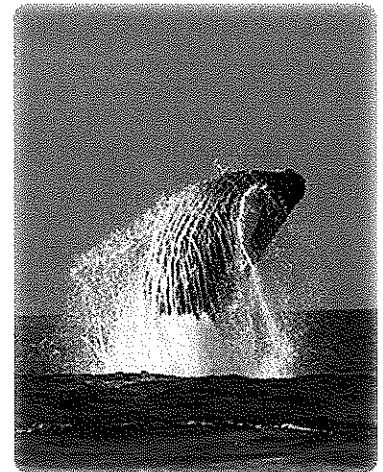
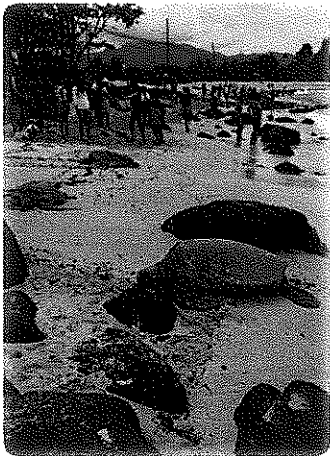
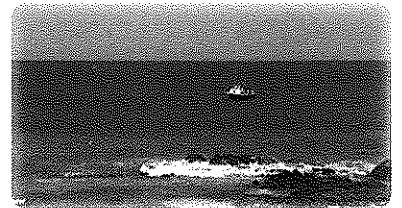
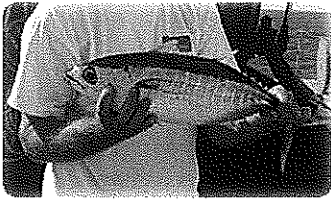
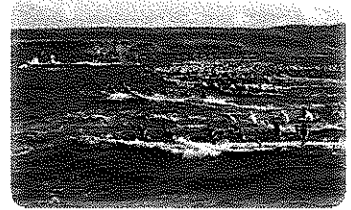
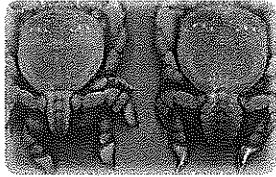


# PUWALU 2011 REPORT HAWAI'I FISHERIES REGULATORY REVIEW

*"PAPA KANAWAI KAI"*

CORRECT WAYS TO BEHAVE ON THE OCEAN



NOVEMBER 2-4, 2011  
PAGODA HOTEL  
HONOLULU, HAWAI'I



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## Overview

### HAWAII FISHERIES REGULATORY REVIEW

Fishing and ocean rules and regulations are put in place to establish boundaries and processes to address issues or problems that arise in society and/or in our natural resources. As societies, communities, environment and natural resources change, rules and regulations need to be periodically reviewed to ensure they remain current and appropriate to meet the purpose for which they were created. In many instances, rules and regulations carry on in perpetuity without being revisited. As such, the Obama Administration issued a directive of all federal agencies to conduct such reviews to ensure federal policies and regulations are efficient and effective.

The Western Pacific Fishery Management Council (Council) launched, in cooperation with local, state and federal agencies and a non-profit organization, an initiative to conduct a community-based review the current landscape of fishing and ocean regulations. The intent of this effort, entitled "Hawaii Fisheries Regulatory Review Initiative", is to identify which rules and regulations are effective, inadequate, antiquated or missing.

The Council supports the periodic review as an important element of adaptive management which is a key element of its ecosystem-based approach to fisheries management. The environment and ecosystems are dynamic, so fisheries managers need to collaborate with communities to ensure that rules and regulations remain appropriate and effective. Adaptive management and community involvement are key components of the Aha Moku system of resource management, along with education, code of conduct and generational knowledge.

In May 2011, a coordinating committee was established, with fishing and indigenous representatives from each island throughout the state, to develop, plan and carryout the Review in a manner that ensures issues and priorities are brought forward through a community process. The members of the committee met the charge by holding three rounds of community meetings to identify the regulatory issues, prioritize those issues and begin the process of developing solutions. As one would expect, the issues raised were numerous and wide-ranging. However, many of those issues are symptoms that stem from fundamental problems with the processes through which rules and regulations are created, monitored, reviewed and evaluated.

