



**Final Recommendations Maritime Heritage
Hawaiian Islands Humpback Whale National Marine
Sanctuary Advisory Council
January 18, 2012**

The Hawaiian Islands Humpback Whale National Marine Sanctuary (sanctuary) Advisory Council (council) forwarded these final recommendations to sanctuary management at the January council meeting for consideration in the management plan review. This report is based on the work of a working group that was formed by the council in December 2010 to address one of the priority topics brought up during the 2010 public comment period. The working group met over the course of 12 months in 2011. A digital copy of this report can be downloaded at http://hawaiihumpbackwhale.noaa.gov/management/pdfs/maritimeheritage_rec_report.pdf.

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Need for Action:

Hawai'i has a long history of continuous maritime activity, and therefore possesses many submerged archaeological sites, cultural resources, and historic wrecks. A 1989 state-wide survey documented the location of 62 ancient fishponds within the sanctuary, and documents record at least 160 historic vessels lost in the same waters (30 of which have been located), as well as some 70 missing naval aircraft. (Statewide numbers are much higher.) Collectively, these kinds of sites are called *maritime heritage resources*, significant cultural and historic properties which reflect key time periods and activities such as Native Hawaiian fishing and aquaculture, 19th century sail and steam navigation, and the events of World War II. These resources are elements of broad cultural landscapes, and also provide historians and archaeologists with a unique record of the past. Additionally, they can be of great value to both commercial and non-commercial ocean users, including recreational divers, fishermen, and others.

To date there has been no overall inventory or assessment of most of the maritime heritage resources in the main Hawaiian Islands. The educational and socio-economic potential for these resources has not been realized. The existing state and federal preservation laws intended to protect such sites (the most relevant being Hawai'i Revised Statute Chapter 6-E, National Historic Preservation Act, Abandoned Shipwreck Act, and the Sunken Military Craft Act...see Appendix) are generally unfamiliar to the public and seldom followed. Multiple examples of illegal damage and removal of publicly-owned historic properties from sanctuary waters have been documented. Looting and both intentional and inadvertent damage remain, unfortunately, more the general rule than the exception. No agency has addressed the overall maritime heritage issue for the main Hawaiian Islands.

Desired Outcome:

The desired outcome is the identification, appreciation, and preservation of our maritime heritage resources for the benefit of ocean users and the general public. This outcome includes assessment of the resource, active engagement of the public in education and outreach opportunities, and compliance with the existing maritime heritage preservation laws.

Recommendations:

The Maritime Heritage Working Group strongly recommends that the sanctuary add maritime heritage resources to its management plan. These resources have value from a number of different perspectives and for a number of different user groups (e.g. cultural,

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archaeological, recreational, fishing) and their proper management can also help alleviate potential environmental hazards that would affect the current stewardship priorities of the sanctuary. Yet clearly a lack of general understanding of maritime heritage sites has led to their continuing damage and destruction. Adding maritime heritage resources does not necessarily require new law, for applicable state and federal preservation laws already exist. The problem is that no resource management agency has taken up this issue in the main Hawaiian Islands. True preservation and stewardship of marine resources must be supported at the local level. Therefore, better understanding the resources within the sanctuary, and working towards increasing public awareness and appreciation of these resources through education and outreach, should be the mainstays of the maritime heritage effort.

Furthermore, the group recommends that overall sanctuary maritime heritage efforts take full advantage of potential partnerships (such as the Hawaii Island Recreational Scuba Association or HIRSA, and the Malama Kai Foundation) to help identify resources and support (funding), and strive for island-wide participation. Maritime heritage efforts should also recognize the need to appropriately share information and be inclusive of other non-heritage preservation groups who also benefit from these resources, such as fishermen. Human remains (some sites are also war graves) must be treated with the proper respect. Finally, maritime heritage efforts must recognize the special significance of Native Hawaiian cultural resources, and coordinate any activities involving these with the proper cultural working group.

