

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawaii 96813

April 13, 2018

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

REQUEST FOR APPROVAL TO HOLD PUBLIC HEARINGS TO ADOPT A NEW
CHAPTER UNDER HAWAII ADMINISTRATIVE RULES (“HAR”) AS TITLE 13
CHAPTER 60.9, MO‘OMOMI COMMUNITY-BASED SUBSISTENCE FISHING
AREA, MOLOKA‘I, TO MANAGE AND PROTECT FISH STOCKS AND TO
REAFFIRM TRADITIONAL AND CUSTOMARY NATIVE HAWAIIAN
SUBSISTENCE FISHING PRACTICES ALONG THE NORTHWEST COAST OF
MOLOKA‘I

Submitted for your consideration and approval is a request to hold public hearings to adopt Hawaii Administrative Rules (“HAR”) chapter 13-60.9 to designate the Mo‘omomi Community-Based Subsistence Fishing Area, Moloka‘i (“Mo‘omomi CBSFA”), to reaffirm and protect traditional and customary native Hawaiian fishing and mālama practices that inform place based stewardship for the improvement of managing key threatened species and preventing further degradation of fishery stocks along the northwest coast of Moloka‘i. The Mo‘omomi CBSFA is an excellent example of the interweaving of traditional and modern scientific knowledge and improving the Department of Land and Natural Resources (“DLNR”) and the community’s capacity to co-manage the State’s public trust resources.

HISTORY

DLNR and community driven efforts to designate Mo‘omomi as a CBSFA span over 20 years and eight DLNR administrations. The following provides a brief history of the relevant events that have culminated in the proposal currently before the board.

Historically, the marine resources of the Mo‘omomi and northwestern coastline of Moloka‘i have sustained the local population since at least 900 A.D. Ho‘olehua Homesteaders and the fishing families of Mo‘omomi have continued these traditions and refer to Mo‘omomi as their icebox and ipu kai, the bread bowl of a community that relies heavily on subsistence. Mo‘omomi’s fishers also continue to utilize and promote the use of the traditional fishing trail that allows them to sustainably gather along the coastline.

While experiencing declines of key subsistence marine species in the early 1990s, Governor John Waihe‘e appointed the Moloka‘i Subsistence Task Force to document the importance of subsistence gathering, how much families’ food comes from subsistence,

and to identify the barriers to sustaining subsistence fishing, hunting, and gathering on Moloka'i. The task force was also asked to recommend policies and programs to improve the situation. As part of its final report, the task force recommended that the community on the northwest end of Moloka'i be allowed to manage shoreline marine resources in the area to restore traditional strategies consistent with native values and customs to manage and perpetuate the near shore marine resources.

The following year, the Hawai'i State Legislature enacted Act 271 (SLH, 1994), codified as Hawaii Revised Statutes ("HRS") §188-22.6, which authorizes DLNR to designate community-based subsistence fishing areas ("CBSFAs") through administrative rulemaking "for the purpose of reaffirming and protecting fishing practices customarily and traditionally exercised for purposes of native Hawaiian subsistence, culture, and religion." The statute provides requirements and criteria for the submission of CBSFA designation proposals and a management plan to DLNR for consideration. The legislative history of Act 271 encourages CBSFAs as "there are communities where subsistence fishing is necessary for the economic viability of its residents" and "to provide native Hawaiians with the opportunity to guide Hawai'i and the world in fishery conservation."

Section 2 of Act 271, mandated DLNR to establish a two-year Subsistence Fishing Pilot Demonstration Project on the northwestern coast of Moloka'i from Nihoa Flats on the east to 'Īlio Point on the west. The pilot project required DLNR to grandfather in existing commercial fishing activities in the project area. The law also required DLNR to file a status report after the 2-year pilot project period. Despite the pilot project sunset on July 1, 1997 and rulemaking not commencing based upon the proposal and management plan the Hui Mālama o Mo'omomi submitted in 1995, HMM and members of the community continued its efforts on the ground to better steward the resources of Mo'omomi.

In March 2013, DLNR's Division of Aquatic Resources ("DAR") received a proposal and management plan from the Hui Mālama o Mo'omomi (HMM) for the designation of the Mo'omomi CBSFA. In January 2014, DLNR held a public information session in Kaunakakai, Moloka'i in regards to the draft Mo'omomi CBSFA proposal. Subsequently, the Aha Kiole o Moloka'i, Palā'au Moku conducted an in-home survey of Mo'omomi fishing families. Survey results showed that of the 60 families surveyed, 55 families supported the Mo'omomi CBSFA proposal, 1 family did not support it, and 4 surveys were not returned. However, DLNR requested that HMM continue community engagement before resubmitting. The Board of Land and Natural Resources ("BLNR") also adopted a CBSFA Designation Procedures Guidelines in 2014 to provide standardized protocols and guidance for community's development of their CBSFA proposal and management plan.

From 2014 to 2016, HMM continued to hold publicly advertised community workshops and meetings to provide on-island community outreach and engagement to discuss the Mo'omomi CBSFA proposal. HMM also updated its management plan pursuant to the recommendations provided in the 2014 pilot CBSFA Designation Procedures Guide. Independently, the Kohala Center also conducted a Health Impact Assessment ("HIA") for

the Mo‘omomi CBSFA (findings available online). **The following list provides HMM hosted workshops and meetings to engage feedback on the proposal (DLNR/DAR participation indicated by *):**

Nov. 8, 2014	Mo‘omomi CBSFA Community Workshop*; announced in Moloka‘i Dispatch
March 25, 2015	Mo‘omomi CBSFA Community Workshop*
April 25, 2015	Mo‘omomi CBSFA Community Workshop*; announced in Moloka‘i Dispatch and flyers posted around Kaunakakai
August 26, 2015	Mo‘omomi CBSFA Community Informational Meeting; OHA/DHHL Conference Room in Kaunakakai, Moloka‘i
September 2015	Mo‘omomi CBSFA Health Impact Assessment (“HIA”) Community Meeting
October 15, 2015	Mo‘omomi CBSFA Fishermen’s Meeting; OHA/DHHL Conference Room in Kaunakakai, Moloka‘i
November 2015	Mo‘omomi CBSFA Community Informational Meeting; Kaunakakai, Moloka‘i
April 6, 2016	Mo‘omomi CBSFA presentation to the Ahupua‘a o Moloka‘i (Moloka‘i homestead association)
April 8, 2016	HMM, DAR, and Landowner Partners Meeting to review the draft proposal and management plan*
April 30, 2016	HMM Outreach at Moloka‘i whippahs fishing tournament
July 2016	HMM submits Mo‘omomi CBSFA Proposal and Management Plan to DAR. An updated version is provided in January 2017 and again in March 2017 and provided to the public on DAR’s website

