allow the State to track fishing in the area.

[4] Nohopapa Hawaiʻi. 2023. E Hoʻi I Ke Au A Kanaloa. Cultural Impact Statement and Legal Analysis for the Proposed Designation of a Papahānaumokuākea National Marine Sanctuary.

Analysis of Alternatives that include Midway Atoll

J.23 Comment: A commenter requested that the final EIS clearly describe how Alternative 1, as compared to Alternative 3, would provide enhanced protection of the marine waters of the Midway Atoll National Wildlife Refuge from each of the threats described in the draft EIS, including how such protection would be above and beyond that which is provided by existing laws, policies and regulations (e.g., Clean Water Act, CERCLA, Oil Pollution Act, Marine Mammal Protection Act, and Endangered Species Act). Further, the final EIS should describe how the overlay of the proposed sanctuary on Midway Atoll National Wildlife Refuge in Alternative 1 would be consistent with the presidential proclamations.

Commenters: Friends of Midway Atoll National Wildlife Refuge

Response: In response to this comment, NOAA has revised the description of existing management in the description of the No Action Alternative (Section 3.2), providing a clearer articulation of what exists under current management, and in the following sections of Chapter 3, how sanctuary designation would supplement and complement existing management. The final EIS has also been revised to more clearly articulate that sanctuary designation would not change existing authorities, and all existing authorities would remain in effect under all action alternatives.

Due to the existing management measures and protections enacted over the years, presented in sections 3.2 and 4.2, the proposed sanctuary designation primarily supplements existing protections and imparts only a few new restrictions and requirements on users. Sanctuary designation would not remove Monument designation or accompanying regulations, and would not remove any other existing authorities. The scope of the impact analysis focuses on minor changes proposed to improve consistency of regulations across the area of the proposed sanctuary and additional protections imparted by NMSA program regulations. The primary focus is on the impacts caused by the differences between action alternatives compared to existing management under the No Action Alternative. However, NOAA does provide a table (Table 6.1) showing the comparison of the aggregate average impacts for each alternative, including a comparison of impacts between Alternative 1 and Alternative 3. Finally, NOAA has concluded that a sanctuary that overlays Midway Atoll National Wildlife Refuge is consistent with the spirit of cooperative management in directives that established the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve and the Monument.

J.24 Comment: Commenters suggested that the final EIS: (1) describe the role of Midway Atoll National Wildlife Refuge in providing support for all Monument partners and how Midway Atoll National Wildlife Refuge operations will be affected under each alternative for the proposed sanctuary; and (2) describe how implementation of the Midway Atoll Comprehensive Master Plan would support access, scientific research, environmental education, public appreciation of sanctuary resources, human safety, and partner agency operations. Commenters requested that the 2021 Midway Atoll Comprehensive Master Plan, and information on the proposed public visitation program, be included and evaluated in the cumulative effects assessment of the final EIS.

Commenters: Friends of Midway Atoll National Wildlife Refuge, Ann Bell

Response: Section 3.6 of the final EIS, with regards to human activity, describes why Midway Atoll is unique within the Monument. In Section 3.2, NOAA has provided additional information on the existing management framework for the Monument, including Midway Atoll National Wildlife Refuge. Regarding the request that the EIS describe how Midway Atoll National Wildlife Refuge operations would be affected by sanctuary designation, NOAA has provided additional clarity in Section 3.3 describing elements common to all action alternatives. Notably, through sanctuary designation, NOAA would supplement and complement existing management of the Monument. As a result of the existing successful Monument management framework, of which ONMS is a critical part, the final rule has been specifically designed to uphold the current management framework, to be consistent with the current management framework, and to allow for seamless operations between the Monument and proposed sanctuary.

NOAA has also clarified that nothing in these regulations or establishment of the national marine sanctuary shall diminish USFWS' authority to administer Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge under the National Wildlife Refuge System Administration Act (and other acts). Where Papahānaumokuākea National Marine Sanctuary overlays Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge, NOAA would implement the National Marine Sanctuaries Act to provide supplemental authority to protect resources. NOAA and USFWS are developing an agreement to provide details on the execution of sanctuary management where the national marine sanctuary overlaps with Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge.

Most of the activity at Midway Atoll is land-based and is only indirectly related to this sanctuary designation action. Under Alternatives 1 and 2, the sanctuary boundary would overlay the pre-existing Midway Atoll and Hawaiian Islands National Wildlife Refuges, which are administered by the USFWS pursuant to the National Wildlife Refuge System Administration Act. The USFWS would retain sole management authority over the lands and waters within the boundaries of the refuges. Where the sanctuary overlays the marine areas of the refuges, NOAA may provide supplemental authority to strengthen protection of resources.

