



Approved at Council Meeting #69  
Hawaiian Islands Humpback Whale National Marine  
Sanctuary Advisory Council

**NON-GOVERNMENT** (Voting)

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James Coon  
*Citizen-At-Large*

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*Conservation*

Judith Lemus  
*Education*

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*Fishing*

Adam Pack (Chair)  
*Hawai'i County*

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Matthew Kawaiola Sproat  
*Native Hawaiian*

Douglass Cole  
*Ocean Recreation*

John (Jack) Kittinger  
*Research*

Kelsey Poole  
*Tourism*

Gregory Kaufman  
*Whale Watching*

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*DBEDT Renewable Energy*

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*DLNR*

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*DLNR - Hawaiian Islands  
Humpback Whale NMS*

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*DOH*

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*DOT - Harbors*

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Eric Kingma  
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Shelly Lynch  
*US Army Corps of Engineers*

Eric Roberts  
*US Coast Guard*

Janice Fukawa  
*US Navy*

**68<sup>th</sup> Meeting**

**July 20, 2015, 9 am – 5 pm**

**Pagoda Hotel, International Ballroom, Honolulu**

**Purpose**

The purpose of this meeting is for the Management Plan Review working group to present the results of their evaluation and recommendations for discussion for the Sanctuary Advisory Council to take action on the Sanctuary's Draft Management Plan and Draft Environmental Impact Statement.

**Welcome and Introductions**

Ka'au Abraham opens the meeting with a pule at 9:18 am. Acting Chair Sol Kaho'ohalahala welcomes everyone to the 68<sup>th</sup> Sanctuary Advisory Council Meeting. He explains that at the March SAC meeting, a Management Plan Review working group was formed to evaluate and make recommendations on the Sanctuary's Draft Management Plan and Draft Environmental Impact Statement. The purpose of this meeting is for the Management Plan Review working group to present their results and facilitate council discussion. The public comment period will be at 3:00 pm. Please be aware that public comments received at this meeting are comments to the council and not public comments to NOAA. NOAA's public comment period on the DMP/DEIS closed on June 19<sup>th</sup>. Those wishing to speak on agenda items may add their name to the public comment sign-up sheet.

Walter Ritte asks for a clarification about the public comments for the SAC meeting. Sol clarifies that the public comments are for the council today, and public comments should not be for the sanctuary management plan since technically the public comment period is closed.

Secretary Jack Kittinger takes attendance.

**Primary SAC council members present:** Leo Asuncion, Malia Chow, Athline Clarke, Doug Cole, Janice Fukawa, Rick Gaffney, Maka'ala Kaaumoana, Eric Kingma, Jack Kittinger, Teri Leicher, Bob Leinau, Judy Lemus, Keola Lindsey, Laura McIntire, Robin Newbold (phone), Sol Kaho'ohalahala, Kelsey Poole, Walter Ritte, Eric Roberts, Sandra Rossetter, Rachel Sprague, George Thompson, Take Tomson (for Jeff Pollack), Adi Phillis (for Suzanne Case)

**Alternate SAC council members present:** Rebecca Alakai, Frazer McGilvray, Phil Fernandez

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**Others present:** Paul Wong, Shannon Lyday, Bo Petty, Anne Walton, Allen Tom, Abraham, Jean Souza, Ed Lindelof, Sarah Marquis

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**Excused:** Gene Brighthouse, Suzanne Case, Jim Coon, Elia Herman, Shelly Lynch, Adam Pack, Jeff Pollack, Matt Sproat, Veronica Roche, John Taschner, Adam Pack, Sabra Kauka

## Introductions

Council members and meeting attendees briefly introduce themselves.

## Office of National Marine Sanctuaries Blue Planet Video

A short video was shown of the recent footage shot in the Hawaiian Islands Humpback Whale National Marine Sanctuary which featured interviews with council members.

## Council Business

Sol informed the council that there is a change to the agenda; the scheduled 9:30 am ONMS Presentation will be removed to accommodate space for other items. Sol made a motion to accept meeting minutes from meeting #67 and Maka'ala Kaaumoana seconded the motion. All members voted in favor to accept meeting minutes.

Sol welcomed Sabra Kauka as the newest SAC member. She will hold the Native Hawaiian alternate seat. Unfortunately she is unable to join us today. The last SAC recruitment period closed on June 30 and we are looking for 3 SAC members to serve on the review panel for the applicants for the commercial shipping seats. Makaala Kaaumoana, George Thompson, and Rick Gaffney volunteer to serve on the panel. Athline Clark asked which other SAC seats were vacant. Shannon Lyday stated that information on open seats will be forthcoming.

## Summary of Public Comment Period

### *Presentation by Malia Chow*

Malia gave a summary of the public comments received during the 90-day public comment period. 3,070 submissions were submitted to regulations.gov. However, this number is individual submissions so we do not yet have an accurate count as some comments (comments from public hearings) were uploaded as one submission as a video file. The next steps will be to organize and bin the comments.

Bob Leinau asked which bins and categories will be used to organize the comments. Malia replied that when the categories are finalized they will be provided to the SAC.

