

JOSH GREEN, M.D.  
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621  
HONOLULU, HAWAII 96809

June 18, 2024

DAWN N.S. CHANG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT

RYAN K.P. KANAKA'OLE  
FIRST DEPUTY

DEAN D. UYENO  
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Chairperson and Members  
Natural Area Reserves System Commission  
State of Hawaii  
Honolulu, Hawaii

NARS Commission Members:

SUBJECT: REQUEST CONSIDERATION OF APPLICATION OF FOR SPECIAL USE PERMIT FOR TRADITIONAL AND CUSTOMARY FISHING PRACTICE IN 'ĀHIHI-KĪNA'U NATURAL AREA RESERVE, APPLICANT M. LUUWAI.

BACKGROUND:

On March 1, 2023, the Division (DOFAW) received an application (Exhibit A) for renewal of a special use permit (Exhibit B), pursuant to Chapter 13-209-5, Hawaii Administrative Rules, from Mr. Mogul Lu'uwai, requesting to engage in traditional and customary fishing practices in the 'Āhihi-Kīna'u Natural Area Reserve.

The 'Āhihi-Kīna'u Natural Area Reserve (Reserve) was established in 1973 for the purpose of protecting its unique native ecosystems, as unmodified as possible, in perpetuity. The Reserve includes an 807-acre marine reserve that supports one of the most intact marine ecosystems in the state. The coral reefs of the Reserve are among the healthiest in the main Hawaiian Islands, with research indicating that they are the only coral reefs on Maui in which coral cover has increased in recent years.<sup>1</sup> At least 33 species of coral, 53 species of subtidal invertebrates, and 75 species of fish, 17 of which are endemic, have been documented in the Reserve. The Reserve supports numerous endangered and protected species and is encompassed by the Hawaiian Islands Humpback Whale National Marine Sanctuary. Pursuant to the statutory purpose of the Reserve, take of marine life is prohibited.

In 2023, the Division received three applications from separate persons and families requesting to engage in traditional and customary fishing practices in the Reserve, and a fourth inquiry for which an application may be pending. Subsequent to those applications, one application was withdrawn and the remaining two are pending a decision by the Commission. In addition to its constitutional and statutory responsibilities for the protection and management of the Reserve, the Division has a

<sup>1</sup> Rodgers et al. 2009. Biological Assessment of 'Āhihi Kīna'u Natural Area Reserve, Maui, Hawai'i

constitutional responsibility to facilitate and support the rights of native Hawaiians to engage in traditional and customary practice, as provided by law. In light of the significant number of applications and inquiries received, the Division submitted to the Commission under a separate agenda item a request for approval of terms, conditions, and guidance in consideration of the issuance of permits for traditional and customary fishing practice in the Reserve, including approval of cumulative annual take limits to be applied across all permits, should any such permits be approved. Included in that submittal is additional background and a detailed discussion of issues and considerations<sup>2</sup>. The purpose of this submittal is to request a decision on the subject application.

#### CONSULTATION:

In reviewing the levels of take of marine life requested in the permit renewal application in consultation from experts with the Division of Aquatic Resources, staff noted concerns about potential take of marine life within the Reserve, particularly in light of the significant increase in applications and inquiries received, as well as concerns about levels of take levels of certain species that are at risk of impacts or for which populations are low or in decline in the Reserve or elsewhere. To discuss the application and staff concerns, a series of meetings were convened with the applicant and representatives from his family, the Lu‘uwai ohana. Also, in attendance at most of the meetings were representatives of the Kuloloio family, for which an application is also pending.

On June 21, 2023, staff met with the applicant and representatives from the families for a preliminary discussion of the application. During this meeting, staff shared concerns regarding take of marine life and the potentially large number of eligible applications.

On October 17, 2023, a second meeting was convened with the applicants from the Kuloloio and Lu‘uwai families. In attendance were the Department Chair and Land Deputy, Division staff, and staff from the Division of Aquatic Resources (DAR). The applicants described their families’ past fishing practices at ‘Āhihi-Kīna‘u and what they propose in the subject application. The families described the significance of the reserve to their families and their practices, including the importance of resource conservation. Staff shared concerns about potential impacts from take of marine life and suggested that if there were to be permits issued it would be important to establish cumulative annual take limits that reflected minimal take and would apply across all permits. The meeting was productive, and staff and the applicants agreed to follow up to see if they could come to a consensus about take limits and cumulative annual take limits to accompany permits, should any such permits be approved.

On December 21, 2023, representatives from DAR and DOFAW met with the applicants and discussed take limits and the idea of cumulative take. DOFAW and DAR expressed concerns about some of the take levels requested, especially for certain species that are in decline, and provided a table of suggested take limits and cumulative annual take for the families to review. The applicant agreed to review the table and provide comments at a future meeting.

On February 15, 2024, DOFAW met with representatives from the Lu‘uwai family and Native Hawaiian Legal Corporation (NHLC), who the family had retained. On the morning of the meeting DOFAW received a memorandum (Exhibit C) produced by NHLC with the Luu‘wai proposal for take and written rationale. DOFAW reviewed the memorandum and noted that the take levels requested for

---

<sup>2</sup> <https://dlnr.hawaii.gov/ecosystems/nars/commission/>

certain species would equal or exceed DOFAW's recommendations for cumulative take. The meeting discussions focused largely on the differences in the take levels requested in the Lu'uwai family application and the take levels suggested by DOFAW at the prior meeting. NHLHC requested additional information regarding the justification for the take levels proposed by DOFAW. The participants agreed to post a proposed take level table online to be shared so that DOFAW and the families could insert notes and information for each to review and consider, which each did, as well as sharing by email. A representative from the Kuloloio family attended the meeting to listen in.

On March 5, 2024, DOFAW met with the Lu'uwai family and representatives from NHLHC. The participants reviewed a revised take table that reflected changes made since the last meeting. The participants noted significant reductions in the request for species of concern, with the revised take levels being largely consistent with staff recommendations for cumulative take limits. Staff noted that it still had concerns about the levels of take requested for opihi and limu. A representative from the Kuloloio family attended to listen in.

On April 24, 2024, staff met with the Lu'uwai and Kuloloio families together to provide an update on the application review and consultation process. Staff indicated that it was developing a draft submittal for the Commission that requested decisions on both families' applications and that it would make that draft available for review by the families. Representatives from the Kuloloio family requested that their application be considered separately, as a separate item and request on the Commission agenda. Kuloloio family members noted that they had productive discussions early on in the consultation process in the February 13, 2024 meeting with staff and wished that those discussions and process be considered on their own merits, indicating their desire that the staff submittal provide a recommendation of approval of their application. Staff acknowledged the requested and expressed appreciation for the productive dialogue and consultation.