The final EIS addresses the implementation of Midway Atoll Comprehensive Master Plan, generally speaking, in the Cumulative Impact Analysis (see Section 5.6). NOAA, however, cannot speculate about how USFWS would implement the Midway Atoll Comprehensive Master Plan upon sanctuary designation to specifically support access, scientific research, environmental education, public appreciation of sanctuary resources, human safety, and partner agency operations.

J.25 Comment: The draft EIS states that the exclusion of refuge waters would have an adverse impact on the existing laws and management, because it "may potentially require permittees to obtain two permits, one for the activity that falls within the area of the sanctuary, and another for the area that falls outside the sanctuary but within the national wildlife refuge." A commenter stated that if refuges are part of the Monument permitting system, the only reason

two permits would be needed is if a sanctuary permit is required in addition to a monument permit.

Commenters: U.S Fish and Wildlife Service

Response: NOAA has made revisions to the final EIS in response to this comment. See the response to E.3 for details on proposed sanctuary permitting. The sanctuary regulations were developed to allow for integration with the Monument permitting system, to ensure continued joint permitting administered by the MMB. These proposed sanctuary permit categories were designed to provide the same management function and permittee interface as the current Monument permit categories.

In addition, NOAA has removed this commenter's referenced portion of the impact analysis in the final EIS, Section 5.5.1. NOAA and the State agree with the comment, and have removed any statements implying there would be adverse impacts due to the creation of an additional permitting process/system.

Other

J.26 Comment: The draft EIS states that it relied on the Council on Environmental Quality's 2020 NEPA regulations. However, those regulations were amended, effective May 20, 2022. While scoping concluded before then, most of the draft EIS was likely written after promulgation of the final 2022 regulations.

Commenters: Lois Schiffer and Dinah Bear

Response: NOAA prepared this EIS in accordance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq*.) and CEQ's 2020 NEPA regulations because review of the proposed action began on November 10, 2021, which preceded the effective date of CEQ's Phase 1 and Phase 2 NEPA regulations (May 20, 2022 and July 1, 2024, respectively). However, the EIS is consistent with the Phase 1 rulemaking. Specifically:

- the Purpose and Need for the EIS complies with 40 CFR 1502.13 of the Phase 1 rule;
- the EIS analyzes the direct, indirect, and cumulative impacts of the alternatives, consistent with 40 CFR 1508.1(g) of the Phase 1 rule; and
- The EIS considers a reasonable range of alternatives that are technically and economically feasible, and meet the purpose and need for the proposed action, consistent with 40 CFR 1508.1(z) of the Phase 1 rule.

NOAA believes that this approach represents the best combination of regulatory consistency and stringent environmental review.

K. Sanctuary Administration and Funding, Resource Protection, Education and Outreach, Partnerships, and Sanctuary Advisory Council

Administration and Funding

K.1 Comment: Commenters emphasized the importance of having Kānaka ʻOiwi in leadership positions for the sanctuary, such as a Native Hawaiian in the Superintendent role. Some commenters emphasized the importance of having full-time Native Hawaiian staff positions, including a Native Hawaiian Program Specialist. Commenters also expressed the importance of having Native Hawaiians implementing sanctuary management, conducting agency inreach, and guiding decision making. Additionally, commenters emphasized the need for full-time Native Hawaiian staff who have the credible knowledge, skills, and experience to ensure the Hawaiian cultural objectives and strategies are met.

Commenters: Maribel Ybanez, Evan Hamaoka, Naomi Himley, Roxane Keliʻikipikāneokolohaka, Ashley Wong, Council for Native Hawaiian Advancement, American Civil Liberties Union of Hawaiʻi, ʻAha Pūnana Leo, Bishop Museum, Boys & Girls Club of Hawaiʻi, Hawaiʻi Land Trust, ʻIolani Palace, Kanaeokana, Native Hawaiian Education Council, Papa Ola Lōkahi, Partners in Development Foundation, Pouhana O Nā Wāhine, National Wildlife Federation, Jackie Milligan, Surfrider Foundation Hawaiʻi

Response: NOAA and the State of Hawaiʻi agree that it is important to have Native Hawaiian expertise in management, including in leadership roles. The Native Hawaiian Program Specialist position, which is a current NOAA position for the Monument, would continue after sanctuary designation to further support the building of these partnerships and the integration of Hawaiian knowledge, values, and practices into co-management through the guidance provided in Mai Ka Pō Mai and in the proposed sanctuary management plan.