Inventory: Though there is a partial list of sites discovered by local divers, there has been little to no effort to search for and examine maritime heritage resources in any comprehensive fashion. The group recommends that an inventory and assessment of sanctuary heritage resources be developed over time, as available support allows, taking full advantage of cost-saving measures and partnerships. Specific recommendations follow:

1. When Native Hawaiian cultural resources are identified, communicate/work collaboratively with the Native Hawaiian Advisory Council. Recognize the potential sensitivity of Native Hawaiian cultural resources and locations, and establish a process by which Native Hawaiian cultural resource finds are handled properly. Develop a contact list, and work in coordination with the State Historic Preservation Division. Discuss broader resource heritage issues with the Native Hawaiian Advisory Council.
2. Use a multicultural perspective in defining maritime heritage resources, the unifying theme is that these resources all reflect submerged seafaring/marine-oriented/nautical activities. Respect cultural diversity and the wide variety of heritage information.

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3. Do not limit resource to “50 years or older” (see National Historic Preservation Act guidelines). Consider that more recent resources may have historical value as well. Vessels intentionally sunk (e.g. artificial reefs, intentional disposal) may have a historical component too, and should not be left out.
4. Compile existing archival information on maritime heritage resources in order to develop the database. Take advantage of multiple sources such as NOAA fisheries, Hawai'i Undersea Research Lab, Army Corps of Engineers, State Historic Preservation Division, Bishop Museum, National Park Service, etc.
5. Conduct initial field inventory and assessment of maritime heritage sites (some of which has begun opportunistically). Implementation of field assessment may be incremental. Cost-saving measures and partnerships should be pursued, such as Oak Ridge Institute for Science and Education (ORISE) and the Joint POW/MIA Accounting Command (JPAC) etc.
6. Assess and prioritize maritime heritage resources by combining field and archival data. Prioritization will indicate which sites warrant further field survey, which sites may be eligible for state and/or federal historic registers, periodic monitoring, etc.
7. Determine site sensitivity to potential impacts from increased access, particularly for resource sites not publicly known or accessed (see “Resource Protection” below). Some locations may not be suitable for general public access.
8. Establish periodic monitoring of priority sites to determine impacts or change over time. (This may be a role for sport divers/clubs trained through Heritage Awareness Diving Courses, Nautical Archaeology Society diving courses, etc.)
9. Recognize the importance of maritime heritage sites to the scientific community, including biodiversity and ecosystem issues, impact and benthic surveys, etc.

Outreach and Education: As experience in other sanctuaries has demonstrated, raising public awareness and appreciation of local resources is often the best way to create resource stewardship. Nautical archaeology courses for sport divers, specific outreach materials and curricula, online and social media information,



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presentations for dive shops and clubs etc provide tools for engaging the public in local level preservation efforts. Specific recommendations follow:

10. Highlight the potential for both youth educational (youth groups) and socio-economic (recreational dive industry) benefits for maritime heritage resource preservation in Hawai'i. (Note: "recreational" includes commercial sport diving operations.) Provide outreach to schools.
11. Assess the statewide contribution of maritime heritage diving sites to the recreational diving industry by supporting a survey of dive shops and operations.
12. Incorporate maritime heritage into existing sanctuary education and outreach efforts. Also create specific maritime heritage materials (brochures, posters, presentations, online and social media material, etc.).
13. Engage the sport diving community in the inventory process. This can be done via dive clubs, u/w photo clubs, "adopt-a-wreck" programs, Nautical Archaeology Society courses, heritage awareness training, heritage or shipwreck trails, etc.
14. Work awareness of heritage preservation laws and guidelines into the education and outreach efforts.

Resource Protection: Since appropriate state and federal preservation laws already exist, the working group recommends that the sanctuary endorse and support these laws, rather than create any new resource protection mandate. Resource protection also implies the careful handling of data. Federal agencies comply with the National Historic Preservation Act, which (among other things) prohibits the public release of information where such release would damage the heritage resource itself. Specific recommendations follow:

15. Endorse and support the existing state and federal heritage preservation laws that already apply to these resources in Hawai'i. Maritime properties underwater are given the same legal status and should be given the same level of protection as heritage properties on land. Share heritage resource status information with the appropriate state and federal partner agencies.
16. Engage the sport diving community (who become the local stewards) in local protection of the resource (see "Outreach" above). Increasing awareness of the resource is the best way to create protection for wrecks.



