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 Honuaʻula/Ahihikinaʻu 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	ʻAhihi-Kinaʻu 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 kamaʻāina 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 kamaʻāina, 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, Enenue, 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 ʻohana.

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 Kaʻuhane Lu'uwai - Participant
Kaulu Lu'uwai - Participant
Kawai Lu'uwai - Participant
Hi'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 Luʻuwai and Robert J. Luʻuwai (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

JOSH GREEN, M.D.
GOVERNOR | KE KIAʻĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIAʻĀINA

STATE OF HAWAIʻI | KA MOKUʻĀINA ʻO HAWAIʻI
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA ʻOIHANA KUMUWAIWAI ʻĀINA

DIVISION OF FORESTRY AND WILDLIFE
1151 PUNCHBOWL STREET, ROOM 325
HONOLULU, HAWAII 96813

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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

October 17, 2023

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

NARS Commission Members:

SUBJECT: Request for approval of guidance for consideration of applications for special use permits for traditional and customary fishing practice in ʻĀhihi-Kīnaʻu Natural Area Reserve

SUMMARY
The ʻĀhihi-Kīnaʻu Natural Area 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. Pursuant to the statutory purpose of the Reserve, take of marine life is prohibited. The Division of Forestry and Wildlife recently received three applications, and an inquiry for which a fourth application is pending, for permits to conduct traditional and customary fishing practices in the Reserve. In addition to its statutory responsibilities for the protection and management of the Reserve, the Division has a constitutional responsibility to facilitate and support the rights of native Hawaiians to engage in traditional and customary practice, as provided by law. The purpose of this submittal is to establish guidance for the consideration of such requests that balances the Division's obligations to protect and manage natural resources with traditional rights to access and use those resources.

BACKGROUND
The ʻĀhihi-Kīnaʻu Natural Area Reserve (Reserve) was established in 1973, in large part to protect its marine ecosystems. At over 807 acres, the marine portion of the reserve is the one of the largest marine protected area in the state, second only to the Kahoʻolawe Island Marine Reserve. 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[1]. At least 33 species of coral, 53 species of subtidal invertebrates, and

[1] Rodgers et al. 2009. Biological Assessment of ʻĀhihi Kīnaʻu Natural Area Reserve, Maui, Hawaiʻi

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.

Native Hawaiian traditional and customary practices are protected by Hawai‘i law. Department policies and procedures, as well as a significant body of case law, have affirmed the need to balance those rights with the obligations of the state to protect public trust resources.[2] The Division of Forestry and Wildlife receives applications and issues a number of permits each year for the conduct of traditional and customary practices within lands under its jurisdiction. In the case of requests for such activities in Natural Area Reserves (NARS), applicable regulations are found in the administrative rules for the issuance of special use permits, specifically §13-209-5, Hawaii Administrative Rules[3]. Applications are available on-line, and criteria for evaluating such permits are found in the Management Policies of the Natural Area Reserves System, approved by the Board at its May 23, 1997 meeting.

At its March 23, 2018 meeting, the Commission recommended, and subsequently the Board approved, delegation to the Division's Branch managers the authority to approve the issuance of special use permits for traditional and customary practices for which activities that are otherwise prohibited are incidental to the traditional and customary practices. This delegation is consistent with similar delegations approved for the conduct of traditional and customary practice in the Division's Forest Reserves. Traditional and customary practices that do not include take of marine life or other protected species may be subject to the delegation. Applications for traditional and customary practices that include take of marine life in the Reserve are not included in that delegation because the proposed take of marine life, which is prohibited in the Reserve, is the purpose of the activity, and not incidental to another activity or practice.

In 1997, the Commission received a request for a special use permit to engage in traditional and customary fishing practices in the Reserve. In consideration of that request, the Commission convened an advisory working group tasked with the development of guidance and recommendations regarding the application. The working group held a number of meetings to consult with constituents and experts on the application, producing in October 1998 a report of its findings, titled, The Question of Perpetuation of Traditional Cultural Fishing Practices, ‘Āhihi-Kīna‘u Natural Area Reserve (Exhibit A). The report provided guidance to assist the Commission in its consideration of approval of the application, presenting perspectives and alternatives both in support and opposition to approval of the application, as well as proposed guidelines for eligibility criteria, participants, frequency of use, methods used, take limits, and other relevant conditions.

At its March 2, 1999 meeting, the Commission voted to recommend to the Board of Land and Natural Resources approval of a limited Special Use Permit based on specific conditions established by staff in consultation with appropriate Divisions. The Board approved the issuance of the permit at its June 25, 1999 meeting. In 2014, the Division received an application to engage in traditional and customary fishing practices in the Reserve from another family with

[2] MacKenzie 2015. Native Hawaiian Law: A Treatise
[3] https://dlnr.hawaii.gov/dofaw/files/2018/02/Chp-13-209.pdf

close ties to the area. That request was determined to be substantially consistent with the previous permit and guidance and was approved with a permit issued on June 1, 2014.

Earlier this year, 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. While the working group's October 1998 report provides valued guidance, the report was in consideration of a single application and does not address potential cumulative impacts that may result from the issuance of multiple permits. Given the significant increase in the number of applications received, and in light of the increased threats to marine ecosystems in Hawaii and world-wide, to assist staff and the commission in the review of such applications and ensure a transparent process for applicants, this submittal requests guidance for the review of applications to conduct traditional and customary fishing practices in the Reserve.

ANALYSIS

The Hawaiian Islands are the most isolated archipelago in the world, surrounded by the Pacific Ocean and lying more than 2,300 miles from the nearest continent. As a result of their isolation, the natural flora and fauna of the islands are characterized by lower rates of colonization from distant lands and waters over geologic time periods. Many of those species that did successfully colonize evolved to become new species, often resulting adaptive radiations of dozens or hundreds of species from a single common ancestor and creating ecosystems that are found no where else on earth. The biodiversity of the Hawaiian Islands is among the world's most striking examples of evolution in island ecosystems. Marine and nearshore waters for example, support more than 7,000 species of plants and animals, at least 1,250 of which are found nowhere else in the world.

Hawai‘i is also one of the last places on earth to be colonized by humans, having been discovered by Polynesian voyagers some 1,500 years ago – a fraction of an instant in evolutionary time. The unique and remarkable biodiversity of the Hawaiian Islands evolved for millions of years in the absence of human influences. Following discovery, impacts to ecosystems began, increasing dramatically following western contact. Those impacts have been profound, destroying more than half of the native terrestrial ecosystems and driving hundreds of species to extinction. The causes of destruction and degradation are numerous, including agriculture, development, fire, diseases, invasive species, and more recently, climate change. Marine ecosystems are among those heavily impacted by human activities, with resource fish biomass declining by 75% for many species, and accelerating threats from overfishing, coastal development, land-based sources of pollution, increased sediments in the water, damage by tourists and divers, groundings, poor water quality from runoff and sewage treatment, and climate change[4]. Among those threats, overfishing has been shown to have the most significant impacts, resulting in changes and shifts in food webs, ecological function, and biological integrity.

The devastating impacts to the biological diversity of the islands were noted by early naturalists and significant efforts have been in progress for more than a hundred years to abate threats, mitigate impacts, and restore damaged ecosystems. The state's forest reserve system, for

[4] DLNR (https://dlnr.hawaii.gov/holomua/)

example, was established in 1903 in recognition of the wholesale loss of forests and the ecological services they provide. A watershed moment in that effort came in 1970, with the establishment of the state's Natural Area Reserve System (NARS), a network of protected lands established explicitly for the protection and preservation of Hawaii's unique native ecosystems[5]. Established by law in the face of destruction of native ecosystems and collapse of fisheries and marine ecosystems, the statute explicitly recognizes the significance of flora and fauna that are found nowhere else on earth, with the intent of to preserve, in perpetuity, areas that support those unique natural resources, as unmodified as possible. HRS Chapter 195 (and the corresponding administrative rules) seek to protect such areas, both for the enjoyment of future generations and to provide baselines, a biological reference, against which changes in other areas can be measured.

Consistent with the intent of the statute, administrative rules prohibit the take or disturbance of natural resources in the NARS[6]. Fishing is prohibited in NARS and is inconsistent with the explicit purpose of the NARS. Administrative rules provide conditions required for the issuance of special use permits for activities that are otherwise prohibited by law and identify criteria required for evaluation the merits of each application for a special-use permit. Included among those criteria are a determination that the proposed special use cannot be conducted elsewhere. Long term monitoring of marine ecosystems throughout the state show that coral reef ecosystems in marine protected areas, and this reserve in particular, support some of the highest biodiversity and abundance of marine life in the state and are among the only marine ecosystems where coral cover is increasing. These findings indicate that protection and management of the Reserve, including take prohibitions, are achieving the statutory intent of the designation and that threats, overuse, and fishing adversely impact marine ecosystems and are incompatible with the statutory intent of the Reserve.

Establishment of marine protected areas has been shown to be an effective approach to conserve and restore biodiversity in marine ecosystems. Protected areas support higher biomass, abundance, diversity, and size of marine species and help to maintain and restore natural patterns of species diversity and abundance that provide long term stability and function. Importantly, the positive impacts of marine protected area extend beyond their boundaries by serving as source populations for surrounding areas. The number, size, spatial design, and level of protection of marine protected areas affects their effectiveness in achieving conservation goals. In Hawaii, there are few marine protected areas and widespread recognition that a more comprehensive network of marine protected areas is needed and work is underway to accomplish that objective through the department's Holomua initiative.

Article XI of the Hawaii State Constitution protects public trust resources.[7] The public trust doctrine includes the duty of the State to protect and conserve natural resources, including the

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[5] §195-1, Hawaii Revised Statutes (https://www.capitol.hawaii.gov/hrscurrent/Vol03_Ch0121-0200D/HRS0195/HRS_0195-0001.htm)

[6] §13-209-4, Hawaii Administrative Rules (https://dlnr.hawaii.gov/dofaw/files/2018/02/Chp-13-209.pdf)

[7] Article XI, Section 1 of the Hawaii State Constitution states:

climate system, for the benefit of present and future generations. The State also has an obligation to protect traditional and customary practices under Article XII, Section 7 of the Hawaii State Constitution,[8] however the practices are subject to reasonable restrictions, including Article XI, Section 1, which prohibits the State from taking action that substantially impairs the public interest in a trust resource.

Those practices include traditional fishing techniques that are preserved through practice, with skills and knowledge passed on directly from one generation to the next. Practices may include methods that are site-specific and geographically unique and practitioners may include descendants of families whose fishing practices were interrupted by the establishment of the reserve. Often, traditional knowledge is lost because of the threats that have degraded marine ecosystems throughout the Hawaiian Islands, where marine resources outside the reserve have been so depleted by modern fishing activities that it is impossible to fish traditionally with any success.

DISCUSSION

The ʻĀhihi-Kīnaʻu Natural Area Reserve's marine reserve was established by law to protect its valued natural resources from the impacts of human exploitation to the greatest degree possible. The threats to marine ecosystems that informed the establishment of the reserve in 1973 have accelerated in the years since and the Division expends considerable cost and effort to identify, mitigate, and monitor the impacts of those threats[9]. The reserve further serves as one of a very few no-take marine protected areas in Hawaii, vital to efforts currently underway to protect and restore marine ecosystems and fisheries resources in the state. Take of marine life impacts populations and ecosystems, is inconsistent with the statutory purpose of the Reserve to conserve and restore the biological integrity of the Reserve's marine ecosystems and is inconsistent with current efforts underway to enhance the state's system of marine protected areas.

In theory, there may be some level of take of certain species that may have no impact on the natural patterns of species diversity and abundance of the reserve. However, in practice, it is not possible at this time to identify what that level is for any given species because the level of survey effort required to detect such changes is impractical and cost prohibitive. Baseline surveys and monitoring of the reserve's coral reef ecosystems are carried out annually. However, at over 807 acres, the marine is reserve is large and surveys are carried out employing an experimental design based on statistical sampling. While these methods are effective in detecting changes in species abundance over long time periods at large spatial scales, more

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For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

All public natural resources are held in trust by the State for the benefit of the people.

[8] The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua`a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

[9] DLNR, 2012. ʻĀhihi-Kīnaʻu Natural Area Reserve Management Plan (https://dlnr.hawaii.gov/ecosystems/files/2013/07/Ahihi-Kinau-NAR-Management-Plan.pdf)

focused surveys would be needed to specifically determine impacts of take permitted under the applications contemplated here. Similarly, while fisheries models may be employed for some species to determine what levels of take are likely to have a certain impact on the population, those models treat species separately, depend on accurate life history and demographic data, would require still a significant investment of field and lab effort and expense, and would not address ecosystem-level processes. In addition, while issuance of fishing permits would be a potential impact to the marine ecosystems of the Reserve, there are many other threats that currently impact the reserve, including illegal fishing, erosion and sedimentation, and climate change. It is not practical to expect to parse impacts of permitted fishing out from those impacts based on biological surveys and monitoring. Based on these considerations, any attempt to identify levels of take consistent with the goal of no take would be arbitrary, based on an educated guess at best.

Traditional and customary practices that do not result in take of marine life are compatible with reserve management goals and objectives and provide opportunities for practitioners to engage in activities and pass their knowledge on. As a marine protected area that supports healthy ecosystems, the reserve provides unique and valued opportunities for those practices. If the Reserve is to play a role in supporting the perpetuation of traditional practices, it is essential that the activities are carried out in a manner consistent with the purpose for the NARS and the responsible stewardship of its unique resources and status. Staff encourages and supports such practices through the special use permit process, to the extent those practices can be done without take of marine life. In the case of practices that cannot be done without take of marine life, staff recommends those practices be done elsewhere, as compatible with local regulations.

The increasing number of requests to engage in traditional and customary fishing practices are a reflection, at least in part, of the poor condition of marine ecosystems elsewhere. Declining fisheries stocks throughout the main Hawaiian Islands leave few areas with sufficient resources to support traditional and customary fishing practices. Population growth, development, overharvest, climate change, and other threats are putting pressure on nearshore environments. Current practices are unsustainable and will only increase pressure on marine protected areas. Recent data indicates many reef fish populations have declined by as much as 75%. Recent bleaching events in 2015 resulted in up to 50% coral mortality on some of the most productive reefs. Marine protected areas play a vital role in the conservation of marine ecosystems in Hawaii[10] and need to be expanded if we are to improve management at regional scales[11]. It is neither sustainable or appropriate for the Reserve to serve as a site for the growing and legitimate need for the perpetuation of traditional and customary fishing practices.

Long term solutions to ensure sustainability of traditional and customary fishing practices are best achieved through improved management of fisheries at the statewide scale. As the Division of Aquatic resources launches its Holomua initiative this year, the commission may support that effort through designation of additional marine NARS, where marine protected areas can be established, and terrestrial NARS, where coastal and ridge to reef habitats can be better managed to prevent land based erosion and pollution. Similarly, the department may explore

[10] Friedlander et al. 2018. https://dlnr.hawaii.gov/holomua/files/2023/01/Friedlander-et-al.-2019-Characteristics-of-effective-marine-protected-areas-in-Hawai-i.pdf

[11] Division of Aquatic Resources, 2023. https://dlnr.hawaii.gov/holomua/

establishment of a system of marine customary practice reserves. State law provides for a number of designations for marine managed areas, including Natural Area Reserves, Marine Life Conservation Districts, Fisheries Management Areas, and Community-based Fisheries Subsistence Areas, yet none are designated specifically for the management of marine life consistent with traditional and customary practice. Incorporating such a designation into the ongoing work to improve protection and management of marine ecosystems may be a practical and efficient approach to such an objective. As suggested by the working group in its 1998 report, creating such a management area adjacent to the Reserve, including La Perouse Bay to Hanamanioa Point may be an appropriate place for such a designation.

The analysis set forth in the submittal considered the public trust and traditional and customary practices. We believe the recommendation is reasonable and balanced for the reasons set forth above.

RECOMMENDATION

Disapprove requests for special use permits for traditional and customary practice, in the case that the requests include take of marine life, in which those activities and associated take can be carried out elsewhere.

Testimony

From: Justin Kekiwi
Sent: Monday, October 9, 2023 4:45 AM
To: Yuen, Emma <emma.yuen@hawaii.gov>
Subject: [EXTERNAL] Re: Upcoming Natural Area Reserves System Commission meeting regarding your Ahihi Kinau permit applications

Aloha mai kākou,

In response to the letter sent to me by the State of Hawaii from the DOFAW administrator David G. Smith, I would like to now (10.8. 2023) withdraw my application for the special use permit requesting "take" through the NARS at Ahihi Kinaʻu. It is very disturbing to see the recommendation sent to the NARS commission to deny all applicants especially Leinaʻala Vedder and Mogul Luʻuwai as they are direct descendants of Kūpuna who worked so hard to obtain the previous permits years back for traditonal and customary practices regarding take.
I am very concerned about the managment practices for the Ahihi Kinaʻu NAR being controlled by DOFAW as its been over 50 years since the State acquired this property and converted it to a NAR with very little studies or data available to properly issue allowable take for lineal descendants. I hope to see changes made in this program and more consultation with lineal descendants to help you properly manage the resources and conduct data reports. I am very dissapointed in the States recommendations but I really hope that the commission and DLNR board makes the right decisions by approving the other two applications on the agenda.
Mahalo you for your time,
Justin Kekiwi

Native Hawaiian
LEGAL CORPORATION

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Thursday, February 15, 2024

CUMULATIVE TAKE ANALYSIS AND RECOMMENDATIONS
for Special Use Permit Applications within the ʻĀhihi-Kīnaʻu Natural Area Reserve

Mogul Luʻuwai and his ʻohana 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."[1] 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 Luʻuwais seek to exercise in the ʻĀhihi-Kīnaʻu Natural Area Reserve are unique to the environment of ʻĀhihi-Kīnaʻu and cannot be carried out elsewhere. Their ʻohana have lived and fished in Honuaʻula 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 ʻohana's particular cultural practices and teach the next generations the cultural fishing techniques specific to ʻĀhihi-Kīnaʻu – essentially, to pass on knowledge only their ʻohana 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 Luʻuwai ʻOhana 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 ʻohana 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.