The sanctuary management plan (Appendix A) provides strategies to guide management based upon principles and examples of pono practices from Mai Ka Pō Mai. Native Hawaiian cultural integration and cultural proficiency are themes cross-cutting all Kūkulu, or pillars of management, within the plan including resource protection, research, governance, partnerships, and education/outreach. Sanctuary management plan strategies that emphasize these priorities include:

- Strategy 3.6. Integrated and Inclusive Management: Integrate diversity, equity, inclusion, and accessibility into our business practices and organizational culture to increase the diversity of our workforce and create a more inclusive work environment.
- Strategy 3.2. Culturally Integrated Management Approach: Continue to conduct and improve programs and initiatives to increase internal cultural capacity and proficiency.

Additionally, management of the site would rely upon input from advisory bodies (NWHI Coral Reef Ecosystem Reserve Advisory Council and the Native Hawaiian Cultural Working Group) to provide input in various areas of decision making, including permitting. See also comments C.1, C.2 and E.9.

K.2 Comment: Commenters provided questions about the adequacy and sustainability of funding to implement the proposed regulations and management plan, including statements of concern regarding the effects of funding gaps on the viability of management. Commenters expressed concern that insufficient funding and resource allocation makes it difficult and/or impossible for monitoring, surveillance, and enforcement, including detecting illegal fishing activities.

Commenters: Roxane Keliʻikipikāneokolohaka, Papahānaumokuākea Native Hawaiian Cultural Working Group, Nicolas Anderson, Susan Olson

Response: Management of the proposed sanctuary is envisioned to be funded by a mix of federal appropriations, external funding from collaborations with other agencies and organizations, and in-kind/volunteer support and supplies. Although the federal budget for the sanctuary would be contingent on several factors, including the federal appropriations process, overall operational and construction budgets for NOAA as determined by Congress, and spending priorities determined by NOAA. In general, NOAA anticipates the budget to grow over time to meet the needs of sanctuary management. Collaboration with partners, including non-profit organizations, is also anticipated to help implement key programs and activities.

Although ONMS equally views the monitoring, surveillance, and enforcement efforts as critical components of overall protection, ONMS also recognizes that this responsibility largely falls on law enforcement partners with NOAA's Office of Law Enforcement and the U.S. Coast Guard. To assist in this coordinated effort, ONMS facilitates a PMNM Law Enforcement Coordination Team which is composed of law enforcement representatives from NOAA, U.S. Fish and Wildlife Service, U.S. Coast Guard, and Hawaiʻi Division of Conservation and Resource Enforcement. This group meets regularly to coordinate joint enforcement efforts in PMNM.

K.3 Comment: A commenter requested sufficient funding specifically for the removal of the seawall and decaying infrastructure at Lalo.

Commenters: Birgit Winning

Response: Although the sanctuary would not include shore-side infrastructure under its jurisdiction, the MMB sees the mitigation of effects from aging infrastructure in the Monument as being one of the highest priorities. This has led to a recent Lalo resilience study that is now being reviewed by Monument managers to determine the best path forward.

K.4 Comment: Commenters expressed support for funding priorities identified in the sanctuary management plan, including a Native Hawaiian Cultural Program, to enhance

understanding of cultural values; and a dedicated research vessel to implement site-specific research and monitoring.

Commenters: Papahānaumokuākea Native Hawaiian Cultural Working Group, William J. Aila Jr. and Melva N. Aila

Response: Sanctuary status would allow NOAA to enhance, or fill gaps in, critical programmatic/management priorities through the NMSA. This includes allowing NOAA to maintain a Native Hawaiian Cultural Program to conduct Kānaka ʻŌiwi access and research and enhance understanding of Hawaiian cultural values, concepts, and traditional resource management stewardship. Another priority is to initiate the build and operation of a dedicated research vessel to support resource protection, research, and monitoring activities within Papahānaumokuākea.

K.5 Comment: A commenter requested that federal funding be distributed equally amongst all co-trustees.