In September 2011 the final round of community meetings were held. Coordinating committee members carried forward specific high priority issues in their respective communities

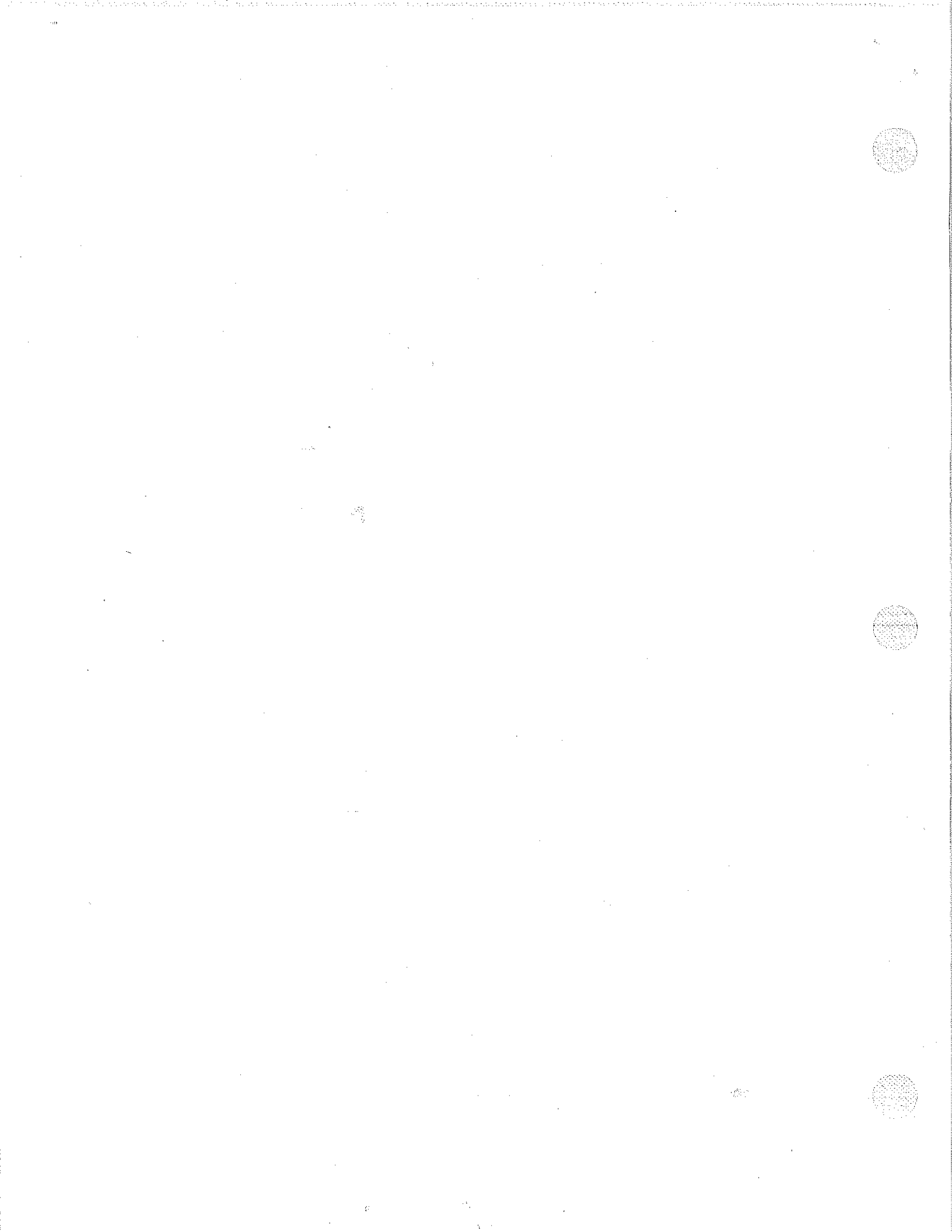


as examples of the symptoms that result from flaws in the policy development, monitoring, enforcement and management processes. Those key issues are listed in the table below:

<u>City, Island</u>	<u>Priority Issues</u>
Honolulu, O'ahu	Ahi Minimum Size; Kahana Bay; Regulatory Process
Līhu'e, Kaua'i	Kauai/Niihau Collaboration; Sanctuary/Monk Seal
Kaunakakai, Molokai	Green Sea Turtle; Regattas
Kahului, Maui	Ocean User Conflicts (CMSP); BFRAs; Section 106 Consultation
Hilo, Hawai'i	Wai Opae; DOCARE Officer Concerns
Kau, Hawaii	DOCARE Officer Concerns
Kona, Hawaii	Offshore Aquaculture; DOCARE Officer Concerns

This regulatory review effort will culminate in a state-wide Puwalu to be held at the Pagoda Hotel on November 2-4, 2011. The outcomes from the regulatory review effort to date will be brought forward to this state-wide venue to review and discuss potential solutions to the priority issues that have been identified, vetted through and carried forward from communities from each mōkupuni or island. This Puwalu will focus on identifying actions to address the deficiencies in local, state and federal regulatory processes.

Two panel sessions are planned to help frame the discussion







## **Papa Kanawai Kai (Ocean Code of Conduct) Puwalu**

November 2-4, 2011

Pagoda Hotel, Honolulu, Hawaii

### **Opening Remarks**

By Kitty Simonds, Executive Director

Western Pacific Regional Fishery Management Council

We've come a long way since the first puwalu in August 2006. That landmark gathering—the start of the Ho`ohanohano I Na Kupuna (Honor Our Ancestors) Puwalu series—brought together, for the first time in Hawaii's history, more than one hundred traditional lawai`a and mahi`ai practitioners from Niihau to Ka`u. At the end of the three days, the traditional practitioners resolved “to unite Native Hawaiians to move forward, to live, to grow, to gather together, to stand firm and to restore and perpetuate the Hawaiian way of life” and “to begin the process to uphold and continue traditional Hawaiian land and ocean practices in the governance and education of the Hawaii archipelago.” The participants called for the “perpetuation and preservation of the knowledge of practitioners and the restoration of healthy ecosystems through furtherance of the ahupua`a management system, konohiki management, kapu, hoa`aina rights and the reestablishment of the `Aha Moku.”

For those of you today who were at that first meeting, maika`i, good job. You accomplished what you strived for. You began the process to reestablish the Aha Moku.

The Ho`ohanohano Puwalu series continued through 2006 and 2007, and like a ground swell, it gathered others on the path—first the educators and then the policy makers. Next, the practitioners reunited to build the net, the conceptual framework to reestablish the Aha Moku system. Finally, they began stirring up the seas to raise up the people of Hawaii so the community consultation process would enhance the ability of Native Hawaiians to contribute their knowledge and practical experience to government decisions on the use of natural resources in the Hawaiian Islands.

The Ho`ohanohano Puwalu series culminated when some of the inspired participants joined forces with others, including members of the Hawaii State Legislature, particularly the Hawaiian Caucus, to pass legislation that created the `Aha Kiolo Advisory Committee. Without promised State funding, the `Aha Kiolo moved forward to fulfill its mandate to consult with communities to solicit best practices of traditional natural resource management. The result was



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the identification of five key elements: Adaptive Management, Community Consultation, Generational Knowledge, Education and Code of Conduct. Let us give a round of applause to the `Aha Kiole for a job well done!

In 2010, the Ho`o Lei `Ia Pae`Aina (Cast the Net, Bring All Together in Hawai`i) Puwalu series commenced. On each island, meetings were held that included Native Hawaiian communities, fishing communities, and others to introduce the five pillars of the Aha Moku system as identified by the Aha Kiole. Nearly a year ago, the Ho`o Lei concluded with a statewide meeting in Honolulu involving more than 200 Native Hawaiians, fishermen, farmers, ranchers, educators, municipal representatives, State representatives and the general public who “agreed that the Aha Moku structure is a traditional, effective and community-based way to manage natural resources in Hawaii.” And they urged “the county, state and federal entities to formally recognize the `Aha Moku system as part of the management regime of natural resources in Hawaii and the allowance of customary and traditional practices.”

