

Comments on the
**DRAFT MONUMENT MANAGEMENT PLAN, DRAFT CULTURAL
IMPACT STATEMENT, DRAFT ENVIRONMENTAL ASSESSMENT,
and DRAFT MIDWAY VISITOR SERVICES PLAN** for the
Papahānaumokuākea Marine National Monument

submitted by the **NWHI hui**

members of KAHEA: The Hawaiian-Environmental Alliance,
‘Ilio‘ulaokalani Coalition and the Sierra Club

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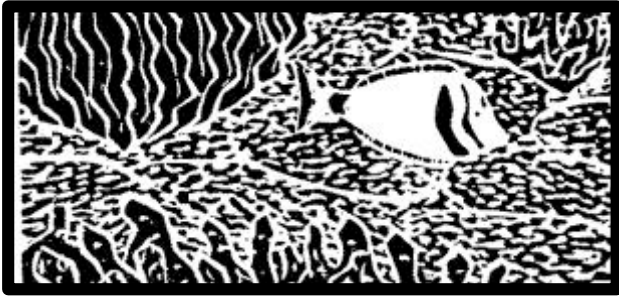
*This document is a reformatted version of the official comments submitted. Page numbers may differ between these two versions.

APPENDIXES

- A: Original Permit Form to Access State NWHI Marine Refuge
- B: Joint Permit Application Template for Access to PMNM and State Refuge
- C: Special Activity Permit Application Review Checklist, Division of Aquatics, State Department of Land and Natural Resources
- D: State and Federal Regulations Missing From Draft Monument Management Plan
- E: Federal Court Mitigation Measures Required for Active Sonar Use in Hawaiian Waters
- G: Federal Petition to Designate Additional Critical Habitat for Hawaiian monk seals
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The Northwestern Hawaiian Islands is one of the last large-scale, predator-dominated coral reef ecosystems on the planet. Ancient Hawaiian heiau (temples) and iwi kupuna (burials) on Nihoa and Mokumanamana highlight the significance of these islands as the path of souls into the afterlife. This fragile network of coral reefs, islands, atolls, and shoals that arches through the Pacific for 1,200 miles northwest of the Main Hawaiian Islands and is home to most of the remaining endangered Hawaiian monk seals and 90% of the Green sea turtles left on the planet.





EXECUTIVE SUMMARY

These comments are the culmination of more than eight years of involvement and advocacy by the NWHI hui (members of KAHEA: The Hawaiian-Environmental Alliance, 'Ilio'ulaokalani Coalition, and the Sierra Club) towards the strongest possible protections for the fragile and sacred Northwestern Hawaiian Islands (NWHI). Together as the NWHI hui, we were the first to advocate the creation of a marine monument to protect Hawai'i's kupuna islands. Today, we continue our efforts towards the full and effective implementation of that proposal. We commend the forward-thinking leadership shown by the State of Hawaii and the United States federal government to set aside and protect the NWHI as a State Refuge and National Marine Monument. We write today to express serious concerns about the direction and ability of the proposed Draft Monument Management Plan (DMMP) to meet the promise of these visionary designations or to fully protect this fragile coral reef ecosystem and unique Wao Akua (sacred place).

As currently proposed, the DMMP shifts the focus of management away from full conservation and instead promotes an expansion of human impacts--an increased harmful human footprint--in the Northwestern Hawaiian Islands. The three co-managing agencies - the Department of Commerce, Department of Interior and the State of Hawai'i - propose no mitigation measures on the proposed expansion of military activities in the Monument, and includes proposals to increase extractive research, vessel traffic and construction for tourism activities. At the same time, the current proposal closes the door on meaningful public participation by failing to establish a meaningful public advisory body (i.e., Monument Advisory Council). The analysis provided here details ten key shortcomings that must be addressed to assure the highest degree of protection for this pristine natural area. Key among the concerns is the abandonment of the "precautionary principle," which requires biological, cultural and historic resource integrity be favored when the impacts of any

proposed activity are uncertain. In addition to problems associated with proposed increases human activity and a lack of controls on military activities, other key concerns identified by the NWHI hui include: no prohibition against bioprospecting, lax and undefined enforcement protocols, insufficient resources for Native Hawaiians involvement in Monument decision-making, poorly-defined permitting process, and an inadequate Cultural Impact Assessment.