Commenters: Northwestern Hawaiian Islands Hui, Puaʻāinahau Foundation, Hawaiʻi Wildlife Fund, Malu ʻAina, Life of the Land, Hālau Nā Mamo o Puʻuanahulu, Malama Makua, Isaac Harp

Response: Federal funding for the sanctuary would be provided, in part, as a portion of the annual Congressionally-appropriated budget for NOAA's ONMS. Meanwhile, the Monument is administered jointly by four co-trustees—the Department of Commerce (including NOAA), the Department of the Interior, the State of Hawaiʻi, and the Office of Hawaiian Affairs. Each federal department and state agency provides support and funding for Monument management through their own, separate budget appropriations or allocation processes. These separate processes do not guarantee that this combination of federal and state funding would be equal across the co-trustees from year to year; however, NOAA works closely with our partners as we jointly manage the Monument and would continue to do so if a sanctuary is designated. For example, through agreements with the State of Hawaiʻi and the Office of Hawaiian Affairs, NOAA has assisted in funding its partners' Monument management activities.

Resource Protection/Threat Management

K.6 Comment: Commenters suggested that scientific research should not be conducted in a way that would harm resources. Commenters also expressed concerns about the use of remotely operated vehicles (ROVs) and other scientific instruments on the seafloor.

Commenters: Matthew Murasko, Susan Kiskis, Djedi Alliance, Rainbow Warrior Collective, Alisha Chauhan, Cindy Freitas

Response: The sanctuary includes a permitting system modeled after the existing Monument permitting system, such that there are sufficient safeguards in place that apply to the permit review process for all activities, including for scientific research and ROVs.

The sanctuary has adopted the same permit criteria as currently required for Monument permits, including that the proposed activity would be conducted in a manner compatible

with resource protection. In addition, conditions can be placed on the permit specific to the activity being permitted and permit applications would be reviewed with respect to all other pertinent regulations and statutes, including NEPA, 42 U.S.C. 4321 *et seq*., and any required consultations, permits, or authorizations.

K.7 Comment: A commenter recommended NOAA consider an established framework for identifying vulnerable marine ecosystems from images for permitted scientific exploration and research activities.

Commenters: Deep Ocean Stewardship Initiative

Response: The National Marine Sanctuary System has an established framework, called condition reports (or, in the case of PMNM, the State of the Monument Report) to assess the condition and trends of national marine sanctuary resources and ecosystem services. The *2020 State of Papahānaumokuākea Marine National Monument Report* documents the status and trends of Papahānaumokuākea's resources from 2008-2019. The report not only notes the status of the resources, but also identifies threats to natural resources, and gaps in current monitoring and management efforts. In this way, the document identifies species, ecosystems, and geographical regions that may warrant an additional level of protection, monitoring, or research.

K.8 Comment: A commenter suggested that NOAA leave Battle of Midway vessels and aircraft undisturbed to be respectful of the war and preserve the materials for future archaeological purposes.

Commenters: Jake Ruby

Response: NOAA's management principles emphasize an *in situ* management approach for the long-term protection of site information and integrity, as well as other preservation methods and activities outlined in the ONMS policy guidance document *Monitoring and Management of Tangible Maritime Heritage Resources*.

The Sunken Military Craft Act of 2004 preserves and protects all sunken military craft that are owned by the U.S. government, as well as foreign sunken military craft that lie within U.S. waters, from unauthorized disturbances.

K.9 Comment: A commenter recommended that NOAA clean up the eroded/deteriorated military infrastructure, plastics, or derelict fishing gear at Midway Atoll and/or Lalo.

Commenters: Skippy Hau, Birgit Winning

Response: The terrestrial areas of Midway Atoll and Lalo are outside of NOAA's jurisdiction, and would remain so in the event of sanctuary designation. The USFWS, a Monument co-trustee, oversees the Midway Atoll National Wildlife Refuge and the Hawaiian Islands National Wildlife Refuge. The USFWS is attempting to remediate natural areas that have been affected by anthropogenic activities including the removal of hazardous contamination and deteriorated military infrastructure. Additionally, NOAA supports and partners with nonprofits like Papahānaumokuākea Marine Debris Project that work to

remove plastics and derelict fishing gear from both terrestrial and near shore waters of the refuge.

K.10 Comment: Commenters expressed concerns regarding the impacts of sonar activity and underwater detonations to marine mammals, fish, sea turtles, and sea invertebrates. Commenters specifically expressed concern with impacts from sonar activity and testing by the military. One commenter recommended mid-frequency active sonar as an alternative technology.