#### DISCUSSION:

In a prior item on today's agenda, the Commission considered terms, conditions, and guidance for the issuance of special use permits for traditional and customary fishing practices in the Reserve, including cumulative annual take limits to be applied across all permits, to accompany such permits, should any such permits be approved. It is staff's understanding that the subject application, including the last draft of the proposed take requested by the applicant (Exhibit D) is viewed by the applicant as the lowest level of take necessary to continue their practice. Staff notes that the request is largely consistent with its recommendations for cumulative take.

#### RECOMMENDATIONS:

That the Commission:

- 1) Approve or deny the subject application(s) for special use permit(s) to engage in traditional and customary practice, including take of marine life.
- 2) Should the Commission approve the subject application(s), approve the inclusion of terms, conditions, and guidance, as appropriate, including take limits., to accompany the permit.

Respectfully submitted,



---

Emma Yuen, Natural Resources  
Management Program Specialist  
Division of Forestry and Wildlife

Exhibits

- Exhibit A. Application for renewal
- Exhibit B. Luuwai Special Use Permit issued October 1999
- Exhibit C. Luuwai NHLCP 2-15-2024
- Exhibit D. Luuwai requested take

# Permit Activity Details Summary

## Applicant

Name: Mogul Luuwai  
Address: 63 Limu Kala St  
City/State/Zip: Wailuku HI 96793

## Application Information

### Permit Type

Invertebrate  Rare Plant  NARS

### Activity will involve:

Take of animal or plant life  Install equipment or structures  Commercial Use  Damage / disturb cultural features  Damage / disturb geological features  Damage / disturb historical features  Damage / disturb natural features

1) How will study/activity results benefit the area, resource, or management in the future?

This activity benefits the area by perpetuating cultural practices directly tied to culturally grounded place-based stewardship that enhances and compliments other forms of managing the NAR. This activity will also benefit future generations that will learn cultural fishing techniques from lineal decedents. Another benefit will be to study how strong the management area is doing when fish are gathered and the catch report is developed.  Submitted

2) Study/activity objectives

The objective of the activity is to teach cultural fishing techniques specific to the Honua'ula/Ahihikina'u area to the children and grandchildren as well as direct relatives covered under the conditions of the permit by the permit holder in the place where his father, uncle, and grandparents taught him.

3) Specific study/activity location(s). Attach map if needed.

Code	Island	Land Designation	Locality Name	Other Locality
47	Maui	Natural Area Reserve	'Ahihi-Kina'u Natural Area Reserve	

4) Mode of travel to study/Activity site

Hiking/On foot  Motor vehicle  Helicopter

5) Duration of study/activity

a. Overall: 1 year, Yearly permit

b. Dates for this request:

Start Date: 04/01/2023

End Date: 03/31/2024

6) How is the study/activity to be accomplished? What are the methods to be used?

Be specific in listing study/survey techniques and include efforts that will be taken to minimize effects on the resource and/or area.

Traditional fishing techniques will be used such as throw net, spears, traditional lures with no modern hooks to minimize the effects on the resources in the area. We will follow the conditions from the original permit and follow bag limit for each of the species. (See original permit attached).

7) Justification:

a. Why is the proposed study/activity important?

This activity is important to perpetuate cultural fishing techniques and traditions of the area passed down from nā kūpuna and to continue these practices for generations to come. The activity also ensures continued place-based stewardship by kama'āina of the place to aid in sustainable management of the area.

b. If work is in a Natural Area Reserve, can it be done elsewhere? If so, justify use of NARS. Is your proposed special-use consistent with the purpose and objectives of the Natural Area Reserve System, and Natural Area Reserve management plans? Does your proposed special-use provide a benefit (direct or indirect) to the Natural Area Reserve System or to the individual Reserve(s)? Where applicable, does the activity comply with HRS Ch.105A, "Coastal Zone Management".

This activity cannot be done elsewhere. The request for this activity in the Ahihikina'u Natural Area Reserve is to pass down cultural fishing techniques to lineal decedents from the area.

This special use is consistent with the 2008 Strategic Plan for the NARS, Goal 5 being to "Develop the capacity to effectively address and accommodate constitutionally and statutorily protected cultural values and traditional and customary practices in the NARS." The use is further consistent with the management policy of the NAR to permit Native Hawaiian gathering rights to the extent permitted by law if a special use permit is obtained. (See Management Policies of the Natural Area Reserves System 1997).

Benefits of the proposed activity include integrating a kama'āina, or localized, system of management to compliment other forms of monitoring and management already taking place in the NAR; potential for collaborative research and documentary opportunities between the practitioners and NARS staff.

c. How will the information learned be applied?

The catch report can be used to track the strength and health of the management area through out the year. Spawning periods in this area can be studied, fish health can be studied, fish quantity can be studied throughout the year.

d. How will study/activity results be disseminated?

Report to DLNR-DOFAW    Technical Report    Peer-Reviewed Publication    Oral/Poster Publications

Other                      If Other is selected, enter your option here:

e. Will any specimens be collected? (If yes, state kind, quantities, storage methods, and ultimate disposition.)

Fish species to be gathered are as follows:

Moi, Weke, Āholehole, Uouoa/'Ama'ama, Enenu, Uhu, Palani, Kole, Pāpio, He'e.

Moi - minimum size of 7 inches, closed season from June to August, bag limit of 15 fish per person.

Āholehole - minimum size of 5 inches for spearing, thrownets will not be used on large fish schools to avoid exceeding the bag limit.

'Ama'ama - minimum size of 7 inches for spearing, closed season from December to February.

'Uhu - minimum size of 1 pound for spearing, no more than 8 individuals of this fish can be taken during any one fishing day.

Pāpio - minimum size of 7 inches and one pound for spearing, bag limit of 20 fish per person.

He'e - one pound minimum size and a total of 4 he'e per fishing day, he'e will no be taken when occurring in pairs (mating).

'Opihi - minimum size of 1-1/4 inches (with shell) or 1/2 inches (meat only) and the permit limit of a total of 100 per day. Three fishing days shall occur between March and August, and only one fishing day shall occur between September to February ( to affect breeding season and recruitment of young 'opihi).

Black Crab (Paiea or 'A'ama) - Maximum of 100 individuals per fishing group day.

Wana - Maximum of 50 individuals per fishing group day.

Limu Līpe'epe'e - Maximum of 1 gallon per fishing group day.

The storage methods used to collect all specimens will be by cooler and ice. Ultimate disposition will be for consumption by 'ohana.

8) Have any studies (in the case of research proposals) been made that are similar to the one proposed? If yes, please cite.

No.

9) Who will participate in the study? (Please list the names of additional researchers or research assistants.)

Eligibility requirements for permit holder and participants are determined per the Report to the Commission on Perpetuation of Traditional Cultural Fishing Practices (see attached at page 3).

