

MEMORANDUM OF AGREEMENT

AMONG THE

STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES

AND THE

OFFICE OF HAWAIIAN AFFAIRS

AND THE

U.S. DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

AND THE

U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

FOR

PROMOTING COORDINATED MANAGEMENT OF THE
PAPAHĀNAUMOKUĀKEA MARINE NATIONAL MONUMENT AND EXPANSION



I. BACKGROUND

- A. President George W. Bush established the Northwestern Hawaiian Islands Marine National Monument on June 15, 2006, to protect scientific, historic, and cultural resources of the Northwestern Hawaiian Islands. The purposes and management regime for the Monument, as well as restrictions and prohibitions regarding activities in the Monument, are set forth in Presidential Proclamation 8031 of June 15, 2006 (71 FR 36443, June 26, 2006). The Northwestern Hawaiian Islands Marine National Monument was renamed the Papahānaumokuākea Marine National Monument by Presidential Proclamation 8112 of February 28, 2007 (72 FR 10031, March 6, 2007). President Barack Obama designated the Papahānaumokuākea Marine National Monument Expansion out to the limits of the United States Exclusive Economic Zone (EEZ) in the waters and submerged lands to the west of 163 degrees West longitude by Presidential Proclamation 9478 of August 26, 2016 (81 FR 60227, August 31, 2016). Presidential Proclamation 9478 does not alter the restrictions and prohibitions of Presidential Proclamations 8031 and 8112, and creates separate and distinct restrictions and prohibitions for the area of the Monument Expansion.
- B. The Monument and the Monument Expansion (hereafter referred to collectively as the Monument) encompass a vast part of the Hawaiian Archipelago and provides habitat for numerous species found nowhere else on earth. Totalling approximately 582,478 square miles, the Monument is the nation's largest marine protected area and includes the majority of the coral reefs found within the United States' jurisdiction. Biogeographically, Hawaii's chain of islands is the most remote archipelago in the world. The shallow-water ecosystems, deep-sea communities, and the surrounding waters form a nearly pristine ecosystem of unique biodiversity supporting more than 7,000 marine species, of which at least one quarter are unique to the Hawaiian Islands chain. This diverse ecosystem is home to many species of coral, fish, birds, marine mammals, and other flora and fauna, including the endangered Hawaiian monk seal, the threatened green sea turtle, and the endangered leatherback and hawksbill sea turtles, and constitutes a significant cultural, traditional, and spiritual place for the Native Hawaiian community. The atolls, islets, and seamounts are home to many plant and animal species found nowhere else in the world, including four endangered land birds, an endangered seabird, and 12 endangered plants. In addition, millions of central Pacific seabirds congregate on these islands to breed. The area is rich in history and cultural significance and in 2010 was recognized by UNESCO and inscribed as our nation's first mixed (natural and cultural) World Heritage Site. It is an area that must be carefully protected by integrated resource management to ensure that the resources of the Monument are not diminished for future generations.
- C. A purpose of this Agreement is to update the Memorandum of Agreement entered into on December 8, 2006, by the Secretaries of Commerce and the Interior (the Secretaries) and the Governor of Hawai'i for Promoting Coordinated Management

of the Northwestern Hawaiian Islands Marine National Monument to include the requirements of the three Presidential Proclamations and implement the Governor's request that the Office of Hawaiian Affairs (OHA) be added as a Co-Trustee. OHA is a constitutionally established body, set as a separate state entity independent of the executive branch of the State of Hawai'i with primary responsibility for representing the interests of the Native Hawaiian community in the Monument through the perpetuation of Hawaiian cultural resources, including the customary and traditional rights and practices of Native Hawaiians exercised for subsistence, cultural, and religious purposes under the Hawai'i Constitution, Article XII, Section 7.