Commenters: Lynn Ryan, Claire Iloprizi, Susan Olson, Cindy Freitas, Nā Iwi Kūpuna

Response: Consistent with the presidential proclamations establishing the Monument, NOAA would prohibit "using or attempting to use poisons, electrical charges, or explosives in the collection or harvest of a sanctuary resource." NOAA would also prohibit, unless conducted pursuant to a permit "removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging; or attempting to remove, move, take, harvest, possess, injure, disturb, or damage any living or nonliving sanctuary resource." The use of sonar by U.S. Armed Forces is a lawful Armed Forces activity and the use has been analyzed by the U.S Navy within prior environmental planning documents (U.S. Department of the Navy, 2018)[5] and is subject to other applicable laws, permits, and authorizations, including the MMPA.

NOAA provides a broad exemption to allow activities and exercises of the U.S. Armed Forces, including those carried out by the U.S. Coast Guard, to be consistent with existing management of this area, as provided for the Monument by Presidential Proclamations 8031 and 9478. However, all activities and exercises of the Armed Forces shall be carried out in a manner that avoids, to the extent practicable and consistent with operational requirements, adverse impacts on sanctuary resources and qualities. See also the F.3 response.

K.11 Comment: A commenter recommended protections for koholā (humpback whale) that are similar to the protections included in Hawaiian Islands Humpback Whale National Marine Sanctuary, including vessel rules, restrictions on sonar, and maintaining a minimum distance away from koholā.

Commenters: Katy Weeks

Response: NOAA would prohibit several activities in the sanctuary that are responsive to this comment, consistent with the presidential proclamations establishing the Monument. The prohibitions most relevant for the protection of humpback whales include prohibitions on "removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging; or attempting to remove, move, take, harvest, possess, injure, disturb, or damage any living or nonliving sanctuary resource" and "attracting any living sanctuary resource." The use of sonar by the U.S. Armed Forces is a lawful activity of the Armed Forces, but is subject to other applicable laws, permits, and authorizations, including the MMPA.

[5] U.S. Department of the Navy. 2018. Hawaii-Southern California Training and Testing Final Environmental Impact Statement/Overseas Environmental Impact Statement. October 2018.

K.12 Comment: A commenter requested that the Outer Sanctuary Zone be named "puʻuhonua," which means a place of safety and refuge. Another commenter asked if there would be a process for naming this area of the sanctuary.

Commenters: Isaac Harp, William J. Aila, Jr.

Response: NOAA will give further consideration to this. NOAA and the State would like to ensure an inclusive process that allows for additional input and discussion from all stakeholders and Monument co-trustees regarding a name for the Outer Sanctuary Zone. In the event that the sanctuary is designated, the proposed name and the process of naming this Outer Sanctuary Zone will be discussed within the Papahānaumokuākea Native Hawaiian Cultural Working Group, facilitated by the Office of Hawaiian Affairs.

K.13 Comment: A commenter recommended that the management plan provide mitigation strategies to address potential economic impacts and challenges faced by local fishing communities. The commenter also requested that the strategies support sustainable fishing practices and promote alternative livelihoods to ensure that the economic well-being of local people is maintained.

Commenters: Dallin Marsh

Response: The sanctuary regulations were drafted to supplement and complement existing management of the area, which already restricts fishing. For example, Presidential Proclamation 8031 for PMNM prohibited commercial fishing for bottomfish and associated pelagic species after June 15, 2011. Presidential Proclamation 9478 for the Monument Expansion Area also prohibits commercial fishing, but states that non-commercial fishing may be regulated, so long as fish harvested, either in whole or in part, cannot enter commerce through sale, barter, or trade and that the resource is managed sustainably. Sanctuary designation would not change those restrictions.

Indigenous and underserved communities are two important areas where ONMS is currently expanding partnerships and engagement. The sanctuary management plan (Appendix A) contains objectives and strategies that address community engagement and support in several ways. Objective 6 is focused on enhancing community engagement and involvement, including engagement of the Indigenous Hawaiian community in the development and execution of management of the sanctuary. Kūkulu 2, Hōʻike, calls for engagement of community in monitoring and citizen science research, and associated educational and mentorship opportunities that can be applied across the pae ʻāina, as well as conducting and supporting socio-economic research. Kūkulu 4, Hoʻoulu, contains several strategies that focus on building diverse, inclusive, and equitable partnerships that enhance the ability to serve Native Hawaiian, underserved, and underrepresented communities; and Kūkulu 5, Hoʻolaha, contains strategies for Native Hawaiian culture and heritage education, and for providing cultural outreach to serve the Native Hawaiian community. Several new community partnerships which support marine research and marine resource stewardship are underway.

