



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE

Papahānaumokuākea Marine National Monument
NOAA DKIRC
NOS/ONMS/PMNM
1845 Wasp Blvd, Building 176
Honolulu, Hawaii 96818

December 22, 2020

MEMORANDUM FOR: John Armor,
Director, Office of National Marine Sanctuaries

THROUGH: Kristina Kekuwa, Regional Director KEKUEWA.KRISTINA.Y.1365894996 Digitally signed by KEKUEWA.KRISTINA.Y.1365894996
Pacific Islands Region Date: 2020.12.24 11:49:03 -10'00'

FROM: Athline Clark, Superintendent CLARK.ATHLINE.MARIE.1390801714 Digitally signed by CLARK.ATHLINE.MARIE.1390801714
Papahānaumokuākea Marine National Monument Date: 2020.12.22 16:10:23 -10'00'

SUBJECT: NWHI Coral Reef Ecosystem Reserve Advisory Council
Letter in support of moving the National Marine Sanctuary
process forward for the NWHI CRER

Background on Advisory Council Communication

In August 2020, the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council (RAC) requested that the Office of National Marine Sanctuaries (ONMS) - Papahānaumokuākea Marine National Monument (PMNM) provide a status update on the National Marine Designation process, which was given by Superintendent Clark and Deputy Superintendent Roberts at its October 22, 2020 RAC meeting. The RAC motioned and approved to form a writing team to draft a letter to ONMS in support of moving forward with sanctuary designation.

At its meeting on December 9, 2020, the RAC unanimously approved the letter after discussion and voting on minor revisions. The letter was signed by Chair William Aila, Jr. on December 18, 2020.

Site Superintendent's Position

I concur with the statements made in this letter and support the RAC's position on this matter.

CLARK.ATHLINE.MARIE.1390801714 Digitally signed by CLARK.ATHLINE.MARIE.1390801714
Date: 2020.12.22 16:12:06 -10'00'

Athline Clark, Superintendent

Date

Signature of Transmittal of Information to ONMS Director

Acknowledges what has transpired:

John Armor Director,
Office of National Marine Sanctuaries

Date



NORTHWESTERN HAWAIIAN ISLANDS CORAL REEF ECOSYSTEM RESERVE RESERVE ADVISORY COUNCIL

Non-Government (Voting)

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

Linda Paul (Vice Chair)
Conservation

Rick Gaffney (Secretary)
Recreational Fishing

Solomon Kahoohalahala
Native Hawaiian Elder

Halealoha Ayau
Native Hawaiian

Pelika Andrade
Native Hawaiian

VACANT
Education

Phil Fernandez
Commercial Fishing

VACANT
Research

Don Schug
Research

Jean Kenyon
Research

Richard Lee
Ocean-Related Tourism

Kanoe Morishige
Conservation

Audrey Newman
Conservation

Judith Cucco
Citizen-at-Large

Government (Non-Voting)

Athline Clark
Papahānaumokuākea MNM

Allen Tom
Hawaiian Islands Humpback Whales NMS

Hoku Kaaekuahiwi-Pousima
NOAA Fisheries PIRO

Brandon Jim On
NOAA OLE

Brad Kaaleleo Wong
Office of Hawaiian Affairs

Maile Norman
U.S. Coast Guard

Janice Fukawa
U.S. Department of Defense

Joshua DeMello
WESPAC

Dan Polhemus
*U.S. Fish and Wildlife Service
- Ecological Services*

Jared Underwood
*U.S. Fish and Wildlife Service
- Refuges*

Brian Neilson
State of Hawai'i - DLNR

December 9, 2020

Mr. John Armor, Director
Office of National Marine Sanctuaries
1305 East-West Highway, 11th Floor
Silver Spring, MD 20910

c/o Athline Clark, Superintendent
Papahānaumokuākea Marine National Monument
NOAA/DKIRC/NOS/ONMS/PMNM
1845 Wasp Boulevard, Building 176
Honolulu, HI 96818

RE: NWHI CRER transition to NWHI NMS

Aloha mai Director Armor,

As you know the Northwestern Hawaiian Islands is a unique world treasure that is protected in part by a series of state, federal and international instruments. However, this very special area still needs the protection of the full authority of the National Marine Sanctuaries Act to ensure lasting protections for this special plac. At its meeting on December 9, 2020, the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council ("RAC") approved sending a letter to the Office of the National Marine Sanctuaries ("ONMS") requesting NOAA to move forward with the designation of a National Marine Sanctuary in the Northwestern Hawaiian Islands pursuant to President William J. Clinton's Executive Order ("EO") 13178 of December 4, 2000, (Federal Register/Vol.65, No. 236/Thursday, December 7, 2000/Presidential Documents).