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[1] *See The ʻĀhihi-Kīnaʻu 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 presere 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.”[2]

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;

[2] *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;[3]
- 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”;[4] 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:

[3] 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.

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

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 Annaul 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	
Enenue (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:[5]

- 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.[6] 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.[7] 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

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[5] 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.

[6] 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[.]”

[7] 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.[8] 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.”[9] At minimum, DOFAW must prepare and make available a statement summarizing the *Ka Pa‘akai* analysis it conducted.[10]

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[8] *Flores-Case 'Ohana v. Univ. of Haw.*, 153 Hawai‘i 76, 82, 526 P.3d 601, 607 (2023).

[9] *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).

[10] *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				
All fish		**100**	**50**	
Manini	*Acanthurus triostegus*		15	
Kole	*Ctenochaetus strigosus*		15	
Uouoa	*Neomyxus leuciscus*		10	
Weke	*Mullidae spp.*		4	
Aholehole	*Kuhlia marginata*		15	
Enenue	*Kyphosidae spp.*		1	
Moi	*Polydactylus sexfilis*	10	5	
Amaama	*Mugil cephalus*		1	
Uhu	*Scarus spp.*	0	0	
Kumu	*Paurupeneus porphyreus*	0	0	
Palani	*Acanthurus dussumieri*	0	0	
Papio	*Caranx spp.*	0	0	
Kala	*Naso spp.*	0	0	
Urchins				
Ha'uke'uke	*Colobocentrotus atratus*	10	10	
Hawae	*Gnathophylloides maneri*	10	10	
Wana	*Diadema paucispinum, Echinothrix diadema, Echinothrix calamaris*	12	3	
Gastropods				
Opihi		60	30	
Kupee	*Nerita polita*	10	10	
Cowrys		10	10	
Others				
He'e	Octopus	4	2	
A'ama	*Graspus tenuicrustatus*	30	15	
Limu	All limu	0	0	

JOSH GREEN, M.D.
GOVERNOR | KE KIAʻĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIAʻĀINA

STATE OF HAWAIʻI | KA MOKUʻĀINA ʻO HAWAIʻI
DEPARTMENT OF LAND AND NATURAL RESOURCES
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

June 18, 2024

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 ʻĀHIHI-KĪNAʻU 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 Luʻuwai, requesting to engage in traditional and customary fishing practices in the ʻĀhihi-Kīnaʻu Natural Area Reserve.

The ʻĀhihi-Kīnaʻu 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.[1] 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

[1] Rodgers et al. 2009. Biological Assessment of ʻĀhihi Kīnaʻu Natural Area Reserve, Maui, Hawaiʻi

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[2]. 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

[2] 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. NHLC 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 NHLC. 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 Honuaʻula/Ahihikinaʻu 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	ʻAhihi-Kinaʻu 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 kamaʻāina 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 kamaʻāina, 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, Enenue, 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 ʻohana.

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 Kaʻuhane Lu'uwai - Participant
Kaulu Lu'uwai - Participant
Kawai Lu'uwai - Participant
Hi'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 Luʻuwai and Robert J. Luʻuwai (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, Enenue, 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 ½ 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, ½ 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.

October 21, 1999

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

Permit Holder

Ahihi-Kinau Natural Area Reserve Special Use Permit Fishing Report Form				
Date Fished: Time In: Time Out:			# of Fishers: _____ # in Group: _____	Site(s) Fished: (Mark Map)

I. Fish Species/He'e Caught: Moi, Weke, Aholehole, Uouoa, Ama ama, Enenue, Uhu, Palani, Kole, Papio, 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-Kinau Natural Area Reserve Special Use Permit Fishing Report Form

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

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

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

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)*
blackfoot	10	1/4 lb.	see attached
yellowfoot	80	4 lb.	" "
ko'ele	10	1 lb.	" "
Crab Species	**# Taken**	**Total Weight**	**Carapace Width (inches)***
a'ama	40	4 1/2 lb.	see attached
Paiea			
Wana species	**# Taken**		
haukc	30	3 lb.	
long-spined	20	3 lb.	

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

haukc – 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'uwai
Signature of Permit Holder

Attached sheet

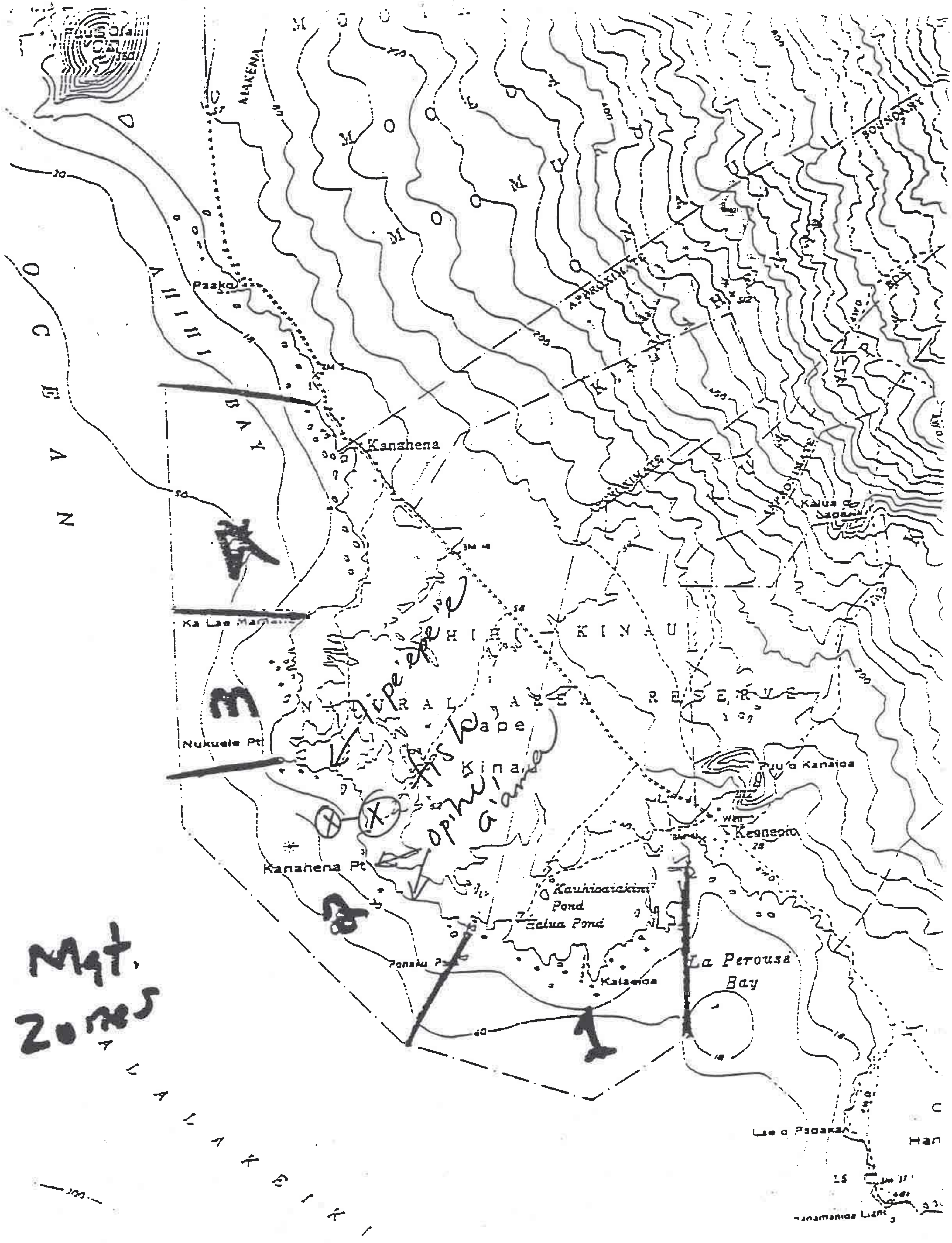
Lu'uwai Special Permit
9-15-99 fishing date

Moi – 12", 12½", 13", 15", 10", 10",
etc..... (15 measurements)

Aholehole – 8", 9", 8½", 8", 7½", 10",
10" etc. (25 measurements)

Opihi (cm)
blackfoot – 3.2, 3.7, 3.5, 4.3, 4.2, etc.
(10 measurements)
yellowfoot – 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 – 2½", 2½", 2", 1¾", 2", 2"
etc. (40 measurements)



Mgt. Zones
OCEAN
AHIHI BAY
Paako
Kanahena
Ka Lae Ma
Nukuele Pt
Kanahena Pt
KINAU
NATURAL AREA RESERVE
Cape Kinau
Kalaeloa
La Perouse Bay
Keoneoio
Puu o Kanaloa
Pond
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Thursday, February 15, 2024

CUMULATIVE TAKE ANALYSIS AND RECOMMENDATIONS
for Special Use Permit Applications within the ʻĀhihi-Kīnaʻu Natural Area Reserve

Mogul Luʻuwai and his ʻohana 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."[1] 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 Luʻuwais seek to exercise in the ʻĀhihi-Kīnaʻu Natural Area Reserve are unique to the environment of ʻĀhihi-Kīnaʻu and cannot be carried out elsewhere. Their ʻohana have lived and fished in Honuaʻula 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 ʻohana's particular cultural practices and teach the next generations the cultural fishing techniques specific to ʻĀhihi-Kīnaʻu – essentially, to pass on knowledge only their ʻohana 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 Luʻuwai ʻOhana 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 ʻohana 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.

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[1] *See The ʻĀhihi-Kīnaʻu 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 presere 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.”[2]

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;

[2] *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;[3]
- 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”;[4] 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:

[3] 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.

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

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 Annaul 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	
Enenue (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:[5]

- 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.[6] 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.[7] 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

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[5] 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.

[6] 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[.]”

[7] 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.[8] 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.”[9] At minimum, DOFAW must prepare and make available a statement summarizing the *Ka Pa‘akai* analysis it conducted.[10]

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[8] *Flores-Case 'Ohana v. Univ. of Haw.*, 153 Hawai‘i 76, 82, 526 P.3d 601, 607 (2023).

[9] *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).

[10] *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				
All fish		**100**	**50**	
Manini	*Acanthurus triostegus*		15	
Kole	*Ctenochaetus strigosus*		15	
Uouoa	*Neomyxus leuciscus*		10	
Weke	*Mullidae spp.*		4	
Aholehole	*Kuhlia marginata*		15	
Enenue	*Kyphosidae spp.*		1	
Moi	*Polydactylus sexfilis*	10	5	
Amaama	*Mugil cephalus*		1	
Uhu	*Scarus spp.*	0	0	
Kumu	*Paurupeneus porphyreus*	0	0	
Palani	*Acanthurus dussumieri*	0	0	
Papio	*Caranx spp.*	0	0	
Kala	*Naso spp.*	0	0	
Urchins				
Ha'uke'uke	*Colobocentrotus atratus*	10	10	
Hawae	*Gnathophylloides maneri*	10	10	
Wana	*Diadema paucispinum, Echinothrix diadema, Echinothrix calamaris*	12	3	
Gastropods				
Opihi		60	30	
Kupee	*Nerita polita*	10	10	
Cowrys		10	10	
Others				
He'e	Octopus	4	2	
A'ama	*Graspus tenuicrustatus*	30	15	
Limu	All limu	0	0	

Signature: 

Email: emma.yuen@hawaii.gov

JOSH GREEN, M.D.
GOVERNOR | KE KIAʻĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIAʻĀINA

STATE OF HAWAIʻI | KA MOKUʻĀINA ʻO HAWAIʻI
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA ʻOIHANA KUMUWAIWAI ʻĀINA

P.O. BOX 621
HONOLULU, HAWAII 96809

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

RYAN K.P. KANAKAʻOLE
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 ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

June 18, 2024

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 ʻĀHIHI-KĪNAʻU NATURAL AREA RESERVE, APPLICANT L. VEDDER.

BACKGROUND:

On March 13, 2023, the Division received an application (Exhibit A) for renewal of a special use permit (Exhibit B), pursuant to Chapter 13-209-5, Hawaii Administrative Rules, from Ms. Leinaʻala Vedder (Kuloloio Ohana), requesting to engage in traditional and customary fishing practices in the ʻĀhihi-Kīnaʻu Natural Area Reserve.

The ʻĀhihi-Kīnaʻu 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[1]. 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

[1] Rodgers et al. 2009. Biological Assessment of ʻĀhihi Kīnaʻu Natural Area Reserve, Maui, Hawaiʻi

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[2]. 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 (DAR), 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 the Kuloloio ohana. Also in attendance at most of the meetings were representatives of the Lu‘uwai 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, and Division (DOFAW) and DAR staff. 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 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 13, 2024, representatives from DAR and DOFAW met with the applicant and representatives from the Kuloloio ohana. The Kuloloio family provided an updated proposed take table (Exhibit C). Staff noted that it was largely consistent with the levels identified in the table provided by staff at the prior meeting. In particular, staff noted that the Kuloloio family was agreeable to lower take

[2] https://dlnr.hawaii.gov/ecosystems/nars/commission/

limits for limu, opihi, and urchins, and agreed to no take of uhu, kala, papio, and kumu, species for which staff had expressed significant concerns. There was discussion about fish caught with throw nets and staff agreed based on those discussions that the requested bag limits for manini, kole, uouoa, and aholehole, were reasonable, noting that it would provide flexibility when fishing, while keeping the overall take within the cumulative take recommendations. This meeting ended on a positive exchange where staff felt the applicant was sincere in their application and their request consistent with reducing the level of take to the minimum amount needed to conduct their practice in Reserve.

Additional meetings were held in February and March of 2024 with representatives from the Lu‘uwai family, in which representatives of the Kuloloio family attended to listen only.

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 of the 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 be approved. It is staff’s assessment that the subject application, including the updated proposed take table (Exhibit C) presented to staff by the applicant, is consistent with those terms, conditions, and guidance, including the cumulative annual take limits. Most of the take requested is furthermore significantly lower than the levels identified in the cumulative take recommendations. Staff believes that these requested levels are the result of the sincere desire on the part of the applicant to contribute to effective conservation of marine life in the Reserve and to work with staff on concerns expressed regarding potential impacts on the marine resources.

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 identified in Exhibit C, 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. Kuloloio Special Use Permit issued June 2014
Exhibit C. Kuloloio Proposed take limits

Permit Activity Details Summary

Applicant

Name: FRANCILLE VEDDER
Address: 122 KAHIAPO PLACE
City/State/Zip: HAIKU Hawaii 96708

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?

☑ Submitted

Access will be approximately quarterly and centered on learning the wahi pana (place names), nā alahele (trails), ka ʻike kuʻuna lawaiʻa (traditional fishing knowledge), nā loina (values); gathering by observing first, sampling on site, and taking only what is needed for the family ("E ʻai i kekahi, e kāpī i kekahi" - Eat what you need, return the rest). To conduct access to the Reserve to pass on ancestral and generational knowledge to the moʻopuna (descendants) of the Kuloloio ʻOhana (Ka ʻIke Kuʻuna o Nā Kūpuna ʻAlaea o Honuaʻula); in an area long held to be associated with the ʻOhana, in order to perpetuate traditional practices.

* Our ʻohana will examine conditions of trails along ʻae kai.
* Dispose of ʻopala, sore was debris, ets.
* Identify users in area wo are snorkeling, swimming, or disrespecting natural resources.

2) Study/activity objectives

Our objective is to protect the ʻAha Moku System. We supersede the NARS Management Plan because we come with traditional moku knowledge of Honuaʻula. We come with respect for the lani, ʻāina, and kai.

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

Code	Island	Land Designation	Locality Name	Other Locality
47	Maui	Natural Area Reserve	ʻAhihi-Kinaʻu Natural Area Reserve	
129	Maui	City and County Lands	See Other Locality Field >>	Maonakala to Ahihi Kinaʻu, to Mamau, to Kanahena, to Keoneʻoʻio, to Ka Lae Mamane.

4) Mode of travel to study/Activity site

☑ Hiking/On foot ☐ Motor vehicle ☐ Helicopter

5) Duration of study/activity

a. Overall: Planned visits will be approximately once a quarter to record seasonal changes, conditions, and species traditionally harvested. Access to the Reserve will be from shoreline and by foot only. Traditional use of observing, managing, and gathering natural resources from the shoreline and offshore will be followed using traditional methods.

b. Dates for this request:

Start Date: 06/01/2023 End Date: 05/31/2024

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.

We will gather, identify, tase, collect data, compare, and visually examine alignment of papa ʻākoʻakoʻa, limu papa, koʻu kuʻula. Examine conditions of trails along ʻae kai. Dispose of ʻōpala, shore wash debris, etc. Identify users in area who are snorkeling, swimming, or disrespecting natural resources.
a) Method of transportation will be on car traveling on the main road. We will then travel by foot from the parking lot to the shoreline.

*We will gather, identify, tase, collect data, compare, and visually examine alignment of papa ʻākoʻakoʻa, limu papa, koʻu kuʻula.

*Examine conditions of trails along ʻae kai.
*Dispose of ʻōpala, shore wash debris, etc.
*Identify users in area who are snorkeling, swimming, or disrespecting natural resources.

b) Ka ʻIke Kuʻuna o Nā Kūpuna Alaea o Honuaʻula is kept with makuakāne and makuahine of the Kuloloio ʻOhana. Kuloloio ʻOhana members include myself, my children, brother, sister, nieces, and nephews.

7) Justification:

a. Why is the proposed study/activity important?

Ka ʻIke Kuʻuna o Nā Kūpuna Alaea o Honuaʻula is kept with makuakāne and makuahine of the Kuloloio ʻOhana. Kuloloio ʻOhana members are left to pass on our lineal traditional and customary knowledge to the next generation. Leināʻala, family matriarch and keeper of knowledge of limu harvesting practices has the kuleana to pass on this traditional and customary knowledge to the children and grandchildren of my kūpuna.

