

RESOLUTION REGARDING PROPOSED SANCTUARY
MANAGEMENT PLAN DEVELOPMENT

RECOMMENDATION OF THE NORTHWESTERN HAWAIIAN ISLANDS
CORAL REEF ECOSYSTEM RESERVE ADVISORY COUNCIL

TO THE NWHI CORAL REEF ECOSYSTEM RESERVE

June 2, 2005

The Council notes the following:

1. The NWHI Coral Reef Ecosystem Reserve Advisory Council (RAC) and its management plan subcommittee have worked with the Reserve staff on the development of a draft management plan and an alternative or alternatives to be analyzed in the DEIS for the proposed NWHI National Marine Sanctuary since 2004. The draft management plan uses the Reserve Operations Plan as a foundation, with action plans written to directly address management issues and needs, a departure from the functional approach taken in the Reserve Operations Plan (ROP). The issue-based management plan also differs from the ROP in that it contains a regulatory and permitting framework for access to and use of the Sanctuary.

2. In preparing these recommendations the RAC reviewed the National Marine Sanctuaries Act (NMSA), Executive Orders 13178 and 13196 establishing the Reserve, and the Vision, Mission, Management Principles, and the RAC-recommended Goals & Objectives of the proposed NWHI National Marine Sanctuary, which together set the standards for management plan and the range of DEIS alternatives that should be considered by the NMSP in the DEIS.

3. The recommendations of the RAC included herein are offered to further the primary objective of resource protection as outlined in the purposes and policies of the NMSA, 16 U.S.C. 1431, sec. 301(b). In particular the NMSP and the RAC incorporated into Goal 1 for the proposed Sanctuary section 301 (b)(3) "to maintain the natural biological communities in national marine sanctuaries, and to protect, and, where appropriate, restore and enhance natural habitats, populations, and ecological processes." We also note that section 301 (b) (6) permits public and private uses of a sanctuary only "to the extent compatible with the primary objective of resource protection." That precautionary approach has been incorporated into Goal 3 and was in the RAC's original Goal 7.

4. Executive Order 13178 established "the long-term conservation and protection of the coral reef ecosystem and related marine resources and species of the NWHI in their natural character" as the principal purpose of the Reserve. The

executive orders outline several protection and conservation measures, including caps on commercial fishing effort, take, gear and permits, and limits on effort, take, and gear for recreational fishing in the Reserve to levels and landings for the year(s) preceding December 4, 2000; prohibition of certain activities, and the establishment Reserve Preservation Areas.

5. Executive Order 13178 directed that the Reserve Operations Plan address issues and actions that at a minimum provide for coordinated management, vessel allocation, research, marine debris clean-up and prevention, restoration, education and outreach, enforcement and surveillance, coordination with Native Hawaiian interests, identification of potential tourism, recreational, and commercial activities, the use of vessel monitoring systems, and any regulations the Secretary deems necessary to manage the Reserve. The draft management plan for the proposed Sanctuary builds and expands on these priority issues and actions in an issue-based format.

6. The mission of the proposed Sanctuary is to “[c]arry out coordinated and integrated management to achieve the primary purpose of strong and long-term protection of marine ecosystems in their natural character, as well as the perpetuation of Native Hawaiian cultural practices and the conservation of heritage resources of the Northwestern Hawaiian Islands” (from the Advice and Recommendations on Development of Draft Fishing Regulations Under the National Marine Sanctuaries Act Section 304(a)(5) September 20, 2004).

7. The principal management goal of the proposed Sanctuary is to “[p]rotect, preserve, maintain, and where appropriate restore the natural biological communities, including habitats, populations, native species, and ecological processes, of the Sanctuary as a public trust for current and future generations.” (Id.)

8. After careful review of the management plan draft provided in March 2005, we offer the following comments and recommendations. In particular, we call attention to certain approaches, strategies, and activities in the management plan that we think are particularly important, as well as those areas that need changes or improvement.

9. On June 2, 2005, the RAC recommended an alternative to be analyzed in the Draft Environmental Impact Statement for the proposed Sanctuary. Overall, the draft management plan should be written to be consistent with this alternative recommendation which was developed to carry out the spirit and intent of legislation introduced by Representative Ed Case, entitled “Northwestern Hawaiian Islands National Marine Refuge Act of 2005.”

Regarding the development of the draft management plan for a proposed national marine sanctuary in the NWHI, the Council recommends the following:

1.0 Introduction

The Council reviewed the introduction and finds it comprehensive, especially with the addition of subsection 1.7 NWHI Ecosystem Status. The ecosystem status section adds substantive and current baseline information on the status of the NWHI ecosystem that will provide for a comparative baseline for long-term conservation and management of the Sanctuary.