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17. Identify steps, when warranted, to preserve historic shipwreck sites under the sanctuary's ownership or control. Examples include in situ preservation management, or site recording, or recovering significant artifacts when preservation in place is not possible.
18. Consider the use of mooring sites at specific diving locations like those with existing high-use (protects resource from anchor damage).
19. Protect sensitive information (National Historic Preservation Act section 304 prohibits release of information if such release would be damaging to the resource). Transparency and responsible public access to public resources is the ideal, but the sanctuary should not release sensitive information.
20. Identify site sensitivity (ie sites that are publicly known vs. sites that are relatively unknown) and determine site ownership (ie sites that are state property vs. sites that are federal property). Publicly known sites may be suitable for the public inventory; other sites may not be.

Process:

The Sanctuary Advisory Council established the Maritime Heritage Working Group to consider possible management recommendations for these maritime heritage resources, determine whether the resources should be included in the sanctuary's mission, and, if so, consider how they would be managed. Planning meetings were initiated in January 2011, with group selection completed (plan approved by Council) in March. Agendas and minutes for the bi-monthly working group calls were posted on the sanctuary's web site, and public participation welcomed. Access to online webinars facilitated the conference call method, allowing participants to view documents and maps during the discussions. Altogether five planning meetings (during the formation of the group) and six public working group meetings were held. The group carefully reviewed the maritime heritage public scoping comments, as well as the overarching issues list. Additional supporting documents were made available to the group by email (see Background Documents below). Group members were provided agendas prior to, and summary minutes following, the conference calls.

- Appendices:**
- A) Contributing Members**
 - B) Contributing Technical Experts**
 - C) Sources of Information—Background Documents**
 - D) Sources of Information—References**
 - E) Summary of Relevant Maritime Heritage Laws**

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A) Contributing Members:

- Teri Leicher, Chair: Alternate Business/Commerce Seat, Sanctuary Advisory Council and Jack's Diving Locker (Hawai'i Island)
- Rebecca Hommon, Vice-chair: Sanctuary Advisory Council and U.S. Navy Region Hawai'i (O`ahu)
- Hans Van Tilburg, staff lead: NOAA Office of National Marine Sanctuaries (O`ahu)
- Cindi Punihaole, member: Citizen-At-Large Seat, Sanctuary Advisory Council and Kohala Center (Hawai'i Island)
- Gavin Key, member: Alternate Tourism Seat, Sanctuary Advisory Council and Kona Diving Company (Hawai'i Island)
- Jack Kittinger, member: Honolulu County Seat, Sanctuary Advisory Council (O`ahu)
- Carlos Santana, member: Dive Pro (O`ahu)
- Cindy Hunter, member: Director UH Marine Option Program (O`ahu)
- Erik Stein, member: Extended Horizons Dive Company (Maui)
- Larry Widhelm, member: Paradise Divers (Kaua`i)
- Marvin Otsuji, member: Seasport Divers (Kaua`i)
- Patrick Price, member: Pearl Harbor Divers (O`ahu)
- Richard Gould, member: Emeritus Professor of Archaeology Brown University (O`ahu)
- Rick Rogers, member: Avocational Maritime Archaeologist/Historian (O`ahu)
- Terry O'Halloran, member: Malama Kai Foundation (O`ahu)
- Trisha Drennan, member: Cultural resource specialist/maritime archaeologist (California/Hawai'i)

B) Contributing Technical Experts:

Following the completion of draft recommendations, the document was then reviewed by the following outside technical experts:

- Dr. Dave Conlin Adviser: National Park Service Submerged Resources Center
- Dr. Robert Neyland Adviser: Naval History & Heritage Command
- Dr. Stefan Claesson Adviser: Joint POW/MIA Accounting Command
- Terry Kerby Adviser: UH Hawai'i Undersea Research Lab (deep water research)

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C) Sources of Information--Background Documents:

In addition to reviewing the maritime heritage public scoping comments and the overarching issues list provided by the sanctuary, the working group identified the need for further information on specific aspects of the maritime heritage field: resources in the sanctuary and Hawai'i; examples of heritage resource management plans from other sanctuaries; description of existing state and federal laws relevant to the maritime heritage resource; and description of existing regulations at other sanctuaries. The following documents were provided to the working group by the sanctuary (HIHWNMS) and by the sanctuary system's Pacific Islands Region office (PIR):

- sanctuary 2010 condition report (excerpt);
- current known maritime heritage inventory;
- assessment of additional marine resources 2007 (excerpt);
- examples of other sanctuary maritime heritage management plans;
- summary of existing state and federal preservation laws;
- summary of other existing sanctuary maritime heritage regulations.