The Honuaʻula District of Maui (Kona) is a cultural depository to teach my children and the generations to come. I, along with my brother Manuel and sister Kekane, are the only mākua in my family who have this knowledge. I learned how to fish and gather from the sea as a child with my parents and family members in Honuaʻula, Hāmākuapoko, and Hāmākualoa. My parents along with my kūpuna took my brother, sister, and me to these area and taught us what they knew before the area was turned into a reserve. Like my father, Leslie Kuloloio, it is important that my knowledge and experiences be passed down to the next generation so that they know the right stories and name places from kūpuna from that place rather than outsiders who claim to know the area. I want them to know how to survive off of our own foods from the sea. I will teach my children, nieces, and nephews how to collect data of the amount and kinds of fish we have gathered.

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”.

No. The Honuaʻula District of Maui (Kona) is a cultural depository to teach my family nā wahi pana (name places), nā alahele (trails), ka ʻike kuʻuna lawaiʻa (traditional fishing knowledge) and nā loina (values) that are unique to the places listed above.

Yes. The proposed special-use does comply with the provisions and guidelines contained in HRS Chapter 205A, entitled Coastal Zone Management. We will also be following our own traditional ways of gathering by taking only what is needed for the amount of people that will be eating it. “E ʻai i kekahi, e kāpī i kekahi” – Eat what you need, return the rest.

c. How will the information learned be applied?

My ʻohana feel that it is our kuleana to be protectors and stewards of the ʻāina and teach the next generation. Our special-use will be a benefit to the Reserve because we will teach the next generation how to do data collection of the amount of sea animals that are in the area and how many we have collected. My brother, sister, and I have seen first hand the impacts of tourists, development, and commercialized ocean activities have had on the shorelines for many years. We gather and eat sea animals and limu in Hāmākuapoko and Hāmākualoa. Therefore, it would be interesting to compare the likes and differences of these animals in Honuaʻula.

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.)

I am seeking permission to remove the following from the area: hāʻukeʻuke, limu līpepeʻe, ʻopihi, ʻōkala, limu ʻakiʻaki, kūpeʻe, manini, ʻuhu, kole, kala, wana, hāwaʻe, wāwaeʻiole, lepe moa, pālahalaha, ʻekahakaha, kala, līpoa, nei, pakanaka, kumu, weke, moi. All of these items that will be gathered may not be gathered and eaten all at once. We will gather enough to feed ourselves while staying in the area to show the next generation the amount you need to survive. We will store items in a small cooler while staying on the area.

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

Yes, my ʻohana was granted access to the Reserve to pass on ancestral and Generational Indigenous Knowledge Systems to makua and moʻopuna descendants of the Kuloloio ʻOhana on September 28, 2013.

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

Manuel Wayne Makahiapo DeCosta Kuloloio (brother), Kekanemanaʻopiliiāʻoe Kuloloio (sister), Garrett Kekoa Vedder (spouse), Puniawa Kuloloio Vedder (son), Kamaluokalani Kuloloio Vedder (son), Kuʻumakalehiwaonālani Ruidas (niece), Dionne Yukie Ruidas (niece), Piper-Ann Kekauonohi DeCosta Kuloloia (niece), Abraham Kahiapo Kekahuna Kuloloia (nephew), Josh Kalani Ponce (nephew).

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

No.

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.

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

No.

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. Our proposed special-use will not threaten or damage the integrity or the condition of the natural, geological, or cultural resources as well as have any environmental impact on the NARS adjacent area or region because we will be gathering and eating only what we need. We are traditional gatherers and are respectful of the animals and kinolau of these areas.

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.

I was the Primary Contact of the NARS Special Use Permit granted to my ʻohana from Oct. 1, 2012 to Sept. 1, 2013 and June 1, 2014 to May 31, 2015 as approved by William Aila, Chairperson of BLNR. My father Leslie Apiu ʻAipalena Kuloloio was the Permit Holder on that permit. We were in compliance with the permit and a report was completed on September 28, 2013. Our ʻohana did not access the Reserve in the years that followed (2014 to 2015) as we felt that it was necessary to allow the marine life time to live in their natural environment in the Reserve without encumbrances.

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

The expected date will be determined according to traditional Hawaiian season and tides that is appropriate for the species that will be gathered.

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

Information shared with the Department of Land and Natural Resources will include date and time of planned visit, names of persons who will use the permit, types of traditional gathering gear used and kinds of resources gathered.

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.

Ancestral and Generational Indigenous Knowledge Systems embraces the physical geography, which deals with the world in the present stage of its existence. The Kumulipo considers the relationship and machinery which makes day and night, seedtime and harvest; which lifts the vapor from the sea; forms clouds and waters the earth. Clothes the land with verdure and cheers it with warmth or covers it with snow and ice. The Moku System (physical geography), moreover, treats of the Nā ʻAumākua (agents) that causes the wonderful circulation of waters in the sea that diversify Nā Moku ʻĀina (continents, atolls, volcanic islands) with mountains, hills, plains, valleys, and kaha (embellish) the landscape with rivers and lakes. This ancestral and generational knowledge teaches us to nānā i ke kumu the views of the earth-Papa (its surface), nā wai (its waters), and ka lani (its enveloping atmosphere) as the scene of Ke Komo (operation) of the great physical and creative forces. Their united action ke komo render possible the life of plants and animals, and studies the ola (life) of the globe. Both terrestrial and aquatic, noting particularly the circumstances, which are favorable or adverse to its development.

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: June 1, 2014 – May 31, 2015

RESERVE: ʻĀhihi-Kinaʻu (open and closed portions)

The Board of Land and Natural Resources or its authorized representative, with the approval of the Natural Area Reserves System Commission, hereby issues this Special Use Permit in accordance with Section 195-5, Hawaii Revised Statutes; and Title 13-209-5, Department Administrative Rules, to

Leslie Apiu ʻAipalena Kuloloio, Permit Holder
Francille Leinaʻala Kuloloio Vedder, Primary Contact
122 Kahiapo Place
Haʻiku, HI 96708

Phone: (808) 280-5060 Fax: (808) 579-2103

E-mail: puniawalei@hotmail.com pokaiuli2@gmail.com

to conduct access the Reserve to pass on ancestral and generational knowledge to the *moʻopuna* (descendants) of the *Kuloloio ʻOhana* (*Ka ʻIke Kuʻuna o Na Kupuna ʻAlaea o Honoaʻula*), in an area long held to be associated with the ʻOhana, in order to perpetuate traditional practices. Access will be approximately quarterly and centered on learning the *wahi pana* (place names), *na alahele* (trails), *ka ʻike kuʻuna lawaiʻa* (traditional fishing knowledge), *na loina* (values); gathering by observing first, sampling on site, and taking only what is needed for the family ("*E ʻai i kekahi, e kapi i kekahi*" – Eat what you need, return the rest).

STANDARD CONDITIONS:

1. Besides conditions stipulated here, the permit holder will adhere to project specifications given in the permit application.

2. Disturbance of vegetation and wildlife will be avoided as much as possible.

3. Reports: (a) A field report will be submitted within 1 week of each access. (b) Results of the project, as published or unpublished reports, also will be submitted. (c) The reports will identify the Natural Area Reserve as a project site and acknowledge the special-use permit approved by the NARS Commission.

4. Precautions will be taken to prevent introduction of plants or animals not naturally present in the area. Should an infestation develop, Permit Holder is responsible for eradication by methods to be specified by NARS--whether it occurs during or after the permit period, and even though it may be

only indirectly attributable to the project activities. **Permit Holder is responsible for ensuring that all clothing and gear is cleaned before entering any Natural Area Reserve.**

5. This permit is not transferable.

6. This permit does not exempt the Permit Holder from complying with any other applicable rule or statute.

7. 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. **Provision of Chapters 183, 185, and 195, Hawai`i Revised Statutes, 1985, as amended, and any other laws applicable thereto, and all rules and regulations of the Department of Land and Natural Resources shall be strictly observed. Infractions or misconducts will constitute grounds for revocation of this permit and criminal prosecution. Any person whose permit has been revoked shall not be eligible to apply for another permit until the expiration of two years from the date of revocation.**

8. The Permit Holder **is responsible for notifying appropriate DOFAW/NARS Staff, prior to conducting visits to inform them of exact dates for each site visit, family names and numbers, so that they are aware that there will be an activity involving fishing gear otherwise prohibited in the NAR.** This is particularly important also, to be sure that proposed site visits do not conflict with other NARS Staff or other management activities, as well as to be sure that areas are not closed due to hazardous conditions. NARS staff will also notify DOCARE so they are aware of this permit.

9. The Permit Holder is responsible for explaining permit terms to participants and ensuring their compliance at all times. **A copy of this permit will accompany participants in the field at all times.**

10. The proposed activities to be conducted in the Natural Area Reserves fall under the Division of Forestry and Wildlife's exemption list of June 12, 2008, including but not limited to **Exemption Class 5: Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource (5-2).** Division analysis of the proposed resource management actions concluded it will provide a positive environmental benefit and will be done in a manner to have no negative impact on the conditions that define the area. Furthermore, the cumulative impact of these actions over the duration of the permit (1 year) will not have a significant adverse impact and will have minimal or no significant effect on the environment and are exempt from the need to prepare an environmental assessment.

11. Permits are issued on an annual basis; if a **renewal** is required, please submit a report detailing progress to date (not just species lists; species however, should be listed for each Reserve they were observed or collected from for NARS management purposes) prior to submitting an application form for renewal detailing future plans. Renewals may be delayed or denied without prior reporting. In the case of single year permits, submit a report following the permit expiration date that details what was accomplished during the permit period. In the case of hikes or other single event activities, submit a brief summary of observations, problems, experiences of students/participants and their views of the NARS, having participated in such an activity.

SPECIAL CONDITIONS:

12. This Permit allows a maximum of twelve Family Members only (including the Permit Holder; his children and grandchildren and Kamaka, Family Matriarch and keeper of knowledge of *limu* harvesting practices. The Permit Holder must be present for each visit; generally no more than six family members per visit.

13. This Permit is specifically for access to the following areas within the Reserve: currently open areas and from Maonakala to ʻĀhihi, to Mamau, to Kanahena, to Ka Lae Mamane. Planned visits will be approximately once a quarter to record seasonal changes, conditions, and species traditionally harvested.

14. Access to the Reserve will be form shoreline (by foot) only; no access by boat or fishing from boat; no camping will be done in the Reserve; day visits only.

15. Catch or harvest must be carried out on foot in same way Permit Holder and accompanying family entered the Reserve. No catch or harvest may be transferred to any type of vessel.

16. Use of fishing gear or methods not in conformance with applicable statutes or rules is prohibited; in particular, use of gill nets is prohibited.

17. Any species or numbers or categories not listed on this permit are prohibited from collection.

SPECIES REGULATIONS AND OTHER SPECIAL CONDITIONS:

The following conditions refer to state regulations and rules, and NARS-imposed conditions for specific species sizes, limits, and seasons. Condition 17 of the Special Use Permit is also in full effect in addition to the following species regulations and conditions.

18. Fish species to be gathered are as follows: *moi* (*Polydactylus sexfilis*), *weke* (Mullidae, including goatfish), *manini* (*Acanthurus triostegus*), aholehole (*Kuhlia sandvicensis*), *ʻamaʻama* (*Mugil cephalus* or mullet), *uouoa* (*Neomyxus chaptalli* or false mullet), enenue (*Kyphosus bigibbus* or pilot fish), *uhu* (*Scarus perspicillatus* and other species or varieties of parrotfish), *palani* (*Acanthurus dussumeri* or surgeonfish), *kole* (*Ctenochaetus strigosus* or surgeonfish), *pāpio* (*Caranx* spp. young form of jack crevalle or *ulua*),

19. Fish not specified in Condition 18, or those listed that are out of season or are not the legal size, which are inadvertently caught will be immediately be returned to the ocean.

20. Moi: Adherence to the minimum size of 7 inches, the closed season of June-August, and bag limit of 1 fish per person.

21. Aholehole: Adherence to the minimum size of 5 inches for spearing. Throw nets will not be used on large fish schools to avoid exceeding the Bag limit of 1 fish per person.

22. ʻAmaʻama: Adherence to the minimum size of 7 inches for spearing, maximum 5 individuals per visit; closed season between December to February.

23. Uhu: In addition to the minimum size of one pound for spearing, no more than 1 individual may be taken during any one fishing day.

24. Papio: Adherence to the minimum size of 7 inches and one pound for spearing; bag limit of one per person.

25. Invertebrate species and amounts to be gathered are as follows: *'a'ama* (*Grapus grapsus tenuicrustatus* or rock crab), no more than five individuals; none with eggs; *'opihi* or limpets (*Cellana* spp.) no more than two dozen, in addition to the minimum size of 1 ¼ inches with shell or ½ inches meat only; three fishing days may occu4r between March and August and only one fishing day may occur between September to February so as not to affect breeding season and recruitment of young 'opihi; sea urchins including hā 'uke 'uke (*Colobocentrotus atratus*), *hā 'ue'ue* (*Heterocentrotus mammillatus*); *wana* (*Diadema paucispinum* and *Echinothrix diadema*): no more than five each; seaweeds including *limu līpe'e pe'e* or *līp'e'e* (*Laurencia* spp.), no more than one gallon per trip; *he'e* or octopus (*Polypus* spp.) no more than one per visit.

26. Maximum number of participants per fishing day is six, accompanying the Permit Holder.

27. Gathering will be for limited on site sampling and offsite consumption for family members, not for commercial or other purposes.

28. Number of fishing days: each fishing day shall be separated by a minimum of 30 days and subject to seasonal conditions, such as for 'opihi and other species, to have as little effect on species in Reserve.

29. Fishing gear may include small throw nets, Hawaiian sling spears, *he'e* lures, *'opihi* knife.

30. Use of fishing poles and non-traditional lures is prohibited.

31. Use of nets (including *hukilau* seines and gill nets) other than throw nets (legal mesh size only) is prohibited. Scoop nets may be used to simply look at fish species, show them to family members then put them back).

32. For reporting purposes: for each access, list the date, participants by name accompanying Permit Holder and family relationship (such as grandchildren, children); locations, amounts and species gathered. Also report any unusual observations or anyone asking questions or raising concerns at the presence, under permit, of fishing gear and fishing activities (which will better aid staff in providing future onsite coverage).

33. Reports are due within one week to Maui NARS staff. (either Maui NARS Specialist or Lead Ranger; this is so that staff is aware of the amounts and species for each visit; they should be signed first; date will be shared with Division of Aquatic Resources (DAR) staff.

34. For each fish species, the total weight in pounds shall be cumulative weight of all of one species.

35. 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.

36. Harvested *'opihi* should be separated by species: 1) blackfoot, 2) yellowfoot, and 3) ko'ele (very large specimens).

37. Each species of *'opihi* should be weighed separately.

38. Each *'opihi* should be measured by its greatest shell length to the nearest 1/16 inch.

39. Each crab should be measured for its greatest carapace (head shell) width.

40. Harvested sea urchins should be reported by species and size.

41. For *limu* report the amount (pint, quart, ½ or 1 gallon, etc).

42. The Army Corps of Engineers (USCAE) has not issued a final report with recommendations due to reported presence of Unexploded Ordnance (UXO) in closed portions of the Reserve. While recent surveys have not reported any live UXO; because the Reserve was used as a bombing target, Permit Holder needs to exercise caution when leaving any known trails. In addition to notifying NARS staff prior to any access; letting them know specific areas to be visited will help staff determine if they should accompany the group or review the concerns and liabilities of the area. This is for the safety of participants, as well as the resources. Signs have been posted noting the presence of UXO; all entering such areas are responsible for exercising caution and reporting any suspicious-looking objects. If any UXO is located, either on land or in water, Permit Holder will notify NARS staff immediately so that USACE may be notified for further action. If an object is found to be too dangerous for any further entry to the area, access may be curtailed until the object is cleared.

WILLIAM J. AILA, JR., Chairperson,
Board of Land and Natural Resources

LESLIE APIU 'AIPALENA KULOLOIO
Permit Holder

Hawaiian Name	Scientific Name	Annual limit	Limit per trip	Notes*
		Total	Total	
Fish				
All fish		**100**	**50**	
Manini	*Acanthurus triostegus*		12	
Kole	*Ctenochaetus strigosus*		12	
Uouoa	*Neomyxus leuciscus*		12	
Weke	*Mullidae spp.*		2	spear
Aholehole	*Kuhlia marginata*		12	
Enenue	*Kyphosidae spp.*	10	4	
Moi	*Polydactylus sexfilis*	10	4	
Amaama	*Mugil cephalus*		1	
Uhu	*Scarus spp.*	0	0	
Kumu	*Paurupeneus porphyreus*	0	0	
Palani	*Acanthurus dussumieri*	0	1	
Papio	*Caranx spp.*	0	0	
Kala	*Naso spp.*	0	0	
Urchins				
Ha'uke'uke	*Colobocentrotus atratus*	10	2 per person	eaten on site
Hawae	*Gnathophylloides maneri*	10	1 per person	eaten on site
Wana	*Diadema paucispinum, Echinothrix diadema, Echinothrix calamaris*	12	5 + 1 'ina	eaten on site
Gastropods				
Opihi		84	1 Koele, 20 other	
Kupee	*Nerita polita*	10	1 kupepe, 10 pipipi	
Cowrys		0	0	
Others				
He'e	Octopus		1	
A'ama	*Graspus tenuicrustatus*		2 per person + 1 paiea	eaten on site
Limu	All limu	1 quart	1 quart	eaten on site

Āhihi-Kīnau Working Group

REPORT TO NATURAL AREA RESERVE SYSTEM COMMISSION

THE QUESTION OF PERPETUATION OF TRADITIONAL CULTURAL FISHING PRACTICES, Āhihi-Kīnau Natural Area Reserve

OCTOBER 5, 1998

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Introduction

On September 12,1997 Mr. Boogie Lu'uwai and Mr. Robert Lu'uwai applied to the Natural Area Reserve System Commission (NARSC) for a Special Use Permit to practice traditional fishing within the boundaries of Āhihi-Kīnau (Kanahena) Natural Area Reserve (AKNAR). In response, the NARSC held a public meeting in Kihei, Maui on March 24, 1998. At a NARSC meeting the following night, the NARSC appointed the Maui Commissioner to establish a working group to address the question of "subsistence" fishing in the reserve and provide information relative to the applications. The Working Group was convened on June 25, 1998 and held 8 meetings to address the question of traditional subsistence fishing. As the Working Group deliberated and discussed the issue it became clear to all members that what the Lu'uwais were proposing and what was being described is not subsistence fishing but traditional cultural fishing. Therefore the word "cultural" has been substituted for "subsistence" throughout the document, as appropriate. A recommendation on whether to deny or approve a Special Use Permit was not the purpose of the working group. This report provides information to assist the NARSC in making decisions concerning the application. Appendix C contains minutes of the meetings which is a record of the discussions upon which this report is based.