2.1 Goals and Objectives Statement

The Council is pleased to find the language of the vision, mission, management principles, goals & objectives largely intact from our January 22, April 29 and July 22, 2004 recommendations. However, we continue to support our original Goal 7 recommendation (July 8, 2004 advice), and have modified fishing objectives D, E, and F to be consistent with our DEIS alternative recommendation (June 2, 2005 advice) as follows:

Objective D: Prohibit recreational and charter fishing.

Objective E: Phase out commercial bottomfishing and associated pelagic fishing by 2025. Allow for a 'grandfathering' of current, active bottomfishermen who would, over a period of time, be phased out through attrition or a buy-out program. Those that selected a buyout would need to make their decision within one year after the date the buyout offer is made. Those that opt to remain in the fishery would need to cease their fishing operations by the year 2025. No new permits would be issued and no existing permits may be transferred. All fishing would be limited to areas outside of no fishing zones established and referenced in the RAC alternative recommendation.

Objective F. Limit commercial pelagic fishery to permitted bottomfishers.

In addition, since every statement is of importance, it is appropriate to change the title of the statement to include the vision, mission, and management principles as well as the goals and objectives.

2.2 Priority Management Needs

We find the five priority management need categories broad enough to encompass the specific management issues that will face the Sanctuary at this time. They are:

- Understanding and interpreting the NWHI
- Reducing threats to the ecosystem
- Managing human activities
- Coordinating conservation and management efforts
- Achieving effective operations

2.3 Management Approach

Overall, we take note that natural resource management worldwide has been improved by results-based management similar to the management approach described in this subsection. The management approach consists of three main elements: 1) adaptive management process 2) regulations and action plans, and 3) collaborations and partnerships.

Regarding an adaptive management approach, we acknowledge that the adaptive management process described in conjunction with the Evaluation Action Plan describes a structured process for modifying management actions based on new information and learning by experience. This adaptive management approach should be strengthened by adding language that emphasizes the precautionary principle be applied in selecting initial actions, with caution exercised to avoid potentially irreversible impacts. Any modifications to such actions over time should be consistent with the vision, mission, management principles, goals and objectives of the NWHI Sanctuary.

Regarding regulations and action plans, since regulations are one of the foundations of effective management, we recommend the Reserve continue to build the regulatory and permitting framework, incorporating the recommendations contained in this Resolution.

Regarding collaborative management mechanisms, we find that some of the costs reflected in the Interagency Coordination Action Plan MOU's are actually costs of implementing specific action plans and recommend that these costs be moved to the appropriate action plan budgets.

3.0 Specific Action Plans to Address Priority Management Needs

The RAC has not yet prioritized strategies or activities, but reserves the right to provide such advice at a later date.

Our recommendations for the action plans are below. They are arranged here in the same order they are listed in the Management Plan.

Zoning Action Plan

We note and support that the Zoning Action Plan addresses issues of concern to the RAC, and includes Activity Z-1.1, to investigate international maritime organization designations (such as area to be avoided, shipping lanes, particularly sensitive sea area), and update nautical charts. We also note and support the use of straight-lined zoning boundaries which use lat/long coordinates rather than fathom depths, resulting in a network of clearly identifiable and enforceable zones (page 2).

However, because of the importance of these actions for the effective management of the Sanctuary, we recommend additional details be added to Activity Z-1.1 to explicitly address the following:

- Work with NOAA and navigation software providers to produce and publish accurate maps based on the latest available GPS data, pending completion and publication of new charts. However, where and when the depths are available they should be provided as well.
- Pursue the designation of the NWHI Sanctuary as a particularly sensitive sea area via International Maritime Organization in order to address threats to the ecosystem posed by transiting vessels (including foreign flag vessels).
- Pursue a notice to mariners on navigation charts about the need to avoid impact on the fragile NWHI marine area in order to prevent future damages from transiting vessels.
- The Sanctuary should also include protection considerations for Native Hawaiian artifacts and sites.
- No extractive recreational activities should be allowed in the Sanctuary.
- All other strategies and activities should be consistent with our DEIS alternative recommendation.

Permitting Action Plan

Permits have been a high priority issue for the RAC and the public throughout the development of the management plan for the proposed Sanctuary. Overall, we recommend that permitted activities be consistent with the RAC's 6/2/05 alternative recommendation.