Walter Ritte asked for a summary of the public hearings. Malia: The draft management plan was released in March, and within late April –early May timeframe public meetings were held on all of the Main Hawaiian Islands. We held 11 public hearings within 15 days. The public meetings were well advertised.

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Eric Kingma: When will you respond to public comments? Malia: The responses to comments on the management plan, DEIS, and proposed rule will be provided as part of the final management plan and EIS.

Jack Kittinger: Can you tell us how the federal and state co-review process will go? Addy: DLNR will be involved in the analysis and response to the comments. Malia confirmed this.

Walter asked about comment numbers and how long will it take to analyze. Malia: It is hard to determine because we cannot rely on the numbers of individual submissions. The analysis may take 2-3 months.

George: After the final management plan and EIS is done what happens? Malia: The proposal will go to the governor for a 45 day review. Following that, congress has an opportunity to weigh in before the plan and rule become final.

Jack: Without knowing when the next SAC meeting is, we don't know when the public will see the analysis of the comments? Malia: A SAC meeting is not needed to share the analysis of the comments with the SAC or public.

Walter: If the public wants to influence the outcome of the DEIS, how will that work? Malia: The public had the opportunity to weigh in during the public comment period; the public can reach out to the SAC; and staff can make themselves available to meet with people. Teri Leicher clarified that the SAC can forward on comments to the sanctuary.

Bob: Will the SAC be able to give comments on the draft of the final management plan/EIS? Malia and Ed Lindelof both described that the comments are for the draft management plan/DEIS primarily. The draft final plan will be shared with the SAC but generally it doesn't go through a review.

Jack: Does the plan trigger HEPA? Malia deferred to the state.

Judy Lemus: Does the state know when they will determine if the plan triggers HEPA?

Adi: There is no predicted timeline.

Bob: Who at the state is involved with this process? Adi: The governor, DLNR, DOH, DOT, DBEDT, OHA and several state agencies.

Walter: Where are the state and ONMS on co-management? Are you on the same page or not? Malia: We are coordinating with the state currently and will continue to.

Adi: The state has issued comments as part of the public comment period on different areas where we had concerns. There are a lot of questions that the state has to get answers for before they can make a final determination on the plan.

Kelsey Poole: Thank you for the efforts to put together the video. I understand that there is a lot of misunderstanding about the plan. I would love to know what the misinformation is so we can relay that to the people we are talking with.

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Sol: Let's move into the presentations of the MPR working groups report before we continue Q&A on the review of the management plan.

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## Overview of Proposed Regulations

### Presentation by Anne Walton

- The National Marine Sanctuary program model is to allow multiple compatible uses
- Unlike other agencies and areas, everything is allowed in a sanctuary unless it is specifically prohibited
- In our proposal to move from single species to ecosystem based management, we are proposing to broaden the scope of the regulations
- Regulations fall into the following general categories: protected species; habitat protection; water quality; cultural resources; additional regulations
- Within the regulatory language are exemptions/exceptions for these proposed regulations (except for the cultural resources protections).
- Since we are a multi-use sanctuary we need to allow exceptions for certain activities such as harbor maintenance, or if someone is operating under another agency's permit, such as a National Marine Fisheries Service permit
- The sanctuary is also proposing to have permitting authority. This would allow us to issue permits in four categories: research, education, management, and submarine cables. We will not have the ability to issue general permits.
- We would also have the ability to authorize other agencies' permits. This is not automatic, but we would work with other agencies to ensure our conditions are met within their permits so that an applicant would not have to come to us for a separate permit. This would help streamline the permitting process.
- At the national level, all sanctuaries have the ability to issue Special Use Permits
- All sanctuaries give full exemption to the Department of Defense and also for emergency exemptions.

Walter: In the community there is concern about people being able to continue traditional practices. Anne: One must read each proposed regulation along with its exemptions to understand the cultural exemptions. For example, in our proposed discharge regulation, biodegradable material discharged for traditional and cultural practices is exempt. Paper lanterns and leis are listed as examples, but this also applies to spreading ashes.

Judy: Are these regulations already on the books in sanctuary waters in Hawaii?

Malia: The sanctuary already has prohibitions on the books that are tied to other agencies' authority. Anne: These regulations that we are discussing are the proposed new regulations.

Bob: As you create regulations, are you taking extra care that they don't conflict with other regulations? Anne: We are trying to not contradict what is already on the books; we are determining if our regulations are complementary to others and if we are providing an

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added value. Bob: Will you have multiple jeopardy? Anne: Violations to the regulations would be civil violations. Every agency has thresholds for when they pursue violations and their associated levels of fines.

Doug Cole: What we are seeing and reading about in the papers is fear from people about their access to the ocean being limited. Many of us like living in Hawaii because of the ocean lifestyle we have. However, we are scared about diminishing resources. There are changes that are occurring and we do have a responsibility to protect the resources. What is explicitly prohibited? We need to know/explain what is prohibited and be able to articulate it.

Ed: We are now in process of understanding how activities may be affected by our proposed regulations and can make changes when developing the final plan.