I. DESCRIPTION OF TRADITIONAL CULTURAL FISHING PROPOSED

1. **Eligibility Requirements for Special Use Permit:** *(All requirements must be met)*

Applicant:

--Evidence of continuously exercised traditional fishing practices, since November 25, 1892, which were interrupted only when AKNAR was established in 1973.

--Able to demonstrate a genealogical connection to the Honua'ula District.

--Native Hawaiian, meaning a descendant of the race inhabiting the Hawaiian Islands previous to 1778.

--Only one permit per eligible family unit with up to 4 permittees per permit. Permit must be renewed annually. Permit will be issued to senior family member who can actively engage in traditional fishing activities.

Family members who may accompany permittee(s):

--Permittee's progeny who are permanent residents of Maui.

--Blood siblings and their progeny who are permanent residents of Maui.

2. Species and Quantities to be Harvested:
(see Appendix A, Marine Life Names)

Fish Species:

--Moi, Weke, Manini, Aholehole, Uouoa/Ama'ama, Enenue, Uhu, Palani, Kole, Papio, He'e. Maximum of 50 individual fish total in any species combination per fishing-group day of which no more than 4 can be He'e.

Shellfish:

--'Opihi. Maximum of 100 individuals per fishing-group day.

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

--Wana. 50 individuals per fishing-group day.

Limu:

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

3. Fishing Frequency:

--Maximum of 4 days annually per permit.

4. **Fishing Methods** (methods must be traditional Hawaiian; may include modern materials)

-- Hawaiian sling spears

-- Throw or casting nets

-- He'e lures

-- Hand gathering (including 'opihi knife) or hand lines

5. **Areas of Reserve to be Fished:**

-- 4 zones as delineated on map. Permittee will notify Hawaii Department of Natural Resources (DLNR) which zone his/her group will be fishing. Based on seasonal and resources management considerations, DLNR may request that a specified zone not be fished or certain species not be taken from that zone that day.

6. **Restrictions:**

--Compliance with Hawaii State fishing laws regarding fishing bag limits, closed seasons, size limits, etc.

--Use of motorized vessels is prohibited. Human propelled vessels, without motors aboard may be used to access fishing area. Fishing from vessel is prohibited. Anchoring or mooring is prohibited except in the case of an emergency.

--Use of fishing poles and non-traditional lures prohibited.

--Use of nets (including hukilau seines) other than throw nets(legal mesh size only) is prohibited.

--Fish not specified in #2, or of those listed that are out of season or are not the legal size, which are inadvertently caught will immediately be returned to ocean.

--Maximum number of fisherpersons is 4, including permittee(s).

--One permittee must always be present during fishing activities.

7. **Enforcement Provisions:**

--Permittee(s) shall provide written notice to DLNR with list of participants no later than one week before fishing date.

--Permittee(s) shall submit reports (form provided by DLNR) listing species, quantities, location and species' measurements will be submitted to DLNR within one week after fishing date.

--Non-compliance with permit conditions will result in loss of permit in accordance with procedures established by NARSC. (Get input from Alan Murakami)

--For identification purposes, a Hawai'i Drivers License or Hawai'i ID card and a copy of the Special Use Permit must be with permittee(s) on site.

8. **Public Information:**

--Press release by DLNR will be provided to the media when the program is approved by the NARSC.

--Enforcement Officers or NARS staff will attempt to be on site during the days of fishing activity to explain program to bystanders.

9. **Resource Monitoring:**

--DLNR will develop procedures for monitoring the resource populations as a necessary means to know if AKNAR resources are being placed in jeopardy. Permittee(s) will cooperate in providing monitoring data requested by DLNR.

--Research projects by universities and/or other government agencies will be encouraged to conduct studies relevant to the program.

--Reporting on active traditional Hawaiian cultural practices and their ethnographic importance will be encouraged.

II. ARGUMENTS IN FAVOR OF PERMITTING TRADITIONAL CULTURAL FISHING AS DESCRIBED IN I

1. Integration of Cultural Resources Management and Natural Resources Management: Management policy to preserve natural processes and conditions should not ignore the traditional, cultural component that affected the marine resources for 1,000 years or more prior to the establishment of the reserve. Traditional Hawaiian cultural fishing techniques need to be preserved through practice, with such skill and knowledge passed on directly to the next generation. The families whose fishing practices were interrupted by the establishment of the reserve are the rightful keepers and perpetuators of a unique culture. Fishing methods and consumptive practices are often site-specific and geographically unique. This unique heritage is being lost throughout Hawai'i because marine resources outside the reserve have been so depleted by modern fishing activities that it is impossible to fish traditionally with any success. This program, with minimal risk to the resources, will put the traditional Hawaiian component back in the marine ecosystem and allow permittees to participate in the stewardship and protection of the area. A model partnership for cultural/natural resources management can evolve that would be applicable to other areas.

2. Research Opportunities: This program will provide an extraordinary opportunity for ethnographic documentary and biological research specific to the Honua'ula District.

Fishing techniques used by traditional Hawaiians have been incompletely documented. This is a rare opportunity to add to the literature on the subject; reports can result which can augment work by previous scholars such as Pukui, Malo Titcomb, and others who have written on the subject. The kupunas who possess this knowledge have limited time to pass this information on to the next generation. There is much to be gained by expediting this program, and conversely there is much to be lost if the kupunas pass away before this program is implemented.

Traditional fishing practices relative to resource sustainability can be studied. Precise data on species composition, size, and location can be obtained. Such data is virtually unattainable elsewhere. Resulting reports would be important references for educational and interpretive materials. Studies designed with the permittee(s) cooperation can provide controlled experiments that will be useful in managing marine resources elsewhere.

3. **Legal Considerations:** Legal decisions and opinions related to Hawaiian gathering and access rights appear to be consistent with the proposed program. Granting a Special Use Permit may avoid litigation. Program is consistent with subsistence and gathering rights granted in many national parks particularly in Alaska. (Refer to Alan Murakami or Isaac Hall for review of language)

4. **Counterbalancing of Restrictions on Hawaiian Culture:**

Over the last 200 years as a result of annexation, statehood, tourism promotion, etc. the Hawaiian culture unarguably has suffered from ever increasing restrictions on their traditional approach to living. Burial sites have been destroyed. Off shore marine life is overfished. The ahupua'a system of land management has virtually been lost. For Hawaiians it is an uphill battle to retain a little of their past. This program is an opportunity to affect a small reversal in the continuing loss of traditional Hawaiian culture.

5. **Program is Compatible with NARS Management Policies Approved May 23, 1997:** Current management/administrative policies for NARS contain provisions for Native Hawaiian Gathering rights under Special Use Permit.

> *"Native Hawaiian gathering rights will be allowed to the extent permitted by law and only if a Special Use Permit has been obtained. A Special Use Permit helps monitor amounts collected in specific areas and protects gatherers from any public concerns as to why they are conducting such an activity in a protected area."* (Native Hawaiian Rights, page 5)
>
> *"Gathering(including Native Hawaiian Gathering Rights as permitted by law), traditional religious access and practice: activity cannot be conducted elsewhere; will be consistent with the protective and educational purposes of the NARS, does not*

degrade the natural resources of the Reserves; not used for commercial purposes. It is recommended that gathering be limited to native Hawaiians who are residents of the particular island where the subject Reserve is located." (Criteria Evaluating Special-Use Permits, Appendix D)

III. ARGUMENTS AGAINST PERMITTING TRADITIONAL CULTURAL FISHING AS DESCRIBED IN I

1. The proposal to allow traditional cultural fishing at AKNAR is not in keeping with the letter and spirit of the law that established the Natural Area Reserve System.

Excerpts from law establishing NARS:

"these unique natural assets should be protected and preserved, both for the enjoyment of future generations, and to provide base lines against which changes which are being made in the environments of Hawaii can be measured."

"that a statewide natural area reserves system should be established to preserve in perpetuity specific land and water areas which support communities as relatively unmodified as possible, of the natural flora and fauna, as well as geological sites, of Hawaii."

It is clear that the state legislature enacted this law with the idea that protection of the resources is paramount. To preserve genetic pools under natural conditions, natural predation and unimpeded natural forces must be allowed to interact without human interference. Although Hawaiians, up until AKNAR was established, harvested resources in the area for over 1000 years, this is an insignificant period in evolutionary terms. Without human influence these ecosystems evolved over millions of years before they were disrupted, first by Polynesians and later by European contact. In the absence of fishing pressure, marine ecosystems may return to conditions that are pre-Hawaiian in character. It is imperative that areas be preserved without the influence of human consumptive activities in order that "base lines against which changes which are being made in the environments of Hawai'i can be measured." "…to preserve in perpetuity specific land and water areas which support communities as relatively unmodified as possible" clearly the intent is to exclude human consumptive activities, because it is possible to do so as it is being done under current regulations.

2. **The Program is Exclusionary Except for very few eligible Hawaiians:** Under the eligibility rules very few Hawaiians will be able to participate. The legal validity of these rules may be tested in court by those who believe the geographic and genealogical limitations are too narrowly construed. Should greater numbers of Hawaiians be judged eligible, there is real danger that quantity of resources harvested will increase to levels of significant impact. There is no guarantee that the proposed stewardship claim will have a positive effect. Once such a court decision is rendered, the level of traditional cultural activity may become beyond the control of the NARSC. There may be no turning back to the relatively unmodified marine ecosystem we have now. This could also open the door for fishing in marine protected areas, for example in Honolua-Mokuleia Bay, a Marine Life Conservation District.

3. **Lack of Existing Management Planning:** AKNAR has no management plan and there are insufficient management controls currently in place. The offshore boundaries, as well as the inshore and offshore traditional geographical boundaries of the reserve are not adequately delineated. Commercial/sports kayaking, scuba and snorkeling activities go on virtually unregulated. It is a difficult area to manage already; it is not surprising that it is considered one of DLNR's "Hot Spots" that need funding for increased management and protection. Without an approved management plan, public review, environmental compliance, and appropriate funding it is premature to implement a traditional Hawaiian cultural program.

4. **Sustainability Threshold Isn't Well Determined:** The harvested quantities and species bag limits have been established by guesswork and intuition. No one knows what the true impacts will be. Establishing scientifically defensible harvesting guidelines is extremely difficult. Techniques for monitoring of marine ecosystems are dependent on a long-term commitment. Given the subtleties of resources populations, natural forces and impacts of traditional fishing, and other activities, it may be difficult to collect meaningful data for management purposes.

5. **Enforcement Problems:** Division of Conservation and Resource Enforcement, the enforcement branch of DLNR is understaffed and underfunded. The additional burden of policing the traditional fishing program must be carefully considered. It is feared that when observers see traditional fishing it will encourage illegal fishing, either intentional or due to lack of awareness of the

special use permit provisions. On the other hand when illegal fishing is observed by the public, there may be a reluctance to report it, not knowing for sure whether it is poaching or fishing as part of the traditional program.

IV. POSSIBLE ALTERNATIVES TO I

1. Permit traditional cultural fishing as describe in I in up to three zones of the existing reserve, leaving one or more zones unfished for monitoring purposes.

This would maintain some of the reserve as it has been managed since its establishment while providing eligible Hawaiians the opportunity to practice traditional activities. Comparison monitoring of the fished and the unfished zones will provide DLNR with optimal opportunity to gather meaningful resource information. Knowledge accrued from these studies will aid the NARSC in making decisions on the future of the program.

2. Recommend to the Board of Land and Natural Resources that AKNAR be extended to the Hanamanioa lighthouse for purposes of traditional cultural fishing.

This fifth zone, combined with one or two zones in the current AKNAR would leave more of the reserve unfished and protected from consumptive use. This will provide similar monitoring opportunities as in alternative #1. It would enlarge the amount of offshore marine area protected from the impacts of modern fishing.

3. Modify I-2 (Species and Quantities to be Harvested) and II-3 (Fishing Frequency) when issuing the Special Use Permit.

NARSC could adjust suggested species, quantities and frequency of harvest while still accommodating the proposed cultural practice.

4. Recommend to the Board of Land and Natural Resources that all existing ocean recreational activities be discontinued in AKNAR, and do not permit traditional cultural fishing as proposed in I.

The natural marine environment of the reserve will be better protected and preserved if human activities are prohibited. This alternative will allow maximum preservation of the marine resources.

V. ĀHIHI-KĪNAU WORKING GROUP MEMBERS

Don Reeser, Chairman
Boogie Lu'uwai, Applicant
Kalei Lu'uwai
Ed Chang Jr.
Dana Naone Hall
Leslie Kuloloio
Bill Evanson
Skippy Hau
Ron Bass
Eric Brown
Lei Kahakauwila
Stanley Okamoto

Appendix A. Marine Life Names

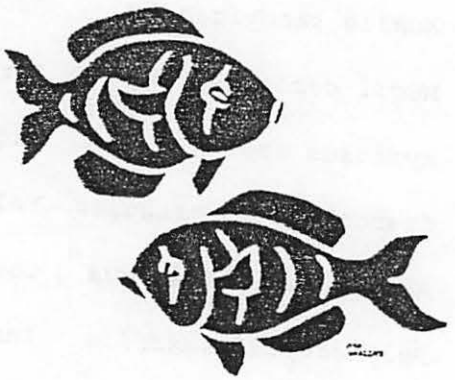
Hawaiian Name	Scientific Name	Common Name
ALGAE		
Limu Lipe'epe'e	*Laurencia succisa*	Red algae
CRABS		
	Grapsidae	Rock crab
A'ama	*Grapsus tenuicrustatus*	Rock/black crab
Pai'ea	*Plagusia depressa*	
FISHES		
Aholehole	*Kuhlia sandvicensis*	Hawaiian flagtail
'Ama'ama	*Mugil cephalus*	Striped mullet
Enenue, Nenue	*Kyphosus spp.*	Rudderfish
Kole	Ctenochaetus strigosus	Yellow-eye
Manini	*Acanthurus triostegus*	Convict tang
Moi	*Polydactylus sexfilis*	Threadfin
Palani	*Acanthurus dussumieri*	Surgeonfish
Pualu	*Acanthurus xanthopterus* *Acanthurus blochii*	Surgeonfish
Papio/Ulua	*Carangidae*	Small/Large Jack or Trevally
Uhu	*Scaridae*	Parrotfish
Uouoa	*Neomyxus leuciscus*	Sharpnose mullet (false 'ama'ama)
Weke	*Mullidae*	Goatfishes
LIMPET		
'Opihi	*Cellana spp.*	Limpet

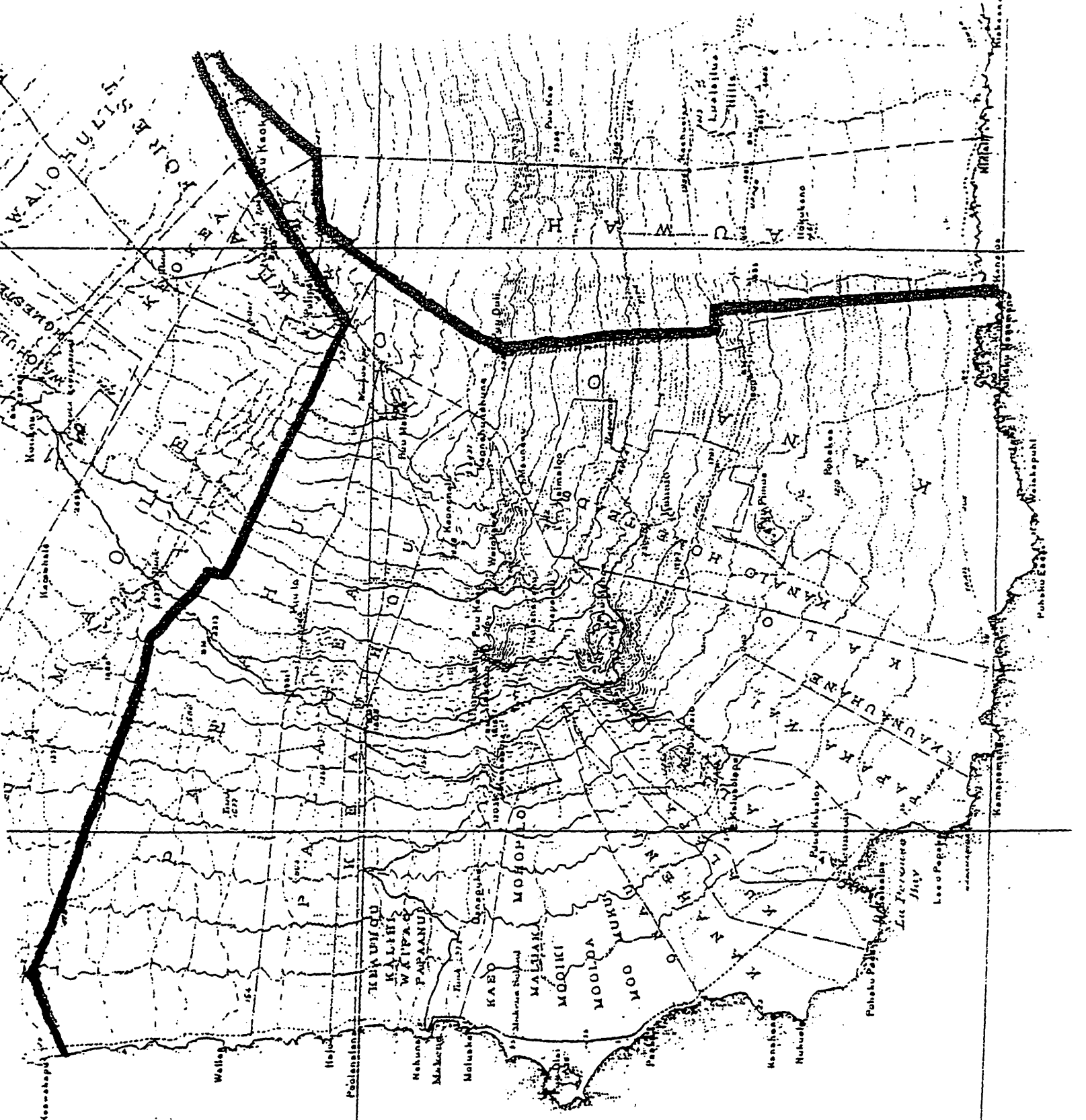
OCTOPUS

He'e puloa	*Octopus ornatus*	Night octopus
He'e mauli	*Octopus cyanea*	Day octopus