1. We urge this Draft Monument Management Plan be amended to protect Monument resources from the harms of human activity in the following ways:

- a. **Assess the risk and cumulative impact of all human activities affecting the region, including global warming.** The current environmental assessment fails to adequately review the past, present, and likely future impacts of the human presence in the Monument. This information is crucial for proper management and should serve as the basis for numerical carrying capacity.
- b. **Require mitigations on military activities affecting Monument resources.** Military exercises should not occur in the Monument, yet the U.S. Navy proposes to expand its activities in and around the Monument, including ballistic missile tests, chemical warfare exercises, and high-intensity active sonar. It is up to the Co-Managers to uphold Monument regulations requiring the Navy, at the very least, to minimize and mitigate the harm of its activities.
- c. **Strictly limit tourism activities in the Monument.** To ensure the human footprint in the Monument is not deepened, set a maximum limit on the number of tourists visiting Midway based on current tourism levels.
- d. **Prioritize conservation-based science needs to ensure the management needs of the Monument are met.** This means restricting permitted activities to those absolutely necessary for protecting endangered and threatened species and their habitats. This must include re-instating the **prohibition on bioprospecting.**

e. **Overhaul the permitting process so that it reflects the strongest protections of overlapping jurisdictions and incorporates rigorous permit terms required in state refuge waters prior to “Co-Management.”** The vast majority of permit applications are for access to the fragile state Refuge waters and USFWS Refuges. Until the implementation of the joint permit, the state Board of Land and Natural Resources required rigorous permit conditions (see Appendix A), including a full impact/take log, a detailed waste log and precautionary requirements for any extractive activities. We urge a return to this more protective approach to permitting.

2. **Ensure Public Participation on the Monument Management Board (MMB)** – The MMB currently makes all management decisions about the Monument without public oversight. Opening the Monument Management Board to the public will ensure that the public trust resources of the NWHI are well-managed in a transparent and accountable way. Additionally, the three Co-Trustees should establish a Monument Advisory Council, which like the original Reserve Advisory Council, would operate under sunshine laws, and include Native Hawaiians, representatives of the conservation community, independent scientists, and independent educators as voting members with the authority to review all management decisions, including issuance of permits.

3. **Empower Native Hawaiian decision-making** by integrating Native Hawaiian cultural knowledge of indigenous traditions and ecosystem management into the larger management scheme. For example, the Native Hawaiian Cultural Resources Working Group must have the authority to review any management decision. Without meaningful participation of cultural practitioners in management and adequate funding, resources, and commitment to empowering Native Hawaiian decision-making, the ideas contained within the DMMP are simply empty promises. Currently, ten times more funding is proposed in the DMMP for scientific research than for activities related to cultural perpetuation, this is unacceptable.



INTRODUCTION

Ten Overarching Concerns

Mahalo for the opportunity to review and comment on the Draft Monument Management Plan (DMMP), Draft Environmental Assessment (DEA), Draft Cultural Impact Statement (DCIS), Draft Midway Visitors' Services Plan (DMVSP), and Compatibility Determinations (CDs) for the Papahānaumokuākea Marine National Monument (Monument). These detailed comments are submitted by members of KAHEA: The Hawaiian-Environmental Alliance, 'Ilio'ulaokalani Coalition, and the Sierra Club. These comments also build on the more than 100,000 public comments that have been collected over the last eight years of public hearings and meetings on the need to improve management of the delicate and sacred Northwestern Hawaiian Islands (NWHI).

As Kupuna, cultural practitioners, fishers, conservationists, scientists, and concerned citizens of Hawai'i, we have legal rights and personal responsibilities to ensure Hawai'i's public trust resources in the Northwestern Hawaiian Islands (NWHI) are fully protected. The Monument Co-managers and the agencies they represent also have legal requirements and responsibilities to administer these public resources on behalf of Native Hawaiians and the general public, including future generations. The DMMP must acknowledge and address the unique circumstances regarding the legal status of the lands and waters of the Northwestern Hawaiian Islands. This includes the acknowledgement by the United States government that the Newlands Resolution, which annexed the Hawaiian archipelago to the United States, was illegal, and the matter of sovereignty over the lands, including the submerged lands, of the NWHI has yet to be resolved.

As is well-documented in the DMMP, previous management schemes in the NWHI were not focused on stewardship of public trust resources. Rather, they encouraged and promoted profit-based

resource extraction that proved to be damaging and unsustainable. A history of more than one hundred years of such extractive activities, coupled with use of Midway Atoll and other areas as military bases, resulted in decimation of the once pristine and abundant resources of the NWHI and the desecration of many sacred sites, including cemeteries. Fortunately, because of the bold leadership of the State of Hawai'i and the federal government acting jointly to set aside and fully protect the NWHI, we have the opportunity, and duty, to replace the destructive practices of the past with a new partnership dedicated to protection of this unique area – an area which is the largest coral reef ecosystem under U.S. jurisdiction and which is embraced by Native Hawaiians as the last intact region within the Hawaiian Islands.