In July 2016, DAR received an updated proposal and management plan for the Mo‘omomi CBSFA by HMM, which was then reviewed by DAR and relevant DLNR divisions. DLNR DAR held another round of four public scoping meetings in March and April 2017 to provide a forum to present the proposal to the public and obtain open feedback through small breakout groups. A summary of the comments and questions received from the four public scoping meetings were posted on the DAR website (see Exhibit 3). HMM provided an updated proposal and management plan in March 2017, which is also available on the DAR website

(https://dlnr.hawaii.gov/dar/files/2017/03/Moomomi_CBSFA_Proposal.rev_.pdf).

The following list summarizes the public scoping and engagement initiatives lead by DLNR:

March 16, 2017	Public Scoping Meeting # 1: Molokai (afternoon)
March 16, 2017	Public Scoping Meeting #2: Molokai (evening)
March 21, 2017	Public Scoping Meeting # 3: Oahu
April 5, 2017	Public Scoping Meeting # 4: Maui
June 6, 2017	DAR staff meets with HMM, partners, and community members meet with DAR staff to discuss DAR's feedback for the Mo'omomi CBSFA proposal after their analysis of community comments from four public scoping meetings.
June 14, 2017	DAR Administrator meets with HMM, partners, and opposing community members to further discuss DAR's feedback and to discuss on-island community concerns.
August 10, 2017	DAR Fishers Forum: DAR provides summary of the updated proposal, adding commercial fishing exemptions for ahi, billfish, mahi, and deep 7 species in waters deeper than 40 fathoms deep. Oahu fishers requested HMM to host them on a site visit to Mo'omomi.
Sept. 26, 2017	Mo'omomi and Oahu Fishers Site Visit: HMM, partners, and community members meet with Oahu fishers, DAR staff, and DOCARE at Mo'omomi to discuss concerns and share more about the Mo'oomomi CBSFA.
Dec. 11-12, 2017	DLNR Moloka'i Listening Sessions: DLNR held listening sessions with concerned Ho'olehua Homesteaders, HMM, representatives from the Ahupua'a o Moloka'i (Moloka'i homestead association), the Aha Kiole o Moloka'i, and other Moloka'i fishers and residents to hear on island community concerns and support.
Jan.-March, 2018	DLNR engages in meetings with coastal landowners including the Department of Hawaiian Homelands (DHHL), The Nature Conservancy (TNC), Molokai Land Trust (MLT), and Molokai Ranch to better understand access issues and mutual landowner agreements. DLNR also met with Office of Hawaiian Affairs Trustee for Moloka'i and Lāna'i and staff regarding OHA's history and support for CBSFAs and Mo'omomi CBSFA rulemaking pursuant to OHA staff and Board of Trustees presentation on the Mo'omomi CBSFA proposal in June 2016.

March 12, 2018 DLNR engages with Ho‘olehua Homesteaders to provide updates regarding DLNR’s findings from stakeholder listening sessions and meetings and ways for community members to get involved in the CBSFA rulemaking process.

After an extensive community-led outreach process, followed by an extensive DLNR public scoping and stakeholder meeting process, DLNR understands that the main community issues brought forth for vehicular access, and discussions with coastal landowners, go hand-in-hand with the State’s enforcement capacity, as well as past and current coastal landowner efforts to manage a pass-key system. DLNR is committed to continuing discussions with landowners and stakeholders to determine how to better facilitate reasonable vehicular access options for the community.

Thus, DAR’s rulemaking capabilities and thus the Mo‘omomi CBSFA proposal cannot address the access issues raised. Given the amount of due diligence and public scoping work done pursuant to the Mo‘omomi CBSFA proposal, DLNR and DAR requests the Board’s approval to hold public hearings, to further solicit community comments for the Mo‘omomi CBSFA, pursuant to the Chapter 91 process.

PURPOSE AND OVERVIEW OF PROPOSED CBSFA RULES FOR THE NORTHWEST COAST OF MOLOKAI

DAR proposes to adopt a new chapter, HAR chapter 13-60.9, to designate the Mo‘omomi CBSFA and to establish rules governing marine resource uses and activities within the area.

Section 1 describes the purpose of the chapter. Section 2 provides definitions of relevant terms as used in the chapter. Section 3 delineates the boundaries of the Mo‘omomi CBSFA and the Kawa‘aloa Bay Protected Area. Section 4 prescribes the permitted and prohibited activities within the Mo‘omomi CBSFA. The regulations in Section 4 have been crafted to allow for the continuance of fishing practices that are customarily and traditionally exercised for native Hawaiian subsistence, culture, and religion within the area. Traditional or otherwise accepted subsistence fishing gear and methods are allowed, while certain over-efficient fishing gear and methods, such as night diving and SCUBA spearing, are prohibited. In addition, the rules set stricter bag limits, size limits, and gear restrictions to prevent over-harvesting while allowing for the continuance of subsistence levels of take. The proposed rules also prohibit the sale of marine life taken from the area as well as the take of marine life for commercial purposes, with exceptions for commercial bottomfishing for deep 7 bottomfish species in waters deeper than 40 fathoms and commercial trolling for any species. This section also recognizes native Hawaiian traditional and customary rights recognized under article XII, section 7, of the Hawaii State Constitution shall not be abridged.

Section 5 prescribes the activities that are allowed and prohibited in the Kawa‘aloa Bay Protected Area.

Section 6 establishes the administrative and criminal penalties that may be imposed for violations of this chapter.


The proposed rules drafted in Ramseyer format have been reviewed by the Attorney General's Office and are attached as **Exhibit 1**. A proposed rules summary table is provided as Exhibit 2. A summary of the testimony received from the four March and April 2017 public scoping meetings is provided as Exhibit 3.