URCHINS

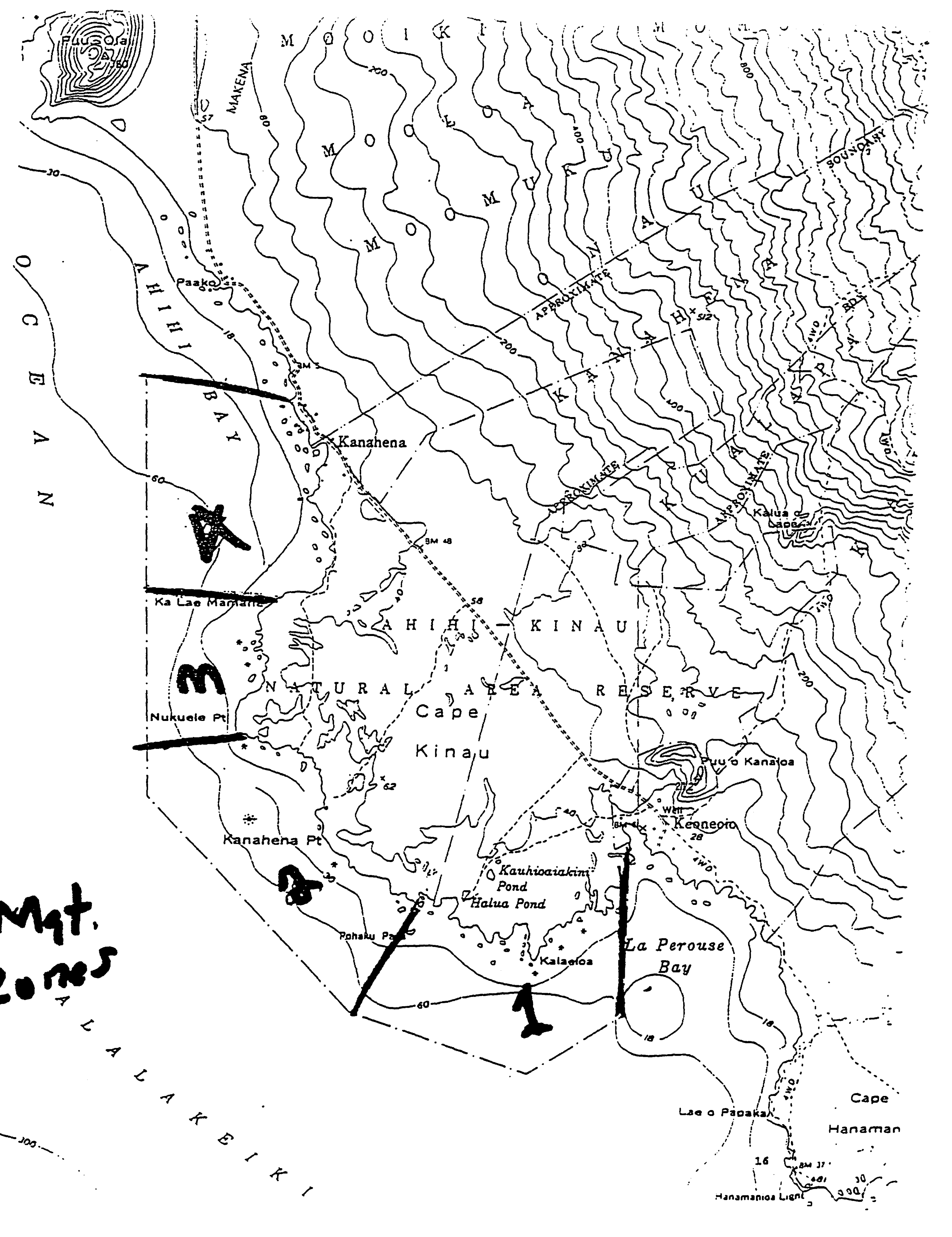
Ha'uke'uke	*Colobocentrotus atratus*	Shingle urchin
Ina	*Echinometra spp.* *Echinometra mathaei;* *Echinometra oblonga*	Rock boring urchin
Wana	*Diadematidae* *Diadema paucispinum;* *Echinothrix calamaris;* *Echinothrix diadema*	Sea Urchin





Honua'ula District

ppendix B. Maps used by Working Group



Puu o Olai
MAKENA
Paako
Kanahena
AHIHI BAY
OCEAN
Ka Lae Mamane
AHIHI - KINAU
NATURAL AREA RESERVE
Cape Kinau
Nukuele Pt
Kanahena Pt
Kauhioaiakini Pond
Halua Pond
Kalaeloa
La Perouse Bay
Puu o Kanaloa
Well
Keoneoio
APPROXIMATE
BOUNDARY
Lae o Papaka
Cape Hanaman
Hanamanioa Light
ALALAKEIKI
Mgt. Zones
1
2
3
4

Ahihi KInau Working Group
Meeting Minutes
(As Corrected July 2)

June 25, 1998 Kanahena Cove

Meeting convened: 1:30 p.m. at Lei Kahakauwila's Home

Members Present: Don Reeser, Lei Kahakauwila, Dana Hall, Ron Bass, Les Kuloloio, Edward Chang, Eric Brown, Kalei Lu'uwai, Bill Evanson, Boogie Lu'uwai, Stanley Okamoto,

Members Absent: Skippy Hau but represented by Alton Miyasaka and Francis Oishi (Department of Aquatic Resources)

Introductions: Participants introduced themselves and provided some biographical information and other thoughts about the working group process.

Remarks by Chairperson: Reeser thanked the participants for their time. The group's purpose is to provide information and opinions to NARS Commission. Specific recommendations for or against subsistence fishing will not be made by this group. No votes will be taken. Members were selected because of their knowledge of the area or expertise in Hawaiiana, marine environment, etc. Wanted to keep group relatively small. All views will be heard and recorded. If no consensus, then all view will be provided to the NARS Commission.

Meeting protocol: Chairperson will try to be neutral and attempt to concentrate the groups focus on the issues. Does not want to waste the valuable time of members. Informal discussion will be the rule.

Minutes of meetings: Chairperson will take notes and produce minutes of the meeting. Will attempt to record the concepts and ideas voiced. Draft minutes will be mailed to each member prior to the next meeting. Mistakes or misrepresentations will be corrected at the first of each meeting.

Report of Findings: A report will be prepared for the NARS Commission. Report will be written as group deliberates. Beginning with the second meeting a partial draft report will be produced for each meeting, corrected and added to for subsequent meetings. The report will be critiqued and revised until all members agree the report is prepared to go to the NARS Commission. If the Commission asks for additional information, the group will reconvene to amend the report.

Discussion of proposed task of Working Group and Final Product: All members agreed that topics #1-4 below were ok. No changes were suggested. Group will not undertake a management plan, but focus on the applications for a special use permit for subsistence fishing. Peripheral issues such as commercial use, vegetation mgt., visitor impacts, etc. will surface in the discussion but will not be the purpose or focus of the report.

1. *Specific description of application for subsistence fishing, i.e. who would be allowed to fish, what species, quantities, frequency, areas of the reserve, methods, monitoring of catch, monitoring of impacts, public information, etc. In other words, if subsistence fishing were permitted specifically how would it be conducted.*

2. *Data and arguments in favor of permitting subsistence fishing as described in #1.*

3. *Data and arguments against permitting subsistence fishing as described in #1.*

4. *Possible alternatives to #1.*

Documents provided group members:

Management Policies of the Natural Area Reserve System, May 23, 1997

Summary of Documented Events Involving Ahihi-KInau Natural area Reserve, 1998

Affidavit of Rudolph Pia 'Boogie' Lu'uwai, 9/97

Affidavit of Robert J. Lu'uwai, 9/97

Hawaii State Laws, Chapter 195, Natural Area Reserve System.

A Marine Resource Survey Conducted at Ahihi-La Perouse Bays and off Cape KInau, Maui between February 17-19, 1998 by Division of Aquatic Resources, DLNR

Pages 3-23 and 3-24 excepts (Protection of Use Rights) from Ola I Ke O Kanaloa, Kaho'olawe Ocean management Plan, 7/97.

Pages 64-68 excerpts(Continuing the Traditions and Customs of the Samoan Culture) from National Park of Samoa's General Management Plan/EIS, 10/97.

Discussion of topic #1-- Specific description of application for subsistence fishing.

Dictionary Definition of 'Subsistence' was read: Means of subsisting as (a) the minimum (as of food and shelter) necessary to support life (b) a source or means of obtaining the necessities of life.

Chairperson's notes of discussion follow:

Boogie and Robert Lu'uwai affidavits provide information on their ancestry and family ties to the area. Traditional fishing by family was broken because of establishment of NARS. Ahu method of fishing was practiced by family in Kanahena. Family however, is not proposing to use this method for subsistence fishing. Kalei Lu'uwai did not file an affidavit but would be eligible as son of applicant Robert Lu'uwai. Lu'uwai's application very creditable; they are a part of the place and the history. Have strong cultural ties to the area. No one questions their eligibility. Traditional subsistence is like modern day ice-box, not a supermarket or refrigerator. Applicant's traditional way of life, genealogy and historical association with the area is the key.

Kalapana fishing rights at Hawaii Volcanoes National Park is reserved to those with a 1/2 blood quantum and from that village. They can guide others to fish.

Only the Lu'uwai family would fish. What about guests? They could come along to observe only but would not fish. Would need a list of those eligible to fish. Maybe not a good idea to take guests, then it becomes something more than subsistence. Lu'uwais would only want to fish perhaps 4 or 5 times a year. Enforcement and NARS management would know when they would be coming in. Perhaps about 8-10 people at a time. Train grandchildren in the techniques the senior Lu'uwais know. No fishing from boats, only from shore. Would need a list so enforcement could know and be able to recognize those eligible. Concern that one member of family might holo holo and take too much fish, particularly opihi.

Well, the principal applicants must be accountable and should be along to train and make certain things are done right. If family doesn't live in Makena or nearby, seems like they couldn't fish. Perhaps an ID card with their photos could be issued and worn while fishing. Regular state laws would apply, such as closed seasons, opihi size, etc. Malama aina all important.

Ka'hoolawe they practice subsistence fishing but everyone has to eat the fish they take on the island. Sometimes there is waste because they take too much and can't eat it all.

On Molokai's Mo'omomi reserve, subsistence fishing has wiped out opihi and other resources. Monitoring shows that. A Management plan is really needed for Kanahena. Must be La'a and Pa'a to place; must respect it. Kanahena is different than Mo'omomi. Only a few will be eligible. Only those that have a true connection to the area. Ever since people had ice boxes it has been a problem. It used to be that people only used what they could eat right away or dry. Now you can take and preserve all you can catch. Monitoring is needed. Monitoring is very difficult. It is easy to say, but it is very hard to predict what can be taken without hurting the resource.

It may be ok for a few but what are we going to do when 18 other families apply? Only those meeting the criteria established would be eligible and the others would be rejected. There will be law suits as a result by those who think they should have been qualified.

Right here in front of us in Kanahena Bay we see tourists snorkeling and they feed the fish. Feeding fish is technically not illegal but impossible to enforce. As a result fish become aggressive and their habits change. The problems of snorkelers and fish feeders --they do more damage than subsistence fisherman would. It would be nice to rotate the snorkeling to give areas a rest. The Lu'uwais would not fish in the Ahihi Cove anyway. Their fishing would be primarily on the south side. So the question of tourists in the cove is academic; a problem but not pertinent to subsistence fishing since they don't propose to fish there. The fish caught there might not be so good to eat because of the stuff they are fed.

Turtles are coming back and people are getting interesting in catching them again. It would be great if there were enough again to harvest.

Hawaii Volcanoes National Park has a system for Hawaiian gathering. Things that are plentiful can be harvested but naile for instance is scarce so no one can take. Perhaps it would be the same for fishing here; can't take those that are becoming short in supply. Need baseline data in order to know.

How about a grant for a research project to monitor what is taking place with the subsistence fishing? Perhaps the subsistence activity could be construed as a research project and studies would tell what could or could not be taken and in what quantities. This is very difficult, not easy, monitoring. There is danger in DLNR spending all their time on this area and neglect needs of other areas. The subsistence fishing must be easily managed without depleting the resource. We've got to face reality. Monitoring is very labor intensive. Health of the resource is so nebulous. We should study the tourists first, if we are going to do research. There are too many people out there. Everything plays a role. The houses, the people, fresh water coming in, etc. We've got to limit the number of people here.

Lu'uwais would report their catch by numbers and species. Got to move this application along because the senior Lu'uwais need to pass their knowledge about the area and fishing techniques to the younger generations, otherwise it will be lost.

Next meeting: July 2, 1:00 p.m. to 3:30 p.m. at Boogie Lu'uwai's home near Makena Landing.

Meeting adjourned: 3:30 p.m.

Ahihi-KInau Working Group
Meeting Minutes
(as corrected July 9)

July 2, 1998 Makena Landing

Meeting convened: 1:15 p.m. at Boogie Lu'uwai's Home

Members Present: Don Reeser, Dana Hall, Ron Bass, Les Kuloloio, Edward Chang, Eric Brown, Kalei Lu'uwai, Bill Evanson, Boogie Lu'uwai, Stanley Okamoto, Skippy Hau

Members Absent: Lei Kahakauwila

Others Present: 'Aulani Wilhelm, Robert Lu'uwai

Review of June 25 meeting minutes: Change Ahihi Cove to Kanahena Cove as location of meeting. Miscellaneous typos corrected. Under Chairperson's notes of discussion, page 2, 1st paragraph, add language to reflect that there was discussion that if traditional family fishing was broken by establishment of AKNAR, this is an important eligibility factor to be considered. In 8th paragraph, page 4, insert Kanahena Bay [at July 9th decided 'Bay' should be 'Cove'] to make clear where snorkeling and feeding of the fish takes place that could be viewed from meeting place. Insert 'not' between 'technically' 'illegal' to correct that feeding fish is not illegal. Also delete sentence that states there are no signs about not feeding fish. There are signs informing the public not to feed fish.

Minutes unanimously approved as corrected.

Chairperson passed out copies of first draft/outline of report to commission to be used to guide further discussion.

Chairperson's notes follow:

Front of report included D. Varez Clipart of a Hawaiian fish and a Hawaiian He'e lure. Boogie Lu'uwai produced an actual He'e lure to show working group.

Chairperson highlighted draft report format and began discussion of SPECIFIC DESCRIPTIONS OF APPLICATION FOR SUBSISTENCE FISHING.

1. Eligibility requirements: PASH decision relates to access for traditional purposes for all Hawaiians but the NARS proposal is much more limited in scope of eligibility. Eligibility is relatively narrow; it should only pertain to an Hawaiian family that has traditional ties to the area. If a family member lives on the Mainland for example, can he/she return and still be eligible to fish? Land ownership in the ahupua'a is an important factor. Kalei Lu'uwai can trace back 6 generations, even though he lives upcountry now. Being an Ahupua'a resident is important. Ahihi-KInau is in Honua'ula district. It is a Moku rather than an Ahupua'a. Families that can trace their ancestry back as continuous residents of Kaunua'ula are eligible. Applicant has to be a resident of Honua'ula. This is generally considered between Paluaea and the boundary of Kanaio. Makena is within this boundary. Working group referred to map of Maui to discuss area under discussion.

   Family must show continuous dependence on the AKNAR back to 1778 or pre-Capt. Cook. Kalapana fishing rights require one-half blood of those races that were living in Hawaii before 1778. There would be no percentage blood requirement for AKNAR subsistence fishing. Tracing geneology back that far is difficult. Going back to 1778 just means you have Hawaiian blood, and is one factor. Having traditional ties is another factor. Must someone be able prove ancestors were in the AKNAR area in 1778? Perhaps 1893, the overthrow of Queen Liliu'okalani is a better date?. No, 1800 would be better. The church in Makena was built in 1832 and records go back that far. The Great Mahele, 1848, when land was divided up would be an appropriate date for this purpose.

   If a family member has left Maui for years, and comes back to visit, can they practice subsistence fishing? If one goes to the Mainland, they shouldn't be eligible. Close to home; close to the fishing area is important. If a family member goes to the Mainland for a period of time and returns to reside permanently on Maui, again he/she would be okay to participate. If they come only for a visit then they are not eligible. Let's give some more thought about this particular concept and for now go on to the next item concerning species of fish and quantities to be taken under the special use permit. Perhaps we should discuss # 3

fishing frequency before we discuss #2 because frequency is going to dictate to a large extent quantities of fish to be taken.