K.14 Comment: A commenter suggested that an in-depth study for each species in Papahānaumokuākea be conducted to ensure that their entire habitat is protected. One

commenter asked how all life forms in the ocean would be protected while migrating in and out of the sanctuary boundaries.

Commenters: Nalani Minton and anonymous commenter(s)

Response: As part of the National Marine Sanctuary System, condition reports would be prepared in advance of any management plan review, approximately every 10 years. Condition reports (or, in the case of PMNM, the State of the Monument Report) are used by NOAA to assess the condition and trends of national marine sanctuary resources and ecosystem services. The 2009 and 2020 Reports on PMNM resources are available online. These reports provide a standardized summary of resources in NOAA's sanctuaries, driving forces and pressures on those resources, and current conditions and trends for resources and ecosystem services. These reports also describe existing management responses to pressures that threaten the integrity of the marine environment. Condition reports include information on water quality, habitat, living resources, maritime heritage resources, and the human activities that affect them. They present responses to a set of questions posed to all sanctuaries. The reports also rate the status and trends of ecosystem services. Resource and ecosystem service status are assigned ratings ranging from good to poor, and the timelines used for comparison vary from topic to topic. Trends in the status of resources and ecosystem services are also reported, and unless otherwise specified, are generally based on observed changes in status since the prior condition report.

Education, Outreach and Partnerships

K.15 Comment: Commenters suggested expanding the efforts led by the National Fish and Wildlife Foundation and Papahānaumokuākea Marine Debris Project.

Commenters: Birgit Winning, Pacific Whale Foundation

Response: NOAA currently supports efforts by these entities, and would consider this suggestion when planning future management activities. This is consistent with the sanctuary management plan (Appendix A), which contains strategies that address multiple types of research, as well as partnership building and education support. For example, Kūkulu 2, Hōʻike, calls for supporting, conducting, and coordinating research and monitoring, incorporating multiple forms of knowledge. Kūkulu 4, Hoʻoulu, contains several strategies that focus on building diverse, inclusive and equitable partnership, including community, academic and economic partnerships.

K.16 Comment: Commenters expressed support for building partnerships with Native Hawaiian practitioners, scientific organizations, and institutions.

Commenters: Karyn Bigelow, Roberto Torres

Response: Creating partnerships with Kānaka ʻŌiwi practitioners, scientific organizations, educational institutions, and others is crucial to supporting the management of Papahānaumokuākea. Partnerships with Kānaka ʻŌiwi practitioners and communities help ensure the inclusivity of ʻŌiwi worldviews. This priority is reflected in the sanctuary management plan (Appendix A), in Kūkulu 4, Hoʻoulu, Partnerships and Constituent

Engagement. Partnerships with scientific and educational institutions help ensure that research is documented, and uses the latest methodologies. Engaging with educational institutions connects future leaders, scientists, and educators to the place, with scholarship and mentoring programs providing the pathways for future careers.

K.17 Comment: Commenters emphasized the importance of raising awareness of the marine environment. Additionally, it was suggested for (1) advertisement on the marine environment throughout schools, social media, publications, and the news; and (2) sharing scientific information in a way that is accessible to the youth.

Commenters: Andy Ku, Alisha Chauhan, Zahz Hewelen, Nalani Merrill, Myra Dehestani

Response: NOAA strives to provide education and outreach that brings the place to the people. NOAA conducts and supports programs and events to teach ocean, land, climate, and conservation literacy through a biocultural lens and build connections to Papahānaumokuākea. NOAA's interpretive visitor center, Mokupāpapa Discovery Center, provides vital educational and community gathering space to bring Papahānaumokuākea to all audiences. Hundreds of teachers and thousands of students are served each year. See Section 1.2.2 in the final EIS. In addition, a broad complement of education partnerships and collaborations with other interpretive centers, Monument co-trustees, educational institutions, organizations, and businesses has, over time, expanded into a diverse network serving both kamaʻāina (locals) and malihini (visitors/tourists) alike. Education and outreach efforts also are amplified through collaborations with Kānaka ʻŌiwi educators and organizations to weave in ʻŌiwi values, knowledge, and place-based connections, providing a holistic understanding of how nature and culture are interwoven. Additionally, ONMS maintains a strong web and social media presence through the PMNM website, Facebook, Instagram, Flickr, and other avenues. The sanctuary management plan Kūkulu 5, Hoʻolaha, reflects the priorities of raising awareness of the marine environment.

K.18 Comment: Commenters suggested the enlistment of Hawaiʻi fishers to help with conservation efforts by removing invasive fish species, including taʻape and roi.