D) Sources of Information--References:

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|-----------------|---|
| HIHWNMS 2010 | Hawaiian Islands Humpback Whale Sanctuary Condition Report |
| PIR 2011 | Current known maritime heritage inventory (list) |
| HIHWNMS 2007 | Assessment of Additional Marine Resources for Possible Inclusion in the Hawaiian Islands Humpback Whale National Marine Sanctuary |
| ONMS 2011 | Examples of other sanctuary maritime heritage "action plans:" Channel Island NMS Florida Keys NMS Monterey/Cordell Banks/Gulf of the Farallones NMS Papahānaumokuākea MNM Stellwagen Bank NMS Thunder Bay NMS |
| PIR 2011 | Summary of existing state and federal preservation laws |
| PIR 2011 | Summary of existing sanctuary maritime heritage regulations |

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E) Summary of Relevant Maritime Heritage Laws:

Hawai'i Revised Statute Chapter 6-E Historic Preservation

Chapter 6-E establishes within the Department of Land and Natural Resources the division to administer a comprehensive historic preservation program within the State of Hawai'i. This includes underwater sites, structures, objects, etc. Chapter 6-E states that "It shall be unlawful for any person, natural or corporate, to take, appropriate, excavate, injure, destroy, or alter any historic property or aviation artifact located upon lands owned or controlled by the State or any of its political subdivisions, except as permitted by the department."

Abandoned Shipwreck Act (43 U.S.C. §§ 2101-2106)

Under the Abandoned Shipwreck Act (ASA), the U.S. asserts title to shipwrecks that are embedded in the submerged lands of a state. The federal government transfers title to the state whose submerged lands contain the shipwreck, except when the wreck is located on federal or Indian land, or is a U.S. warship that has not been affirmatively abandoned. State are directed to: 1) clarify that state waters and shipwrecks offer recreational and educational opportunities to sport divers and other interested groups, as well as irreplaceable state resources for tourism, biological sanctuaries, and historical research; 2) provide reasonable access by the public to such abandoned shipwrecks be permitted by the state holding title to such shipwrecks; 3) guarantee recreational exploration of shipwreck sites; and allow for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and environmental integrity; and 4) create underwater parks or areas to provide additional protection for such resources.

National Historic Preservation Act (16 U.S.C. §§ 470 et seq.)

The National Historic Preservation Act has two major components that affect the responsibilities of federal agencies managing submerged lands. First, under section 106, federal agencies are to consider the effects of their undertakings (including the issuance of permits, the expenditure of federal funding and federal projects) on historic resources that are either eligible for listing or are listed on the National Register of Historic Places. Second, section 110 specifies that federal agencies must identify historic resources and consider the preservation of historic resources as part of their management responsibilities.



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National Marine Sanctuary Act (16 U.S.C. §§ 1431-1445c)

This legislation allows the Secretary of Commerce to designate areas of the marine environment that are of special national significance as protected areas. National significance is defined within one of three categories: special *recreational*, ecological, scientific, *cultural*, *historical*, or *archaeological* attributes; unique or important marine resources; or special human-use values [emphasis added]. The implementing National Marine Sanctuaries Act statute explicitly makes it unlawful for any person to damage or destroy any resource (both natural and cultural) located within an area designated as a sanctuary. Furthermore, it is made illegal to possess, sell or transport any resource illegally removed from such an area.

Sunken Military Craft Act (10 U.S.C. 113 Note and 118 Stat. 2094-2098)

The SMCA states that right, title, and interest of the United States in and to any United States sunken military craft shall not be extinguished except by an express divestiture of title by the United States; and shall not be extinguished by the passage of time, regardless of when the sunken military craft sank. No person shall engage in or attempt to engage in any activity directed at a sunken military craft that disturbs, removes, or injures any sunken military craft, except: 1) as authorized by a permit under this title; 2) as authorized by regulations issued under this title; or 3) as otherwise authorized by law. The legal definition of sunken military craft includes all associated contents.