RECOMMENDATIONS:

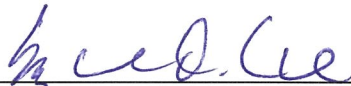
That the Board:

1. Authorize and approve the holding of public hearings on Moloka'i, O'ahu, and Maui to adopt Hawaii Administrative Rules chapter 13-60.9, Mo'omomi Community-Based Subsistence Fishing Area, Moloka'i.
2. Delegate to the Chairperson the authority to appoint a hearings officer to conduct the aforementioned public hearings.

Respectfully submitted,


BRUCE S. ANDERSON, Administrator
Division of Aquatic Resources

APPROVED FOR SUBMITTAL


SUZANNE D. CASE, Chairperson
Board of Land and Natural Resources

Attachments:

- Exhibit 1 – Proposed Rules (Ramseyer format)
- Exhibit 2 – Summary of Proposed Rules
- Exhibit 3 – March and April 2017 Public Scoping Meetings Testimony Summary
- Exhibit 4 – 2017 Marine Resource Assessment Summary

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-60.9
Hawaii Administrative Rules

(Date of adoption)

1. Chapter 13-60.9, Hawaii Administrative Rules, entitled "Mo'omomi Community-Based Subsistence Fishing Area, Moloka'i" is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART II MARINE FISHERIES MANAGEMENT AREAS

CHAPTER 60.9

MO'OMOMI COMMUNITY-BASED SUBSISTENCE FISHING AREA,
MOLOKA'I

\$13-60.9-1	Purpose
\$13-60.9-2	Definitions
\$13-60.9-3	Boundaries
\$13-60.9-4	Permitted and prohibited activities

or freshwater or marine plants, including seeds, roots products, and other parts thereof.

"Area" means the Mo'omomi Community-Based Subsistence Fishing Area (Mo'omomi CBSFA), as encompassed within the boundaries described in section 13-60.9-3(a).

"Commercial purpose" means the taking of marine life for profit or gain or as a means of livelihood where the marine life is taken in or outside of the State, or where the marine life is sold, offered for sale, landed, or transported for sale anywhere in the State.

"Day" means a twenty-four hour period.

"Deep 7 bottomfish" means *Pristipomoides filamentosus* ('ōpakapaka), *Pristipomoides sieboldii* (kalekale), *Aphareus rutilans* (lehi), *Pristipomoides zonatus* (gindai), *Etelis coruscans* (onaga), *Etelis carbunculus* (ehu), and *Epinephelus quernus* (hāpu'upu'u).

"Department" means the department of land and natural resources.

"Diving" means any activity conducted in the water involving the use of an underwater breathing apparatus or a mask, goggles, or any other device that assists a person to see underwater while the person's face is submerged. Diving includes both extractive and non-extractive activities, such as SCUBA diving, free diving, and snorkeling.

"Fish" means any species of marine life with a backbone, gills, and with limbs that are fins, if any.

"Hand-harvest" means to gather directly with the hands only, and without the use of any net, spear, rake, or any other tool or implement.

"Hook-and-line" means a fishing line to which one or more hooks or other tackle are attached. A hook-and-line may include a fishing rod or reel or both to cast and retrieve the line.

"Kole" means any fish known as *Ctenochaetus strigosus* or any recognized synonym. Kole are also known as goldring surgeonfish.

"Kūmū" means any fish known as *Parupeneus porphyreus* or any recognized synonym. Kūmū are also known as whitesaddle goatfish.

"Limu" means any marine alga, including algae in the intertidal zone.

"Marine life" means any type or species of saltwater fish, shellfish, mollusks, crustaceans, coral, algae, or other marine animals, including any part, product, egg, or offspring thereof; or any type or species of seaweeds or other marine plants or algae, including any part, product, seed, holdfast, or root thereof.

"Moi" means any fish known as *Polydactylus sexfilis* or any recognized synonym. Moi are also known as Pacific threadfin.

"Ōpihi" means any mollusk of the genus *Cellana* or any recognized synonym. Ōpihi are also known as kō'ele, 'ālinalina, makaiauli, or limpets.

"SCUBA gear" means any equipment adapted, designed, or commonly used to enable a diver to breathe while underwater, including but not limited to SCUBA regulators, high pressure cylinders, rebreathers, SNUBA, and hookah rigs.

"SCUBA spearfishing" means to take or to attempt to take aquatic life through the combined use of a spear and SCUBA gear.

"Spear" means any device or implement that is designed or used for impaling marine life, whether propelled by hand or with the use of elastic bands or other means. Spears may include but are not limited to spear gun shafts, arbalettes, arrows, Hawaiian slings, or three-prong spears.

"Spiny lobster" means any crustacean in the family Palinuridae. These animals are also known as lobster, Hawaiian spiny lobster, red lobster, green lobster, or ula.

"Subsistence" means the customary and traditional native Hawaiian uses of renewable ocean resources for direct personal or family consumption or sharing.

"Take" means to fish for, catch, injure, kill, remove, capture, confine, or harvest, or to attempt to

fish for, catch, injure, kill, remove, capture, confine, or harvest.

"Throw net" means a circular net with a weighted outer perimeter designed to be deployed by manually casting or throwing the net over fish or other aquatic life.

"Trolling" means fishing by dragging artificial lures or bait behind a vessel that is under way at sufficient speed to produce a wake.

"Uhu 'ahu'ula" means any fish known as *Chlorurus perspicillatus* or any recognized synonym. Uhu 'ahu'ula are also known as spectacled parrotfish. The terminal phase of these fish is also known as "uhu uliuli".

"Uhu 'ele'ele" is any *Scarus rubroviolaceus* which has reached its terminal phase, indicated by a change in coloration from brownish-red and yellowish-gray, to green and blue. A predominantly green or blue-green body color and a green beak on a specimen of *Scarus rubroviolaceus* is prima facie evidence that the specimen is an uhu 'ele'ele. Both uhu 'ele'ele and uhu pālukaluka are known as redlip or ember parrotfish.

"Uhu pālukaluka" means any fish known as *Scarus rubroviolaceus* or any recognized synonym. Uhu pālukaluka are also known as redlip or ember parrotfish. The terminal phase of these fish is also known as "uhu 'ele'ele".