We note and support many aspects of the permitting action plan, including the desired outcome, "to implement a permitting program that manages access only for those activities consistent with long-term ecosystem protection." We also support Strategy P-1, to develop and implement a coordinated permitting system with jurisdictional partners, as well as Strategy P-2, to implement a coordinated permit tracking system to track all activities. However, we note that the action plan can be strengthened in a number of ways:

1) In addition to the permit criteria listed on page 9 of the Permitting Action Plan, the following additional general permit criteria should be added:

- The activity can demonstrate benefit to the Sanctuary.
- The activity is consistent with the goals and objectives of the Sanctuary.
- Ensure that permitted human activities do no harm to the ecosystem, and further the conservation and management of the Sanctuary. Alternatively: no adverse impact.
- Applicant must demonstrate that this activity cannot take place outside of the sanctuary.

2) Regarding the issuance of permits:

- There should be no general access permits issued, only activity-specific permits.
- All activities conducted within the Sanctuary require a permit.
- Transit through the Sanctuary by U.S. flag vessels requires notification.
- Issuance of all permits should be limited by permit criteria on a case-by-case basis, which include review of activity, location and other factors.
- Efforts should continue to achieve improved interagency permit coordination and tracking
- Permit applications should require applicants to describe how they plan to minimize potential impacts.
- Operational details should be included in the application, including sufficient detail of expected vessel operations
- Permits should contain specific, enforceable reporting requirements similar to Reserve Reporting Requirements

3) The sanctuary permitting structure should regularly include the RAC and outside expert review.

- As part of Strategy P-2, include: At each SAC meeting, provide members with a list and summary of all permit requests and permits granted/denied by activity type. This summary should protect the confidentiality of the applicant but provide sufficient information to understand the nature of the activity and the potential impact on resources.
- In addition to the actions described in Activity P-2.2, provide for an annual permit review process:
 - a) A technical panel comprised of experts who understand the resource should periodically review permit files for patterns of compliance. Specifically, the panel should undertake a technical analysis regarding the effectiveness and consistency of the permits that were issued with the criteria, whether the decisions granting the permits were consistent with the criteria, and whether there are patterns in both use and permit compliance.
 - b) The panel should also review whether the permitting criteria in use need modification to allow permit reviewers to better serve sanctuary goals and objectives.
 - c) In addition the panel should consider whether permitted activities may be having cumulative impacts on the Sanctuary, and if so whether such impacts are being properly evaluated and mitigated.

d) If after three years there is evidence that an adequate job is not being done, permits should be reviewed by the technical panel on a case-by-case basis, and the panel would make a recommendation on each case.

4) The sanctuary permitting structure should include the following:

- Expedited implementation of VMS
- On-board observers on a case-by-case basis
- Electronic notification by permittees when entering and leaving the Sanctuary.
- Vessel grounding insurance or bond arrangement requirement for vessels over 25 feet in length.
- Hull cleaning/inspection for both government and non-government vessels within 14 days before entering the Sanctuary

5) Permits issued for specific activities should have tailored criteria which should include, but not be limited to the following:

Research/Scientific Collection Permit

- Distinguish commercial vs. non-commercial research.
- Distinguish non-manipulative (observations, photography, surveys not involving collection or permanent markers) vs. manipulative research (collection including removal or relocation of specimens, mark/recapture/release, introduction of chemicals, use of structures such as stakes, cages or permanent markers, or other disturbance or modification of the environment. Permit review should include scrutiny of sampling design.
- Applications for research requiring extraction and other potentially damaging activities should include a detailed justification of sampling design and sample or collection quantity and location. Such research should be conditioned as necessary to avoid impacts to the ecosystem, for example, by limiting the quantity and location of sampling. All living and non living material removed from the Sanctuary remains the property of the U.S. government.
- In addition to sanctuary review of a permit application prior to approval, applications may be sent out for a peer review of the proposed work if sanctuary reviewers deem this necessary prior to a decision on issuance.
- If the research is being done by the Sanctuary, the permits should be reviewed by outside experts.

Native Hawaiian Permit Criteria

- A kupuna / practitioners council should develop a list of practitioners who might initially qualify as “principal investigators” for permitted activities.
- A kupuna / practitioners council should also develop frequency, location, and activity restrictions.