In May 2011, the Hawaii State Legislature passed a bill to create the `Aha Kiole Advisory Council. Governor Abercrombie vetoed the bill, saying he supported the intent of the legislation and welcomed the chance to review a bill that addresses his concerns.

Also in 2011, the Western Pacific Regional Fishery Management Council, which has been the primary organizer and supporter of the Puwalu series, orchestrated the Hawaii Regulatory Review meetings throughout the Hawaiian Islands. Today, we are here at the Papa Kanawai Kai (Ocean Code of Conduct) Puwalu, to review the findings of those meetings. In ancient Hawaii, kapu and other ocean rules were part of the non-written code. Today, our regulations serve as the written code. This Puwalu is very timely. At the beginning of this year, President Obama ordered federal agencies to facilitate periodic review of existing significant regulations. He said “agencies shall consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.”

Tonight, the outcomes of the Hawaii Regulatory Review community meetings will be summarized. During the following two days, you are tasked to review those issues, examine the regulatory processes that led to these issues becoming community concerns and use your knowledge and experience to find solutions that are effective. This is community consultation. This is adaptive management. This is the Aha Moku process that was good for Hawaii in the past and is good for Hawaii today. Imua, a lanakila.



The White House

Office of the Press Secretary

For Immediate Release

January 18, 2011

## Improving Regulation and Regulatory Review - Executive Order

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve regulation and regulatory review, it is hereby ordered as follows:

Section 1. General Principles of Regulation. (a) Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science. It must allow for public participation and an open exchange of ideas. It must promote predictability and reduce uncertainty. It must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements.

(b) This order is supplemental to and reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in Executive Order 12866 of September 30, 1993. As stated in that Executive Order and to the extent permitted by law, each agency must, among other things: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

(c) In applying these principles, each agency is directed to use the best available techniques to quantify anticipated

present and future benefits and costs as accurately as possible. Where appropriate and permitted by law, each agency may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

Sec. 2. Public Participation. (a) Regulations shall be adopted through a process that involves public participation. To that end, regulations shall be based, to the extent feasible and consistent with law, on the open exchange of information and perspectives among State, local, and tribal officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole.

(b) To promote that open exchange, each agency, consistent with Executive Order 12866 and other applicable legal requirements, shall endeavor to provide the public with an opportunity to participate in the regulatory process. To the extent feasible and permitted by law, each agency shall afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be at least 60 days. To the extent feasible and permitted by law, each agency shall also provide, for both proposed and final rules, timely online access to the rulemaking docket on regulations.gov, including relevant scientific and technical findings, in an open format that can be easily searched and downloaded. For proposed rules, such access shall include, to the extent feasible and permitted by law, an opportunity for public comment on all pertinent parts of the rulemaking docket, including relevant scientific and technical findings.

(c) Before issuing a notice of proposed rulemaking, each agency, where feasible and appropriate, shall seek the views of those who are likely to be affected, including those who are likely to benefit from and those who are potentially subject to such rulemaking.

Sec. 3. Integration and Innovation. Some sectors and industries face a significant number of regulatory requirements, some of which may be redundant, inconsistent, or overlapping. Greater coordination across agencies could reduce these requirements, thus reducing costs and simplifying and harmonizing rules. In developing regulatory actions and identifying appropriate approaches, each agency shall attempt to promote such coordination, simplification, and harmonization. Each agency shall also seek to identify, as appropriate, means to achieve regulatory goals that are designed to promote innovation.

Sec. 4. Flexible Approaches. Where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. These approaches include warnings, appropriate default rules, and disclosure requirements as well as provision of information to the public in a form that is clear and intelligible.

Sec. 5. Science. Consistent with the President's Memorandum for the Heads of Executive Departments and Agencies,

"Scientific Integrity" (March 9, 2009), and its implementing guidance, each agency shall ensure the objectivity of any scientific and technological information and processes used to support the agency's regulatory actions.

Sec. 6. Retrospective Analyses of Existing Rules. (a) To facilitate the periodic review of existing significant regulations, agencies shall consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Such retrospective analyses, including supporting data, should be released online whenever possible.