3.Fishing Frequency: Last meeting we agreed that fishing would only take place 4 or 5 days per year. Let's go with 4 instead of 5. Okay, 4 times is sufficient. A holder of a special use permit will only go four times a year or one time every three months. This really isn't subsistence fishing. The family is not going to starve if they don't fish here. This is cultural subsistence. Allowing the family to perpetuate their traditions. It is cultural; really for ceremonial purposes. Allowing them to continue traditions that are vital to the family's cultural wellbeing. For this kind of subsistence it is not necessary to go so often, so 4 times a year is adequate.

2. Species and quantities to be harvested: As far as what species can be taken, perhaps we can use Skippy Eau's monitoring report list? The easiest way is for the applicants to list what species they would like to take. Boogie had some of the common species in an ice chest and he showed some of the fish that should be able to be harvested under permit. Discussion resulted in listing the following as those to be fished: Moi, Weke a'a, Manini, Aholehole, Uouoa/Ama'ama, Enenue, Uhu, Palani, Kole, Papio, He'e, Limu (LIpe'epe'e) and 'opihi. No lobster, no Weke ula or Weke pueo. You could pick and choose what would be kept. We need to have someone as eyes and ears and be aware of the resource so not to deplete it.

Quantities should be number of individual animals, not pounds or volume. 50 for one family is enough. 50 total pieces. But for 'opihi, it will be different. Usually 'opihi are taken for a special event, like a wedding. One quart per outing should be sufficient. That is without shell. If shelled then it could be a gallon or more. How about 20 LB in the shell or 1 qt. Without shell? Enforcement needs to have something more exact. State minimum size law of 1 1/4" applies. Some underwater 'opihi are huge. Bigger ones are the ones that reproduce. Perhaps we need some studies to determine what method would be best for regulating 'opihi. The NARS commission will want to know exactly how much when they are considering the permit application. Let's make it 100 'opihi total, regardless of size, as long as of legal size. Last meeting it was reported the Mo'omomi area had been depleted of 'opihi by subsistence fishing. Many are eligible to fish there; only a few would be eligible at ANNAR.
The Lu'uwai family's intention isn't to damage the resource; want to see the area remain healthy.

4. Fishing Methods: Last meeting we discussed that there would be no fishing from boats? How about fishing poles and lures, etc.? No, only throw or casting nets. The He'e lure is okay or species can be taken by hand. No spears? Spears are traditional. No drift or stationery nets should be used. Kupe'e can be taken at night by hand. Spears, throw nets or by hand are the only methods to be used.

5. Area of reserve to be fished: The south side has been mentioned as where fishing would take place, and not Kanahena Cove. Map in Lu'uwai's application shows the areas to be fished. Let's divide the area into zones. Four zones would be about right. DLNR can better regulate the take. This will give some areas a rest by a rotational system. Attached map (Exhibit A)shows the zones suggested, with zone #1 beginning at Kioneo'io (La Perouse Bay). Zone #4 we should stay out of since it includes Kanahena Cove where all the tourists are. Zone #4 is important to some; it should not be excluded. Zone #4 has high visibility. It can be managed and closed at times if necessary.

6. Restrictions: Hawai'i fishing laws would apply.

7. Enforcement Provisions: DLNR would have a list of permit holders and a list of those who may accompany the permit holder. Potentially there are five applicants here today: Boogie, Robert, Ed, Les and Kalei. Actually four applicants because Kalei would participate under Robert's permit. Permit holder will be a kupuna for the mo'opuna. Each permit holder could take a certain number in to fish on a given day. Probably 8-10 persons should be the limit for one group. Only 4-5 would fish and the grandchildren would watch. Should only be 4-5 total. Mo'opuna will want to fish too, not just watch. Mainly males will be participating. If there are two or three eligible applicants from each family, then they could each go in 4 times a year with a group, take 50 pieces and 100 'opihi each time. One applicant has 3 sons and 7 grandchildren A permit should be limited to one per family, otherwise it could get out of hand. Only one permit for each eligible family. If too much, it will be difficult to get NARS Commission to give the okay.

Next meeting let's discuss and refine the above points further and also Skippy can help us with the resource monitoring possibilities.

Next meeting, time and place: July 9, 1:00-3:30 p.m. Mā'alaea, Club room, Buzz's Wharf

Meeting Adjourned: 3:20 p.m.

Ahihi-Kinau Working Group
Meeting Minutes
(As corrected at July 17, 1998 meeting)

July 9, 1998 Mā'alaea

Meeting convened: 1:15 p.m. Club room, Buzz's Wharf

Members Present: Don Reeser, Dana Hall, Ron Bass, Les Kuloloio, Eric Brown, Kalei Lu'uwai, Bill Evanson, Boogie Lu'uwai, Stanley Okamoto, Skippy Hau

Members Absent: Lei Kahakauwila, Ed Chang

Others Present: Robert Lu'uwai

Review of July 2 meeting minutes: Correct date from June 25 to July 2, 1998. Reference to Kanahena as a bay should be changed to cove.. Miscellaneous typos and punctuation corrected. Kaunua'ula spelling corrected to Honua'ula.
Use Hawaiian Keone'oio with La Perouse in parentheses.

Minutes unanimously approved as corrected.

Chairperson passed out copies of first draft/outline #2 of report to Commission for review of progress and to guide further discussion.

Chairperson's notes follow:

Front of report included D. Varez Clip Art of a Hawaiian Uhu and a spearfisherman. First, it was suggested that in the Introduction reference be made to the date Lu'uwais made application for a special use permit: Sept. 12, 1997.

Eligibility requirements: Should read evidence of previous 'continuous' dependence on AKNAR. 1893 is better date than 1848. 1893 is consistent with the PASH decision. Because rights were disrupted, they were not extinguished. Lu'uwais did not acquire land with the Great Mahele in 1848.

Rather than only one permittee per family, it should read only one permit per eligible family. One permit with several permittees. Permittees would be kupuna. Up to 4 names on a permit. Primary or lead family member and up to 3 secondary permittees. If the primary permittee doesn't go on a given day, a secondary permittee must be along as the kupuna. In no case will fishing happen without a permittee along. Observers can go along, sit on the shore and watch. Anyone can do this now as long as they do not fish. Even though there may be four permittees, the family has only four days total, annually, to fish and teach children or grandchildren.

Therefore family members may accompany any permittee so it should read 'permittee(s).'

Blood siblings and their progeny okay. Only permanent resident of Maui, okay. An eligible family member who moved to mainland or elsewhere can come back permanently and fish, but not merely be on vacation. Names of permittees and eligible family members will be listed on the permit. To add or substitute names, the family should go back to Commission. As grandkids of the family get older, their names could be added. Permittee(s) would change over time. Commission must have a procedure for reapplication and amending permit. The permit would be reissued annually and undated if necessary.

2. Species and quantities to be harvested: Ama'ama is the correct spelling. He'e (squid) need to be separate and its take restricted. Must avoid taking too many and impacting resource. No more than 4 he'e can be taken per day. 'Opihi taken must be in shell otherwise it is too difficult for enforcement. Black crabs should be listed under Shellfish. Two kinds: Paiea and a'ama. How many crabs can be taken? Crabs, the more you pick the more they come. They are easy to pick up at night. Need no restriction on crabs. There are restrictions on the other things. How about 200 crabs? Difficult for enforcement to count; 100 crabs is better. Okay, we'll list 100 black crabs per family outing.

How much LIpe'epe'e can be taken? 1 gallon is enough

3. Fishing Frequency: Change to permittee(s)

4. Fishing Methods: Canoes are traditional and should be allowed to access fishing sites. No motors allowed. Anyone can access the reserve now without motors. There are no markers to indicated the reserve boundaries. Non-motorized vessels should be allowed for access only. Kayaks, canoes, zodiacs are okay. Hand gathering or hand line should be listed as another approved method for subsistence fishing.

5. **Area of reserve to be fished:** Permittee informs DLNR which zone(s) will be fished. Should be able to go to another zone if the fish sought are not available. Zone # 4 is the best place. Zone # 1 is good in that it is only about a 15-minute walk from the road. Notification by permittee of the zone to be fish should be a two way street with DLNR having a say on which zone would be suitable on a given day. Zones can be an effective regulatory measure. Permittee should be eyes and ears in helping DLNR know what is going on in reserve.

6. **Restrictions:** Allow non-motorized boats, etc. for access only. No anchoring and no mooring, except in an emergency. Maximum number of fisherpersons should be four, not five, including permittee(s). Anybody can watch from shore. Too many persons in the water will scare the fish so it will not be a problem. Permittee(s) must always be present during fishing activities.

7. **Enforcement Provisions:** How much notice should be given to DLNR regarding when permittee would like to fish? One week's notice seems adequate.

How soon should reports to DLNR regarding species and quantities harvested be submitted after the day of fishing? Within one week is reasonable. There could be a form prepared for this purpose.

Non-compliance with conditions of the permit can result in loss of permit, but with due process. An officer could be a lousy bugger, so there must be an opportunity to explain before permit is taken away.

8. **Public Information:** There will be media coverage, like the Maui News about the subsistence fishing program. Perhaps there should be signs telling about it? People won't know whether it is poaching or legal fishing going on. Enforcement would try to be on site at least at first to see how the activity works. Signs about the activities may be misinterpreted and may encourage fishing without a permit. Signing is probably not a good idea.

9. **Resource Monitoring:** The Lu'uwais don't want to do anything to impact the health of the resource. The Commission wants to be assured of this too. How can the impacts of the subsistence fishing be monitored? Skippy Hau and Eric Brown led the discussion of this topic. Hau passed out Hawaii Fishing Regulations and referred to *A MARINE RESOURCE SURVEY CONDUCTED AT AHIHI-LA PEROUSE BAYS AND OFF CAPE KINAU, MAUI BETWEEN FEBRUARY 17-19,1998* previously passed out to members.

A coral research conference reported on study on monitoring of target fish somewhere? It concluded that some species were overfished and there were impacts to the non-target fish also. Must monitor consumption and non-consumptive impacts. Division of Aquatic Resources personnel work have other responsibilities besides monitoring AKNAR. Need helpers, budget, new personnel. To monitor right there is really no limit to what you could spend. Could be part of a research project. Would need some areas off limits to everything including surfing, kayaking, etc. for control and comparison with fished areas. Activities by tourists and outside influences like development, sediment runoff, turbidity, etc. have impacts and affect the study. Difficult to make an area off limits to everything. Natural conditions need to be monitored.

Dr. Issabella Abbott discovered some new species of Alga in AKNAR, but we don't know where they were located or if they were there before -- because no one had looked for them previously.

It would be invaluable for permittee(s) to measure as well as count the fish harvested. Specimens could be taken such as scales for monitoring information. Species bloom could be detected such as was found at Hanauma Bay.

The reserve could be divided into at least 6 zones and have 3 zones for fishing and 3 for a control for the purposes of effective monitoring. Coral could be monitored once per year and 4 times per year for fish. HCC could provide students to help with monitoring studies.

Monitoring is troublesome and is difficult to accomplish to really know what is happening in the AKNAR.

It was suggested that all activities in zone # 4 be stopped, an not allow fishing there. There is too much degradation already. Need to face up to it. At Ho'okipa the fish are gone because of the windsurfers. Tourists are degrading the resource, so let's ban everything in zone # 4. The working group could make this recommendation to the Commission.

This idea would be better discussed in the Possible Alternatives' section. Applicant is willing to help Aquatic Resources monitor by recording catch and providing measurements but that is about all that would come under this Specific Description of Application Section.

Next meeting, time and place: July 17, 1:00-3:30 p.m. Mā'alaea, Club room, Buzz's Wharf

Meeting Adjourned: 3:15 p.m.

Ahihi-Kinau Working Group
Meeting Minutes
(As corrected at July 28 meeting)

July 17, 1998

Meeting convened: 1:15 p.m. Ma'alaea Boat and Fishing Club Room, Buzz's Wharf.

Members Present: Don Reeser, Dana Naone Hall, Ron Bass, Les Kuloloio, Eric Brown, Kalei Lu'uwai, Bill Evanson, Stanley Okamoto, Skippy Hau, Ed Chang

Members Absent: Lei Kahakauwila,

Members Excused: Boogie Lu'uwai

Others Present: None

Review of July 9 meeting minutes: Miscellaneous typos punctuation and sentence structure corrected.

Minutes unanimously approved as corrected.

Skippy Hau passed out copies of *STATUS REPORT TO THE NINETEENTH LEGISLATURE REGULAR SESSION OF 1997 ON THE SUBSISTENCE FISHING PILOT DEMONSTRATION PROJECT, MOLOKAI.*

Chairperson passed out copies of first draft/outline #3 of report to Commission for review of progress and to guide further discussion.

Chairperson's notes follow:

Front of report included D. Varez Clip Art of a four Hawaiians in canoe with a school of fish.

Introduction: Use 1998 with dates of March 24 and June 25 for clarity.

Eligibility requirements: Instead of 'from the time of the overthrow' change to 'prior to overthrow' of the Hawaiian Monarchy in 1893. There needs to be something stated in this section relative to family members concerning their genealogical ties to the area. Dana and Les will confer to develop some appropriate language to present at the next meeting.

2. Species and quantities to be harvested: Wana (urchin) should be added to the list. How about 1 quart? Should be consistent with other quantity units. 50 wana per day is okay.

3. Fishing Frequency: Change 'permittee(s)' to permit. Maximum of 4-days annually per permit.

4. Fishing Methods: Okay.

5. Area of reserve to be fished: Is not certain that DLNR's specification of which zone(s) can be fished can be based on monitoring data. There may not be sufficient data. There should be some scientific or management reason for deciding to close a zone, or restrict the taking of certain species. Seasonality is important consideration. It should state that DLNR's request would be based on seasonal and resources management considerations without specifying before hand. Research monitoring project can be a concern to management. There can be impacts.

6.Restrictions: Sentence about boats prohibited needs clarification. We are talking about small non-motorized boats as being permitted for access. Would a boat with motor that is not running be okay? Large sail boats would be legal. Use the term non-motorized vessel. Human powered vessels, propelled by oars? For subsistence permit, let's specify no motors aboard. Take out 'bona fide'; it is an unnecessary term. Somewhere we will need a definition section. Okay, it can be added at the end and include scientific names of fish too. Can't think of an emergency situation when anchoring or mooring would be necessary. It is possible for a boat to get in trouble during bad weather and need to anchor to keep from going into the rocks.

What is a 'modern' fishing pole? Just say fishing poles are prohibited. He'e lures are used with hand line. Lures should be traditional.

Throw nets must be legal. Fish that are caught that are out of season or not legal size must be returned also. Delete 'unharmed' since there are times when some fish are hurt in net -- they nevertheless should be returned to ocean.

7. **Enforcement Provisions:** Reports should also indicate location or zone where fish were caught. The form for monitoring can include location to be filled in. Revocation of permit procedures need to be written by an attorney for necessary legal language. Commission will review and include the proper language in the permit. Identification of permittee(s) has not been covered. Photos of permittees can be taken and laminated for an ID card. Each permittee should have one. Such cards are expensive. Perhaps no special photo ID needed. Hawai'i Driver's License with photo is enough.

8. **Public Information:** Agreement expressed that no signs about activity are needed. Public hearing by Commission may need to be held. Perhaps not, since Commission can issue special use permits. May need Board of Land and Natural Resources approval.

9. **Resource Monitoring:** Perhaps permittee(s) could participate in a certification program to learn monitoring techniques. Besides species and measurement information, anecdotal information about the habitat, stream flow, perceptions of changes in environments, etc would be of value to researchers. Scientific research with trained personnel would be another level. Both could be important to the overall program.

Monitoring of traditional or subsistence resources is different. Instinct plays a role. Cultural practices in fishing techniques, the Aina and ocean are a consideration. Methodology is unique and documentation of this is important. Hawaiians know techniques. There are 50 ways to catch menpachi.

We need a third item that isn't a negative expression like the other two indicate. There are positive aspects that could be monitored and not all activity should be construed as adverse impacts for which monitoring is being done. Cultural partnering and cultural management are aspects that provide unique monitoring opportunities. We can't get hung up about the cultural aspects. Mesh size of throw net is 2 inches. Permittee(s) can provide routine data but for permittee(s) to provide cultural observations could be a problem. Need to acknowledge the beneficial cultural activities that could be monitored.

Next meeting we will continue to refine *Specific description of application for subsistence fishing.*

Chairperson suggested the working group take up the next section with the time remaining and that the Commission needs to understand all the arguments in favor and against the proposal, and that all members should focus on valid arguments regardless of their individual persuasion on the issue.

Data and arguments in favor of permitting subsistence fishing as described in #1.

Chairperson's notes follow:

There is a strong cultural argument. This program is a continuation of cultural subsistence practices. It teaches kids their traditions and allows them to carry on their traditions. It is an emotional connection with how grandfather and those before him fished the area. Makena is a place that is different from other areas. Species, tides, seasons, etc. are unique. You can't have emotional ties to your traditions if the area is overfished which is true of most of the ocean around Maui. You can't teach your kids cultural practices and traditional fishing methods in an area that is overfished using modern technology. Some fish just don't return such as moi. Cultural practices meant that you didn't fish on certain days, times during spawning, etc. Mo'omomi, Ka'hoolawe, and other areas are all different and Hawaiian fishing practices are different here. ARNAR is a tiny fraction of the shoreline. This project can teach everyone about shoreline traditional practices. This is geographically much different than other areas. Traditional practices, including the Hawaiian family approach, is an approach to resources management that needs to be studied. It can be a partnership experiment, a model for this island and other islands. The Hawaiian family becomes trustees of the area and helps protect and restore a small part of a functioning Hawaiian culture. Allowing the family who has ties to the area is not discriminatory; it can be a partnership for learning. The cultural aspects of the program really take precedence over the consumptive provisions. This puts the Hawaiian culture back in to this place, makes them stewards of the area. Only 4 times a year for each eligible family is not raping the ocean or its resources, it is adding a natural, human component.