Teri: How to you authorize other agencies permits? Anne: Authorization is only for another agencies' permit issued to a user. If they are not permitted by anyone else, we cannot authorize it. And we can only issue a permit if it falls into one of the four permit categories. We cannot issue permits for commercial activities. Teri: As the SAC we need to have clarity on what the proposal is and the regulations from a legal standpoint.

Bob: How are cultural resources defined? Are cultural resources in the plan related to cultural use? Traditional uses change with time. Malia: We are hoping between the draft and final we have enough information to better define cultural resources.

In our proposed rule we have put the same language as the state constitution; we want to make sure traditional and cultural practices are protected. Sol: We did address cultural uses in the recommendations of the MPR working group. Anne: The focus of the prohibitions is for damaging a sanctuary resource. Judy asked if the definition for a sanctuary resource is a national definition defined in the National Marine Sanctuary Act.

Sol thanked Anne for the presentation. He stated that this presentation helped the MPR working group better understand the regulations and he hopes this helps provide clarity to the SAC.

### Management Plan Review (MPR) Working Group Report

*Presentation by Jack Kittinger and Sol Kaho'ohalahala, co-chairs MPR Working Group*

Jack gave an overview of the objectives of the working group, which was to evaluate the sanctuary's Draft Management Plan and DEIS as a whole and also to review it in light of the 2012 working groups reports. The working group held two in-person meetings and numerous phone calls to develop recommendations for the full advisory council to consider for forwarding to sanctuary management. The recommendations consist of overarching recommendations and recommendations from each of the original working groups formulated in 2012 which addressed programmatic areas shaped from public comments during the scoping process.

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Sol reminded the council that they had voted to accept the Kumulipo as a foundational document. Ecosystems-based management and practices are also reflected in the Kumulipo.

Jack said the working group supports a programmatic shift to ecosystem-based management. We are supportive of some combination of Alternatives 2, 3, 4. Alternative 1 is no change/status quo and we are not supportive of that. The working group decided not to state a preference for a specific alternative number.

Jack and Sol walked the council through the main highlights of the working group report (please see report for full details).

- **Co-Management**

The report recommends that both partners (State and NOAA) invest in the needed resources and work together on resource management. The report recommends each partner capitalize on their specific areas of expertise and coordinate efforts. Both partners need to come to the table and build trust together.

- **Key Geographies**

The working group is supportive of the proposed boundary changes at Hanalei and Haena. The other boundary changes the working group felt they did not have the expertise in these geographic areas to make recommendations. The group had three options for moving forward with analyzing boundary changes: form a new working group, create a subgroup from the existing working group, or take no position.

- **Regulatory changes**

The value of ecosystem based management is clearly articulated. However, as the focus of the previous working groups was programmatic, we requested that staff put together additional information to help us review the regulations (provided in Appendix A). The plan needs better articulation about the value or benefits of each regulation to the target resource. Additionally, we need to see what the cost would be for each user group, the impact of permitting, and staff requirements/capacity to implement permit processes. The working group also wants to make sure that permitting authority is not duplicative for similar activities and that permit briefings be held for the SAC.

- **Individual WG recommendations**

Each of the original nine working groups' recommendations were reviewed with regards to the draft management plan and DEIS and the MPR working group developed both programmatic and regulatory recommendations based on these. A brief summary for each working group was provided (please see document for full recommendations).

- **Native Hawaiian WG**

- Section 7, Article 12 of the state constitution should be included
- Engage with Aha Moku
- Make sure cultural resource regulations contains exemptions for customary and traditional use

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- Don't have regulations for fishponds: already regulated by multiple agencies

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- Ecosystem Protections WG
  - Create list of subject matter experts that HIHWNMS can consult with to help bridge transition from single species to EBM
  - Support partners and community-based initiatives
  - The sanctuary can serve as a connector/catalyzing role, for example by convening workshops, filling gaps in knowledge.
  - Regulations can be confusing. Some regulations should be extended to all sanctuary waters for consistency.
  - Analyze activities that have minimal impact to sanctuary (e.g. outrigger canoe activities) and determine if they should be exempt from regulations.
- Humpback Whales WG
  - Separate humpback whales from species and habitat plan so they are highlighted in the management plan
  - Consider not just physical habitat, but acoustic habitat (anthropogenic noise affects humpback whale populations)
  - Establish research fund that people could apply for through RFPs
  - Suggest language clarifying people's responsibilities on the water with whales
- Enforcement WG
  - Enforcement: how to we involve people more? Consider involving civilians
  - Increase education efforts, support ocean etiquette programs
  - What is the role of the sanctuary in facilitating enforcement capacity?
  - Acknowledged that cremated human remains are exempted from regulations for ceremonial purposes
- Offshore Development WG
  - Suggested adding precautionary principle to plan (as did several other working groups)
  - No disturbance of seabed regulation should be applied to all sanctuary waters to avoid confusion among public
- Ocean Literacy WG
  - Collaborate with partners
  - Should have a place-based focus; sense of place is important
  - Education activities may need exemptions from regulations
- Climate Change WG
  - Sanctuary should revisit climate smart sanctuaries initiative

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- Reinsert both Native Hawaiian and western scientific methods

