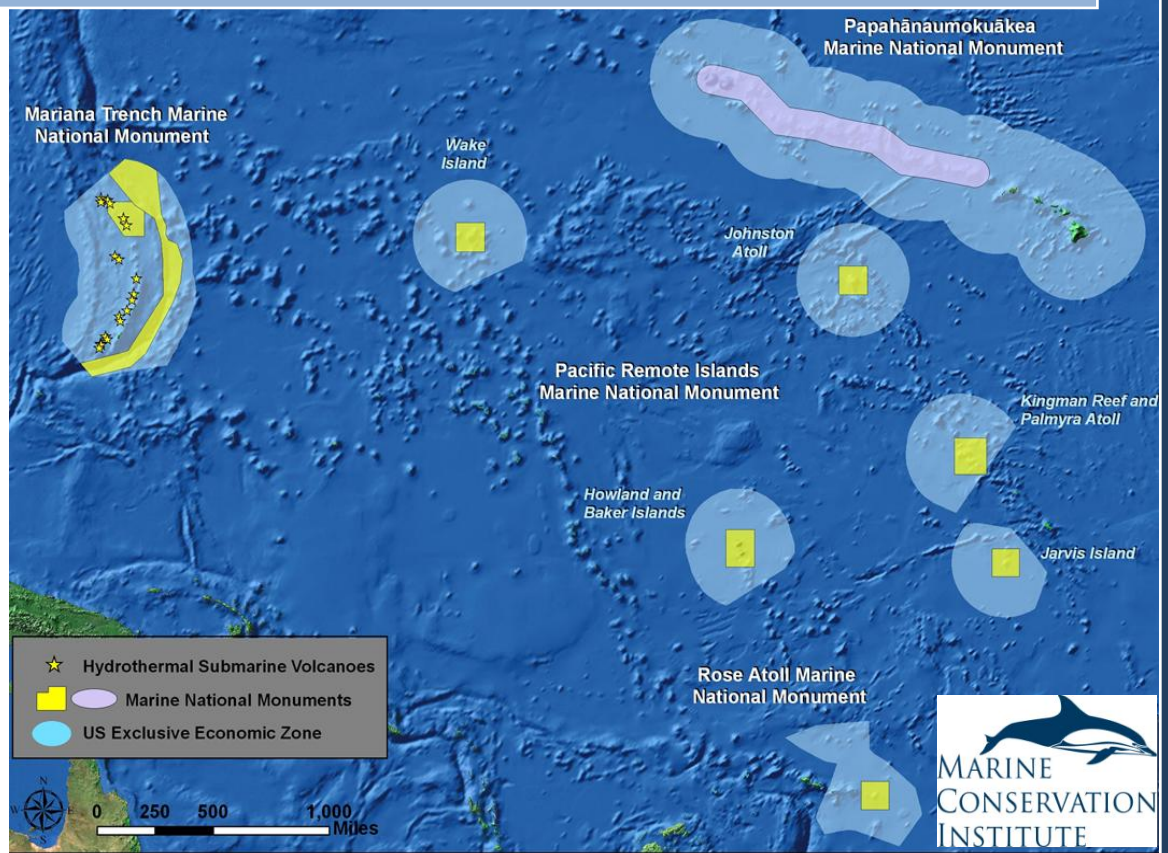


Protecting America's Pacific Marine Monuments:

A Review of Threats and Law Enforcement Issues



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Executive Summary

In January 2009, President George W. Bush exercised his authority under the Antiquities Act of 1906 to establish the Marianas Trench, Pacific Remote Islands, and Rose Atoll Marine National Monuments. Collectively, the three monuments encompass nearly 200,000 square miles of low coral islands and their surrounding pelagic zones, which extend roughly 50 nautical miles (nm) seaward of island shorelines. These areas harbor some of the last relatively pristine marine ecosystems in the Western and Central Pacific Ocean, and are home to countless species of marine wildlife, including dolphins, whales, turtles, seabirds, fish, invertebrates, and corals. The presidential proclamations creating these areas prohibit all commercial resource extraction activities, explicitly ban commercial fishing, and allow limited subsistence or recreational fishing.