- D. The areas subject to this Agreement are the lands and waters within the area of the Monument as described in Presidential Proclamations 8031 and 9478. The Monument includes a portion of State of Hawai'i waters, including the Northwestern Hawaiian Islands Marine Refuge and the Kure Atoll portions of the Hawai'i State Wildlife Sanctuary. The Monument also includes the Midway Atoll National Wildlife Refuge/Battle of Midway National Memorial, the Hawaiian Islands National Wildlife Refuge, and the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve.
- E. The Secretaries, the Governor, and the OHA Chairperson recognize the importance of the Monument's healthy coral reef, marine, and terrestrial ecosystems to the cultural, economic, and biological future of the State of Hawai'i and the Nation as a whole. All recognize that a well-managed terrestrial and marine environment in the area of the Monument is necessary to maintain the health and vigor of rare and protected species, such as Hawaiian monk seals, sea turtles, seabirds, land birds, and plants, as well as to protect the other vital components of the ecosystem. The Co-Trustees, as defined below, have their respective duties to protect, conserve, and enhance fish, plant, and wildlife habitats, including coral reefs, deep sea and other marine and terrestrial resources in the area of the Monument. In order to protect the unique resources of these remote islands and pelagic ocean ecosystems, the parties will manage the Monument in a manner that is free from exploitation and degradation due to human activities.

II. PARTIES, PURPOSE, AND SCOPE

- A. The Parties to this agreement are the State of Hawai'i through the Department of Land and Natural Resources (DLNR), the Office of Hawaiian Affairs (OHA), the U.S. Department of the Interior (DOI), and the U.S. Department of Commerce (DOC) (hereinafter collectively referred to as the Co-Trustees).
- B. The purpose of this Memorandum of Agreement (Agreement) is to implement the provisions of Proclamations 8031, 8112, and 9478. The provisions of this Agreement will be applied consistent with the management provisions of those

Proclamations. This Agreement constitutes an agreement among the Co-Trustees to carry out coordinated resource management for the long-term comprehensive conservation and protection of the Monument.

- C. This Agreement establishes functional relationships to effectively coordinate management actions in this area among the Co-Trustees for purposes of the long-term comprehensive conservation and protection of the Monument. This Agreement also provides the general terms and conditions under which the Co-Trustees will cooperate to manage the resources of the Monument.
- D. This Agreement also establishes objectives and responsibilities necessary for coordinated management activities in the Monument and is intended to provide the framework for long-term comprehensive protection of the Monument. The Co-Trustees will focus on coordinating planning efforts, management priorities, and field operations in the Monument area.
- E. The Co-Trustees will undertake coordinated, integrated management and protection that will result in comprehensive conservation of the ecosystems of the Monument in perpetuity. The Co-Trustees recognize that the Monument is also a place of special cultural significance for the Native Hawaiian community and provides a unique opportunity to manage marine resources in a manner that honors the rich heritage of the Native Hawaiian culture. The Monument also is a place of more recent historical significance, including the Battle of Midway.
- F. The Presidential Proclamations state that nothing contained in the Proclamations shall be deemed to diminish or enlarge the jurisdiction of the State of Hawai‘i.
- G. Co-Trustees’ Vision, Mission, and Guiding Principles for the Monument:
 - 1. Vision: to forever protect and perpetuate ecosystem health and diversity and promote the Native Hawaiian cultural significance of the Monument.
 - 2. Mission: to carry out seamless integrated management to ensure ecological integrity and achieve strong, long-term protection and perpetuation of Monument ecosystems, Native Hawaiian culture, and heritage resources for current and future generations.
 - 3. Guiding principles: to manage the Monument in a manner that, consistent with applicable law:
 - is consistent with the vision and mission;
 - recognizes that the resources of the Monument are administered by the Co-Trustees for the benefit of present and future generations;
 - recognizes the value of cooperation and consensus-based management;
 - affirms that the Monument and its wildlife are important, unique,

- and irreplaceable;
- honors the significance of the region for the Native Hawaiian community;
- honors the historic importance of the region;
- takes into account best practices, scientific principles, traditional knowledge, and an adaptive management approach;
- errs on the side of resource protection when there is uncertainty regarding impacts of an activity;
- enhances public appreciation of the unique character and environment of the Monument;
- authorizes only uses consistent with Presidential Proclamations 8031, 8112, 9478, and other applicable laws;
- coordinates with federal, state, and local governments; the Native Hawaiian community; relevant organizations; and the public; and
- carries out effective outreach, monitoring, and enforcement to promote compliance.