**NON-GOVERNMENT** (Voting)

Tetsuzan Benny Ron  
Business Commerce

James Coon  
Citizen-At-Large

Vacant  
Commercial Shipping

Barbara (Maka'ala) Kaaumoana  
Conservation

Judith Lemus  
Education

Myrick (Rick) Gaffney  
Fishing

Adam Pack (Chair)  
Hawai'i County

Roberts (Bob) Leinau  
Honolulu County

George Thompson  
Kaua'i County

Solomon Pili Kaho'ohalahala  
Lana'i Island

Robin Newbold  
Maui County

Walter Ritte  
Moloka'i Island

Matthew Kawaiola Sproat  
Native Hawaiian

Douglass Cole  
Ocean Recreation

John (Jack) Kittinger  
Research

Kelsey Poole  
Tourism

Gregory Kaufman  
Whale Watching

**GOVERNMENT** (Non-Voting)

Leo Asuncion  
DBEDT – Office of Planning

Veronica Rocha  
DBEDT Renewable Energy

Carty Chang  
DLNR

Ella Herman  
DLNR – Hawaiian Islands  
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Laura McIntyre  
DOH

Sandra Rossetter  
DOT – Harbors

Keola Lindsey  
OHA (Voting)

Gene Brighouse  
NMS of American Samoa

Malia Chow  
Hawaiian Islands  
Humpback Whale NMS

David Swatland  
Papahānaumokuākea MNM

Take Tomson  
NOAA OLE

Rachel Sprague  
NOAA Fisheries PIRO

Eric Kingma  
WESPAC (Voting)

Shelly Lynch  
US Army Corps of Engineers

Eric Roberts  
US Coast Guard

Janice Fukawa  
US Navy

○ Water quality WG

- Help support development of Quality Assurance Project Plans (QAPP)(and partner with groups that do QAPP) so that Department of Health can use water quality data
- Hold workshops and bring partners together
- Support implementation of BMPs
- Add precautionary principle
- Support water quality monitoring and support pump out stations
- Use traditional ecological knowledge for fishponds
- Recommend removing the exemption for aquaculture in the proposed regulations

Summary of Appendices

- The document also contains 4 appendices which were prepared by staff: Appendix A: Summary of Proposed Regulatory Changes and Permits; Appendix B: Summary of Specific Recommendations on Proposed Regulations from the MPR Working Group; Appendix C: Existing Regulatory Language; Appendix D: Proposed Regulatory Language

**Lunch Break**

At 12:05 council takes recess for lunch. At 1:19 council reconvenes and Sol proposes moving some agenda items to before public comment period.

**Season-end Large Whale Response Report**

*Presentation by Paul Wong, Sanctuary Operations Coordinator*

- Ed Lyman is on detail to southeast Alaska for entanglement response training.
- Since 2002, 22 large whales have been cut free; 12 were entangled in gear from Alaska
- In 2014 – 2015 season, confirmed 21 reports out of 37 reports received; 13 different whales; mounted 7 responses on 6 whales; cut 2 free
- Paul relayed the difficulty of tracking an entangled whale last season off Hawaii Island. Ocean users and helicopter companies relayed information. Successful disentanglement of this whale occurred off Maui one week after the first reports of it from Hawaii Island.
- Vessel-Whale Collisions: last year four individuals hit but five counted as impacted because one was a mother with a calf.
- Young whales are more likely to be involved (65%)
- Most from Maui Nui
- Purpose of response program is to protect whales, gather impact information and reduce risk.

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Rick Gaffney: Can you differentiate between trap gear and FADs? Paul: We try to, but difficult to do

Question: Do you try to track where gear comes from? We try to, example of gear traced back to Alaska. Comment: Some crab gear or longline from Hawaii. Discussion among the group.

## End of the Year Enforcement Report

*Presentation by Take Thompson, NOAA Office for Law Enforcement*

- Shared enforcement range for OLE across the Pacific: cover 1.5 million square nautical miles (Hawaii, American Samoa, CSMI, etc.)
- Added two uniformed agents this year.
- They enforce several laws: Magnuson Stevenson Act, Endangered Species Act, Marine Mammal Protection Act, Sanctuary laws, Lacey Act
- Lately pushing enforcement of wildlife trafficking (Lacey Act)
- Recent case of Hawaii-based indictment for illegal ivory, coral. Ongoing case.
- We've been working with the sanctuary conducting whale patrols for about 20 years; partner with DOCARE & Coast Guard
- Also conduct education and outreach activities during whale season; reached out to 35 water activity/ocean users businesses and discussed the 100 yard approach rule.
- Question: How does funding work? Take: We are part of NOAA and we request funding each year to do the seasonal enforcement – approximately \$100,000 spent on whale enforcement for 3 month detail
- Question: Violation of the Lacey Act, just wanted to comment that there is a legal black coral harvest, do you know where the illegal items came from? Take: I cannot comment on details other than what was released (to press).
- This season there were 46 incidents (humpback whale approach cases), mostly motor users, mostly around Maui.

## Council Discussion Period/Q & A with MPR Working Group

Sol invited council to discuss recommendations presented by MPR working group. Does anyone wish to make suggestions?