"Uhu uliuli" is any *Chlorurus perspicillatus* which has reached its terminal phase, indicated by a change in coloration from a grayish brown body with a broad white band at the base of the tail, to a blue green body with a dark band across the top of the snout. A predominantly blue-green body color and the lack of a white tail band on a specimen of *Chlorurus perspicillatus* is prima facie evidence that the specimen is an uhu uliuli. Both uhu uliuli and uhu 'ahu'ula are known as spectacled parrotfish.

"Underwater breathing apparatus" means any apparatus that allows a person to breathe while the person's face is below the surface of the water.

"Vessel" means any craft used or capable of being used as a means of transportation on or in the water.

§13-60.9-3

[Eff] (Auth: HRS §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.6, 188-53, 190-3)

§13-60.9-3 Boundaries. (a) The Mo'omomi Community-Based Subsistence Fishing Area includes that portion of the northwestern coast of Moloka'i consisting of all state waters and submerged lands between 'Īlio Point in the west and Nihoa Flats in the east, from the shoreline out to approximately one mile. The boundaries of the Mo'omomi CBSFA are described by eastern and western boundary lines, landward and seaward boundary lines, and seven reference points (A, B, C, D, E, F, and G) identified by their latitude and longitude coordinates as follows:

- (1) The western boundary of the Mo'omomi CBSFA is an imaginary straight line drawn along 157°15'14.73"W longitude.
- (2) Point A is the point along the western boundary line at the high water mark on shore, located at approximately 21°13'26.00"N, 157°15'14.73"W.
- (3) Point B is a point approximately one mile due north of Point A, located along the western boundary line at 21°14'16.41"N, 157°15'14.73"W.
- (4) The seaward boundary of the Mo'omomi CBSFA consists of a series of points connected by imaginary straight lines beginning at Point B; then to Point C, located at 21°14'4.93"N, 157°12'31.36"W; then to point D, located at 21°13'23.01"N, 157°11'2.85"W; then to Point E, located at 21°12'56.24"N, 157°9'16.14"W; then to point F, located at 21°11'51.77"N, 157°1'0.47"W.
- (5) Point F is a point along the eastern boundary line located approximately one mile seaward of the shoreline.

- (6) The eastern boundary of the Mo'omomi CBSFA is an imaginary straight line drawn contiguous with the western boundary of Kalaupapa National Park that intersects $21^{\circ}10'50.18''\text{N}$, $157^{\circ}1'12.13''\text{W}$ and $21^{\circ}11'15.36''\text{N}$, $157^{\circ}1'6.80''\text{W}$.
- (7) Point G is the point along the eastern boundary line at the high water mark on shore, located at approximately $21^{\circ}11'1.54''\text{N}$, $157^{\circ}1'9.69''\text{W}$.
- (8) The landward boundary of the Mo'omomi CBSFA is an imaginary line drawn along the shoreline at the highest wash of the waves between Point A and Point G.

The foregoing boundaries and reference points are shown on Exhibit A entitled "Map of the Mo'omomi Community-Based Subsistence Fishing Area, Moloka'i", dated September 28, 2017, located at the end of this chapter.

(b) The Kawa'aloa Bay Protected Area is established as a subzone within the Mo'omomi CBSFA, and includes all state waters and submerged lands bounded by a line drawn starting from the shoreline at Kaiehu Point on the western side of Kawa'aloa Bay, located at approximately $21^{\circ}12'4.50''\text{N}$, $157^{\circ}9'26.03''\text{W}$, to the northernmost submerged rocks offshore of the eastern side of Kawa'aloa Bay, located at approximately $21^{\circ}12'2.94''\text{N}$, $157^{\circ}9'8.47''\text{W}$; then southeast to the submerged rocks located at approximately $21^{\circ}12'1.55''\text{N}$, $157^{\circ}9'6.30''\text{W}$; then due south to a point on the shoreline at the eastern boundary of Kawa'aloa Bay, located at approximately $21^{\circ}11'54.46''\text{N}$, $157^{\circ}9'6.30''\text{W}$, as shown on Exhibit B entitled "Map of the Kawa'aloa Bay Protected Area", dated September 28, 2017, located at the end of this chapter.

(c) For the purposes of this chapter, the shoreline shall be determined by the upper reaches of the wash of the waves on shore. Should there be a stream or river flowing into the ocean, the shoreline shall be determined by an imaginary straight line

§13-60.9-4

drawn between the upper reaches of the wash of the waves on either side of the stream or river. [Eff] (Auth: HRS §§188-22.6, 188-53, 190-3) (Imp: HRS §§187A-1.5, 188-22.6, 190-3)

§13-60.9-4 Permitted and prohibited activities.

(a) Nothing in this chapter shall be construed as abridging traditional and customary native Hawaiian rights or as allowing within the Mo'omomi Community-Based Subsistence Fishing Area any activity or fishing gear otherwise prohibited by law or rules adopted by the department of land and natural resources or any other department of the State.

(b) It is unlawful for any person to sell or offer for sale any marine life taken from within the area, or to otherwise take marine life from within the area for commercial purposes, provided that:

- (1) Any fish may be taken by trolling for commercial purposes and may be sold or offered for sale; and
- (2) Deep 7 bottomfish species may be taken in waters deeper than forty fathoms for commercial purposes and may be sold or offered for sale.

(c) It is unlawful for any person to take or possess marine life while diving within the area between 6:00 p.m. and 6:00 a.m.

(d) It is unlawful for any person within the area to engage in or attempt to engage in SCUBA spearfishing, to possess both SCUBA gear and a spear at the same time, or to possess both SCUBA gear and speared aquatic life at the same time.