(b) Within 120 days of the date of this order, each agency shall develop and submit to the Office of Information and Regulatory Affairs a preliminary plan, consistent with law and its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.

Sec. 7. General Provisions. (a) For purposes of this order, "agency" shall have the meaning set forth in section 3(b) of Executive Order 12866.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

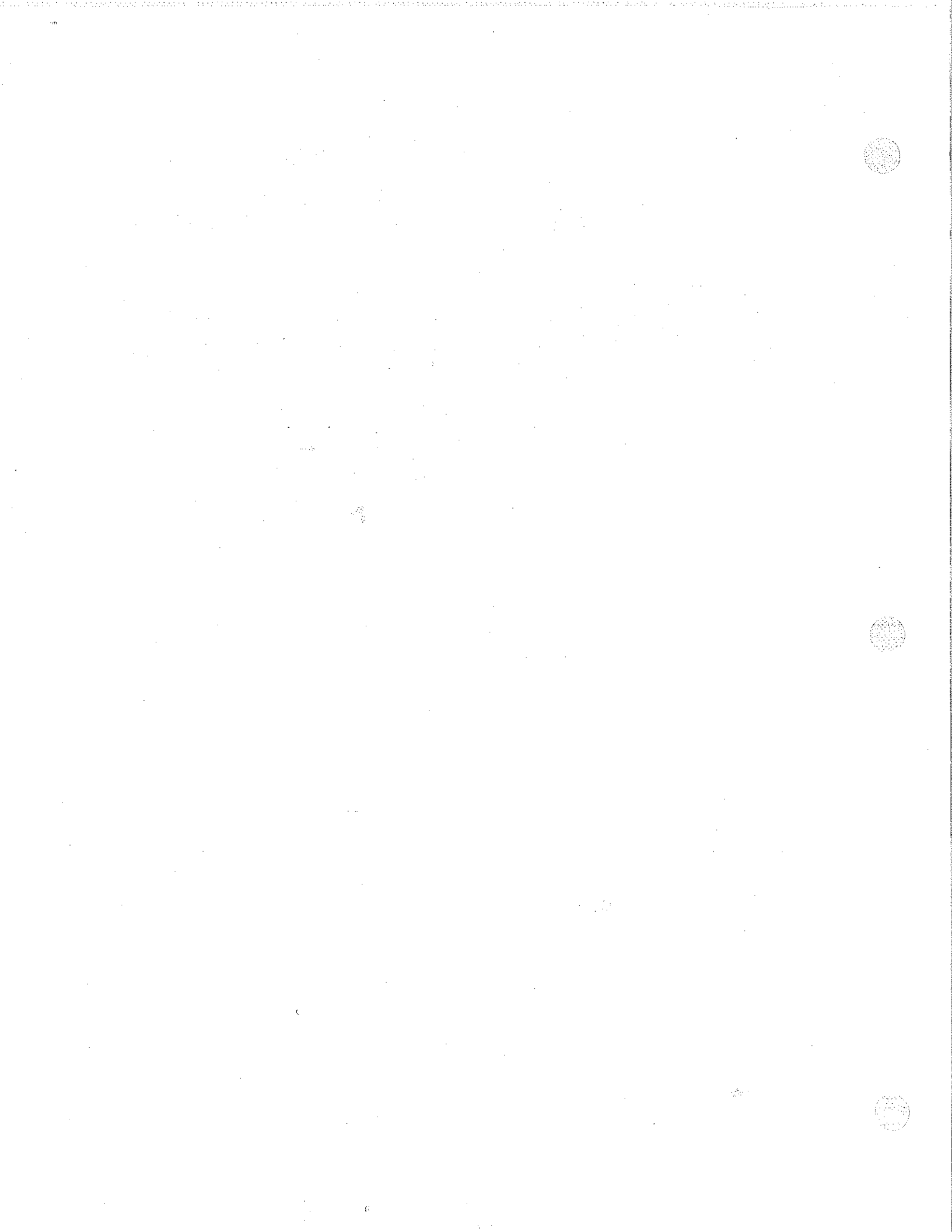
(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA

THE WHITE HOUSE,  
January 18, 2011.