Robert Lu'uwai - Permit Holder

Mogul Lu'uwai - Permit Holder

Paul Ka'uhane Lu'uwai - Participant

Kaulu Lu'uwai - Participant

Kawai Lu'uwai - Participant

Hī'ilei Lu'uwai - Participant

10) Will your research/activity require camping or night work? If yes, please describe the specific locations, durations, and dates.

No camping or night work is required.

11) Will your research/activity involve the use of aircraft in any way? If yes, please describe specific locations, frequency of use, and dates.

No aircraft will be used.

12) Will your research/activity involve the use of firearms? If yes, describe locations, frequency of use, safeguard to be employed. etc.

No firearms will be involved in this activity.

13) Will your research/activity require structures/equipment to be left in the field? If so, when will they be removed? Will the proposed special-use damage or threaten the integrity or condition of the natural, geological, or cultural resources in the study area?

No structures or equipment is required to be left in the field.

14) Have you previously received a permit from the Division of Forestry and Wildlife? Were you or are you compliant with permit conditions?

Will permits from other agencies be required for your study/activity? If yes, please list.

Previously received permit from the Division of Forestry and Wild Life was held by Rudolph Lu'uwai and Robert J. Lu'uwai (both deceased) effective from October 21, 1999 to October 21, 2000. We were compliant with the permit conditions. (See completed fishing report form attached to Permit). No other permits will be required from any other agency besides DLNR.

15) What is the expected report date for your findings – in the case of research or commercial photographs?

Dates will be chosen based upon availability of the lineal decedents and NARS officers.

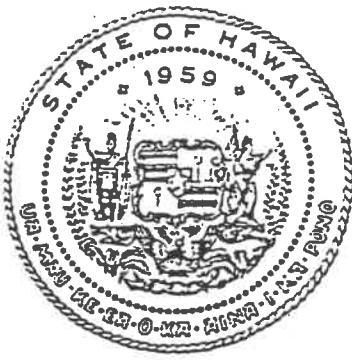
16) What information will be made available to the Dept. of Land & Natural Resources?

Permit holders will submit a completed catch report to the Maui NARS specialist within one week after the fishing date.  
Catch report will include the type of fish collected, sizes, quantity, and the area the fish were collected from.

17) Is this application part of graduate studies? If so, please include the name and affiliation of your major professor/advisor and his/her signature.

This application is not a part of a graduate studies program.

Common name	Scientific name	No. of species



# SPECIAL USE PERMIT NATURAL AREA RESERVES SYSTEM

DEPARTMENT OF LAND AND NATURAL RESOURCES  
1151 PUNCHBOWL STREET, HONOLULU, HI 96813

EFFECTIVE: October 21, 1999 - October 21, 2000

RESERVE(S): Ahihi-Kina`u

The Board of Land and Natural Resources, as approved by the Natural Area Reserves System Commission, hereby issues this Special Use Permit in accordance with Section 195-5, Hawaii Revised Statutes, and Section 13-209-5, Department Administrative Rules, to

Rudolph Lu`uwai  
5100 Makena Road  
Makena, Maui, Hawai`i 96753

Robert J. Lu`uwai  
468 Kulalani Circle  
Kula, HI 96790

*to teach cultural fishing techniques to their children and grandchildren in the place where their parents and grandparents taught them.*

## GENERAL CONDITIONS

1. Permit holders will adhere to specifications given in this permit.
2. Disturbance of vegetation and wildlife not being gathered or harvested will be avoided as much as possible.
3. Precautions will be taken to prevent introduction of plants or animals not naturally present in the area.
4. This permit is not transferable.
5. This permit does not exempt the permit holder from complying with any other applicable rule or statute.
6. The State of Hawaii shall be released and held harmless from any and all liability for injuries or death, or damage or loss of property however occurring during any activity related to this permit.
7. The Permit Holders are responsible for explaining permit terms to participants and ensuring their compliance at all times.
8. One Permit Holder must always be present during fishing activities. Family members who may accompany the two Permit Holders (but not all at once): Leona Lu`uwai, Maile Lu`uwai, Robert K. Lu`uwai, Paul K. Lu`uwai, Joseph R. Lu`uwai, Mogul K. Lu`uwai, Aukai Lu`uwai-Cavaco, Kamaha`o Lu`uwai-Cavaco, Mahealani Lu`uwai-Cavaco, Nanea Lu`uwai-Cavaco, Jacqueline Perreira, Kaulu Lu`uwai, Pu`ulena Lu`uwai-Augustin. Participants should have their Driver's Licenses or State of Hawaii ID, so the Division of Conservation and Resources Enforcement (DOCARE) knows and recognizes who is eligible.
9. A permit copy will accompany participants in the field at all times. No person upon the request of a DOCARE officer shall refuse to display the Special Use Permit or withhold permission to inspect any container, bag, carrier, vehicle or object capable of holding or concealing natural resources, tools, and equipment.



10. Permit Holder(s) must notify both Maui NARS and DOCARE Staff of the actual day and time to be fished ten (10) days prior to actually fishing/gathering, with a list of participants.
11. Permit Holders are responsible for helping NARS and DOCARE to inform the public about the conditions of this permit and permitted activities of the public in the Reserve.

#### **GENERAL PROHIBITIONS:**

12. Access to Reserve will be from shoreline (by foot) only; no access by boat nor fishing from boat. Catch or harvest must be carried out on foot the same way Permit Holder(s) and permittee(s) entered the Reserve. No catch or harvest may be transferred to any type of vessel.
13. Use of fishing gear or methods not in conformance with applicable statutes or rules is prohibited.
14. Any species or numbers or categories not listed on this permit are prohibited from collection.

#### **SPECIES REGULATIONS AND SPECIAL CONDITIONS**

The following conditions refer to state regulations and rules, and NARS-imposed conditions for specific species sizes, limits, and seasons. Condition 14 of the Special Use Permit is also in full effect in addition to the following species regulations and conditions.

15. Fish species to be gathered are as follows: Moi, Weke, Manini, Ahole`hole, Uouoa/`Ama`ama, Eneue, Uhu, Palani, Kole, Papio, He`e. Size and quantity of some fish, He`e, `Opihi, Crab, Wana, and Limu may be restricted as noted below. No more than a maximum of 50 fish TOTAL, in any species combination per fishing-group day, of which no more than four can be He`e may be taken, per visit.
16. Fish not specified in Condition 15, or those listed that are out of season or are not the legal size, which are inadvertently caught will immediately be returned to the ocean.
17. Moi: Adherence to the minimum size of 7 inches, the closed season of June-August, and the bag limit of 15 fish per person.
18. Ahole`hole: Adherence to the minimum size of 5 inches for spearing. Thrownets will not be used on large fish schools to avoid exceeding the bag limit.
19. `Ama`ama: Adherence to the minimum size of 7 inches for spearing, and the closed season between December to February.
20. `Uhu: In addition to the minimum size of one pound for spearing, no more than 8 individuals of this fish be taken during any one fishing day.
21. Papio: Adherence to the minimum size of 7 inches and one pound for spearing, and the bag limit of 20 fish per person.
22. He`e: Adherence to the one pound minimum size and a total of 4 he`e per fishing day; further he`e will not be taken when occurring in pairs (mating).
23. `Opihi: In addition to the minimum size of 1-1/4 inches (with shell) or 1/2 inches (meat only) and the permit limit of a total of 100 per day, three fishing days shall occur between March and August, and only one fishing day shall occur between September to February (so as not to affect breeding season and recruitment of young `opihi).