(e) The following restrictions apply within the Mo'omomi Community-Based Subsistence Fishing Area:

- (1) No person may take or possess any uhu 'ele'ele or uhu uliuli at any time;
- (2) From April 1 through June 30, no person may take or possess any uhu pālukaluka or uhu 'ahu'ula;

- (3) From July 1 through March 31, no person may take more than a total of two uhu pālupaluka or uhu 'ahu'ula per day, or possess more than a total of two uhu pālupaluka or uhu 'ahu'ula at any one time;
- (4) From January 1 through March 31, no person may take or possess any kūmū;
- (5) From April 1 through December 31, no person may take more than two kūmū per day, or possess more than two kūmū at any one time;
- (6) No person may take or possess any kūmū greater than sixteen inches fork length;
- (7) From April 1 through June 30, no person may take or possess any kole;
- (8) From July 1 through March 31, no person may take more than twenty kole, or possess more than twenty kole at any one time;
- (9) No person may take or possess any kole less than five inches in fork length;
- (10) No person may take or possess any moi greater than eighteen inches fork length;
- (11) Moi may only be taken by hook-and-line, spear, or throw net;
- (12) No person may take more than two spiny lobster per day, or possess more than two spiny lobster at any one time;
- (13) Spiny lobster may only be taken by hand harvest or by hook;
- (14) No person may take any 'ōpihi while diving; and
- (15) No person may take or possess any limu with holdfasts or roots attached. [Eff
] (Auth: HRS §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§187A-5, 187A-6, 188-22.6, 188-53, 190-3)

§13-60.9-5 Kawa'aloa Bay Protected Area. (a) It is unlawful for any person to engage in swimming, surfing, body boarding, snorkeling, diving, fishing, operating a vessel, or any other activity that may

§13-60.9-6

otherwise disturb the marine environment within the Kawa'aloa Bay Protected Area. This subsection shall not apply:

- (1) In the case of an emergency requiring such action as may be necessary to prevent loss of life or destruction of property;
 - (2) To authorized law enforcement or rescue operations; or
 - (3) To persons engaged in subsistence activities as provided in subsection (c).
- (b) It is unlawful for any person to take or possess any marine life within the Kawa'aloa Bay Protected Area, except as provided in subsection (c).

(c) Subsections (a) and (b) notwithstanding, any person may engage in the following activities within the Kawa'aloa Bay Protected Area for subsistence purposes only:

- (1) Take and possess any fish species using a throw net from the shoreline between 6:00 a.m. and 6:00 p.m.;
- (2) Take and possess 'a'ama crab by hand-harvest from the shoreline at any time;
- (3) Take and possess limu from the shoreline between 6:00 a.m. and 6:00 p.m., provided that no person shall take limu with the holdfast or roots attached; and
- (4) Take and possess any fish with hook-and-line from the shoreline between 6:00 a.m. and 6:00 p.m., provided that only artificial lures may be used. [Eff]
(Auth: HRS §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.6, 188-53, 190-3)

§13-60.9-6 Penalty. (a) Any person who violates any provision of this chapter or the terms and conditions of any permit issued as provided by this chapter, shall be subject to:

- (1) Administrative penalties as provided by section 187A-12.5, HRS;

- (2) Criminal penalties as provided by section 188-70, HRS; and
- (3) Any other penalty as provided by law.
- (b) Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State. [Eff: 10/1/18] (Auth: HRS §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§187A-12.5, 188-22.6, 188-70, 190-5)

§13-60.9-7 Severability. If any provision of this chapter, or the application thereof, to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable." [Eff
] (Auth: HRS §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§1-23, 187A-5, 188-22.6, 188-53, 190-3)

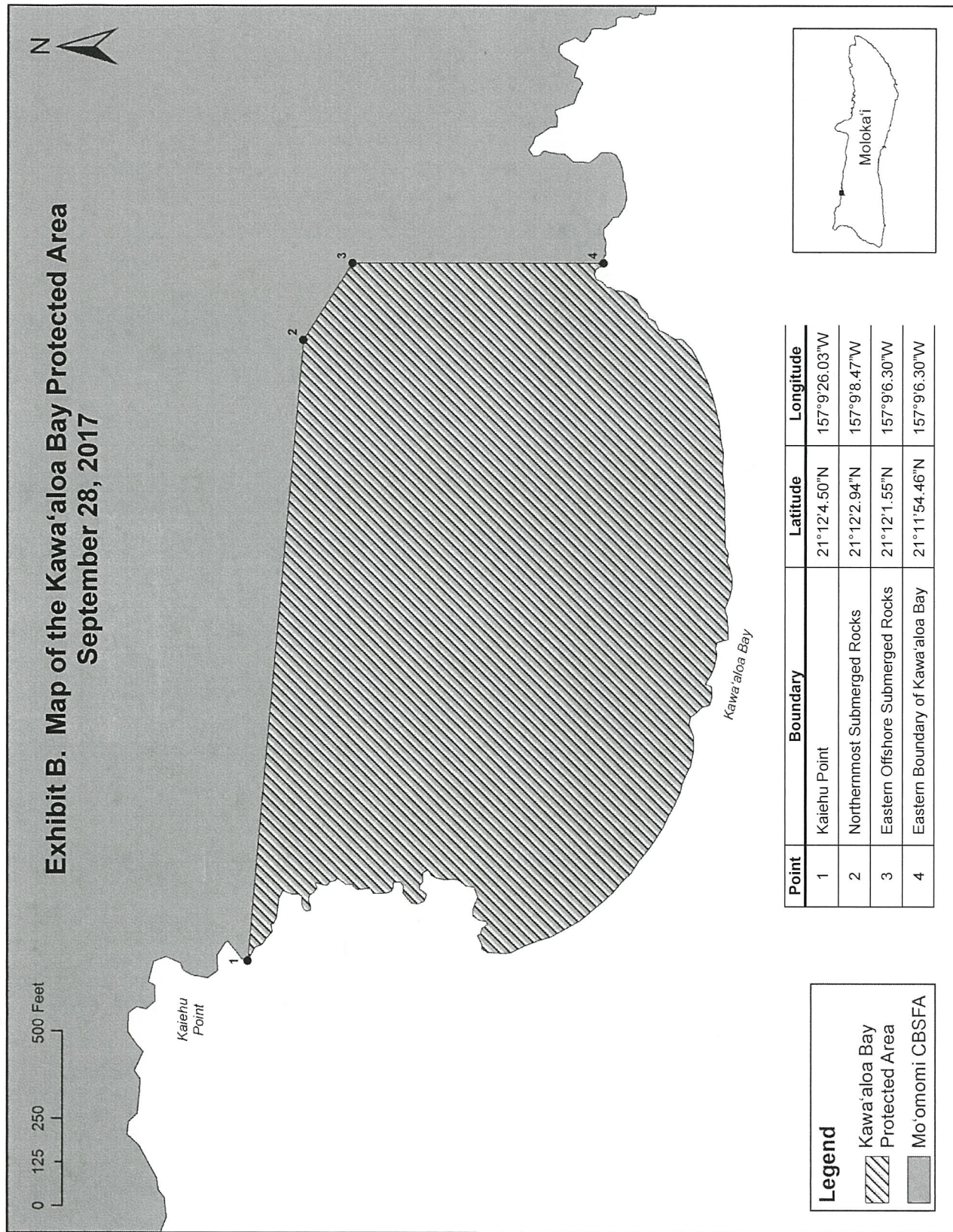
2. The adoption of chapter 13-60.9, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ and filed with the Office of the Lieutenant Governor.