III. REFERENCES AND AUTHORITIES

Authorities highlighted as relevant to this Agreement include but are not limited to the following:

- A. Antiquities Act, 54 U.S.C. § 320301, *et seq.*;
- B. Proclamation 8031 of June 15, 2006, 71 FR 36443 (June 26, 2006);
- C. Proclamation 8112 of February 28, 2007, 72 FR 10031 (March 6, 2007);
- D. Proclamation 9478 of August 26, 2016, 81 FR 60227 (August 31, 2016);
- E. Papahānaumokuākea (aka Northwestern Hawaiian Islands) Marine National Monument regulations, codified in 50 CFR Part 404 (2006);
- F. Executive Order 13178 of December 4, 2000, 65 FR 76903 (December 7, 2000);
- G. Executive Order 13196 of January 18, 2001, 66 FR 7395 (January 23, 2001);
- H. Executive Order 10,413, 17 FR 10,497 (November 17, 1952);
- I. State of Hawai‘i Organic Act of April 30, 1900, c339, 31 Stat. 141, § 2; and Hawai‘i Admission Act of March 18, 1959, Pub. L. 86-3, 73 Stat. 4, § 2;
- J. Submerged Lands Act, Pub. L. No. 31, ch. 65, title I, § 2, 67 Stat. 29 (1953) (codified as amended at 43 U.S.C. §§ 1301-1315 (2013));

- K. Hawai‘i Constitution, Article XI, §§ 1, 2, 6, and 9; and Article XII, §§ 5, 6 and 7;
- L. Hawai‘i Revised Statutes, Title 1, Chapters 6E and 10; Title 10, § 128D-4; Title 12, §§ 171-3, 183D-8, 187A-8, 188-37, 188-53, 195D-5, 199-3; and Hawai‘i Administrative Rules Title 13, Chapters 60.5 and 126, and other applicable law;
- M. National Marine Sanctuaries Act, as amended, 16 U.S.C. § 1431, *et seq.*, including National Marine Sanctuaries Amendments Act of 2000, Pub. L. 106-513 § 6(g);
- N. Endangered Species Act of 1973, as amended, 16 U.S.C. § 1531, *et seq.*;
- O. Marine Mammal Protection Act of 1972, 16 U.S.C. § 1361, *et seq.*;
- P. Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801, *et seq.*;
- Q. National Wildlife Refuge System Administration Act of 1966, as amended, 16 U.S.C. §§ 668dd-ee;
- R. Refuge Recreation Act, 16 U.S.C. § 460k-3;
- S. Fish and Wildlife Act of 1956, 16 U.S.C. § 742f;
- T. Fish and Wildlife Improvement Act of 1978, 16 U.S.C. § 742l;
- U. Fish and Wildlife Coordination Act of 1934, 16 U.S.C. § 661;
- V. Organization of Executive Agencies, Executive Order 6166 (June 10, 1933);
- W. An Act Ratifying All Reorganization Plans, Public Law 98-532 (Oct. 19, 1984), 98 Stat. 2705.

IV. MONUMENT MANAGEMENT OFFICIALS AND RESPONSIBILITIES

- A. Senior Executive Board (SEB): The Co-Trustees hereby establish the SEB.
 - 1. The SEB will provide policy guidance to their respective agency staff assigned to carry out Monument management activities.
 - 2. Responsible Officials: SEB Membership will consist of an authorized senior level designee from each of the following (Co-Trustees will notify each other of appointed designee and upon change of designee):
 - a. State of Hawai‘i Department of Land and Natural Resources
 - b. Office of Hawaiian Affairs

- c. U.S. Department of the Interior, United States Fish and Wildlife Service
- d. U.S. Department of Commerce, National Oceanic and Atmospheric Administration