On December 4, 2000, President William J. Clinton signed Executive Order 13178 establishing the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve). It provides *inter alia*:

Sec. 5. Implementation. . . . (b) Reserve Operations Plan The Reserve Operations Plan shall be directed at priority issues and actions that, at a minimum, provide for. . . .

(12) Coordination of all relevant activities with the process to designate the Reserve as a National Marine Sanctuary, as provided under paragraph (f) of this section. . . .

*(e) National Marine Sanctuary. The Secretary shall initiate the process to designate the Reserve as a national marine sanctuary pursuant to sections 303 and 304 of the National Marine Sanctuaries Act (16 U.S.C. 1433, 1434). In doing so **the Secretary shall supplement or complement the existing Reserve.** [emphasis added] The Secretary shall, in consultation with the Governor of the State of Hawaii, determine whether State submerged lands and waters should be included as part of the sanctuary. In designating and managing the sanctuary, the Secretary shall consider the advice and recommendations of the Reserve Council established pursuant to paragraph (f) of this section.*

(f) *Council*. After considering input from the Secretary of the Interior and Governor of the State of Hawai'i, the Secretary shall establish a Coral Reef Ecosystem Reserve Council pursuant to section 315 of the National Marine Sanctuaries Act (16 U.S.C. 1445a) to provide advice and recommendations on the Reserve Operations Plan and designation and management of any sanctuary.

On June 15, 2006, President George W. Bush issued Proclamation 8031 establishing a North Western Hawaiian Islands Marine National Monument pursuant to section 320301 of title 54, United States Code (the "Antiquities Act"), the boundaries of which coincided with those of the Reserve. On February 28, 2007, Proclamation 8112 amended Proclamation 8031 and renamed the Monument the Papahānaumokuākea Marine National Monument. On August 26, 2016, President Barrack Obama issued Proclamation 9478 expanding the boundaries of the Monument out to the limit of the U.S. Exclusive Economic Zone (EEZ). Proclamation 9478 provides, inter alia, that "the Secretary of Commerce should consider initiating the process under the National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.) to designate the Monument Expansion Area and the Monument seaward of the Hawaiian Islands National Wildlife Refuge and Midway Atoll National Wildlife Refuge and Battle of Midway National Memorial as a National Marine Sanctuary to supplement and complement existing authorities.

Additionally, a pending U.S Senate appropriations bill for 2021-2022 directs "NOAA to initiate the process under the National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.) to designate the Papahānaumokuākea Marine National Monument as a National Marine Sanctuary to supplement and complement, rather than supplant, existing authorities. NOAA shall provide the Committee an update on this designation before the end of fiscal year 2021."

See <https://www.appropriations.senate.gov/newsroom/committees-releases-fy21-bills-in-effort-to-advance-process-produce-bipartisan-results>

In addition to complying with Executive Order 13178, which is still in effect, and Proclamation 9478, the RAC feels the designation of the NWHI Coral Reef Ecosystem Reserve and the Marine National Monument as national marine sanctuary will provide NOAA with the authorization under the National Marine Sanctuaries Act (NMSA) to carry out the following necessary management actions that it currently has no authority to take:

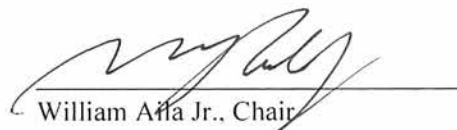
- a. Assess criminal and civil penalties for violations of sanctuary regulations and for damages to sanctuary resources that occur due to actions within the sanctuary and actions from outside sanctuary boundaries. Some amount of the civil penalties collected will go to the sanctuary, primarily for funding resource protection efforts.
- b. Take into account whether a violation occurred in the sanctuary when assessing penalties under other statutes, including the Endangered Species Act and the Marine Mammal Protection Act.
- c. Access Natural Resource Damage Assessment funds to recover costs associated with responding to and remediating the destruction, loss or injury (or potential destruction, loss or injury) to sanctuary resources.
- d. Enter directly into agreements with other agencies. Currently, the Monument must go through the Pacific Island Region for all MOAs, MOUs, etc.