The creation of the monuments reflects a growing trend in ocean protection as nations shift their focus away from smaller, coastal Marine Protected Areas (MPAs) in favor of larger areas that capture an array of marine ecosystems and biodiversity (e.g., the South Georgia & South Sandwich Islands Marine Protected Area created in 2012 spans 386,372 square miles). Unfortunately, large ocean areas remote from human populations are difficult and costly to manage and enforce. Without the provision of sufficient resources, even government agencies of wealthy nations cannot monitor these places on a consistent basis, let alone manage and protect them at a level commensurate with their status as internationally recognized conservation areas.

To ensure that the US Pacific marine national monuments (MNM) in the Western and Central Pacific do not simply linger as “paper parks,” Marine Conservation Institute assessed the major human threats to these areas and reviewed the current performance of US law enforcement agencies in deterring and prosecuting activities that could prove catastrophic to monument ecosystems. Based on an analysis of vessel traffic in the region, damage to the Pacific MNMs is likely to occur in one of the following ways: 1) illegal fishing activity by US or foreign fishing vessels; 2) accidental groundings and oil spills by large commercial vessels (e.g. container ships or tankers) or fishing vessels; or 3) introduction of invasive marine or terrestrial species by small recreational vessels (e.g. sailboats) that trespass in nearshore island waters or on the islands themselves. A synthesis of government documents, personal interviews with federal enforcement staff, and information from international fishery management organizations shows that vessel-based threats continue to manifest themselves inside Pacific marine national monuments. For example:

- Since the monuments were created in January 2009, there have been low but consistent levels of illegal fishing by US-registered vessels inside the boundaries of Rose Atoll and Pacific Remote Islands MNMs.
- Foreign fishing vessel incursions are a regular occurrence in the vast and discontinuous US Exclusive Economic Zone (EEZ) in the Western and Central Pacific

Ocean; there have been at least two documented cases of foreign vessels fishing illegally inside Marianas Trench MNM, and many more suspected violations.

- There have been several documented cases of attempted or actual illegal trespass by recreational sailing vessels at various islands within the Pacific Remote Islands MNM; in one case the presence of an invasive terrestrial species (a rat) was linked to a trespassing vessel at Johnston Atoll, which previously had been cleared of rats.
- Historically, commercial fishing vessels have posed the greatest threat of accidental groundings and spills; in the last 25 years there have been groundings on Rose Atoll, Palmyra Atoll, and Kingman Reef, all of which caused significant and lingering damage.
- Large container and tanker vessels pose a potential threat of catastrophic contamination and physical damage to the monuments through accidental groundings and spills, but the frequency and location of commercial vessel traffic are not routinely tracked or made public by federal agencies or international agencies.

In addition to documenting these threats, we analyzed routine law enforcement operations in the Pacific Islands region to assess government agency capabilities to track, respond to, and deter illegal activity. To effectively deal with threats, federal law enforcement agencies need to have a minimum set of things in place, including: 1) clear and enforceable regulations; 2) adequate financial, human, and technological resources; 3) a surveillance and monitoring system that detects vessels in real-time; 4) an effective public outreach and education program that contributes to voluntary compliance; and 5) a mechanism for interagency cooperation that allows agencies to leverage scarce resources and find collaborative solutions to problems.

Using these conditions as a framework for analysis, we identified various issues, gaps, and constraints that hinder effective law enforcement in the region. Major ones are summarized here:

1. There are currently no enforceable regulations that prohibit commercial fishing by US vessels in the Marianas Trench, Rose Atoll, and Pacific Remote Islands National Monuments, even though the proclamations immediately prohibited such fishing in January 2009. Furthermore, the USFWS penalty schedule for wildlife infractions may not be sufficient to deter illegal activity in marine waters under USFWS management. Finally, current provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) limit the effectiveness of US Coast Guard law enforcement activities in the Pacific Islands region.
2. USFWS, NOAA, and US Coast Guard are underfunded and underequipped to carry out their expanding portfolio of environmental protection mandates in the Pacific Islands region. The vast size and discontinuous nature of the US EEZ pose a huge

logistical and operational challenge for enforcement agencies that has yet to be sufficiently recognized and accepted by national level agency leadership.

