

Mo‘omomi Community Based Subsistence Fishing Area: Testimony Compilation and Summary

Prepared by the Division of Aquatic Resources
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Total Testimony	949 (+650*)
Total Support	561
Molokai Support	190
Hoolehua Support	66
Total Oppose	388 (+650*)
Molokai Oppose	280
Hoolehua Oppose	109

- 650 individuals signed an online petition distributed through social media therefore it’s been separated from the standard testimony we received.

Testimony in Support:

The Division of Aquatic Resources (DAR) received over 150 individual testimonies that indicated their support based was on the following two reasons:

1. Intent to limit commercial fishing and activities
2. Give communities the ability to co-manage their areas

General comments/concerns from individual testimony in support:

Traditional management/Community Based Subsistence Fishing Areas (CBSFA) have worked
Protection for sustainable fishing and gathering for subsistence
Mitigate decline in resources
Regulations proposed are reasonable
The local community knows best
Need balanced use of the area
Extent of time and effort invested into this proposal (27 years)
“Need to put back not just take”

DAR received testimony in support from the Office of Hawaiian affairs, as well as their Molokai Representative Collette Machado. DAR also received support from Molokai County Council Representative Keani Rawlins.

Dr. Alan Friedlander provided testimony explaining nearshore fish populations and their associated fisheries have declined dramatically around Hawai'i over the past hundred years due to: an increase in the human population; destruction of habitat; introduction of new and unsustainable fishing techniques; and *the loss of traditional conservation practices*. Dr. Friedlander believes that based on his experience in Hawai'i that locally managed marine areas are highly effective in conserving fisheries resources and more effective than many state managed areas.

Dr. Rob Toonen found that communities following traditional Native Hawaiian practices have the highest harvest rates and densities of limpet stocks, along with a positive population growth. In comparison, areas managed under state rules consistently have the lowest densities and show continued population decline. His results show that where communities remember and follow traditional management practices, those practices simultaneously enable harvest and increase the abundance of natural resources. Dr. Tonnen also found very limited exchange of populations of reef animals between the north, south, east and west-facing shores of Moloka'i. These populations include: corals; 'opihi; lobsters; uhu; moi; kumu; and kole. This supports the need for Mo`omomi to protect its own resources, because Mo`omomi replenishes itself.

Subsistence Fishers and Cultural Practitioners provided testimony explaining how proposed rules would not inhibit their Native Hawaiian Gathering Rights, and instead the rules would help to ensure the ability to sustainably gather for subsistence in the future. Community members provided testimony in regards, to kapu (regulations) and how these regulations are reasonable for contemporary times, as the kapu were reasonable in traditional times.

The previous DAR biologist on Molokai also provided testimony that the 1994 demonstration project clearly illuminated the benefits of such a community-based management scheme. The biologist also mentioned the proposal doesn't exclude but asks to comply with long standing customary fishing practices and this proposal is codifying these practices. This is a reasonable approach to appropriate management of marine resources.

Testimony in support also mentioned "Commercial harvest was not a gathering right. Traditional gathering requires it be done in a manner that allows for resource regeneration, which is exactly what this proposal does. Subsistence is a necessity it's survival and ensuring these needs are met, is a focal point abundantly evident throughout this proposal. You're still allowed to take a managed amount of the five threatened species, and there are numerous other species with plentiful population available to harvest such as anenue, manini, palani, kala, weke, aholehole. This ensures the gathering from a diverse range of species is always available to feed families big and small."

Testimony in support provided instances of how the plan was changed to accommodate comments from opposition, and that while there is opposition, there is no proposed alternative. Community members with opposing views have been invited to join beach clean-ups and community monitoring efforts. Testifiers also mentioned the need for additional meetings and outreach to clarify any misinformation in regard to the proposed regulations.