- e. Establish a mechanism to charge fees for commercial Special Ocean Use permits. This includes charging for permitting staff time, cost of vessel hull inspections, cost of providing Resource Monitors, etc. The revenue from these fees will stay with the site. The sanctuary implementation language will also provide that the Monument's current joint permitting system will continue.
- f. Provide opportunities to obtain additional funding and other resources for marine resource protection and management activities. The NMSA allows ONMS to enter into agreements with nonprofit organizations to solicit donations of funds, property, and services; acquire by purchase, lease, or exchange land, facilities or other property; apply for, accept and use grants from other federal agencies, states, local governments, regional agencies, interstate agencies, foundations, or other persons, and raise funds through the creation, marketing and selling of products.
- g. Establish a Sanctuary Advisory Council regulated by the NMSA that can provide consensus advice to sanctuary managers as representatives of various community constituencies.
- h. The Antiquities Act protects "objects of historic or scientific interest," the NMSA protects areas of "recreational," "cultural," or "human-use values." Moreover, instead of focusing on protecting specific "objects," the NMSA focuses on designating and managing "areas as the National Marine Sanctuary System." Thus, a marine sanctuary may be larger, protect more diverse values, and serve different overall goals than an ocean-based monument.

Over four years ago on January 14, 2016, at the National Marine Sanctuary Advisory Council Summit in Annapolis, MD, then acting ONMS Director John Armor, now ONMS Director, advised the RAC through its Vice Chair to submit a letter requesting that ONMS allow the Reserve to continue the transition into a NWHI NMS as mandated by President Clinton's Executive Order 13178. Since that time the RAC has remained interested and committed to moving forward with the process of designating the Reserve and the Monument as a National Marine Sanctuary.

The RAC respectfully requests ONMS to begin the process of designating a National Marine Sanctuary in the Northwestern Hawaiian Islands. Please be assured that ONMS has the full support of the RAC in this designation. We look forward to your response to this request at your earliest convenience.

Sincerely,



William Afa Jr., Chair



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
Office of National Marine Sanctuaries
1305 East-West Highway
Silver Spring, Maryland 20910

January 27, 2021

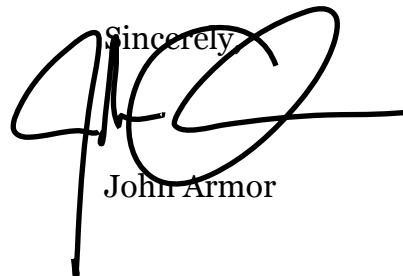
Dear Mr. Aila:

William

Thank you for your December 9, 2020, letter of behalf the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council (RAC) “requesting NOAA to move forward with the designation of a National Marine Sanctuary in the Northwestern Hawaiian Islands pursuant to....Executive Order (EO) 13178 of December 4, 2000.” In the letter, the RAC identified several benefits that sanctuary designation would bring to existing management actions. The letter also cited the U.S. Senate appropriations bill (which is now law) for 2021-2022 that directs NOAA to initiate the process under the National Marine Sanctuaries Act to designate the Papahānaumokuākea Marine National Monument (PMNM) as a national marine sanctuary.

I am pleased to announce that the Office of National Marine Sanctuaries (ONMS) will be initiating the process to designate the PMNM as a national marine sanctuary in collaboration with our co-managers. ONMS staff will begin to work with the State of Hawaii and other co-management partners to develop a schedule, workplan and process to move forward. We are committed to a cooperative effort that includes significant input from the RAC and the public. I look forward to developing a proposal for a sanctuary that enhances, supplements and complements existing authorities and supports the current work of PMNM co-management to implement the provisions of the Reserve and Monument’s designation.

Sincerely,



John Armor