Teri suggested the council look at the recommendations page-by-page.

Jack: The goal for this discussion is come to an agreement on a set of recommendations that we can vote on today. We can start discussion now, then have the public comment period, then have more discussion.

George Thompson: You are asking us to vote on recommendations but the sanctuary has not yet shared the summary of the public comment period. Doesn't the SAC need the comments from the public comment period?

Sol: We are not going to address those today.

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Jack: We are asking the council to vote on SAC recommendations (not the public comments about the plan).

Maka'ala: In my way of thinking, we are asking if the management plan reflects the work of the individual working groups.

Jack: The MPR working group did not review public comments; this was not the task of the working group.

Eric Kingma: Comments were reviewed by some so we do not want to make it sound like they are not being reviewed.

Doug: Public comments will be reviewed, but not as a part of this working group.

Jack: We can look at the plan section by section: Overarching recommendations--preferred alternative, EBM, boundary changes, regulations...

Eric: Does this represent the previous working groups?

Jack: The previous working groups did not deal with regulations.

George: Can we start with page 5, the section related to the boundaries and the three options?

Sol: The working groups do not have a specific recommendation because we do not have the expertise so we are giving the council three options. If you feel we should move one option forward, voice your opinion.

Kelsey Poole: It is important to bring it to the community. How much longer will the process take?

Jack: The chair can form a working group quickly.

Kelsey: Moved to adopt Option 1 (create separate boundaries working group including members of the affected communities).

Teri: Seconded motion

Bob: I like the recommendation, but this is a moot issue since the SAC's input is limited.

George: Who (which communities) would we reach out to/involve in the working group?

Jack: Leave it to working group and the chairs and co-chairs of the working group to decide.

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Keola Lindsay: Is this for us or for NOAA to work on? The communities have already been identified and NOAA already has a relationship with these communities.

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*US Navy*

Sol: We have been given a task to make recommendations. We took it upon ourselves as a working group to work with boundaries. However, we did not feel we had enough expertise on the MPR working group with all of these communities.

Jack: The new working group would develop recommendations, change language, vote on options, and/or direct NOAA to work on these options.

Eric: Is the working group created at the discretion of the chair? Who would represent the community for the proposed Penguin Bank boundary change?

Sol: The people of Molokai.

Eric: We would suggest that you bring in fisherman from Oahu that fish Penguin Banks. Although WESPAC will likely vote against most of this.

Discussion about who would be a part of the working group if we went with Option 1.

Jack: We can vote, and depending on the outcome make a decision from there about the members of the boundary working group. Do we recommend at this point or vote?

Sol: We are asking if you wish to vote for Option 1. Are there any other questions? Other comments? If the process is clarified, the motion on the table is Option 1.

Bob: I am voting against this. I think we should keep all three options open to consideration.

Judy: I suggest that we leave it to the Sanctuary, not the SAC.

Sol: I am asking for input so we can move forward.

Teri: Do we have other ideas/recommendations?

George: I do not know how my constituents feel. I wanted to have input into the document. I do not think we should decide, but take recommendations and discuss more with our constituents.

Jack: The document was sent out a week ago for review.

Sol: If you would like you can retract the motion, but at some point we need to vote on recommendations.

Malia: We have heard a lot from communities. The formation of this current working group and finishing this document was to tie-in with the NOAA and State timetable. A lot

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of work has been done by the MPR working group. I caution against extending this process out too long. If we wait 6 months it may not provide input within the timeframe we need.

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*US Navy*

Jack summarized the three options from the working group.

Sol: We want to make decisions based on a clear process.

The motion was withdrawn by maker and seconder

Doug Cole made a new motion to amend pages 5-6 to forward all three options on boundary changes to sanctuary management. On page 5 replace “SAC” with “Sanctuary management.” Seconded by Rick Gaffney.

Keola: Recommended that this is broadened to include communities, stakeholders, and user groups.

Eric: WESTPAC is voting against this. However, if considering boundary changes around Niihau, we recommend you consult the Kauai fishing community.

The motion passed.

Discussion commenced on overarching considerations.

Bob: The word value could be defined/specified more explicitly.

Sol: Would you like to keep this discussion broad or narrow?

Jack: With these things the language matters; he encouraged the SAC to not be bashful and to tell the working group that they missed something; it is consensus language and is open to discussion.

Keola: In the regulations section, can it be called out that the purpose and need for regulations be added to this section?

Jack: Supports Keola's recommendations to help alleviate the confusion to the public.

Teri: Recommends that any regulations be clearly articulated so that they can be easily understood. We need to have sanctuary staff go through and clarify the plan and make it simple so people can understand.

Maka'ala: The appendices of the working group recommendations report explain the existing regulations, proposed regulations, and the differences. The language for the proposed regulations is similar to the language of the existing regulations.

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Jack: There is incongruity in the recommendation report where in some places the group says they have difficulty understanding the regulatory language but in other cases, they recommend extending regulations sanctuary wide.

Maka'ala: Pointed out that there is some comparative descriptions of the regulations in Appendix E of the DEIS.