24. Black Crab (Paiea or A`ama): Maximum of 100 individuals per fishing-group day.
25. Wana: Maximum of 50 individuals per fishing-group day.
26. Limu: Lipe`epe`e: Maximum of 1 gallon per fishing-group day.

**LIMITATIONS:**

27. Maximum number of fishers per fishing day is four (4), including Permit Holder(s). One Permit Holder, Rudolph Lu`uwai or Robert J. Lu`uwai must always be present during fishing activities.
28. Number of fishing days: In addition to adherence to the permit's limit of four fishing days per year, each fishing day shall be separated by a minimum of 30 days and subject to the conditions in the `opihi (General Condition #23). An exception can be made for allowing more than one fishing day during the September to February period provided that `opihi can be taken only in one fishing day during that period.
29. Fishing gear may include Throw or casting nets, Hawaiian sling spears, He`e lures, Hand gathering (including `opihi knife), or hand lines.
30. Use of fishing poles and non-traditional lures is prohibited.
31. Use of nets (including hukilau seines) other than throw nets (legal mesh size only) is prohibited.
32. Zone 2, Pohaku Paea to Nukuele Point (see attached map) for the purpose of this Permit, is the only zone open to fishing.

**REPORTING PROCEDURES:**

33. A copy of the Reporting Form, attached hereto, will be completed and submitted. An example of a completed reporting form is also attached hereto. For each fishing date, fill in the information requested as completely as possible. Most are self-explanatory; any questions as to form may be addressed to DAR staff (Francis Oishi 1-808-587-0094).
34. Permit Holders will submit completed reports to Bill Evanson, Maui NARS Specialist within one week after fishing date.

**ADDITIONALLY, FOR EACH FISH SPECIES CAUGHT:**

35. The total weight (in pounds) shall be the cumulative weight of all of one species.
36. The total length (in inches) is the measuring from the tip of the fish's snout to the tip of its tail for each individual specimen. If a large number of one species is caught, the lengths should be written on a separate page.

**FOR `OPIHI:**

37. The harvested `opihi should be separated by species: blackfoot, yellowfoot, and ko`ele (very large specimens).
38. Each different species of `Opihi should be weighed separately.
39. Each `opihi should be measured by its greatest shell length. A metric measurement is preferred. If using an English measure, measurement should be to the nearest 1/16 inch. A separate page should be used if ..

necessary.

**FOR CRAB:**

40. Harvested crab should be reported separately on the Fishing Report Form recording different species as 'a`ama or paiea.
41. Each crab should be measured for its greatest carapace (head shell) width. A separate page should be used if necessary.

**FOR WANA:**


42. The harvested wana should be reported separately on the form if different species are taken.

**FOR LIMU PE`EPE`E:**


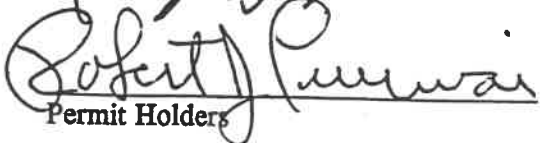
43. Report the volume of pe`epe`e harvested (pint, quart, 1/2 gallon, etc.).
44. Each section on the report form has a request for listing of the traditional/cultural reason(s) for harvesting a particular species. It is important to be as specific as possible in filling out this portion of the report. Reasons such as 'because I feel like eating...' is not sufficient. If there is a social, religious, or other cultural reason for harvest, this would be of greater interest. If the harvesting is tied to seasonal abundance, largest size, fattest condition, best-eating condition, etc., this would be of interest, particularly for future management actions. Documenting the cultural purpose or linking observation of nature with harvest efficiency is important.

**CERTIFICATION OF REPORTED INFORMATION:**

45. Sign and date report forms for each fishing date. These may be turned into Maui NARS staff, who will then forward them to appropriate Aquatics Division staff.
46. Conditions, species, and quantities listed in this Permit will take precedence over any items in the permit application, should there be a difference in amount of take, dates, number of participants, etc.
47. This Permit expires after one year. Extension or renewal of the Permit must be made at least one month prior to expiration. A report detailing accomplishments and why it is necessary to renew the Permit should be submitted so the NARS Commission and DLNR staff may evaluate the request for renewal.
48. Violation of any permit term will render the Permit null and void with no further gathering or activity allowed within the Reserve.

  
TIMOTHY E. JOHNS, Chairperson  
Board of Land and Natural Resources

October 21, 1999

  
  
Permit Holders

Ahihi-Kinau Natural Area Reserve Special Use Permit Fishing Report Form

Date Fished: Time In:	Time Out:	# of Fishers: _____	Site(s) Fished: (Mark Map)
		# in Group: _____	

I. Fish Species/He'e Caught: Moi, Weke, Aholehole, Uouoa, Ama ama, Enenua, Uhu, Palani, Kole, Papiro, He'e. Please List the Species Caught.

Fish species	# Caught	Total Weight (pounds)	Total Length (inches) *	Fishing Method
1.				
2.				
3.				
4.				
5.				

Please list the traditional/cultural reason(s) for catching the above-listed species. Use an additional page if necessary.

II. Shellfish (opihi, crab, wana). Separate each by species.

Opihi Species	# Taken	Total Weight	Greatest shell length (mm) *
blackfoot			
yellowfoot			
ko'ele			
Crab Species	# Taken	Total Weight	Carapace Width (inches) *
a'ama			
Paiea			
Wana species	# Taken		

Please list the traditional/cultural reason(s) for catching the above-listed species. Use an additional page if necessary.

III. Limu pe'epe'e: Report the volume harvested: \_\_\_\_\_

Please list the traditional/cultural reason(s) for taking limu pe'epe'e:

\* If more space is needed, please use additional forms or pages as necessary.  
I certify that the foregoing and appended information provided by me is true.