SUZANNE D. CASE
Chairperson
Board of Land and Natural
Resources

APPROVED AS TO FORM:

Deputy Attorney General




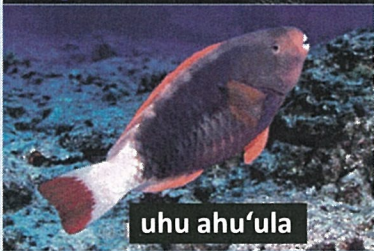








Proposed Rules for the Mo'omomi Community-Based Subsistence Fishing Area (CBSFA)

Purpose: To reaffirm and protect Native Hawaiian traditional and customary subsistence fishing, cultural, and religious practices, in accordance with HRS §188-22.6, and to protect the diversity, abundance, and accessibility of the marine resources upon which these practices rely.

Boundaries: From Kalaeoka'ilio (Īlio Point) in the west to Nihoa Flats in the east, from the shoreline out to one mile.

Proposed Regulations:

Species-Specific Regulations	
Uhu, parrotfish (Scaridae)	
<p>Redlip parrotfish (<i>Scarus rubroviolaceus</i>)</p>  <p>uhu 'ele'ele</p>  <p>uhu pālūkāluka</p>	<p>Spectacled parrotfish (<i>Chlorurus perspicillatus</i>)</p>  <p>uhu uliuli</p>  <p>uhu ahu'ula</p> <ul style="list-style-type: none"> No take: uhu 'ele'ele and uhu uliuli Bag limit: 2 total uhu pālūkāluka and uhu ahu'ula during open season Size limit: 12" minimum fork length (existing state law) Closed Season: April 1 – June 30 for uhu pālūkāluka and uhu ahu'ula
<p>Kūmū, whitesaddle goatfish (<i>Parupeneus porphyreus</i>)</p> 	<ul style="list-style-type: none"> Bag limit: 2 per day Size limit: 16" maximum fork length; 10" minimum fork length (existing state law) Closed Season: January 1 – March 31
<p>Kole, goldring surgeonfish (<i>Ctenochaetus strigosus</i>)</p> 	<ul style="list-style-type: none"> Bag limit: 20 per day Size limit: 5" minimum fork length Closed Season: April 1 – June 30

<p>Moi, Pacific threadfin (<i>Polydactylus sexfilis</i>)</p> 	<ul style="list-style-type: none"> • <i>Bag limit: 15 per day (existing state law)</i> • <i>Size limit: 18" FL maximum; 11" minimum fork length (existing state law)</i> • <i>Closed Season: June 1 – August 31 (existing state law)</i> • <i>Allowable gear: Take by hook-and-line, spear, or throw net only</i>
<p>Ula, spiny lobster (<i>Panulirus spp.</i>)</p> 	<ul style="list-style-type: none"> • <i>Bag limit: 2 per day</i> • <i>Size limit: 3 ¼" carapace length (existing state law)</i> • <i>Closed season: May 1 – August 31 (existing state law)</i> • <i>Allowable gear: Take by hand harvest or hook only</i> • <i>Other: No take of females (existing state law)</i>
<p>'Opihi, limpet (all varieties) (<i>Cellana spp.</i>)</p> 	<ul style="list-style-type: none"> • <i>Size limit: 1 ¼" shell diameter; ½" meat diameter, if meat only (existing state law)</i> • <i>Other: No take or possession while diving</i>
<p>Limu (multiple species)</p> 	<ul style="list-style-type: none"> • <i>Other: no taking with holdfast/roots attached</i>
<p>General Regulations</p> <ul style="list-style-type: none"> • No take or possession of marine life while night diving from 6pm to 6am ("torching" is allowed) • No SCUBA spearfishing (including rebreathers and/or other underwater breathing devices) • No commercial fishing, except that any fish may be taken by trolling for commercial purposes, and deep 7 bottomfish may be taken in waters deeper than 40 fathoms for commercial purposes. (recreational/charter fishing operations are not included under commercial fishing) 	
<p>Regulations for Kawa'aloa Bay Nursery Area Only (see map for boundaries)</p> <ul style="list-style-type: none"> • Fishing or gathering in Kawa'aloa Bay is not allowed, except for the following allowed activities: <ul style="list-style-type: none"> ○ Gather a'ama crab from the shoreline by hand-harvest only ○ Gather limu from the shoreline from 6am-6pm ○ Throw net from 6am-6pm ○ Hook-and-line from shoreline from 6am-6pm using artificial lures only • No swimming, surfing, body boarding, snorkeling, diving, operating a vessel, or engaging in any other in-water recreational activity (to minimize disturbance by non-subsistence activities) 	


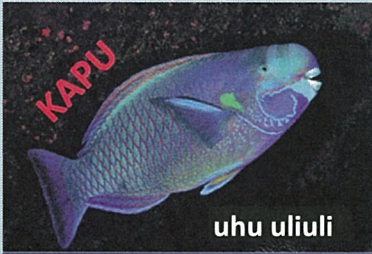


Summary of Public Comments and Questions from Public Scoping Meetings
Proposed Mo‘omomi North Coast of Molokai CBSFA
(Revised June 2017*)

[*This Summary was revised in June 2017 to include the following changes based on public feedback on the original Summary published by DAR on May 24, 2017:

1. Under “SCUBA spearfishing” (p.7), a sentence was added to include a comment that some people are too old or out of shape to freedive, so they need to use SCUBA equipment to safely spear fish;
2. Under “Commercial fishing” (p.8, paragraph 1), language was added to clarify that “weke ‘ula” refers to *Mulloides vanicolensis*, also known as “red weke” (as opposed to *Mulloidichthys pfluegeri*, also known as weke nono or moelua, which is often called weke ‘ula);
3. Under “Commercial fishing” (p.8, paragraph 4), a sentence was added to include a comment that the original intent of the CBSFA statute (HRS §188-22.6) was to grandfather in commercial fishers, and a suggestion the state should consider including such a provision in the Mo‘omomi CBSFA rules;
4. Under “Other Comments, Questions, and Concerns” (p.16), a bullet point was added to include comments from fishermen regarding State responsibility, culpability, and fiduciary duty to the people of Hawaii in establishing a CBSFA.]