Eric Kingma: Things listed in Appendix E of the DEIS are incorrect. There are concerns about permitting duplication. I advocate for the sanctuary to do a gap analysis to avoid duplication. WESTPAC will likely be voting no against many things. There are many things the sanctuary can do which are programmatic and not regulatory, regulatory duplication is not needed. I propose that the recommendations include language to advise against permitting and regulation duplication.

Walter: The way we look at it the community is looking for tools to manage their natural resources; the commercial fishers are the people being affected by being shut down.

Sol: In the next 5-10 minutes we need to come to a decision of finding out if the recommendations (in the report) are acceptable.

Doug: Commended working group for all the hard work and going through the massive plan and boiling it down to what we have here today; and acknowledges that motions that follow good discussions will provide for better support of the recommendations.

Rick: Motioned that the SAC accept the section with the modifications that have been discussed and move forward. Maka'ala seconded the motion.

Jack: Motioned to amend the section to prioritize programmatic focus over regulatory package. Bob seconded the motion.

Walter & Judy both do not support the amendment by Jack.

Eric Kingma: Supports the amendment proposed by Jack. WESTPAC supports programmatic actions but not regulatory actions.

Doug: Agrees with Walter and supports having more tools like regulations. Maybe there is some duplications here, but we are here talking about it because there are less resources out there.

Sol: Calls for vote on amendment, the motion by Jack does not pass.

Sol: Calls for a vote on accepting the overarching recommendations section of the report, the motion passes.

### Public Comment Period

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The public comment period starts at 3 pm. Sol explains that comments are confined to 2 minutes so that will allow for everyone that signed up to speak. Shannon will facilitate the time limit of the testifiers. Please start by identifying yourself and who you represent. The testimony is to be directed towards the advisory council and issues before the council.

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**Robin Jones:** Vice President of Hawaii Kai Community Marina Association. In 1991, the marina was deeded to the association with the provision that the organization maintain the area. They have purchased an easement at the bridge and are required to maintain it. We are not misinformed, we have read the plan. We applaud the work the working group has done. Co-management will serve the community and help with the process. She supports proposed Alternatives 1 or 2. Maunalua Bay doesn't need an experimental SSMA. Don't create duplicative regulations. The fee structure of the sanctuary is higher for duplicative sanctuary regulations. It is clear that communities in Maunalua Bay have not been involved in this process, although Malama Maunalua has.

**Sam Montgomery:** Friends of Maunalua Bay. Everyone has the same common goal, a beautiful Hawaii. The federal government isn't the way; it should be the state that manages these resources. If we can't approach you like we can the state it is not a good process. NOAA has failed to engage the community. The previous meeting in Hawaii Kai showed that the community does not support NOAA. The community is divided and they (NOAA) are bypassing the community. Please take a month or two to think about this process. No one here lives in East Oahu. There were 500 people at the meeting and there were 2 people for the NOAA proposal. I've heard that the community will have no further voice in this matter. You guys aren't addressing the runoff issues.

**Phil Fernandez:** Fishing alternate on the SAC, member of MPR working group, chairman of offshore development working group. Regarding Jack's earlier amendment, I think the plan should focus more on the programmatic side than the regulatory side. We need boots on the ground to help with the ecosystem, help with coral reef, get fisheries working in sustainable methods, these are not regulatory. In the draft management plan, aquaculture is exempted from the proposed rules, and the offshore working group had agreed with the exemptions. However, a member of the MPR working group, Robin Newbold, wanted to make sure that BOEM cannot regulate or permit within the sanctuary and encourages the sanctuary to be able to permit.

**Mahealan Silva:** Private Citizen. The concern is that when an EIS happens, if there is a finding of no significant impact it proceeds. What is called into play is a cultural impact assessment. The Aloha 'Aina document, it captures good things, but if this is the trade off to a cultural impact assessment it doesn't fly. Culturally this plan is going to impact all these areas, so it needs to be assessed. The people that are going to be impacted need to give feedback in terms of impacts before you pass this. Disregarding comments that just read 'no', isn't appropriate, culturally many people don't explain themselves, they communicate the way they do. This is not America for the records.

**Lynn McNutt:** Kauai Ocean Users Group. Agree with Eric Kingma that programmatically the conservation of things is a good idea. Don't support regulatory, or management. Have a

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problem with the fact that the compact agreement has to be renegotiated. Suggests that the definition of a sanctuary resource be looked at, make sure that no costs are incurred to the state from this plan. All money collected for fines goes back to NOAA. Would like to see an analysis by the working group of how the regulations don't impact the user groups. Have a problem with the military injuring the animals.

**Jeff Krantz:** Street Vac and operator (Seabreeze Parasail), in Maunalua Bay. Operate thrillcraft and parasailing business. People are having a hard time following this regulation package. You council members will be remembered for your decisions here. The science isn't being addressed here. We need to be following what the science tells us before we go regulating people. There is no money for this plan, there is little allocated to the SSMA. Voting for option 1. Revisit this plan in 5 years. Have community involvement and engage at that time. Road runoff and sediment issues are the primary concerns.

