



STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
560 N. NIMITZ HWY., SUITE 200
HONOLULU, HAWAII 96817

June 7, 2016

Tim Johns, Chair
Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve
Advisory Council

Re: Papahānaumokuākea Marine National Monument: Proposed Boundary Expansion and OHA initiative to fill a fourth Co-Trustee position

Aloha mai Chair Johns:

Thank you for the opportunity to provide comments on the proposed boundary expansion and Office of Hawaiian Affairs (OHA) initiative to fill a fourth Co-Trustee position for Papahānaumokuākea Marine National Monument (PMNM).

The Native Hawaiian community-led effort to propose a boundary expansion was formally initiated by members of the PMNM-Native Hawaiian Cultural Working Group (CWG) in March 2016. This continued the advocacy efforts of Native Hawaiian community leaders, practitioners and kūpuna who joined with other stakeholders to establish the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (CRER) in 2000 and PMNM in 2006. Included in the CWG proposal is support for the elevation of OHA to a fourth OMNM Co-Trustee position.

On May 26, 2016 the OHA-Board of Trustees passed an action by majority vote to conditionally support the proposed boundary expansion of PMNM provided that:

1. OHA is elevated to a Co-Trustee position;
2. The cultural significance of the expansion area to Native Hawaiians is recognized; and
3. There is no boundary expansion southeast towards the islands of Ni'ihau and Kaua'i.

I respectfully offer the following information specific to OHA's Co-Trustee initiative to the CRER for consideration:

The PMNM Co-management Structure

In December 2006, the State of Hawai'i and U.S. Departments of the Interior and Commerce executed a Memorandum of Agreement (MOA) to promote the coordinated management of PMNM.

The MOA simply describes a "Co-Trustee" as a party to the agreement. The Co-Trustees agree to carry out coordinated resource management for the long-term comprehensive conservation and protection of PMNM. The MOA establishes functional relationships to effectively coordinate management and provides the general terms and conditions under which each Co-Trustee will cooperate and manage the resources of PMNM.

Co-Trustees are afforded representation on the Senior Executive Board (SEB) to provide policy level guidance to their respective agency staff assigned to carry-out Monument management activities. Disputes that cannot be resolved at the Monument Management Board (MMB) level are elevated to the SEB for resolution. The MOA further outlines a series of site management tasks that the SEB will achieve through the MMB. The PMNM Management Plan drafted by the MMB (on behalf of the SEB) and approved by the current Co-Trustees in 2008 further operationalizes the MMB's management tasks.

The MMB implements coordinated management of PMNM at the operational (field) level. For nearly a decade now, Native Hawaiian interests have been represented by OHA at the MMB level of the PMNM co-management structure. However, OHA is not represented at the SEB-level or as a Co-Trustee. OHA is the only entity operating at the MMB level that is not a subsidiary of an entity represented at the higher levels of the co-management structure. The cultural significance of the Northwestern Hawaiian Islands to the Native Hawaiian people is recognized in Proclamation 8031. OHA has consistently asserted that the absence of the Native Hawaiian voice representing that significance at the Co-Trustee level is a flaw in the unique co-management structure for PMNM that is held up as a model for the World to consider.

The Co-Trustees have echoed OHA's concerns about the missing Native Hawaiian voice at the higher levels of co-management. In the 2008 PMNM Management Plan, the current Co-Trustees acknowledged that despite the significance of Papahānaumokuākea to Hawai'i's indigenous people, the Native Hawaiian voice was missing in the co-management structure above the MMB. The plan clearly identified the OHA as an entity that could fill that void, in the absence of a federally recognized Native Hawaiian governing entity. Adding OHA as a Co-Trustee will correct this issue in the manner articulated by the Co-Trustees themselves in 2008.

State and Federal jurisdictions and authorities that existed in the Northwestern Hawaiian Islands before the establishment of PMNM are neither diminished nor enlarged

The Presidential Proclamation (Proclamation 8031) established the Papahānaumokuākea Marine National Monument. Proclamation 8031 is explicit that:

Nothing in this proclamation shall be deemed to diminish or enlarge the jurisdiction of the State of Hawai'i.

This is confirmed by the MOA, which states that:

Nothing in this Agreement shall be construed to conflict with applicable laws, or otherwise diminish authorities otherwise vested in the Secretaries of Commerce and Interior under federal law or the State of Hawai‘i under state law. Any such conflicting term shall be invalid, but the remainder of the Agreement shall remain in effect. If a term is invalid, the Co-Trustees shall immediately review the Agreement to decide what should be done in light of the invalid term, e.g., amend or terminate the Agreement.

Amending the 2006 MOA to add OHA as a 4th Co-Trustee does not diminish or enlarge the jurisdiction of the State of Hawai‘i, nor does it conflict with or diminish the authority of federal or state laws.