In January 2017, the Division of Aquatic Resources (DAR) received a proposal from Hui Mālama O Mo‘omomi (HMM) for the designation of the Mo‘omomi North Coast of Molokai Community-Based Subsistence Fishing Area (“Mo‘omomi CBSFA”). DAR held four public scoping meetings, two on Molokai on 3/16/17, one on Oahu on 3/21/17, and one on Maui on 4/5/17, to present the proposal to the public and obtain feedback from interested stakeholders. DAR also accepted written feedback by mail and email from 2/19/17 to 4/12/17. The following is a summary of the comments, questions, and suggestions, organized by category, received through the public scoping process.

Uhu

Uhu, parrotfish (Scaridae)		
Redlip parrotfish (<i>Scarus rubroviolaceus</i>)	Spectacled parrotfish (<i>Chlorurus perspicillatus</i>)	
 uhu ‘ele‘ele	 uhu uliuli	<ul style="list-style-type: none"> • No take: uhu ‘ele‘ele and uhu uliuli • Bag limit: 2 total uhu pālukaluka and uhu ahu‘ula during open season • Size limit: 12” minimum fork length (existing state law) • Closed Season: April 1 – June 30 for uhu pālukaluka and uhu ahu‘ula
 uhu pālukaluka	 uhu ahu‘ula	

Summary

Most people felt that the proposed bag limit of 2 uhu per person per day was reasonable. Some felt that two uhu was too much, especially if a group of fishermen were targeting uhu. They suggested setting a limit per fishing group. Others felt that two uhu was not enough to allow fishermen to harvest for kūpuna or other family members. They suggested increasing the limit for fishermen harvesting to share their catch. Many people agreed that blue uhu should be protected. Some fishermen shared anecdotal reports that they now see more blue uhu on Maui as a result of the Maui rules protecting blue uhu. One individual questioned the scientific basis for protecting blue uhu and suggested that instead a slot limit should be implemented to protect large breeders. One other individual questioned why a maximum size limit for uhu was not proposed. A couple of people felt that the existing state minimum size of 12" was too small, but they were okay with it. There was also a suggestion to consider including other uhu species. Most people agreed that uhu should be protected from harvest during their peak spawning times from April – June, although a few stated that the June closure would adversely impact the already short summer fishing season.

Questions:

- What is the reason for the uhu bag limits?
- Will the bag limit change if uhu populations recover?
- Why is there no proposed maximum size for Uhu?

Suggestions:

- Consider including other uhu species
- It would be great if there is someone monitoring the health of the fish and reporting back about the health.
- Consider a group bag limit for uhu
- Consider increasing the bag limit for fishermen harvesting to share with others
- Consider allowing the take of uhu in June

Kūmū

Kūmū, whitesaddle goatfish
(*Parupeneus porphyreus*)



- **Bag limit:** 2 per day
- **Size limit:** 16" maximum fork length; 10" minimum fork length (existing state law)
- **Closed Season:** January 1 – March 31

Summary

Most people agreed that kūmū were in need of more protection and agreed with the proposed bag limit of 2 per person per day. A few individuals felt that the 2 kūmū limit was not enough to feed their family. Some felt that the existing minimum size limit should be increased. People generally agreed that the proposed slot limit was a good management tool, but there was concern that spearfishers might have difficulty judging length and that fish would be wasted.

One individual suggested correlating length with weight to make it easier for fishermen to determine max size. Most people agreed with the proposed seasonal closure. Some questioned whether three months was long enough and proposed extending the closed season into summer to be in line with spawning time. Some questioned the reason for regulating kŭmū at all, stating that the area does not have the right habitat for kŭmū.


Questions:

- Who determines how to decide length of closed season?
- In lifetime of monitoring – has spawning season of species changed?
- The north shore doesn't have the right habitat for kŭmū (they like sand). Why put regulations on fish where they're not?

Suggestions:

- Increase kŭmū minimum size limit
- Increase the bag limit so fishers can share with others
- Remove slot limit
- Correlate length (inches) with weight (pounds)
- Extend closed season (at least through the end of May)

Kole

<p>Kole, goldring surgeonfish (<i>Ctenochaetus strigosus</i>)</p> 	<ul style="list-style-type: none"> • Bag limit: 20 per day • Size limit: 5" minimum fork length • Closed Season: April 1 – June 30
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Summary

There was general consensus that kole needed regulatory protection. Most people felt that the proposed 20 kole bag limit was fair or generous. Some comments expressed concern that 20 per person was insufficient to prevent groups of fishers from over-harvesting an area. There were suggestions to reduce the bag limit to 15, 10, or even 5. One comment raised concern that if people needed large amounts of kole, there would be more fishing pressure on other areas. There were comments that the proposed closed season (April – June) would coincide with graduation season. Many saw this as a good thing. A couple comments questioned the proposed minimum size, and there was a suggestion that it be increased to 6 inches.


Questions:

- Is kole in danger of overharvest?
- Why is the bag limit 20 per day?
- Why is the minimum size 5 inches?
- Will this put more pressure on other areas?

Suggestions:

- Reduce bag limit (suggestions include 15, 10, and 5)
- Increase minimum size to 6 inches
- Consider a group bag limit for kole

Moi

<p>Moi, Pacific threadfin (<i>Polydactylus sexfilis</i>)</p> 	<ul style="list-style-type: none">• Bag limit: 15 per day (existing state law)• Size limit: 18" FL maximum; 11" minimum fork length (existing state law)• Closed Season: June 1 – August 31 (existing state law)• Allowable gear: Take by hook-and-line, spear, or throw net only
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Summary

Most comments pertained to the existing state bag limit of 15 moi per person, which was not part of the CBSFA proposal. Many people expressed that this was too high, and suggested a bag limit of 6-12, 5, or even 2 moi per person per day. There was general agreement with the proposed maximum size to protect large spawning females. One comment raised concern that it might be difficult for throw net fishers to judge the length of moi in the surf zone before throwing their nets, but it was recognized that throw net fishing was an important subsistence gathering practice. One individual suggested raising moi by aquaculture to replenish stocks.