Commenters: Anonymous commenter(s)

Response: Resource protection and mitigation of alien/invasive species impacts are very high priorities for the Monument and proposed sanctuary. Resource protection staff would continue to come up with innovative management activities to address threats to sanctuary resources.

Reserve/Sanctuary Advisory Council

K.19 Comment: A commenter expressed concern that the Sanctuary Advisory Council has minimal influence or legal authority in decision making. Commenters requested the need to expand RAC/SAC authorities.

Commenters: Roxane Keliʻikipikāneokolohaka, Naiʻa Ulumaimalu Lewis

Response: Section 315 of the NMSA (16 U.S.C. § 1445a) allows the Secretary of Commerce to establish one or more advisory councils to advise and make recommendations to the

Secretary regarding the designation and management of national marine sanctuaries. Advisory councils are community-based advisory groups established to provide advice and recommendations to the superintendents of national marine sanctuaries and marine national monuments across the system. Council members provide expertise about the local community and sanctuary resources, strengthen connections with the community, and help build stewardship for sanctuary resources.

Because advisory councils are authorized to advise and make recommendations "regarding the designation and management of national marine sanctuaries," any council advice, recommendations, or comments (i) must address the planning or management of the National Marine Sanctuary System or the management and protection of sanctuary resources, and (ii) if implemented, must be part of or related to existing or potential management measures that could be authorized under the NMSA. Advisory councils, therefore, are not managing bodies of the sanctuaries; for example, they do not create regulations. Rather, they tap into their members' and alternates' diverse backgrounds to provide NOAA with advice and recommendations. NOAA considers all advisory council advice and recommendations, but ultimately, NOAA decides which courses of action to pursue.

K.20 Comment: A commenter requested ONMS to conduct a study on the weaknesses of the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council to establish a more effective Sanctuary Advisory Council for Papahānaumokuākea.

Commenters: Roxane Keli'ikipikāneokolohaka

Response: The effectiveness of other Sanctuary Advisory Councils is outside the scope of this action. See the comment response to K.21 for more information on the Advisory Council for the proposed sanctuary.

K.21 Comment: Commenters requested clarification on the role of the Reserve Advisory Council in the sanctuary management plan and final EIS**.** A commenter also stated that the Reserve Advisory Council should become the Sanctuary Advisory Council, and that it should continue to engage with federal and state agencies, friends groups, and non-governmental organizations. Finally, a commenter requested that any changes to the composition of the SAC should require public review and input.

Commenters: Papahānaumokuākea Native Hawaiian Cultural Working Group, 'Aulani Wilhelm, William J. Aila Jr. and Melva N. Aila

Response: The existing Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council (RAC), formed in 2001, was created by Executive Order 13178 pursuant to the NMSA. The RAC has served as a mechanism for public input and a venue for public comment on Monument management activities, including for the areas of the Monument that overlap with national wildlife refuges. As the RAC was created pursuant to the NMSA and operates per the policies and procedures of a Sanctuary Advisory Council, the RAC is effectively already a Sanctuary Advisory Council. The identifier would be changed to be more consistent with the sanctuary designation. Revisions were made to Strategy 4.1 in the sanctuary management plan to clarify that the existing RAC would be transitioned to also

serve as a Sanctuary Advisory Council. The advisory council would continue to engage with Monument co-trustees, friends groups, non-governmental organizations, and the public. Revisions describing the role of the Sanctuary Advisory Council were also made to final EIS Section 1.3.2. See also the response to C.3 regarding seat composition.

L. Other, Editorial Changes, Including Technical Edits

L.1 Comment: A commenter suggested that a glossary of acronyms and terms be added to the draft management plan.

Commenters: Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council

Response: NOAA has included an abbreviations section to the sanctuary management plan.

L.2 Comment: Commenters noted missing or misquoted text pertaining to the description of NMSA purpose, in Section 2.2.1 and elsewhere. Specifically, one commenter noted that the word "conservation" is absent in the sections.

Commenters: Peter Auster

Response: NOAA has made revisions in the final EIS Section 1.1.2 and Section 2.1 to include the word "conservation" when referring to the purpose of the proposed sanctuary.

L.3 Comment: A commenter suggested replacing "MEA" with "Monument Expansion Area" and "OSZ" with "Outer Sanctuary Zone."