\_\_\_\_\_ Date

\_\_\_\_\_ Signature of Permit Holder

Ahihi-Kinaiu Natural Area Reserve Special Use Permit Fishing Report Form

Date Fished: 9-15-99 # of Fishers: 4 Site(s) Fished: (Mark Map)  
 Time In: 8 AM Time Out: 2 PM # in Group: 10 Kanahena  
 (see map)

I. Fish Species/He'e Caught: Moi, Weke, Aholehole, Uouoa, Ama ama, Eneue, Uhu, Palani, Kole, Papio, He'e. Please List the Species Caught.

Fish species	# Caught	Total Weight (pounds)	Total Length (inches)*	Fishing Method
1. <u>Moi</u>	<u>15</u>	<u>7</u>	<u>see attached</u>	<u>Throw Net</u>
2. <u>Aholehole</u>	<u>25</u>	<u>10</u>	<u>see attached</u>	<u>Spear</u>
3. <u>Uhu</u>	<u>4</u>	<u>8</u>	<u>12", 15", 18", 18"</u>	<u>Spear</u>
4. <u>He'e</u>	<u>4</u>	<u>10</u>	<u>"</u>	<u>Spear</u>
5. <u>Papio</u>	<u>2</u>	<u>4</u>	<u>12", 18"</u>	

Please list the traditional/cultural reason(s) for catching the above-listed species. Use an additional page if necessary.

Moi - abundant, high-fat content.

II. Shellfish (opihi, crab, wana). Separate each by species.

Opihi Species	# Taken	Total Weight	Greatest shell length (mm)*
<u>blackfoot</u>	<u>10</u>	<u>1/4 lb.</u>	<u>see attached</u>
<u>yellowfoot</u>	<u>80</u>	<u>4 lb.</u>	<u>" "</u>
<u>ko'ele</u>	<u>10</u>	<u>1 lb.</u>	<u>" "</u>
Crab Species	# Taken	Total Weight	Carapace Width (inches)*
<u>a'ama</u>	<u>40</u>	<u>4 1/2 lb.</u>	<u>see attached</u>
<u>Paiea</u>			
Wana species	# Taken		
<u>hauke</u>	<u>50</u>	<u>3 lb.</u>	
<u>long-spined</u>	<u>20</u>	<u>3 lb.</u>	

Please list the traditional/cultural reason(s) for catching the above-listed species. Use an additional page if necessary.

hauke - eggs plentiful - need to treat illness.

III. Limu pe'epe'e: Report the volume harvested: 1 quart

Please list the traditional/cultural reason(s) for taking limu pe'epe'e:

pe'epe'e - seasonally available

\* If more space is needed, please use additional forms or pages as necessary. I certify that the foregoing and appended information provided by me is true.

9-15-99  
Date

Lu'uwa  
Signature of Permit Holder

Attached sheets

Lu'uwa Special Permit

9-15-99 fishing date

Moi - 12", 12 1/2", 13", 15", 10", 10",  
etc..... (15 measurements)

Aholehole - 8", 9", 8 1/2", 8", 7 1/2", 10",  
10" etc. (25 measurements)

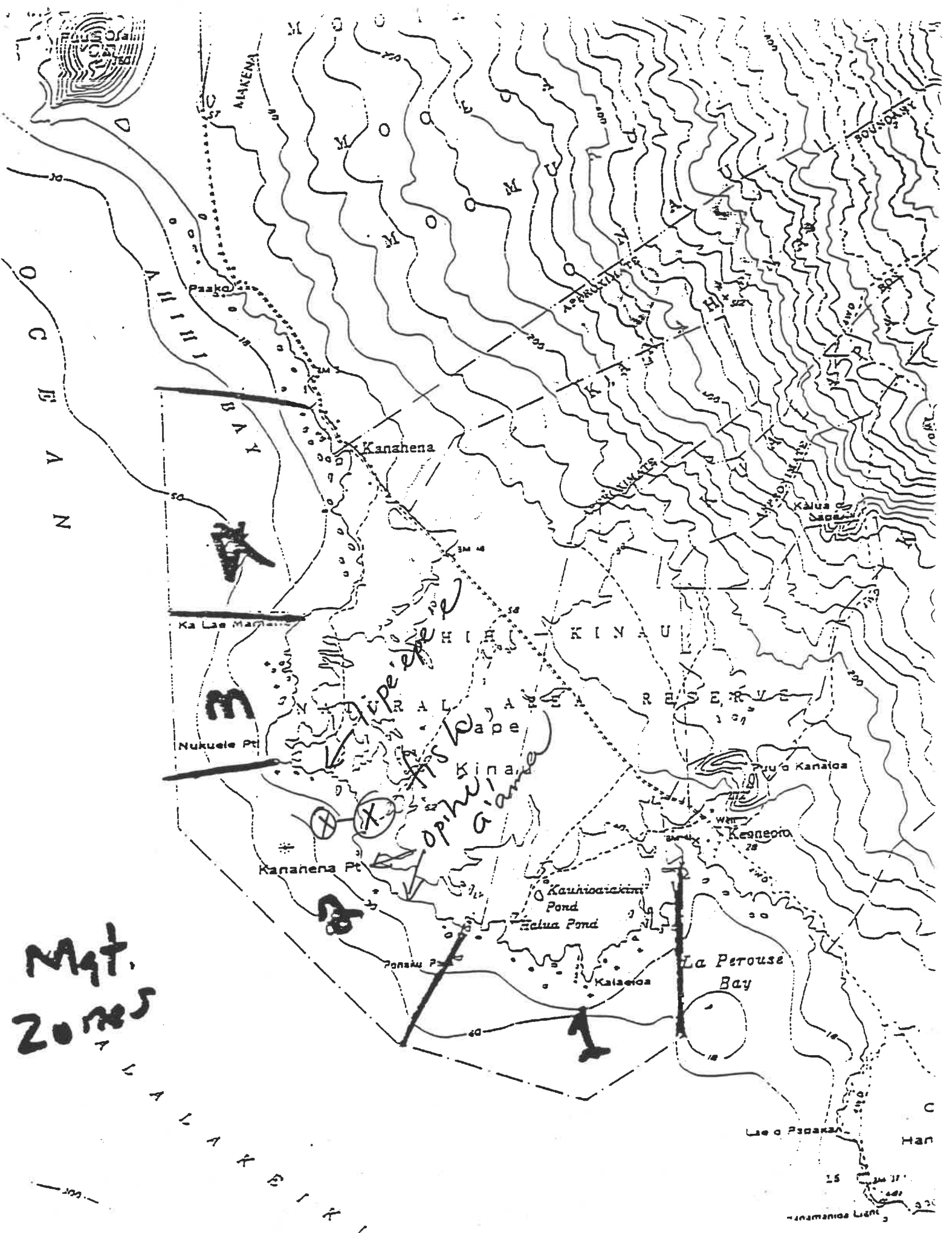
Opikū (cm)

black foot - 3.2, 3.7, 3.5, 4.3, 4.2, etc.  
(10 measurements)

yellow foot - 3.7, 4.0, 4.1, 4.3, etc.  
(80 measurements)

ko'ele - 8.9, 8.0, 6.3, 7.5, etc.  
(10 measurements)