Another important favorable aspect is the research opportunities it affords. It is nice to be able to record the activities, techniques and data on a fish population that is influenced by traditional fishing. In most other areas even with rules and regulations, the resource goes down the tube because nobody will stop fishing until the resource is

seriously depleted. This program can test the idea of discipline in management. This is a thumb-sized area, only a small spot. Look at the Ma'alaea Bay. It is overfished. There is no discipline. The data and results of studies of subsistence fishing at ARNAR can be an argument for more areas with fishing restrictions for the overall health of the coastal environment. This is a chance for a new mentality. It can be a base line for management of other areas.

Another argument in favor is that it involves rights spelled out in law, specifically the PASH decision. The granting of a special use permit may avoid a complicated legal battle.

It follows a precedent for federal areas that allow native gathering rights, such as national parks.

Families should not be penalized for depletion of resources are included in their traditional fishing grounds outside the reserve.

Chairperson passed out copies of 2/24/98 Memo to Y. B. Swimmer from Dr. R. A. Kinzie III concerning subsistence fishing in ARNAR. It may be discussed at next meeting

Next meeting, time and place: July 28, 1:00-3:30 p.m. Mā'alaea Boat and Fishing Club room, Buzz's Wharf

Meeting Adjourned: 3:15 p.m.

Ahihi-Kinau Working Group
Meeting Minutes
(As corrected at August 6, 1998 meeting)

July 28, 1998

Meeting convened: 1:15 p.m. Ma'alaea Boat and Fishing Club Room, Buzz's Wharf.

Members Present: Don Reeser, Dana Naone Hall, Ron Bass, Les Kuloloio, Eric Brown, Kalei Lu'uwai, Bill Evanson, Stanley Okamoto, Skippy Hau, Ed Chang, Boogie Lu'uwai.

Members Absent: Lei Kahakauwila,

Others Present: None

Review of July 17 meeting minutes: Miscellaneous typos punctuation and sentence structure corrected. Meeting place name corrected to Ma'alaea Boat & Fishing Club. Wana should be specified as urchin in parentheses. Legal mesh of a throw net is 2" rather than 2.5". There are 50 ways to 'catch' menpachi rather than 'prepare.'

Minutes unanimously approved as corrected.

Chairperson passed out copies of first draft/outline #4 of report to Commission for review of progress and to guide further discussion.

Chairperson's notes follow:

Front of report included D. Varez Clip Art of a Hawaiian picking 'Opihi with a Muhe'e nearby.

Introduction: In last line, insert 'traditional' in front of 'subsistence.' As we've discussed before this program differs from purely subsistence fishing. We must not allow any confusion on this.

I. Specific Description of application:

1. **Eligibility requirements:** This needs to be revised to point up genealogical ties of the applicant(s). Applicant must show evidence of continuously exercised traditional fishing practices which were interrupted only when ARNAR was established in 1973. Also applicant must be able to demonstrate a genealogical connection to the Honua'ula District. Should use prior to Nov. 25, 1892 rather than 1893. The 1892 date is the correct one for defining when usage must have been established.

Under the meaning of Native Hawaiian, use the singular race rather than races. Okay, but for some reason, some laws mention races. But it seems right that there was only one race at the time of European contact.

2. **Species and quantities to be harvested:** Refer to individuals when indicating how many of one kind of shellfish can be taken, so there is no confusion as to whether we are meaning pounds, gallons, or individuals.

3. **Fishing Frequency:** Okay.

4. **Fishing Methods:** Okay.

5. **Area of reserve to be fished:** Are we talking about 4 or 6 zones. 4 is okay for this purpose.

6. **Restrictions:** Okay.

7. **Enforcement Provisions:** As we discussed last meeting there should be an item about identification of permittee(s). Let's insert that a Hawaii driver's license and a copy of the special use permit should be on site to identify permittee(s). Concerning non-compliance, we need lawyers to suggest the correct language. If a DOCARE officer gives a citation, there is an established process. Yet, if a citation is for violating the special use permit, it goes to the Commission? Attorney Alan Murakami can help us clear this up and give us the proper language. Chairperson should send it to Alan and ask for suggestions. This is different than Kaho'olawe and Mo'omomi regulations. Makena/Honua'ula should not be considered part of Kaho'olawe. If so it could mean that there would be no fishing for moi.

The species the Lu'uwais' request may be different than another applicant's request. Would species and quantities be different for each eligible family? We know of 3 families

that will qualify. Probably the species and quantities, etc. would remain the same; otherwise it would take another working group if these were to change with each applicant.

6. **Public Information:** Okay..

7. **Resource Monitoring:** populations DLNR should monitor resource populations, not merely impacts of the program. This puts it in a less negative light. Resource monitoring should deal with many resources not just the species harvested. This is a proactive approach.

Data and arguments in favor of permitting subsistence fishing as described in I.

1. **Integration of Cultural Resources Management and Natural Resources Management:** Again, use traditional in referring to subsistence fishing. We are putting the traditional Hawaiian component back into the marine environment and allow permittee(s) to participate. At the end of the last sentence, we should state that the model partnership could be applicable to other areas outside the reserve. Probably best not to limit it to just around the reserve. It is true but this program could be used even on other islands.

2. **Research Opportunities:** Ethnographics have to do with the practices, customs, structures, etc. of a native population. We should specify ethnographic documentation will be done specific to the Honua'ula District. Also resources can be uniquely studied as well as questions of sustainability. Take out 'subsistence' in last sentence to avoid confusion about what we mean by subsistence as far as this program is concerned. The language in the July 17 minutes meeting on this subject conveyed some things that should be included. Chairman will attempt to incorporate some of that language for next draft.

3. **Legal considerations:** This section is another place it would be wise to request attorney's help to articulate this argument. This program is more restrictive than PASH, but the PASH decision certainly has some application.

4: **Other Arguments in Favor:** Perhaps some of the rights that pertain to native Americans might have some bearing. Ron Bass had some books on the subject. The type of subsistence fishing that is allowed at Molokini and Kaho'olawe are not as restrictive as what we are discussing for AKNAR.

The fishing techniques used by traditional Hawaiians are not well documented. We have depended on journals by Pukui, Malo and Titcomb, heretofore. This will be a good opportunity to provide additional information to help evaluate what has been documented before. Time is getting short. The kupunas who possess the knowledge are getting up in years and if they pass on before this program is implemented, much will be lost.

Over the years there have been more restrictions on the Hawaiian culture. Hukilau nets can no longer be used. It is a dying culture struggling to survive. Culture is on a losing streak. It is an uphill battle. The ahupua'a system is being lost. This is an opportunity to maintain the system in one small spot.

Recently adopted NARS policies include provisions for traditional Hawaiian gathering rights under a special use permit; so this activity is not against existing policy.

Data and arguments against permitting subsistence fishing as described in I:

Chairman suggested that everyone, regardless of their stand on the issue focus on all the possible arguments that might be presented against the concept of traditional subsistence fishing in AKNAR.

This proposal goes against the purposes of NARS. These areas represent genetic pools and areas where habitat and resources remain unmodified. They act as yardsticks for changes elsewhere. Traditional subsistence fishing would compromise that purpose. It could interfere with fish migrations. The AKNAR land and marine resources were former Territory of Hawaii lands that became state lands at statehood. They are ceded lands but we don't want to get into the question of ownership of ceded lands or Hawaiian sovereignty. That is beyond the scope of this working group.

This program could be considered as discriminating against other Hawaiians who would not be eligible. There would be those Hawaiians who could be concerned that they are not eligible but others are. There are possibilities of law suits as a result. The word discrimination is too hard a word for what we are talking about, but there will be those who disagree with the eligibility requirements.

There isn't enough information available on the area. The boundaries of the offshore habitat aren't even marked. Policies of the reserve are lacking because there is no

management plan. Adding this traditional subsistence program on top of all the other problems of the reserve doesn't seem like a good idea right now. It is hard enough to manage already, just with non-consumptive uses. DLNR already classifies AKNAR as a "hot spot" that needs management attention and protection. We need to get all the policy questions resolved prior to issuing a traditional subsistence permit.

The visibility of this program may be a negative. When people see this fishing going on, it may give the impression it is okay to fish. The public may become concerned about fishing in this protected area.

If too many Hawaiian families become permittees, then the quantities of resources taken will go up and there is a real question of where do we stop.

Sustainability is a question. How much can the resource withstand without being adversely impacted. Just four days a year and the limited number of fish, etc. allowed to be taken doesn't sound like anything significant, but where is the threshold? It is not well determined. We are only guessing at it. We talk of stewardship by the permittee(s). What do we mean by stewardship?

Enforcement responsibility presents a problem. This could additionally tax an already overtaxed DOCARE program. There are only 10 officers available now. Five more are being trained to make a total of 15 for all of Maui County. The Lu'uwai's can help monitor and report violations, but will it be enough?

Under Marine Life Conservation District policies for places like Honolua-Mokuleia Bay there are no provisions for traditional uses. This could open the door for fishing in those areas.

Next meeting, time and place: August 6, 1:00-3:30 p.m. Mā'alaea, Boat and Fishing Cub, Buzz's Wharf.

Meeting Adjourned: 3:05 p.m.

Kahili-Kinau Working Group
Meeting Minutes

(As corrected at 8/26/98 meeting)

August 6, 1998 Meeting convened: 1:15 p.m.

Ma'alaea Boat and Fishing Club Room, Buzz's Wharf.

Members Present: Don Reeser, Dana Naone Hall, Ron Bass, Les Kuloloio, Eric Brown, Kalei Lu'uwai, Bill Evanson, Stanley Okamoto, Skippy Hau, Ed Chang, Boogie Lu'uwai.

Members Absent: Lei Kahakauwila,

Others Present: Laurie Chang

Review of July 28 meeting minutes: Boogie Lu'uwai's name was omitted as being present. Clip art was a Muhe'e not a He'e. Under eligibility, indicate that usage of the area must have been established prior to Nov. 25, 1892 rather than when Hawaiian government was discontinued. Under I-4 add Malo along with Titcomb and Pukui as those who have documented traditional Hawaiian fishing techniques. Miscellaneous typos and other minor corrections.

Minutes unanimously approved as corrected.

Chairperson passed out copies of first draft/outline #5 of report to Commission for review of progress and to guide further discussion.

Chairperson's notes follow:

Front of report included D. Varez Clip Art of a Hawaiian runner with fish and a shark.

Introduction:

I. Specific Description of application:

2. Species and quantities to be harvested: Indicate maximum of 50 Wana to be consistent.

7. Enforcement Provisions: Use DLNR rather than HDLNR throughout document. Reporting requirements should be simpler and let the form developed by DLNR dictate what will be reported. No change made in text, however, after further discussion.

9. Resource Monitoring: Include 'ethnographic' in definition section.

Data and arguments in favor of permitting subsistence fishing as described in I.

1. Integration of Cultural Resources Management and Natural Resources Management: Okay

2. Research Opportunities: Use 'rare' in place of one 'extraordinary.' Name some of the scholars as examples.

3. Legal considerations: Okay.

4. Counterbalancing of restrictions on Hawaiian culture: Okay, except change a few words that are better choices such as 'loss' for 'chipping away.'

5. Program is compatible with NARS Management Policies Approved May 23, 1997: Okay.

III. Data and arguments against permitting subsistence fishing as described in I:

1. The proposal to allow traditional subsistence fishing at AKNAR is not in keeping with the letter and spirit of the law that established the Natural Area Reserve System. Okay, with some discussion and explanation of the evolution of marine resources and the influence of Hawaiians on these resources. All agreed the statements were valid.

2. The program is exclusionary except for very few eligible Hawaiians: The reference to Marine Life Conservation Districts needs to be broader. Revise to reflect there are other Marine protected areas that could be affected. For Hana'uma Bay on Oahu, City and County of Honolulu has authority to regulate access, but DLNR is responsible for the resources.

3. **Lack of management planning:** ARNAR is the only NAR that doesn't have a management plan. There are some management activities underway, particularly in the area of enforcement. Signs are replaced, etc. Let's use 'insufficient' instead of 'minimal' management. Do we really need a management plan? If the plan is to keep everyone out, what is the need? In over 20 years, DLNR has only monitored the marine life twice. They are not doing the job that is necessary. Kayaking, snorkeling, etc. only until recently have been considered problems. DLNR is addressing commercial activity in the Na Ala Hele program and this may lead into additional commercial regulations for NARS. The boundaries are unmarked but there are lots of difficulties concerning marking them we can't go into now. We need to make clear that there are different kind of boundaries: legal boundaries, plus inshore and offshore traditional geographical boundaries. We can't forget about the traditional boundaries. Let's revise text to say that boundaries are not adequately delineated rather than write unmarked. Lots of fisherpersons use electronic and GPS devices to tell them where there are in relation to the boundary. The best type of marking objects would be attached to the bottom, but there are problems with that as well with the standard bouy. You can't do all the things that need to be done without adequate funding. Need to emphasize this point.

4. **Sustainability threshold isn't well determined:** Monitoring requires a long-term commitment, everyone has to understand this. There are so many factors that only by monitoring over many years is there much chance that you can make sense out of the data. It may be difficult to collect meaningful data considering all the variables. There are not real good monitoring protocols. There are different types of monitoring. Monitoring legal violations is one type. Monitoring the resources (scientific monitoring) is another. Both systems should be used; monitoring both on the consumptive side as well as monitoring on the resources side are important to document change.

5. **Enforcement Problems:** Enforcement is understaffed because it is underfunded. If enforcement officers can be on site when there is traditional fishing underway, then there won't be many problems with the public not understanding.

Chairperson asked the group whether there were any other favorable or unfavorable reasons we should include. The question was raised of how much stewardship of the area would be done by the Luu'wais if they were only out there 4 days a year. It was decided to include a sentence in # 2 above rather that include this as another category. The Lu'uwais are proposing to fish traditionally. They would assist in stewardship but not be the primary stewards.

IV. Possible alternatives to I.

Since the meeting was nearly at an end there wasn't time to address this alternative section. Chairperson said that we need to be thinking about these for next meeting. Dr. Kinzie, in his Feb. 24, 1998 memorandum, suggested dividing ARNAR into an unfished core zone, flanked on either side by traditional fishing zones. He also suggests that the traditional fishing zones be expanded outside ARNAR's present boundaries. It was pointed out that Dr. Kinzie does not address whether or not other water activities should go on in the unfished core area. These ideas and others will be discussed at the next meeting.

Next meeting, time and place: August ? (Chairman will be on mainland for a week and will telephone members to set next meeting date) Mā'alaea, Boat and Fishing Club, Buzz's Wharf.

Meeting Adjourned: 3:05 p.m.

Feb. 24, 1998

TO: Y. B. Swimmer

FROM: R. A. Kinzie III

RE: Your letter of Feb. 9, 1998

This memo is in response to your letter asking for comments on the potential impact of proposed fishing activities in the 'Āhihi-Kīna'u NAR.

I should, at first, let you know that I was not a member of the NARS Commission when AKNAR was being considered, nor when it became part of the system. I was appointed to the Commission after those events.

With regard to the application to fish within the reserve I have some comments and a suggestion. At the NARSC meeting where this proposal was introduced, representatives from the Attorney General's office, NARS staff members, and others all expressed the opinion that this case is potentially very important in determining how State laws will be interpreted and applied, and that a satisfactory resolution will require imagination, cooperation, creativity, and a will to seek a solution that is just, workable and in accord with stated goals of the NARS. I hope that all departments of the State government will exert themselves to show flexibility and a willingness to work across departmental and divisional boundaries to formulate policies that are responsive to the rights of native Hawaiians and the general population of the State.

In my view there are three major stake holders in this situation. The first is the applicant (represented by the Native Hawaiian Legal Corp. NHLC), the second is a loosely defined "conservation community" whose members have in the past expressed support for various initiatives to protect natural resources (represented in this particular situation by the NARS), and the third is the general fishing community, and in particular those on Maui (represented, at least at an official level by DAR, but with other non-governmental groups which may or may not always be in agreement with DAR policies and actions).

In addition to recognizing the players outlined in the preceding paragraph it is important to understand a more fundamental aspect relating to natural resource conservation or management. Among other things this includes biological processes, population dynamics and to a lesser extent fisheries practices. The basic natural resource management principle with regard to the AKNAR question is that a fished population is not a protected population, but rather (in the best of conditions at least), a managed population. A natural resource cannot at the same time serve both as a protected unit and one managed for production. A change from protection to management status for a population would require a management plan designed to take into account the species in question, their population size, age structure, reproduction and recruitment dynamics. With regard to the specific question in your letter concerning the "integrity of the biological features of the AKNAR" it would no longer be a reserve but a fisheries management area.

There are also several problematical areas that make this situation important, and worth serious attention and thought by all the parties involved. The first is the position of the State fisheries management agency (DAR) and the agency charged with enforcing fishing rules and regulations (DOCARE). Both have repeatedly made the case to the legislature and to the Governor that they are understaffed, underfunded and that their abilities to carry out their mandates suffer because of limited resources. With respect to the AKNAR question this means that development of a management plan, carrying out the necessary monitoring activities necessary to assure the plan is appropriate, and enforcing the plan would put an added strain on their already limited resources.

The second aspect, with which I am not very familiar, but which will certainly play an important part in this situation, is the PASH decision under which the applicant seeks to exercise his rights. My understanding is that the specific motivation that brought about the PASH decision was more concerned with securing access through lands with some form of restrictions to gather elsewhere rather than with gathering from lands that had the restriction. Nevertheless, it is reasonable to assume that the law will eventually be applied to both situations. Therefore, it should be pointed out here that the NARS rules and regulations already have a provision to permit use (including gathering) in NAR's for traditional Hawaiian purposes.

In the hope that the State and interested parties are looking for ideas to help provide solutions to this question, I make a proposal here. The idea is not original; with me. It has been implemented in many places throughout the world in response to varying problems. I first outlined a similar plan with the help of Bruce Carlson of the Waikiki Aquarium for a potential conflict on the leeward side of O'ahu. Because the plans for that development were never implemented, the idea was never fully worked out.