Commenters: Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council

Response: NOAA recognizes that the term "Outer Sanctuary Zone," proposed as the name for a portion of the sanctuary, is unfamiliar. NOAA has revised the final EIS to spell out Outer Sanctuary Zone. NOAA will continue to use the acronym MEA for "Monument Expansion Area."

L.4 Comment: A commenter requested that the final EIS state that the Battle of Midway occurred at both Midway Atoll and at sea.

Commenters: Friends of Midway Atoll National Wildlife Refuge

Response: The final EIS refers to maritime aspects and submerged resources associated with the Battle of Midway in Section 4.5.2, Section 5.1.4, and in Appendix C. NOAA feels that the description in Section 4.5.2 clearly states that the Battle of Midway occurred at Midway Atoll and at sea in surrounding waters. A minor revision has been made to Appendix C to better reflect this aspect.

L.5 Comment: A commenter requested that the rule language be revised to allow for an ongoing process for updating the sanctuary regulations. Specifically, the commenter suggested replacing the words "as may be necessary," in the Terms of Designation, Activities Subject to Regulation section, with "on an ongoing basis."

Commenters: Alisha Chauhan

Response: The terms of designation, as defined under section 304(a)(4) of the NMSA, may be modified only by the same procedures by which the original designation is made, including public hearings, consultations with interested federal, Tribal, State, regional, and local authorities and agencies, review by the appropriate Congressional committees, and approval by the Secretary of Commerce, or his or her designee. Any future proposed changes to sanctuary regulations or boundaries would be subject to public review as mandated by the NMSA and other federal statutes.

L.6 Comment: A commenter provided questions and suggestions regarding perceived data anomalies in the boundary description, including:

- "The proposed SMA and SPA boundaries do not coincide with the boundaries as described in Presidential Proclamation 8031 nor do they coincide with the proclamation's SMA and certain SPA boundaries as charted on ENCs that are larger scale than Band 2 (General Navigational Purpose). It appears that the coordinates of the proposed boundaries may have been derived from the SMA and SPA boundaries of the national monument as depicted on the Band 2 ENCs.
- Appendix A to Subpart W, Points 610-662 - Papahānaumokuākea National Marine Sanctuary Boundary: Points 610 through 662 form the easternmost extent of the proposed sanctuary boundary. However, these points are coincident with a portion of the Inner Reporting Area Boundary Around Nihoa ATBA. Should Points 610 through 662 be coincident with the Reporting Area Outer Boundary instead of the Inner Reporting Area Boundary?
- Pages 15302 - 15303, Appendix D to Subpart W - Unnamed, unnumbered table: ONMS did not designate a table number and name for the first set of coordinates that encompasses Kure Atoll.
- Pages 15306 - 15307, Appendix E to Subpart W, Table 1 - Ship Reporting Area (Reporting Area Outer Boundary): According to FR page 15278, Column 1: "NOAA proposes to establish this reporting area, which would be defined as "the area of the proposed sanctuary that extends outward ten nautical miles from the PSSA [Particularly Sensitive Sea Area] boundary, as designated by the IMO…" The coordinates for the Reporting Area Outer Boundary of Appendix E / Table 1 do not completely coincide with a 10-NM buffer (geodesic) from the PSSA boundary per the International Maritime Organization (IMO). I recommend a re-evaluation of the boundary points for the Reporting Area Outer Boundary."

Commenters: Lance Roddy

Response:

- Regarding the boundary discrepancies in the special management area and special preservation areas, those boundaries have been corrected and the updated coordinate tables, to be appended to the final rule, will correspond to the coordinates as described in Presidential Proclamation 8031.

- Regarding the outer boundary of the Reporting Area, NOAA intends to define the Reporting Area as was defined by IMO Resolution MSC.171(57) and the subsequent amendment IMO Resolution MSC.279(85) adopted in December 2008. This boundary has been corrected and is now described citing the geographic coordinates of the outer boundary of the "CORALSHIPREP" reporting area of IMO Resolution MSC.279(85).
- Regarding the missing designation of a table number and name for the first set of coordinates that encompass the Kure Atoll Special Preservation Area, after investigating the issue, NOAA determined that the table did in fact have a name and number as referenced at the web address and therefore no corrective action was necessary.
- Regarding the portion of the proposed sanctuary boundary identified as being coincident with the Inner Ship Reporting Area Boundary around the Nihoa Area to be Avoided, NOAA determined that this portion of the boundary was the same as that used for both the original and expanded marine national monument, and intends that it would also be used for this portion of the national marine sanctuary boundary. Therefore, no edits were necessary.

AMERICA'S UNDERWATER TREASURES