3. USCG and NOAA rely heavily on vessel monitoring systems (VMS), in combination with air and sea patrols, to provide the bulk of our information about fishing vessel activity. However, these two surveillance methods currently provide only a partial picture of realities on the water. The Coast Guard has far too few physical assets to patrol the vast US EEZ, and current international VMS data sharing policies limit the ability to track foreign vessel incursions in US waters. USFWS has documented illegal trespass by recreational vessels on several occasions within the monuments, but lack of a staff presence on many islands hampers its ability to deal with trespass. Creative approaches to surveillance and planning could bridge these gaps and improve overall maritime domain awareness.
4. USCG and NOAA outreach to the fishing community are somewhat effective, but limited in scope. USFWS outreach to ocean user groups with respect to the Pacific monuments is largely non-existent, due to staffing and funding shortages. Expanded outreach efforts with US fishermen and recreational boaters potentially could increase voluntary compliance rates and leverage 'crowdsourcing' assistance from mariners to improve surveillance in remote marine areas. Furthermore, the three Pacific monuments are not currently depicted on official NOAA nautical charts, a deficiency that could be easily remedied by NOAA.
5. The creation of Rose Atoll, Marianas Trench, and Pacific Remote Islands US Marine National Monuments presents a unique management challenge to federal agencies in a time of constrained and diminishing budgets. Effective management of these large remote ecosystems requires a mindset that involves collaboration and creative thinking to ensure they are cared for in a manner consistent with their status as national treasures. However, there is currently no formal coordinating mechanism to foster cooperation and collaboration between the three management and enforcement agencies.

To address these problems, Marine Conservation Institute makes several recommendations for policy and operational changes that would improve the overall performance of enforcement agencies. The recommendations were discussed with federal agency stakeholders at a Pacific Monuments Enforcement workshop that took place April 25-26, 2012 in Honolulu HI. The workshop emphasized inter-agency collaboration in a resource-constrained environment. The recommendations can be grouped into four broad categories:

1. *Policy/Regulatory changes:* Above all else, NOAA needs to move quickly to establish fishery regulations that implement the presidential prohibition on commercial fishing in the monuments. These regulations are almost four years overdue. Without them, NOAA and USCG are legally powerless to prosecute cases of illegal fishing by US vessels in the monuments. In addition, small changes to certain provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) would

eliminate unnecessary costs for certain federal enforcement actions. Also, federal agencies should continue to work with other nations who are members of the Western and Central Pacific Fisheries Commission and the Foreign Fishing Agency to gain full access to VMS data collected by these entities to better track illegal foreign fishing activity inside the US EEZ.

2. *Greater emphasis on innovation:* Agencies should look for ways to augment traditional 20th century patrol and electronic monitoring techniques through innovative partnerships, and through the integration of science analyses with standard enforcement analyses. For example, enforcement agencies typically store large amounts of data on fishing activity but lack the analytical capacity to explore the data to depict patterns that explain the complex relationship between fisherman behavior and dynamic changes in the ecosystem. Partnering with science agencies and academia could help enforcement agencies better identify likely hotspots of illegal human activity.
3. *Improved ocean user outreach:* To eliminate confusion and unintentional violations, agencies should ensure monument boundaries are accurately portrayed on all relevant government and commercial nautical charting products. NOAA and USCG should also work together to improve use of their emergency hotlines to report illegal fishing activity, and work with USFWS to establish outreach programs to educate the recreational sailing community about the dangers and consequences of illegal trespass in National Wildlife Refuges within the monuments.
4. *Better coordination and transparency:* At a minimum, agencies should establish a formal working group or task force that is dedicated to dealing with shared challenges in protecting and managing the vast and remote US Pacific monuments. Progress toward meeting shared goals should be reviewed quarterly or biannually by the working group, with an annual strategy review led by the USCG 14th District Commander, NOAA Regional Administrator, and USFWS Regional Director. Agencies should coordinate their annual budget requests and work to promote the region's priorities at the national level. Furthermore, data on threats to the monuments and enforcement actions should be made publicly available on an annual basis.

The Pacific marine monuments are unprecedented in their geographic scope, ecological value, and national symbolism for ocean conservation. Their creation changes the landscape of ocean protection in the Pacific Islands region. Agencies must adapt traditional enforcement approaches to meet this new mandate. If implemented over the next 1-3 years, our recommended changes could help improve overall law enforcement performance in measurable ways. Collaboration and innovative thinking is essential to protecting the monuments and preserving their status as icons of ocean conservation in a time of flat or declining budgets.