A'ama - 2 1/2", 2 1/2", 2", 1 3/4", 2", 2"  
etc. (40 measurements)



Mgt.  
Zones

OPINION

A  
L  
A  
K  
E  
I  
K  
I

500

15  
320  
Anamooa Light



# Native Hawaiian LEGAL CORPORATION

1164 Bishop Street, Suite 1205 • Honolulu, Hawai'i 96813  
Phone (808) 521-2302 • [www.nativehawaiianlegalcorp.org](http://www.nativehawaiianlegalcorp.org)



Thursday, February 15, 2024

## **CUMULATIVE TAKE ANALYSIS AND RECOMMENDATIONS for Special Use Permit Applications within the 'Āhihi-Kīna'u Natural Area Reserve**

Mogul Lu'uwai and his 'ohana propose the following take limits and recommendations, which allow for the reasonable exercise of traditional and customary rights within the Reserve while also promoting natural resource management efforts through an "integrated biological and cultural focus."<sup>1</sup> We are prepared to further discuss these proposed limits and the contents of this memorandum with State Department of Land and Natural Resources, Division of Forestry and Wildlife ("DOFAW") representatives at the meeting on Thursday, February 15, 2024 at 2:00pm. However, we also understand that our client's proposed take limits and recommendations will be shared with others that may not be present at the February 15, 2024 meeting; accordingly, our client's proposal and the written rationale supporting his recommendations are included in this memorandum.

The knowledge and practices the Lu'uwais seek to exercise in the 'Āhihi-Kīna'u Natural Area Reserve are unique to the environment of 'Āhihi-Kīna'u and cannot be carried out elsewhere. Their 'ohana have lived and fished in Honua'ula for generations, since at least the mid-1800s, and certainly prior to the Reserve's establishment. Through their individual permit, they seek to perpetuate their 'ohana's particular cultural practices and teach the next generations the cultural fishing techniques specific to 'Āhihi-Kīna'u – essentially, to pass on knowledge only their 'ohana has acquired and kept for generations.

In the past, the Natural Area Reserve Systems ("NARS") Commission ("the NARS Commission") has issued permits to traditional and customary practice practitioners, applying strict eligibility requirements and heavy restrictions. Doing so has allowed the Commission to fulfill its duties to the management and protection of the Reserve while balancing its affirmative duty to protect traditional and customary practice rights. For more than one generation, the Lu'uwai 'Ohana has respected that approach, acted in good faith to comply with what NARS and Department of Land and Natural Resources Board has required, and responsibly continued their multi-generational practices in the Reserve. The current practicing generation of their 'ohana is seeking permits with the same mindset, understanding, and intent. They should be afforded the same approach as the NARS Commission has taken in the past, so that their practices are not extinguished forever.

---

<sup>1</sup> See *The 'Āhihi-Kīna'u Natural Area Reserve Management Plan* (2012).



For these reasons, NARS Commission should approve the Lu‘uwais’ Special Use Permit application with the Lu‘uwais’ proposed take limits and recommendations detailed further below.

### **Lu‘uwai ‘Ohana Recommendations**

In response to DOFAW’s “Cumulative Take Analysis” provided in December 2023, our client recommends:

- Increased bag limits for individual species;
- Annual limits set for *individual* permits;
- Removal of “Eaten on site” limitations from permit conditions; and
- Articulation of State’s reasoning for the recommendations contained in its “Cumulative Take Analysis” provided in December 2023.

The combination of these proposed take limits and recommendations would allow practitioners to monitor species and the health of the area consistent with the stewardship components of their traditional cultural fishing practices as well as the intent of the NAR System and Hawai‘i’s public trust. Additionally, the State’s articulation of the rationale for its recommendation would document its analysis of how it independently considered the effect of its actions on the Native Hawaiian traditional and customary practices in the Reserve area, as required under *Ka Pa ‘akai o Ka ‘Aina v. Land Use Comms’n*, 94 Hawai‘i 31, 7 P.3d 1068 (2000) and *Flores-Case ‘Ohana v. Univ. of Haw.*, 153 Hawai‘i 76, 85, 526 P.3d 601, 610 (2023) (Recktenwald, C.J.) (concluding “agencies must prepare a written statement summarizing the above analysis prior to adopting a proposed rule, and make that analysis available to the public”).

#### ***Increase certain per-species bag limits***

The Lu‘uwais propose increased bag limits for certain species, which would allow for the reasonable exercise of traditional cultural fishing under the permitting program while also continuing to protect and preserve Hawai‘i’s natural and cultural resources.

With regard to the State’s affirmative duty under article XII § 7 of the constitution, the Hawai‘i Supreme Court has emphasized “first, that the State is obligated to protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians; and second, that the State is authorized to impose *appropriate* regulations to govern the exercise of native Hawaiian rights.”<sup>2</sup>

For all the fish species listed in the December 2023 Cumulative Take Analysis, DOFAW recommended either “no take” or take limits of “1 per person” or “1 per trip.” This inflexible, blanket approach is not appropriate for several reasons, including:

- DOFAW’s recommended take limits are inconsistent with traditional cultural fishing practices (e.g., throwing net) that are intended to catch more than one fish;

---

<sup>2</sup> See *Flores-Case ‘Ohana*, 153 Hawai‘i 76, 82, 526 P.3d at 607 (cleaned up) (emphasis added).

- Practical difficulties arise when attempting to catch only one fish (e.g., the risk of damaging other fish is high, nearly unpreventable, when trying to catch a single fish);
- Bag limits must be variable to allow practitioners to adapt to the resources available when fishing (e.g., certain species are seasonal or are only available under certain weather conditions; one day there might be 100 individuals of a species available to fish, and the next day zero);
- Certain species are tied to Honua‘ula and the unique traditional cultural fishing practices that developed there – these resources and practices cannot be found elsewhere;<sup>3</sup>
- More than one (1) fish is needed to teach someone how to monitor, harvest, clean, and prepare fish – repetition and practice are key to passing down this ‘ike kūpuna (ancestral knowledge) including the practice of kilo (observation of environmental phenomena) which is central to the resource management skills upon which these practices rely;
- The State does not have unfettered discretion in regulating Native Hawaiian traditional and customary rights, and DOFAW’s low take limit recommendations impermissibly risk “regulat[ing] the rights of [these] ahupua‘a tenants out of existence”;<sup>4</sup> and
- DOFAW’s overharvesting concerns are alleviated by stringent “per trip” and “per species” bag limits as well as the Lu‘uwais’ continued role/responsibility as stewards of the Reserve and its resources.