3. The SEB shall be responsible for the following activities through the Monument Management Board (MMB):

- a. Develop a management plan for ensuring the coordinated management of the Monument, consistent with Presidential Proclamations 8031, 8112, 9478, and other applicable laws and regulations. Further, the SEB shall regularly review the implementation of the management plan and adjust the management framework as appropriate, consistent with applicable laws and policies.
- b. Provide access and support for enforcement, share enforcement resources and data, as appropriate, and develop joint enforcement capabilities as needed to ensure compliance with applicable state and federal laws. Enforcement support may involve assistance from additional agencies such as the U.S. Coast Guard.
- c. Coordinate research and monitoring efforts to better understand Monument resources. Initiate joint resource assessment, monitoring, and research activities including, but not limited to, population studies, species inventories and assessments, impacts from derelict fishing gear, impacts from chemical contamination related to both historic and current activities, and documentation of historic and cultural resources. Provide opportunities to participate in research activities initiated by each Co-Trustee, as appropriate.
- d. Develop a mechanism to access scientific and resource data, as needed, and, consistent with applicable law, a protocol to ensure the necessary confidentiality of certain information, such as fisheries data and the location of heritage resources.
- e. Provide support to identify locations of cultural and religious significance and for noncommercial Native Hawaiian practices, which may benefit the resources of the Monument and the Native Hawaiian community. Develop a protocol to protect sensitive, culturally significant, and religious locations while allowing permitted access.
- f. Manage recreational, educational, non-commercial, and commercial activities that may take place within the Monument consistent with Presidential Proclamations 8031, 8112, and 9478, and other applicable laws.

- g. Identify and facilitate, as appropriate, coordination, consultation, and partnership opportunities regarding Monument management activities among federal, state, and local governments, the Native Hawaiian community, the private sector, foreign governments, international organizations, and any other public or private persons or entities.
- h. Facilitate opportunities to participate in and collaborate on educational activities and projects between and among the Co-Trustees.
- i. Develop interagency agreements, grants, memoranda of understanding, or other appropriate instruments that allow for ease in sharing resources, including funds as appropriate, and a sharing of in-kind assistance and support such as the sharing of vessel time, aircraft missions, or other logistical support as a means of facilitating cooperative project opportunities. These more detailed agreements on specific issues will be signed at an appropriate and authorized level.
- j. Ensure appropriate monitoring of activities within the Monument. Develop a coordinated response program to assess and address human induced or natural threats to Monument resources. The prohibitions required by this proclamation shall not apply to activities necessary to respond to emergencies threatening life, property, or the environment, or to activities necessary for law enforcement purposes.
- k. Enhance coordination by developing joint permitting processes as and where appropriate for activities allowed under Presidential Proclamations 8031, 8112, and 9478, and all other applicable laws. These processes will likely differ for activities from 0-50 miles from those activities in 50-200 miles due to the different agency jurisdictions and relationships and due to provisions in Proclamations 8031 and 9478.

B. Monument Management Board (MMB): The Co-Trustees hereby establish the MMB.

- 1. The MMB will promote coordinated management of the Monument at the field level.
- 2. Responsible Officials: MMB membership will consist of authorized designees from the following entities (Co-Trustees will notify each other of appointed designee and upon change of designee):
 - a. State of Hawai‘i, Department of Land and Natural Resources, Division of Aquatic Resources, Honolulu, HI
 - b. State of Hawai‘i, Department of Land and Natural Resources, Division of Forestry and Wildlife, Honolulu, HI
 - c. Office of Hawaiian Affairs, Honolulu, HI
 - d. U.S. Fish and Wildlife Service, National Wildlife Refuge System,

Honolulu, HI

- e. U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, Honolulu, HI
- f. National Oceanic and Atmospheric Administration, Office of National Marine Sanctuaries, Honolulu, HI
- g. National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Honolulu, HI

3. The Monument Management Board shall implement the activities set forth in Section IV.A.3.

C. Interagency Coordinating Committee (ICC): The Co-Trustees hereby authorize the MMB to establish an ICC to assist in the implementation of Monument management activities set forth in Section IV.A.3. The MMB will request the participation of other federal and state agencies to establish the ICC as it determines to be appropriate and necessary to seek additional input, or as subject to needs that may arise.

V. PERIOD OF AGREEMENT, MODIFICATION, OR TERMINATION

A. This Agreement becomes effective when all Co-Trustees sign it. On that effective date, the Memorandum of Agreement dated December 8, 2006 is terminated. The Co-Trustees shall, at least every five years, review this Agreement to determine whether it should be modified or terminated.

B. The Co-Trustees may modify this Agreement by written amendment only and with the concurrence of all Co-Trustees.

C. The Co-Trustees may terminate this Agreement by mutual written consent. Any Co-Trustee may terminate its participation in this Agreement by giving the other Co-Trustees six months advance written notice.