# EXECUTIVE SUMMARY

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## HAWAII FISHERIES REGULATORY REVIEW

- Initiated with Conservation International (Hawaii Fish Trust), Department of Land and Natural Resources, United Fishing Agency and the Western Pacific Regional Fisheries Management Council.
- Complements the 'Aha Moku System of natural resource management that includes adaptive management, community participation, education, code of conduct and eligibility criteria (generational knowledge).
- Complements President Obama's Executive Order 13563 of January 18, 2011 "Improving Regulation and Regulatory Review," and in particular, *Section 2 Public Participation*, and Executive Order 13579 of July 11, 2011 "*Regulation and Independent Regulatory Agencies*."
- Convened statewide Hawaii Fisheries Regulatory Review Coordinating Committee on May 24, 2011.
- A series of three (3) Island working group meetings were held with three separate moku (district) meetings on the island of Hawai'i, Hilo, Kau and Kona.
  - The first island working group meetings were to identify issues and concerns on each island;
  - The second series of island meetings tasked working groups to group or bin issues and concerns;
  - The third and final island working group meeting tasked participants to investigate regulatory processes to identify "root" causes that caused the numerous issues and concerns initially produced.
- Four Coordinating committee meetings occurred on Oahu facilitating island reports and communicating "next steps" at their respective island working group meetings.
  - In addition to the working group tasks identified above, coordinating committee members were tasked to call and hold their respective island or district meetings.
  - Members were tasked to focus on the broader aspect of the regulatory review process of define the causes rather than the symptoms that the working groups continued to focus upon.
  - The key focus areas identified were:
    - *Inter-Island Conflicts* – that included issues such as Kaua'i and Ni'ihau Resources and the proliferation of regattas originating on Moloka'i;
    - *Protected Species* – issues including the National Marine Sanctuaries and policies such as the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), and the Section 106 Consultation provision under the Historic Preservation Act;
    - *Coastal and Marine Spatial Planning (CMSP)* – that included ocean user conflicts; and
    - *Regulatory and Enforcement* – that addressed issues such as Ahi Minimum Size, Bottomfish Restricted Fishing Areas (BRFA), etc.
- The "*Papa Kanawai Kai Puwalu*" was convened to gather Coordinating Committee and Working Group Members from throughout the State to engage, discuss, identify, and find consensus on the Puwalu's recommendations to address and improve existing processes.
- The breakout groups produced five (5) resolutions and the plenary developed an overall Puwalu resolution.



The White House

Office of the Press Secretary

For Immediate Release

July 11, 2011

# Executive Order--Regulation and Independent Regulatory Agencies

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve regulation and regulatory review, it is hereby ordered as follows:

Section 1. Policy. (a) Wise regulatory decisions depend on public participation and on careful analysis of the likely consequences of regulation. Such decisions are informed and improved by allowing interested members of the public to have a meaningful opportunity to participate in rulemaking. To the extent permitted by law, such decisions should be made only after consideration of their costs and benefits (both quantitative and qualitative).

(b) Executive Order 13563 of January 18, 2011, "Improving Regulation and Regulatory Review," directed to executive agencies, was meant to produce a regulatory system that protects "public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation." Independent regulatory agencies, no less than executive agencies, should promote that goal.

(c) Executive Order 13563 set out general requirements directed to executive agencies concerning public participation, integration and innovation, flexible approaches, and science. To the extent permitted by law, independent regulatory agencies should comply with these provisions as well.

Sec. 2. Retrospective Analyses of Existing Rules. (a) To facilitate the periodic review of existing significant regulations, independent regulatory agencies should consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Such retrospective analyses, including supporting data and evaluations, should be released online whenever possible.

(b) Within 120 days of the date of this order, each independent regulatory agency should develop and release to the public a plan, consistent with law and reflecting its resources and regulatory priorities and processes, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.

Sec. 3. General Provisions. (a) For purposes of this order, "executive agency" shall have the meaning set forth for the term "agency" in section 3(b) of Executive Order 12866 of September 30, 1993, and "independent regulatory agency" shall have the meaning set forth in 44 U.S.C. 3502(5).

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA

THE WHITE HOUSE,  
July 11, 2011.