In 2000, as a result of input from cultural practitioners, Native Hawaiian fishers and environmentalists, the White House took the first substantial steps to protect the NWHI in almost a century with issuance of Executive Orders which established the 84 million acre NWHI Coral Reef Ecosystem Reserve which required conservation as the principle management objective under a precautionary approach. The State of Hawai'i took the first visionary step in state waters in September 2005 after a historic public outcry for the strongest possible protections in the NWHI. The State Northwestern Hawaiian Islands Marine Refuge committed to implement the precautionary principle and protect the uniquely Native Hawaiian ocean environment of the NWHI by prohibiting all commercial extraction, allowing only appropriate scientific research, and perpetuating Native Hawaiian cultural practice. The federal government followed the State's lead in 2006 by designating this fragile and sacred region as the first-ever Marine National Monument.

The federal and state governments deserve great appreciation for embracing the public's call to revolutionize ocean resource management. Mahalo! To fulfill this promised change, however, every level of agency decision-making must implement equally visionary and dramatic policies. The Co-Trustees of the newly formed Monument and State Refuge are legally obligated to ensure the public trust resources of the NWHI are actually protected for the rightholders and not further exploited by stakeholders. This means they must take specific steps to protect the interests of the public above

the conflicting interests of those seeking to extract and/or profit from the NWHI. The public's interest in protecting the NWHI for future generations must be the primary motivation of all activities in the NWHI. This means focusing all activities in the NWHI on the recovery of threatened and endangered species, fully enforcing strict protective measures, establishing a truly transparent, publicly accountable decision-making process, and demonstrating a commitment to overcome jurisdictional hurdles.

Unfortunately, the management scheme outlined in the current version of the DMMP and its accompanying documents does not rise to this expectation of the State Refuge and federal Monument. The DMMP demonstrates a continuation of the same policies that brought our oceans, especially the NWHI, to this current crisis. This includes continuing to allow public trust resources to be exploited for profit, dissuading public participation – especially that of Native Hawaiians – in the management of public trust resources, and ignoring significant and preventable threats to this irreplaceable ecosystem, such as sustenance fishing (a form of recreational fishing), inadequate enforcement, and military exercises.

Today, we call on the state and federal Co-Trustees of the Monument to uphold the rights of the people of Hawai'i and fully protect the last intact Native Hawaiian marine ecosystem on earth. We urge you to revise the DMMP and its accompanying documents to:

1. Mitigate Military Activities Harming Monument Resources: The U.S. military should not be conducting exercises in the Monument. The Co-Trustees must use the full-force of law to protect Monument resources from the harm of military exercises.

2. Ensure Public Participation on the Monument Management Board: All management decisions are currently made by the MMB without any public oversight. Allowing public participation on the MMB and establishing a Monument Advisory Council will ensure the day-to-day management decisions of the Monument is transparent and accountable to the public.

3. **Empower Native Hawaiian Decision-making:** The Monument was established to protect the cultural as well as natural resources of the NWHI. Recognizing a Native Hawaiian Co-Trustee, establishing a MAC with Native Hawaiian cultural resource experts, and authorizing the Native Hawaiian Cultural Resources Working Group to review any management decision empowers the Native Hawaiian community to directly participate in the management of their resources.

4. **Uphold the Underlying Protections, Most Protective Rules Prevail:** The precautionary principle of the State Refuge and Executive Orders, as well as implementing conservation as the primary management purpose of the original Coral Reef Ecosystem Reserve remain law and must be better incorporated into the DMMP and implemented by Co-Managers. In the case of overlapping jurisdictions, the most protective of rules, laws, and Executive Orders must be implemented. The full implementation of conservation measures, including those in overlapping jurisdictions must be ensured.

5. **Reign in Research:** The DMMP proposes to expand extractive research without a clear nexus to conservation management needs. The science plan should be re-drafted according to the needs of the remaining action plans, especially the “Conserving Wildlife” and “Reducing Threats” plans.

6. **Strictly Limit Tourism:** The DMMP proposes to encourage tourism in the NWHI. Increased human traffic with sufficient protections, especially a cap on total visitors, poses a serious risk to Monument resources.

7. **Improve the Permitting Process:** Simple changes can ensure permits to access the NWHI are granted only after a thorough and transparent review process.

8. **Enforce All Protections:** Enforcement in the NWHI is sorely insufficient. The Co-Managers must invoke their full authorities to ensure all permit violations are properly investigated and penalized.

9. Commit to Conservation -- from the Vision to the Budget: The DMMP waters down the commitment to conservation in the Mission and Goals statements and fails to fund management priorities. The budget must be re-written to prioritize environment protection and cultural perpetuation in the DMMP.

10. Improve the draft Environmental and Cultural Impact Assessments: The DEA must include a comprehensive assessment of the cumulative and specific risks of the activities proposed in the DMMP. The DCIA does not meet the basic legal requirements of a cultural impact assessment.