D. 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 (see Proclamation 9478), nothing herein shall be construed as automatically terminating or otherwise amending this Agreement.

VI. DISPUTE RESOLUTION

The SEB and MMB will seek to come to consensus on all matters. If the members of the MMB disagree on any issue, they shall present their differences to each other in writing, and they shall discuss them. The MMB should be the first body to attempt resolution of any disagreement. If the MMB fails to resolve their differences within 30 days after identification of the disagreement in writing, or immediately upon determination that the

MMB has reached an impasse, the MMB will elevate the matter to the SEB for guidance and counsel. The SEB will work in good faith to resolve all disputes promptly, and will, no later than 60 days after the elevation, report back to the MMB on the status of the dispute resolution. Nothing in this Agreement precludes an action by any Co-Trustee that is otherwise consistent with its statutory responsibilities and applicable legal authorities, so long as that action is consistent with the requirements of the respective Proclamations and the care and management of the objects to be protected. In the event of an emergency or other time-sensitive issue, any Co-Trustee with jurisdiction may act on a faster timeline.

VII. OTHER PROVISIONS

- A. Nothing in this Agreement shall be construed to conflict with applicable laws, or otherwise diminish authorities otherwise vested in the Secretaries of Commerce and the Interior under federal law or the State of Hawai‘i under state law. Any provision in the Agreement found to be in conflict with federal or state law shall be invalidated, but the remainder of the Agreement shall remain in effect. If a provision is invalidated, 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.
- B. This Agreement serves as the foundation for the entering into other agreements among the Co-Trustees and with agencies and other entities, as appropriate, and at a level appropriate to such agreement. Such agreements may be for the purpose of, among other things, the pursuit of research or training, supplementing law enforcement support or entering into cooperative law enforcement agreements, the investigation and risk reduction activities associated with releases of petroleum and hazardous substances, data sharing, or increasing management capacity in the Monument. All such agreements shall be coordinated with the other Co-Trustees and may become annexes to this Agreement.
- C. This Agreement does not change any enforcement agreements in place among some or all of the Co-Trustees.
- D. This Agreement defines in general terms the basis on which the Co-Trustees will cooperate, and as such, does not constitute a financial obligation or an authorization for particular expenditures. Expenditures of funds, human resources, equipment, supplies, facilities, training, public information, and technical expertise are generally intended to be provided by each signatory Co-Trustee to the extent that their participation is required and resources are available.
- E. Nothing in this agreement is intended to require the expenditure of funds in excess or advance of applicable appropriations. This Agreement is not a fiscal or funds obligation document. Any activities involving reimbursement or contribution of funds between Co-Trustees to this Agreement will be handled in accordance with applicable laws, regulations, and procedures. Such activities will be documented in separate agreements, which will identify the specific projects between the Co-Trustees in appropriate detail. Such separate agreements should also reference this

Agreement.

- F. Nothing herein is intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any non-party to this Agreement against the United States or the State of Hawaii, their respective departments, agencies, or entities, or their officers, employees, or agents, or any other person.

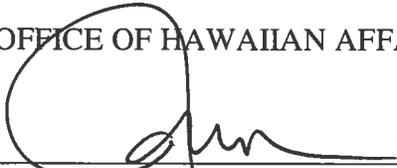
STATE OF HAWAI'I



DAVID Y. IGE
Governor
State of Hawai'i

Date: *Dec. 22, 2016*

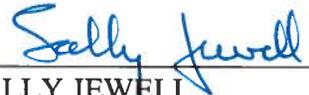
OFFICE OF HAWAIIAN AFFAIRS



ROWENA M. AKANA
Chairperson, Board of Trustees
Office of Hawaiian Affairs

Date: *January 10, 2017*

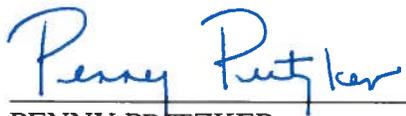
U.S. DEPARTMENT OF THE INTERIOR



SALLY JEWELL
Secretary of the Interior

Date: *January 5, 2017*

U.S. DEPARTMENT OF COMMERCE



PENNY PRITZKER
Secretary of Commerce

Date: *January 5, 2017*