OHA is independent and separate from the Executive Branch of State Government

OHA was constitutionally established for the purpose of promoting greater self-determination for Native Hawaiians, and serves as a voice for Native Hawaiians in the (current) absence of a federally recognized Native Hawaiian governing entity.

Under Hawai‘i state law, OHA is the constitutionally established body¹ responsible for protecting and promoting the rights of Native Hawaiians. The mandates for OHA set forth in the State Constitution are codified in Chapter 10, Hawaii Revised Statutes which establish that OHA “...shall be a separate entity independent of the executive branch”.² State law mandates OHA to “[s]erve as the principal public agency in the State of Hawai‘i responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians; . . . and [t]o assess the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conducting advocacy efforts for native Hawaiians and Hawaiians.”³

OHA fulfills its constitutional and statutory mandates under the direction of nine publically elected trustees.⁴ When established in 1978 by a Constitutional Convention, OHA was envisioned and continues to be the a vehicle for Native Hawaiians to have greater control over Native Hawaiian resources and a greater voice in the protection of cultural resources and our way of life.

Adding OHA as the 4th Co-Trustee does not “duplicate” State of Hawai‘i representation in the co-management structure of PMNM. Rather, it assures that Native Hawaiian interests are represented at all levels of co-management by the entity that has that exact constitutional and statutory mandate.

¹ Constitution of the State of Hawai‘i, Article XII, Section 5.

² Hawaii Revised Statutes §10.4.

³Hawaii Revised Statutes § 10-3.

⁴ Constitution of the State of Hawai‘i, Article XII, Section 6.

OHA as the 4th PMNM Co-Trustee

At a fundamental level, this initiative is about parity as OHA is the only co-managing agency not represented at the Co-Trustee level. Filling a 4th Co-Trustee position will afford OHA membership on the SEB, allowing for a richer conversation and ensures that the Native Hawaiian interests are represented at every level of policy and decision making for PMNM.

OHA's co-management responsibilities would be further institutionalized within the agency. As a 4th Co-Trustee, OHA Administration anticipates conducting a comprehensive assessment of capacity and resource needs. OHA has steadily increased resources towards our co-management responsibilities. These increased resources include two full-time staff positions and a programmatic budget. Without an elevated role in the co-management structure to a Co-Trustee position and the additional responsibilities that come with SEB membership, it will be difficult for OHA to advocate internally and leverage additional resources for PMNM co-management.

As the 4th Co-Trustee day-to-day co-management activities (inclusive of permit application review) will remain a function of OHA Administration. The OHA-Board of Trustees will be regularly updated on management activities and establish any needed internal guidance policies.

Conclusion

The proposed boundary expansion provides an opportunity to correct a flaw in the co-management structure for PMNM and ensure that the Native Hawaiian interests are represented at every level of policy and decision making. As significant expansion of the monument's boundaries is being considered, it is even more important to ensure that the Native Hawaiian voice is appropriately represented at all levels of co-management for the kupuna islands. Amending the 2006 MOA to add OHA as a 4th Co-Trustee does not diminish or enlarge the jurisdiction of the State of Hawai'i, nor does it conflict with or diminish the authority of federal or state laws. OHA is independent of the Executive Branch of the State of Hawai'i. Thus, adding OHA as a 4th Co-Trustee does not duplicate State representation.

For nearly a decade now, Native Hawaiian interests have been represented by OHA at the MMB level of the PMNM co-management structure. OHA strongly believes that decade provides a body of evidence that clearly demonstrates our commitment to work responsibly with all stakeholders in the management of PMNM. OHA has steadily increased resources towards our co-management responsibilities. These increased resources include two full-time staff positions and a programmatic budget.

OHA recognizes that the CRER Advisory Council designates representation to Native Hawaiian community members and kūpuna. The PMNM-CWG that is now administered and convened by OHA, began with the CRER. As the 4th PMNM Co-Trustee, OHA fully expects to strengthen our relationship with the CRER Advisory Council as a part of a larger effort to effectively coordinate all management actions.

Tim Johns, Chair

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Thank you for your time and attention to this important matter. My staff will be present at the CRER Advisory Council meeting scheduled for June 8, 2016. They will be available to answer any questions you might have, or provide additional information you might require as you consider the proposed boundary expansion and Office of Hawaiian Affairs (OHA) initiative to fill a fourth Co-Trustee position for Papahānaumokuākea Marine National Monument (PMNM).

‘O wau iho nō me ka ‘oia‘i‘o,

A handwritten signature in black ink, appearing to read 'Kamana'opono Crabbe', written in a cursive style.

Kamana‘opono M. Crabbe, Ph.D.

Ka Pouhana, Chief Executive Officer

CC: OHA-Board of Trustees