With regard to the AKNAR situation, the goals of concerned parties include exercise of traditional fishing use along the coastline and the maintenance of a biological reserve. Because these are simply incompatible uses of the same area, a solution would be to divide the area so that the two uses can co-exist side by side. I suggest that the central area of the reserve be retained as a reserve. I further suggest that two areas flanking this "no-take" central portion be designated as special use areas in which the applicant can exercise his fishing rights. To accommodate this plan, particularly to insure that the special use fishing area is large enough to provide a reasonable catch, I suggest that the outer boundaries of the special use zone be wider than the existing NAR boundaries. The applicant will, as a condition of use of the special use zones for subsistence fishing, be given the responsibility of: 1) monitoring the area to ensure that there is no fishing in the central area, and only permitted fishing in the special use areas; and 2) keeping and providing complete catch records from the special use area to assist in management of the fishery. In this sense the applicant will receive konohiki rights and responsibilities for the entire area.

For this plan to work there will need to be several new initiatives and approaches taken by various groups. The State enforcement unit DOCARE will need to form a working partnership with the applicant to support enforcement of the restrictions in the area. [I envision that only DOCARE will carry out actual enforcement activities, but that they will be given the resources to be able to respond to, and to work with the applicant when needed.]. Secondly, since this would

be the first time such a plan was implemented in Hawai'i (The Mo'omomi management plan has a similar conceptual basis but serves a quite different fishery function), there would have to be a commitment to monitor the natural resources in the central "no-take" section, the special use sections, and the flanking regions of the coastline. It is anticipated that enrichment of natural resource populations in both the special use areas and the flanking areas would occur if enforcement was effective (but probably not otherwise).

Implementation of the plan would require that new boundaries be set up to ensure both protection of the central reserve area and to provide an adequate stretch of coastline for the special use area. Exactly where these boundaries should be drawn should take into account input from NARS and DAR staff, the applicant, the Maui fishing community, the general public, and especially DOCARE personnel who will need clear and enforceable boundaries if they are to be able to perform their duties.

This proposal will require compromise by all parties. The applicant would relinquish rights to fish in some part of the coastline, the conservation community would see the size of the protected areas decrease, and the fishing public would see some loss of existing fishing area on the coast. This last cost should be mitigated by provision of additional fishing areas or facilities for the Maui fishing community. Additionally, other expenses would be incurred. DOCARE and DAR would have additional responsibilities and duties and would require more resources. A monitoring program would have to be instituted with assurance of support for a substantial period of time. It might be possible to use volunteer groups to provide much of the manpower for the monitoring efforts to reduce the drain on DAR resources, but the ultimate responsibility for management would still fall on DAR. The mitigation effort that would replace lost fishing areas might also entail expenses.

An alternative to this compromise plan of either "no exercise of native rights" or "no marine reserve in 'Āhihi-Kīna'u" does not seem to be a promising choice. If the State is serious about supporting native Hawaiian rights and in seeking creative solutions to provision of access and gathering activities for native Hawaiians (and such questions will only be more numerous in the coming years) serious, thoughtful and flexible solutions should be sought now rather than waiting until situations develop to where discussion, compromise and cooperation are difficult. A solution reached by open discussion and interchange of ideas early in the planning process is much more desirable than a decision imposed by some authority, in this case probably after a contentious legal confrontation.

cc: M Wilson DLNR
W Devick DAR
A Murakami NHLC
B. Carlson Waikiki Aquarium
E. Brown PWF

Ahihi-Kinau Working Group
Meeting Minutes
(As reviewed at 9/15/98 meeting)

August 26, 1998 Meeting convened: 1:30 p.m.

Ma'alaea Boat and Fishing Club Room, Buzz's Wharf.

Members Present: Don Reeser, Dana Naone Hall, Ron Bass, Les Kuloloio, Eric Brown, Skippy Hau, Ed Chang, Boogie Lu'uwai.

Members Absent: Lei Kahakauwila, Kalei Lu'uwai, Bill Evanson, Stanley Okamoto

Others Present: Robert Lu'uwai

Review of August 6 meeting minutes: Minor typos and clarifications were made.

Minutes unanimously approved as corrected.

Draft outline #6 of report to Commission was reviewed and discussed.

Chairperson's notes follow:

Page 3, correct spelling is Uouoa/Ama'ama. Page 7, item #4 need to change last sentence to reflect changes recommended at last meeting. Page 8, 3rd paragraph, reverse sentences #4 & #5 for clarity and replace 'Hawaiian' with 'these' ecosystems. Last sentence, Page 8, make it clear that Honolua-Mokuleia Bay is one example of protected area in the Marine Life Conservation District. Page 9, item #4, last sentence insert 'data' between 'meaningful' and 'for.'

Before we get into discussion of alternatives, Skippy would like to discuss fish species list so there is no confusion on what we are talking about. Skippy will fax corrected list to chairperson.

Dana said that Isaac Hall would review some of the legal language needed in a couple of places in document and will fax this to chairperson.

Ron wondered if we should not use some of the terminology and definitions adopted by the Kaho'olawe Commission such as 'native Hawaiian.' It was decided we would stick to the definitions concerning eligibility that the working group had agreed on.

IV. Possible alternatives to I. Chairperson reiterated that alternatives we list didn't necessarily mean that everyone agreed with an idea but they should be potential options that the NARS Commission may want to consider in its deliberations.

To stimulate discussion, chairperson read a portion of Dr. Kinzie's Feb. 24 memo suggesting AKNAR could be divided into two zones: a central core zone unfished and traditional fishing allowed on both flanks. He also suggested the possibility of extending NARS on both sides of the present boundaries to accommodate traditional fishing. The attached maps of the AKNAR area were passed out as references for the discussion.

Dr. Kinzie's reference to AKNAR as a *biological reserve* was discussed. Perhaps any human activity should be considered contrary to his concept of a biological reserve. When Dr. Kinzie wrote the memo he was not aware of the restrictive nature of applicant's proposal. Traditional Hawaiian subsistence fishing could be considered as an activity in keeping with the concept of a biological reserve. It was noted that Dr. Kinzie believes any fishing activity will result in a managed population rather a protected fish population.

Extending the reserve along the flanks is something that the Commission should consider. Seems more realistic in the Keoneoio (La Perouse) side. From the Hanamanioa lighthouse across the bay to the reserve would be a logical extension. Perhaps this extended AKNAR segment could be designated for traditional subsistence fishing?

Concerning core zones and traditional fishing zones, several combinations are possible. There is parking at #4 zone. Access is hard at #3 zone. There is a trail to #2. Many persons use Keoneoio (La Perouse Bay) area. Akule are caught there. A core, no fishing zone could be a control zone and useful for monitoring purposes. If Commission must have a core zone, it should be #4. But they should ban other activities there also. Snorkeling, fish feeding, and kayaking cause more impacts than limited traditional subsistence fishing. At the Great Barrier Reef there are zones where absolutely no water

activities are allowed. If no traditional consumptive activities are allowed then it seems like commercial and other non-consumptive activities should be eliminated. What about the people who have houses fronting ocean in AKNAR? How would it be possible to limit their ocean activities. Right now, commercial Kayaks are launched on the rocky shore on the Makena side of AKNAR. The little bay is the property of the house owner on the Keoneoio side of AKNAR. This house formerly was owned by Mr. Carter who was influential in establishing reserve. The little bay was made using explosives by the military during W.W.II.

La Perouse area could be designated as a Fisheries Management Area rather than an extension of AKNAR. Regulations could allow only subsistence fishing.

Seems like we are talking about two or three alternatives differing from the Lu'uwai proposal that could be listed for consideration by the Commission.

1. Allow Lu'uwai type of traditional subsistence fishing in only certain zones of the existing reserve, leaving one or more zones as no fishing areas.

2. Extend the AKNAR reserve to the Hanamanioa lighthouse and make the extended area along with one or two zones in the existing AKNAR as areas for traditional subsistence fishing under the guidelines proposed by the Lu'uwais.

3. Permit no traditional subsistence fishing as proposed by the Lu'uwais but eliminate all commercial and non-consumptive uses in AKNAR waters.

It appears that with one more meeting we may be able to finish the report to the Commission.

Next meeting, time and place: Sept. 10, 1:00 p.m., Mā'alaea, Boat and Fishing Club, Buzz's Wharf.

Meeting Adjourned: 3:05 p.m.

Ahihi-Kinau Working Group

Meeting Minutes

September 15, 1998 Meeting convened: 1:10 p.m.

Ma'alaea Boat and Fishing Club Room, Buzz's Wharf.

Members Present: Don Reeser, Dana Naone Hall, Ron Bass, , Ed Chang, Boogie Lu'uwai. Kalei Lu'uwai, Bill Evanson, Stanley Okamoto

Members Absent: Lei Kahakauwila, Les Kuloloio, Eric Brown, Skippy Hau

Others Present: Robert Lu'uwai, Ed Tanji

Review of August 26 meeting minutes: No corrections or additions.

Minutes unanimously approved as corrected.

Draft outline #7 of report to Commission was reviewed and discussed.

Chairperson's notes follow:

Chairperson reviewed format changes he made pending the Ok of the Working Group: Table of Contents included. It lists three appendixes: Marine Life Names, Maps, and Meeting Minutes. Working Group list of members was moved to the end of the report. D. Varez clipart of Hawaiian picking 'opihi included on cover page. Three sentences added to Introduction expressing that no recommendations would be made to the Commission by the Working Group; only information. Definition and Abbreviation section deleted; acronyms and definitions were inserted in the text as appropriate. A paragraph relating to gathering rights was lifted from NARSC Special Use Permit direction sheet attached to NARS policies and included in section II-5.
One thing needed for the report is an official map showing the boundaries of the Honua'ula District.

Discussion: It seems like the Working Group should make a recommendation if there is a consensus? It was stated in the beginning that no one recommendation would be made. We attempted to describe the proposal, discuss arguments pro and con and list some alternatives. We don't know what every member actually thinks, one way or another. We asked everyone to rise above their particular bias in order to develop the arguments and information the Commission needs. Perhaps the chairperson should relate the general feeling he senses from the Working Group at the Commission meeting? Maybe a summary of some kind would be appropriate. In a memo to the Commission the chairperson could relate the consensus of the group in a general way. Chairperson will draft a transmittal letter and members will get a chance to review the memo and approve the language it contains.

The cover sheet title should be changed because the program isn't really subsistence fishing, but rather a program to carry on cultural traditions. Change it to "The Question Of Perpetuation of Traditional Subsistence Fishing Practices, Ahihi-Kinau Natural Area Reserve.

The 'Opihi Picker on the title sheet is good, but suggest adding a turtle nearby. Ok, and perhaps add fish somewhere within the text.

Question concerning I-4, fishing methods. What kind of spears and nets. No spear guns. Only regular spears and sling spears should be used. Nets can be monofiliment types. Hand gathering should include the use of an 'opihi knife. These are traditional methods using modern materials.

The fact that the Lu'uwai family lost their fishing rights with the establishment of Ahihi-Kinau isn't stated and it should be. Under II-1 this idea is addressed but not specific to the Lu'uwais. For the purpose of this report we should be more general. In Lu'uwai's application for a Special Use Permit, this certainly could be stressed by the applicant.

IV. Possible alternatives to I

The language of the three alternatives were discussed:

1. Ok

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OF COUNSEL:
G. RICHARD GESCH

MEMORANDUM

TO: The Ahihi-Kinau NARS Working Group
FROM: Isaac Hall
DATE: September 15, 1998
RE: Comments on Draft No. 6

I. Introduction

Thank you for providing me with an opportunity to review Draft No. 6 with respect to Native Hawaiian subsistence fishing within the Ahihi-Kinau Natural Area Reserve ("AKNAR"). Section I describes the proposed uses. Section II summarizes arguments in favor of subsistence fishing and Subsection III summarizes arguments against subsistence fishing.

Before any proposed uses can be recommended, an attempt must be made to determine if consumptive fishing can take place within AKNAR without jeopardizing the whole purpose of having such a Reserve. The "Kaho'olawe Ocean Management Plan" prepared in July 1997 is an important resource document because it balances the need for continued subsistence fishing within an area also recognized as a reserve.

The "PASH" decision does not establish absolute rights. The sometimes competing interests of Native Hawaiians and other "stakeholders" must be balanced. PASH does not protect "unreasonable" or "non-traditional" uses. Subsistence rights, according to Article XII, Section 7 of the Hawaii Constitution, are subject to the right of the State to regulate such rights.

PASH rights may be based upon tenancy or upon custom. To the extent that they are based upon custom: (a) the custom must have predated November 25, 1892, (b) the custom must be consistent and (c) the custom must be "reasonable."

The Kaho'olawe Ocean Management Plan recognizes that it is important to allow for some exercise of subsistence fishing rights by Native Hawaiians. The Plan, however, also recognizes that these rights must be exercised on a "conservative" basis. On Kaho'olawe, ocean resources gathered (a) shall be consumed or used only on Kaho'olawe and (b) may not be removed from Kaho'olawe. These additional conditions were attached (a) to assure long-term resource sustainability and (b) to maintain the island's carrying capacity.

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OF COUNSEL:
G. RICHARD GESCH

MEMORANDUM

TO: The Ahihi-Kinau NARS Working Group
FROM: Isaac Hall
DATE: September 15, 1998
RE: Comments on Draft No. 6

I. Introduction

Thank you for providing me with an opportunity to review Draft No. 6 with respect to Native Hawaiian subsistence fishing within the Ahihi-Kinau Natural Area Reserve ("AKNAR"). Section I describes the proposed uses. Section II summarizes arguments in favor of subsistence fishing and Subsection III summarizes arguments against subsistence fishing.

Before any proposed uses can be recommended, an attempt must be made to determine if consumptive fishing can take place within AKNAR without jeopardizing the whole purpose of having such a Reserve. The "Kaho'olawe Ocean Management Plan" prepared in July 1997 is an important resource document because it balances the need for continued subsistence fishing within an area also recognized as a reserve.

The "PASH" decision does not establish absolute rights. The sometimes competing interests of Native Hawaiians and other "stakeholders" must be balanced. PASH does not protect "unreasonable" or "non-traditional" uses. Subsistence rights, according to Article XII, Section 7 of the Hawaii Constitution, are subject to the right of the State to regulate such rights.

PASH rights may be based upon tenancy or upon custom. To the extent that they are based upon custom: (a) the custom must have predated November 25, 1892, (b) the custom must be consistent and (c) the custom must be "reasonable."

The Kaho'olawe Ocean Management Plan recognizes that it is important to allow for some exercise of subsistence fishing rights by Native Hawaiians. The Plan, however, also recognizes that these rights must be exercised on a "conservative" basis. On Kaho'olawe, ocean resources gathered (a) shall be consumed or used only on Kaho'olawe and (b) may not be removed from Kaho'olawe. These additional conditions were attached (a) to assure long-term resource sustainability and (b) to maintain the island's carrying capacity.

4. *The maximum number of fish which may be taken should be subject to determinations made… without jeopardizing the resources to be protected in AKNAR.*

This is the reason for the monitoring described in I-9, but should be clearly stated there. Will insert this language in I-9.

5. *Fishing methods have been limited to those which are traditional…It should be recognized that traditional methods are required here as a manner of limiting the fishing to protect AKNAR.*

Traditional fishing methods have been specified. Here we require traditional methods but modern materials may be substituted for throw nets, sling spears and knives for picking 'opihi.

6. *With respect to enforcement provisions, it should be clarified that these are the premittees' obligations.*

This can be taken care of by including the words 'Permittee(s) shall submit reports listing species… in 2nd paragraph of I-7. In first paragraph we should include language requiring the Permittee(s) to provide written notice no later than one week before fishing date.

Another meeting is probably not necessary. Chairman will prepare minutes, revise report, write a draft letter to Commission and mail these to members for review. Members will submit comments and changes to Chairman in the time frame designated. If members feel we need another meeting, chairperson will call one. If not, report will be submitted to Natural Area Reserve System Commission when ready.

Meeting Adjourned: 3:05 p.m.

The AKNAR working group's document should recognize the important objectives of AKNAR. These are well stated in Section III. The report should also acknowledge that because the exercise of subsistence rights is proposed to take place within AKNAR, it is necessary that these rights be exercised on a more limited basis than might otherwise be required. In other words, the PASH decision recognizes that those residing outside an ahupua'a may have subsistence rights within a particular ahupua'a. It will be necessary to indicate that PASH rights need to be dealt with on a more conservative basis within AKNAR.

Within this general context, I have the following more specific recommendations.

II. Specific Recommendations

A. Section I (pp. 2-5)

1. To be consistent with PASH, the exercise of fishing rights should have been continuously exercised since prior to November 25, 1892. (See p. 2, bottom.)

2. The definition of "family" and "family unit" should be clarified. For example, does this refer to the John and Kamaka Kukahiko family or to later families within this general family unit, e.g. the Luuwai, Chang or Kululoio families. (See p. 3, top.)

3. Those family members who may accompany the permittees should be clarified. It is my understanding that a family member must either be within the permittee's family or a blood sibling and must also be a permanent resident of Maui. (See p. 3, top.)

4. The maximum number of fish which may be taken should be subject to determinations made, either now or in the future, that such harvesting can or cannot be done without jeopardizing the resources to be protected in AKNAR. (See p. 3, middle.)

5. Fishing methods have been limited to those which are traditional. Case law exists on the mainland which allows traditional fishing with modern implements. It should be recognized that traditional methods are required here as a manner of limiting the fishing, which is necessary to protect AKNAR. (See p. 4, top.)

6. With respect to enforcement provisions, it should be clarified that these are the permittees' obligations. (See p. 5, top.)

7. With respect to "resource monitoring," it may be necessary to assure that actual monitoring take place in order to protect AKNAR. (See p. 5, bottom.)

B. Section II (p. 6-9)

I have been asked to comment on "legal considerations" (p. 7, top). I believe that I have generally covered this in the Introduction. The "Kaho'olawe Ocean Management Plan" should be a very helpful resource document in this respect. Because PASH rights are not absolute and are subject to reasonable regulation, I do not believe that a conservative grant to a few Native Hawaiians who exercise these rights in AKNAR could be challenged either by advocates for AKNAR or by advocates for Native Hawaiians.