To allow for the flexibility needed to meaningfully exercise their traditional cultural fishing practices and teach them to the next generations of their ‘ohana, the Lu‘uwais request increased take limits for certain species, as detailed in the table below:

---

<sup>3</sup> Hawai‘i’s caselaw recognizes that Native Hawaiian traditional and customary practices (and thus traditional and customary rights) are place-based and resource-/context-specific. For instance, in 1992 *Pele Defense Fund v. Paty* articulated that Native Hawaiian traditional and customary rights may be exercised for subsistence, cultural, and religious purposes on undeveloped lands, even those beyond a practitioner’s ahupua‘a of residence, “where such rights have been customarily and traditionally exercised in this manner.” *Pele Defense Fund v. Paty*, 72 Haw. 578, 620, 837 P.2d 1247, 1272 (1992) (emphasis added). Like other Native Hawaiian traditions and customs, fishing practices are based on the ahupua‘a in which they were exercised and “rel[y] upon the observations and knowledge of those intimately familiar with the local marine ecologies. Native Hawaiian Law: A Treatise 617 (Melody Kapilialoha MacKenzie et al. eds., 2015). Native Hawaiian fishing practices require decades of understanding environmental conditions specific to an area. Thus, the same general fishing practice varies dependent on where an ‘ohana practices them and the conditions of that specific area.

<sup>4</sup> *Public Access Shoreline Hawai‘i v. Hawai‘i County Planning Commission*, 79 Hawai‘i 425, 451, 903 P.2d 1246, 1272 (1995).

Thursday, February 15, 2024  
Lu'uweis' Cumulative Take Analysis and Recommendations

Name	State Recommended Limits	Lu'uwai Recommended Limits
Hā'uke'uke (colobocentrotus atratus)	Bag limit per trip: Eaten on site Annual Limit for all permits: 20	
Hāwa'e (gnathophylloides maneri)	Bag limit per trip: Eaten on site Annual Limit for all permits: 20	
Wana (diadema paucispinum, echinothrix diadema, echinothrix calamaris)	Bag limit per trip: Eaten on site Annual Limit for all permits: 20	Bag limit per trip: 3 Annual limit for single permit: 12
'Ōpihi	Bag limit per trip: 1 koele per trip for education, 25 opihi total per trip Annual limit for all permits: 4 koele, 100 opihi total	Bag limit per trip: 100 'ōpihi Annual limit for single permit: 200 'ōpihi total
Kupe'e (nerite polita)	Bag limit per trip: Eaten on site Annual limit for all permits: 20	
Cowrys	Bag limit per trip: Eaten on site Annual limit for all permits: 20	
All limu	Bag limit per trip: Eaten on site Annual Limit for all permits: 2 quart total in any combination of limu	Bag limit per trip: 2 quarts Annual limit for single permit: 1 gallon total in any combination of limu
Manini (Acanthurus triostegus)	Bag limit per trip: 1 per person 4 total per trip Annual limit for all permits: 20	Bag limit per trip: 15 individual fish per day Annual limit for single permit: 60
Kole (Ctenochaetus strigosus)	Bag limit per trip: 1 per person 4 total per trip Annual limit for all permits: 20	Bag limit per trip: 15 Annual limit for single permit: 60
Uouoa (Neomyxus leuciscus)	Bag limit per trip: 1 per person 4 total per trip Annual limit for all permits: 20	Bag limit per trip: 10 Annual limit for single permit: 40
Weke (Mullidae family)	Bag limit per trip: 1 per person, 4 total per trip Annual Limit for all permits: 20	
Āholehole (Kulia marginata)	Bag limit per trip: 1 per person, 4 total per trip Annual limit for all permits: 20	Bag limit per trip: 15 Annual limit for single permit: 60
Kala (naso spp.)	No take allowed	
'Ama'ama (mugil cephalus)	Bag limit per trip: 1 per trip Annual Limit for all permits: 4	
Papio (caranx spp.)	No take allowed	
Enenu (kyphosidae)	Bag limit per trip: 1 per trip Annual Limit for all permits: 4	
Palani (acanthurus dussumieri)	Bag limit per trip: 1 per trip Annual Limit for all permits: 4	
Moi (polydactylus sexfilis)	Bag limit per trip: 1 per trip Annual Limit for all permits: 4	Bag limit per trip: 5 Annual limit for single permit: 10
He'e (Octopus)	Bag limit per trip: 1 per trip Annual Limit for all permits: 4	Bag limit per trip: 2 Annual limit for single permit: 8
Uhu (Scarus spp.)	No take allowed	Bag limit per trip: 8 Annual limit for single permit: 24
Kūmū (Parupeneus porphyreus)	No take allowed	Bag limit per trip: 10 Annual limit for single permit: 40
'A'ama (graspus tenuicrustatus)	Bag limit per trip: eaten on site	Bag limit per trip: 100 Annual limit for single permit: 100

***Set annual limits for individual permits***

In addition to the increased per-species bag limits above, our client and his ‘ohana request that annual limits are set for *individual* special use permits for traditional cultural fishing within the Reserve.

DOFAW’s recommendations to set cumulative take limit for *all* permits fosters a competitive take limit scheme where access to exercise constitutional rights is afforded on a first come, first served basis. Setting a cumulative take limit for all permits may also be administratively burdensome for the State to monitor/enforce; risks pitting ‘ohana against each other to unnecessarily compete for resources; and/or poses criminal risks for ‘ohana members who may not be able to ascertain whether the cumulative take limit for a species has been met.

As such, the Lu‘uwais propose the following overall bag limits *per individual permit* for fish species:<sup>5</sup>

- Bag limit per trip: maximum 50 fish total in any species combination
- Annual limit *per permit*: maximum 200 fish total

These numbers are consistent with past permit conditions/take limits, allow for the flexibility necessary to carry out traditional cultural fishing practices throughout the seasons, and do not risk depleting resources within the Reserve.<sup>6</sup> These take limits (as well as the per species limits detailed above) are specific to this permitting year/application and, depending on the circumstances, may differ from take limits for future permits.<sup>7</sup> Importantly, the Lu‘uwais’ proposed take limits, which are similar to past permits, allow for traditional cultural fishing (not subsistence fishing) so the Lu‘uwai ‘Ohana may pass on their knowledge and protect their traditions and customs from being lost. It is worth noting that past permit maximums were not met evidencing that take limits have never functioned as quotas for cultural practitioners to reach, but instead serve as allowable limits within which they can reasonably engage in practices necessary to the perpetuation of ‘ike kūpuna.