Testimony in Opposition:

DAR received testimony from over 200 individuals in opposition to the proposal, as well as a Facebook petition with over 650 signatures (received on 8/28). Opposition testimony was based primarily on the following three concerns:

1. The proposal is not community based, because it does not accurately represent the desire of the community, the entire community does not fully support the proposal
2. The proposal will take away Native Hawaiian Gathering Rights
3. The resources are not depleted and DLNR should instead focus on the invasive species of the area

General comments/concerns from individual testimony in opposition:

Too much division in the community and families
Restricting Native Hawaiian Gathering Rights
Only Molokai voices should count (no outside opinions)
The resources are not depleted
The process was unfair, discriminatory, and excluded people
Family connection to Mo`omomi
There was a lack of outreach
There was a small group of people making decisions and driving the process
The proposal offered no protection of resources from outer island fishing
This was a money driven process
Lack of enforcement of proposed rules
Invasive species are depleting and displacing native species
DLNR needs to heal not hurt the community (if resources are good we have time to heal)
Public hearing set up/zoom platform is not an ideal option
DLNR fault - not monitoring process, DLNR continually fails

Testimony was offered indicating that DAR, in proposing a prohibition on SCUBA spearfishing, failed to take into account the Americans with Disabilities Act (ADA). The testimony was informed by legal counsel who advised “DAR has failed to observe a respiratory condition is an enumerated condition under the ADA”. If the proposed rules are accepted, “there would be many divers who have some form of lung disease of lung capacity issue, whom would no longer be allowed to scuba dive as was previously allowed in the areas”. A simple and little cost fix would be to allow Scuba spearfishing and prevent a multimillion dollar litigation or lawsuit.

There was also testimony in opposition regarding the take of female uhu’s with the argument that the proposed regulation is opposite of the lobster/crustacean rules, the females are the eggs and only takes one male to fertilize the eggs.

There was testimony in opposition from a retired DAR Biologist who stated “it was the Legislature’s intent to minimize these community conflicts, while at the same time, being keenly aware of the risks of the proliferation of areas that may become established by: 1) requiring that broad community discussions be built into the process; 2) providing that all existing uses would be accommodated, including commercial uses within the areas; and 3) creating a very complex process that stressed community participation when establishing CBSFA” “DAR received reports of intimidations and threats, during the pilot project, but did not have the resources to directly deal with this problem. To be clear, these threats were not focused only on commercial users but on outsiders and even Moloka‘i residents that were viewed as not respecting the area. Because the process was so difficult, the founding members naturally become passionately involved in the area and continued to be very protective of the area long after it sunset. The testifier concluded these conflicts over the ocean resources are social, rather than biological issues. It’s more a question of who gets to use the resource and less about how much resources there are. When the State uses its legal authority to resolve these conflicts, it needs to ensure that equal treatment under the law is followed.”

There was also testimony in opposition regarding the culpability of the State. “Culpability is based specifically on the *State's decision - to knowingly create a substantial and unjustifiable risk* for boaters and fishermen, by inadvertently and consequently creating a situation for even more vigilantism and Civil Rights violations to occur.” A previous response provided to the testifier indicated that the State cannot be held liable for an individual's actions. But the testifier believes “that argument did not hold up for McDonald's when an individual spilled hot coffee in their lap. Education that coffee is hot and can burn you did not negate the culpability of McDonald's negligence.”

DAR received testimony regarding a legislative signed Standing Committee Report No. 2695 which amended Bill No.3446. The report also emphasized “that the pilot project should not be expanded or made permanent until a careful evaluation is reported to the legislature”. The testifier claims the current Mo`omomi management plan and process is invalid since the ability to recreate the CBSFA expired on July 1, 1997 and that the DLNR has never reported to the Legislature why the Mo`omomi Pilot Project should be expanded or made permanent after the July 1, 1997 sunset date.

The Department of Hawaiian homelands (DHHL) testified that they have heard from an equal amount of people in support and in opposition, and while both have a strong desire to protect the resources, there is no consensus on a path forward. “Another concern is over access to the shoreline, particularly vehicular access. DHHL feels this is an important consideration given the only publicly available road to the northern coastline of Molokai that ends at Mo`omomi beach, a relatively safe shoreline access point, crosses DHHL lands.” DHHL has “requested DLNR postpone its rulemaking for Mo`omomi, at least until DHHL has had a chance to develop its Mo`omomi-Anahaki Special Area Plan that may highlight the concerns beneficiaries have regarding access to the proposed CBSFA area and possible community-based solutions.”