**Judy Soben:** Represents her family. NOAA claims that significant community engagement has taken place but at the Hawaii Kai meeting many people came that had never heard of this plan. The plan has been deceptive; it is not a process on whether a new sanctuary is needed. We want to follow the approach you have on your website. Where is the documentation of the communities that have been engaged? People need to be involved in the discussions.

**Matthew Ross:** Commercial fisherman. I understand current regulations. Every time we've voiced our concerns we've been told that we are misinformed. We are not misinformed. If these regulations come into place we wouldn't be able to touch the bottom. It would eliminate the ability of people to fish recreationally or for subsistence or for dive operations to maintain buoys. As written the regulations and exemptions are not clear. The previous recommendation by Jack Kittinger was spot on to support programmatic aspects of the plan but not the regulatory. If the sanctuary could do positive things like research and enable the state's ability to manage the waters that would be a good thing.

**Charlie Hunter:** Friends of Maunalua. Resident and lives on Hawaii Kai marina. Applaud NOAA's efforts nationwide and the intent of the plan. NOAA can do better as a scientific entity, there are no studies that NOAA has done to point to or explain the stressors that exist. No scientific basis for the management. NOAA hasn't identified specific regulatory gaps. The problem is clearly funding enforcement, NOAA and DLNR are underfunded. How are putting duplicative regulations going to make anything better? Maunalua Bay is described as being a test site. The people that live out there don't want the bay to be a test site. Regulations are unclear. Out of time to discuss how the people in the communities were not engaged. Support NOAA doing studies to determine how use affects the bay. Can't say the bay is healthy but suspects that runoff is the problem. There are state rules that can improve the bay and protect from stressors.

**Shyla Moon:** Represents Kauai ocean users and the hunting fishing association. We need more community involvement with the council members. It needs to be done. Malia Chow promised Kauai that they would be considered as individual counts and not just one count and we hope that the staff holds to their promise. Was the entire community involved?

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Define community - if people were engaged why are so many people saying that they weren't engaged? We are in opposition of the sanctuary's plan. We are not misinformed; we are saying no we don't like it. The MPR working group representative was Maka'ala, who did she consult with on Kauai? The way you voted earlier (orally) was a joke.

**Makani Christensen:** Represent hunting and fishing association statewide. State that time is precious, valuable. Comments to the community: keep on it and stay solid and stick to the facts and everything will be fine. The association has 78 paid members across the state.

**Adrienne King:** Resident of Hawaii Kai. Practicing attorney. Agree with many previous comments especially about the lack of community knowledge. I didn't hear about this plan until after the comment period was closed. I don't know if more regulations are needed. The talk about runoff is where the real problem is, and to determine what needs to be done about that. I haven't seen many studies. This is like the lawyers full employment act. All you will result in is more lawyers arguing about things in the future instead of fixing the problem.

**Dennis Yamaguchi:** Asked by other fishermen to attend and see what is going on. We tried reading the document and it is a hard read. There are concerns about fishing in Maunaloa Bay and how the anchoring regulation might affect fishing. I want to find out what happens now after this meeting. We deal with the state all the time but this is the first time we're dealing with federal regulations.

**Janet Scheffer:** President of Mana Communications, organizes communications for 2 groups in Hawaii Kai. Agree that something needs to be done out in the bay but this is not the right process. The feedback from the media that she has received is that it is clear how people are confused. We will continue to publicize the impacts of this plan with the goal of shutting down this process.

At 3:50 pm Sol closes the public comment period

### End of the Year Enforcement Report

*Presentation by Eric Roberts, United States Coast Guard*

Eric discussed the Coast Guard's operational, on-water effort for the year. The Operation Kohala. The intent of the program is to have sufficient presence, provide education, partner with NOAAOLE and DOCARE, and assist the sanctuary with response activities.

- Operational effort is both Sector Honolulu and Air Station Barbers Point
- Provide dedicated patrols, operational support, and patrols of opportunity January – March.
- Last year over 100 hours of effort.
- Different enforcement guidance (issue citations or educate operator) depending on level of harassment.
- Entanglement response also part of program and officer training.
- Seven responses last year: 5 humpback whales, 2 monk seals; most entanglements, one harassment.

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- Outreach and education is part of their mission (including going into the classroom).

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Bob: How do you support other enforcement agencies (e.g. DOCARE)? Eric: One joint enforcement patrol in the recent year but we share schedules and maximize efforts with planes, helicopters, etc.

Question: You mentioned half a million dollars spent per year on this operation, does that come out of operational or conditional money? Eric: All comes out of base operational budget, so \$200K spent on one thing reduces efforts elsewhere.

### Council Discussion Period/Q & A with MPR Working Group Continued

The council continued the morning's discussion of the MPR working group recommendations.

Jack moved to page 7 (Previous Working Group Recommendations) and asked if the council had any questions/comments.

Walter: Mentioned wishing to add to the Native Hawaiian section a traditional and constitutional rights qualifier (ensure that statutes do not disagree with existing rights).

Teri: Read from Maritime Heritage recommendations section about the fact that the working group did not recommend regulations, but maritime heritage rules appear in the plan.

Frazer: Asked who defines environmental impact and what is the precedence?