The annual take limits per permit paired with the individual species bag limits allow for the Lu‘uwai ‘Ohana to exercise their traditional cultural fishing practices, passing their ‘ike kūpuna

---

<sup>5</sup> These limits account for each permit allowing four (4) trips per year, with four (4) ‘ohana members allowed under each permit to join on each trip.

<sup>6</sup> The Lu‘uwais’ 2000 permit allowed “[n]o more than a maximum of 50 fish total, in any species combination per fishing-group day” and “200 [fish] total per year[.]”

<sup>7</sup> The nature and scope of Native Hawaiian traditional and customary rights depend on the circumstances of each case. *Kalipi v. Hawaiian Trust Co.*, 66 Haw. 1, 10, 656 P.2d 745, 751 (1982) (providing that “the retention of a Hawaiian tradition should in each case be determined . . .”); *Pele Def. Fund v. Paty*, 73 Haw. 578, 619, 837 P.2d 1247, 1271 (1992) (The extent of Native Hawaiian traditional and customary rights retained “depend upon the particular circumstances of each case.”); see *Clarabal v. Dep’t of Educ.*, 145 Hawai‘i 69, 84, 446 P.3d 986, 1001 (2019) (“the specifics of the Hawaiian education program required by article X, section 4 have evolved through time and will continue to be refined as circumstances and the state of human knowledge about reviving and preserving language changes. What is key is that the program effectuates the constitutional purpose of article X, section 4”).

to the next generation, and also support the purposes of the public trust doctrine (under article XI § 1 of the constitution) and the NAR System – to protect and preserve in perpetuity Hawai‘i’s unique natural assets, both for the enjoyment of future generations and to provide baselines against which changes are being made in the environments of Hawai‘i can be measured.

In addition to providing invaluable knowledge about the ‘Āhihi-Kīna‘u area and its resources, the Lu‘uwai ‘Ohana’s traditional cultural fishing practices are grounded in stewardship. As a part of their practices, the Lu‘uwais propose stewardship activities, including tracking the strength and health of the management area throughout the year, examining conditions of trails within the Reserve, and disposing of ‘opala and debris. Further, practitioners would be subject to conditions that limit environmental impact and require reporting to the State, which can support data gathering/monitoring and inform management within the Reserve.

### ***Remove “Eaten on site” restrictions***

The Lu‘uwais recommend removal of DOFAW’s “Eaten on site” restriction because such a requirement prevents them from engaging in resource management practices (i.e., monitoring the health and safety of ocean life) inherent in their traditional cultural fishing and is inconsistent with Native Hawaiian traditional and customary fishing practices surrounding cleaning and preparing a fish for consumption. For some species, like Wana, the Lu‘uwais intend to monitor the species’ health as an indicator of the health of their surrounding environment. This type of resource management practice cannot be effectuated under “Eaten on site” restrictions.

For other species, including Limu and fish species, “Eaten on site” restrictions conflict with Native Hawaiian traditional and customary fishing practices, including the off-site teachings about a species/environment and the off-site cleaning and preparation of a species for consumption. For instance, Limu is a resource that is rarely eaten by itself or in large quantities and is instead gathered to be prepared and consumed with other foods – e.g. limu poke. It would not be feasible for our client to transport all the supplies and ingredients necessary to prepare limu poke to the Reserve simply so that the Limu can be eaten on site.

### ***Provide reasoning for take limits***

DOFAW and the NARS Commission, as agencies of the State, must independently consider the effect of their actions on Native Hawaiians’ traditional and customary rights in order to discharge their duties under article XII § 7 of the Hawai‘i State Constitution.<sup>8</sup> Under article XII, § 7 of the Hawai‘i Constitution, State agencies “may not act without independently considering the effect of their actions on Hawaiian traditions and practices.”<sup>9</sup> At minimum, DOFAW must prepare and make available a statement summarizing the *Ka Pa ‘akai* analysis it conducted.<sup>10</sup>

---

<sup>8</sup> *Flores-Case ‘Ohana v. Univ. of Haw.*, 153 Hawai‘i 76, 82, 526 P.3d 601, 607 (2023).

<sup>9</sup> *Flores-Case ‘Ohana*, 153 Hawai‘i at 82, 526 P.3d at 607; *Ka Pa ‘akai o Ka ‘Aina v. Land Use Comms’n.*, 94 Hawai‘i 31, 46, 7 P.3d 1068, 1083 (2000).

<sup>10</sup> *See Flores-Case ‘Ohana v. Univ. of Haw.*, 153 Hawai‘i 76, 85, 526 P.3d 601, 610, (2023) (“[A]gencies must prepare a written statement summarizing the [*Ka Pa ‘akai*] analysis prior to adopting a proposed rule, and make that analysis available to the public.”).

DOFAW shared a Cumulative Take Analysis, which included its bag limit recommendations, but did not provide written explanation or otherwise discuss with our client and his 'ohana the rationale/justifications for its restrictive recommendations. Because no information was provided by the State, it is unclear whether DOFAW's recommendations were intended to protect the reasonable exercise of traditional and customary rights of Native Hawaiians to the extent feasible, consistent with NARS policies, or crafted pursuant to historical take limits. In order to ensure compliance with the mandate of *Ka Pa 'akai*, we request that the State articulate the rationale for its reasoning.

Hawaiian Name	Scientific Name	Annual limit	Limit per trip	Notes*
		Total	Total	

**Fish**

<b>All fish</b>		<b>100</b>	<b>50</b>	
Manini	<i>Acanthurus triostegus</i>		15	
Kole	<i>Ctenochaetus strigosus</i>		15	
Uouoa	<i>Neomyxus leuciscus</i>		10	
Weke	<i>Mullidae spp.</i>		4	
Aholehole	<i>Kuhlia marginata</i>		15	
Eneue	<i>Kyphosidae spp.</i>		1	
Moi	<i>Polydactylus sexfilis</i>	10	5	
Amaama	<i>Mugil cephalus</i>		1	
Uhu	<i>Scarus spp.</i>	0	0	
Kumu	<i>Paurupeneus porphyreus</i>	0	0	
Palani	<i>Acanthurus dussumieri</i>	0	0	
Papio	<i>Caranx spp.</i>	0	0	
Kala	<i>Naso spp.</i>	0	0	

**Urchins**

Ha'uke'uke	<i>Colobocentrotus atratus</i>	10	10	
Hawae	<i>Gnathophylloides maneri</i>	10	10	
Wana	<i>Diadema paucispinum,</i> <i>Echinothrix diadema,</i> <i>Echinothrix calamaris</i>	12	3	

**Gastropods**

Opihi		60	30	
Kupee	<i>Nerita polita</i>	10	10	
Cowrys		10	10	

**Others**

He'e	Octopus	4	2	
A'ama	<i>Graspus tenuicrustatus</i>	30	15	
Limu	All limu	0	0	

Signature:



Email: emma.yuen@hawaii.gov