Ocean Tourism Permit Criteria

- Consistent with our alternative to be analyzed in the DEIS, we recommend that ocean tourism not be permitted in the sanctuary, except any wildlife-dependent recreational activities that may be allowed at Midway Atoll.
- The use of volunteers for restoration, education, or research, should be conducted under those specific permits types

Bottomfishing Permit Criteria

- Consistent with permit requirements for all sanctuary users, Sanctuary permits should be required for bottomfishers in addition to limited access permits required for fishing in the NWHI under the “Bottomfish and Seamount Groundfish Fisheries Management Plan of the Western Pacific Region.”
- If the recommended bottomfishing phase-out (see Objective 7E, page 3) will occur, bottomfishing permit holders should not be subject to “use it or lose it” permit conditions. If a phase-out will not occur, “use it or lose it” conditions should remain in place.

Ecosystem-level Characterization, Monitoring and Research Action Plan

We note that this action plan describes a number of research-related activities that will be important for understanding and properly managing the NWHI Sanctuary. However, we think that the most important activity is to complete, and agree upon, a comprehensive and prioritized plan that identifies the research that will be needed. We recommend that this action plan be revised to include development of such a plan as the first strategy. Subsequent strategies should be revised as needed so that they are guided by the prioritized plan once it is developed.

Native Hawaiian Action Plans

We commend the draft management plan for building on the ROP to emphasize and support Native Hawaiian histories and cultural practices, and involvement in sanctuary management. However, we note the omission in the management plan of the Native Hawaiian workshop recommendation to form a kupuna / practitioners advisory council. Therefore the RAC recommends that the management plan create and describe the roles and responsibilities of a kupuna / practitioners council.

Alien Species Action Plan

We note the importance of preventing the introduction and spread of alien species in the NWHI and support implementation of the Alien Species Action Plan.

Enforcement Action Plan

We note and support Activity EN-2.2 Implement a mandatory surveillance system for all permitted vessels entering the NWHI, as well as Activity EN-2.3. Develop an integrated sanctuary enforcement plan for the NWHI, and Activity EN-2.4

Expand and increase available platforms to aid real-time enforcement efforts. However, we recommend that an activity be added to employ the use of satellites to monitor vessel traffic in the Sanctuary, and that Activity EN-2.2 expedite the implementation of VMS.

Ocean Tourism and Recreation Action Plan

Delete this action plan from the management plan as ocean tourism is not compatible with our DEIS alternative recommendation. However, the use of volunteers to assist in bona fide research, education, and management activities could benefit the Sanctuary, and therefore, should be discussed in the appropriate action plans as possible ways to involve the public in caring for the NWHI.

If this action plan stays in, change the wording of the desired income: “prevent” rather than “manage,” or “minimize.”

Interagency Coordination Action Plan

We note and support the use of memoranda of understanding (MOU) to carry out cooperative management functions. However, as noted in recommendations on Section 2.0, some of the costs reflected in the Coordination Action Plan are actually costs of implementing specific action plans and should be moved to the appropriate action plan budgets.

Ocean Literacy and Constituency Building Action Plan

We note and support the emphasis on informing and involving constituencies to support ocean conservation, and the success of Mokupapapa in reaching these goals in Hilo. Therefore, we recommend the action plan expand on and provide for more such appropriate educational programming on all islands. Regarding the potential for an additional Discovery Center, there should be an activity in the action plan that considers the many factors for location of such a center, including, but not limited to high level use and support by the host community.

Sanctuary Advisory Council Action Plan

We support the continuation of an advisory council upon the designation of the Sanctuary and consider this to be a critical mechanism to engage other agencies, stakeholders, and the public in sanctuary management. We note that it has been difficult to find researchers qualified to sit on the Council because of the requirement in the Executive Orders that they have experience specific to the NWHI and the disqualification of federal government employees and contractors. Since almost all research in the NWHI is done under government auspices, we recommend that the plan allow the inclusion on the Council of government contract researchers who have been doing work in the NWHI as well as independent researchers who have experience relevant to NWHI species and/or issues.

Evaluation Action Plan

We note and support the plan’s emphasis on outcomes and site measures, on the degree to which management actions are achieving desired outcomes, on addressing priority management needs, and on meeting the goals and objectives of the Sanctuary. We support the overarching application of the precautionary principle. We support the process that seeks to improve management decision-making based on reliable information and data, experience, and a sound governance process that includes the role of Sanctuary Advisory Council. We also support a process that binds any changes in management approach and activities to the precautionary principle and the Vision, Mission, Management Principles, Goals and Objectives of the Sanctuary.

Recommendations on other management plan components

Partner Lists

For non-agency partners, emphasis should be on the inclusion of non-profit organizations with expertise in the activity.