Sol: Any more discussion on Ecosystems Protections section?

Walter made motion to include CBSFA in sanctuary's programmatic support. Jack: Programmatic support includes resources.

Walter: We are putting this in here (the document) to see how we will support this. There is no money so it takes people. The state is not doing a good job. We want to put something in here (the document) so the sanctuary can support this.

Sol: We are not creating anything new.

Jack: Regarding the Humpback Whales working group, he suggests to make it easier for people on the water to understand the regulations.

Sol: No discussion so assume consensus. Enforcement, no discussion. Moving forward acknowledging consensus. Offshore Development.

Frazer: The language needs clarification.

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Rick: Is anchoring on the ocean floor part of this regulation?

Malia: Anchoring is exempt if permitted by NMFS or the State of Hawaii. Fishermen operating under a permit are exempt. Rick asks for clarification between commercial fishermen versus the occasional fisher.

Malia: Reads from the document the alteration of seabed regulation.

Ed Lindelof: You can anchor on sandy bottom. You cannot interpret hard bottom versus live coral. Discussion around that.

Bob: It is not okay to anchor on sand and chains wipe out coral.

Comment: This regulation supports state law.

Rachel: Other sanctuaries have this regulation.

Malia: This regulation is consistent with regulations across most sanctuaries.

Anne: We can duplicate where to anchor across sanctuaries.

Teri: If this is state law, will there be funding for enforcement?

Sol: We are going beyond what we are asked to do. To keep moving is there any other discussion?

Eric K: For the record I am not in support of the last section.

Judy discussed the need for exemptions for education. Also explained that Ocean Literacy is very broad.

Doug: There is room for improvement in education. Some people say the regulations are very clear and others say that regulations are very unclear. Now people are thinking they will be adversely affected. If that is not the case we should be able to explain that with clarity. Clarity is very important.

Sol: Do you have language to add?

Bob: It is not shared once and you are done, it needs to be ongoing (communication about regulations).

Rick: One problem of ocean literacy is that many are illiterate. Some people are looking for controversy. The sanctuary needs to address that.

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Judy said we addressed it but what you are saying is to include what we have not addressed.

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Jack read language from document: it is about communicating to the public effectively. Discussion around the communication of the science behind the decision (management plan).

Sol: All in favor of suggested changes? Rick suggested some language about looking across the state of Hawaii.

Sol: Do we combine these three areas into Ocean Literacy? Jack read back comments. Consensus on both items read.

Climate Change: Rick made comments suggesting broadening language to include fisheries. Consensus.

Water Quality: Jack asked if you think the sanctuary is in the position to phase out 2-cycle engines.

Rick: The federal government has mandated regulations. The new two-cycle engines are better than other engines on the water. Should we include info about government mandates in the recommendations? Move to programmatic. Discussion. So we add language that sanctuary work with other agencies to deal with this. Discussion. Language should include “in partnership”. Consensus.

Doug: There is an issue with runoff into Hanauma Bay. We need to add language that explains that the sanctuary addressing water quality becomes a way to address runoff. We welcome additional partners to the table to deal with working with the development that creates runoff.

Rick: Cross out Maalaea. We should be supporting water quality efforts everywhere. Consensus.

Comment: This is a negotiated compromised statement. Needs clarifications of exemptions. We need to remove exemptions for aquaculture. Consensus on changes to WQ recommendations.

Sol: Wish to have consensus. Motion: Support of MP working group recommendations as amended.

Eric K: We cannot support as amended. What should have happened today is that we look at state recommendations and read the state's comments. He urged others to read the state comments. Thanked members for their patience.

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Sol called for motion. Motion passed to accept MPR working group recommendations with discussed edits/comments.

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Walter: Expressed disappointment in some of the outcomes. There has been opposition to the sanctuary. In my mind we should pay attention to this opposition. My tendency is to intrude where we are wanted and not intrude where we are not wanted.

Judy: Asked who was represented at the Hawaii Kai meetings. Malia explained how the town hall meeting was different from the meetings held during the formal public comment period. Judy asked about people's concerns that they were not involved in the process.

Discussion by Malia, then Walter: We must listen to the community.

Rick asked about locations of public meetings.

Jack: Believes that the community engagement and rollout strategy have been part of the problem.

Jack: These documents (recommendations) now go to NOAA and the State for them to deal with as they wish.

Sol: In our options we did provide for the sanctuary to continue working with SAC and WGs.

Keola: As members we have been challenged and we do not know what the outcome will be. There are many ways for people to get involved. Part of the challenge is to find out how all of us are in this together without alienating others. This could be another action that divided a community rather than healing it. Time will tell us what it becomes.

Sol: We have challenges. We have information handed down to us by people that call this their homes and by leaders learning the lessons for us to move forward. As I look at what we have done, I hope each of you feel you are members of this group and acknowledge where we have come from. Let us not lose sight of issues that have gone so far beyond what they are based on. Other things are happening globally. We are taking a message to the world about who we are and what we believe we are. We figure out how to find a way. The horizon is the opportunity to do things we have not done before and we should all go there. Thank you for being here today and moving forward.

5:16 Meeting adjourned.

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