Questions:

- Why the bag limit of 15?

Suggestions:

- Reduce existing bag limit
- Consider doing aquaculture for moi on the south shore.

Ula

<p>Ula, spiny lobster (<i>Panulirus spp.</i>)</p> 	<ul style="list-style-type: none">• Bag limit: 2 per day• Size limit: 3 ¼" carapace length (existing state law)• Closed season: May 1 – August 31 (existing state law)• Allowable gear: Take by hand harvest, hook, or trap only• Other: No take of females (existing state law)
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Summary

Most people felt that the proposed bag limit of 2 ula per person per day was reasonable. A few thought that the limit should be reduced to 1. Some questioned whether the law would

allow fishers to take more than their limit to harvest for family members. Some suggested increasing the bag limit for this reason. There was strong support for the proposed gear restrictions, although some commented that the rules should specify more clearly that nets are not allowed. Some comments also asked for clarity about what types of traps would be allowed and whether hand harvest would include the use of SCUBA gear. One individual suggested that the existing minimum size be increased to 4 inches carapace length.


Questions:

- What is the reason for the bag limit of 2?
- Would the bag limit apply only to people who are actively fishing/taking? If you have keiki, kūpuna, or other family members, can you collect their limit for them?
- Can you hand harvest using SCUBA gear?
- What types of traps are allowed?

Suggestions:

- Reduce bag limit to 1 lobster per person
- Increase the bag limit so fishers can share with others
- Specify that nets are not allowed
- Clarify what gear is allowed for hand harvest (e.g., SCUBA gear)
- Clarify what kinds of traps are allowed (cultural or modern?)
- Increase minimum size to 4 inches carapace length

‘Opihi

<p>‘Opihi, limpet (all varieties) (<i>Cellana spp.</i>)</p> 	<ul style="list-style-type: none"> • Size limit: 1 ¼" shell diameter; ½" meat diameter, if meat only (<i>existing state law</i>) • Other: No take or possession while diving
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Summary

There was widespread support for the proposed ‘opihi regulations. Some comments questioned the purpose of the “no take while diving” rule, and suggested that “diving” be defined. One individual expressed concern that the rule would impact people who jump in the water with a mask from a boat to harvest ‘opihi. Instead, a suggestion was made to remove the “no take while diving” rule and establish a maximum size limit for koele to protect larger fertile individuals. There were other suggestions to establish a max size limit for all ‘opihi. Some comments asked whether ‘opihi had a spawning season and suggested that a closed season be established if appropriate. There were a few comments suggesting that there should be a daily bag limit of 10 or 15-20 lbs per person.

Questions:

- What is the purpose of the “no take while diving” rule?
- Does ‘opihi have a spawning season?
- Do lots of people overharvest ‘opihi in this area?
- How will “diving” be defined?

Suggestions:

- There should be a bag limit (15-20lbs or 10lbs suggested)
- Recommend max size limit for koele (or all ‘opihi) instead of no take or possession while diving
- Existing statewide minimum size should be increased

Limu

Limu (multiple species)



- **Allowable gear:** Take by hand harvest only (use of scissors is allowed)
- **Other:** no taking with holdfast/roots attached

Summary

There was widespread support for the proposed limu regulations. Many felt this was a common sense rule that should be implemented statewide. Some suggested establishing a daily bag limit and protected seasons to correspond with reproductive cycles. There was a question about whether a dive knife could be used to harvest limu. There was also a question about the length of holdfast that must be left attached to the substrate.

Questions:

- For limu take, is a dive knife allowed?
- What is the minimum length of the holdfast that must be left?
- Is there a season when particular species are reproducing that can be incorporated into the regulations?

Suggestions:

- Rotate open and closed areas in Mo‘omomi to test limu spawning and see if there are improvements
- Consider a bag limit for limu

Night diving

- No night diving from 6pm to 6am (exception: lamalama or “torching” is allowed)

Summary

There were only a few comments on the proposed ban on night diving. Most comments were in support of the rule, suggesting that it would help address concerns of overharvest of uhu

and other fish. A couple comments questioned the proposed 6pm – 6am closed period, asking whether the time would change based on the season (due to longer days in the summer) and if 6am was early enough for fishermen. One individual expressed concern about the proposed ban, saying that he goes night diving only a few times, and that it is self-regulating because of water conditions.

Questions:

- Will the closure time change based on the season? Summer later time than winter?
- Is 6am early enough for fishermen?

Suggestions:

- none

SCUBA spearfishing

- No SCUBA spearfishing (including rebreathers and/or other underwater breathing devices)

Summary

There were only a few comments on the proposed ban on SCUBA spearfishing. Most comments expressed support for the rule, with many people concerned that SCUBA spearfishing is too effective at harvesting some types of fish (i.e., menpachi and other fish that hide in caves and ledges). Many considered it an unfair fishing method, which is not in line with cultural harvest techniques. Some suggested that SCUBA gear be banned for all harvest, including lobster. Some comments wanted to make sure SCUBA gear was allowed for surround net fishers to allow them to carefully remove the net without damaging the habitat. Some questioned why SCUBA spearing should be banned and asked whether there were studies to justify it. Another individual felt that freediving is more efficient than SCUBA spearfishing and suggested regulations on freedive spearfishing as well. A couple of comments noted that some people are too old or out of shape to freedive, so they need to use SCUBA equipment to safely spear fish.

Questions:

- Why not allow for SCUBA spearfishing?
- Why ban SCUBA spearfishing when there's a bag limit?
- What study was done for SCUBA diving? Why are you banning it?

Suggestions:

- Clarify SCUBA regulation (e.g., does it allow someone to use SCUBA gear when surround netting for ta'ape and akule?)
- SCUBA should not be allowed for all harvest, including lobster
- Might want to include freediving

Commercial fishing

- No commercial fishing, except for akule and ta'ape (recreational/charters fishing operations are not included under commercial fishing)

Summary

There were a significant number of comments regarding the proposed ban on commercial fishing in the area. Over all, there was a lot of support for no commercial take of reef fish species. Many people felt that the philosophy and ideals of preserving the Hawaiian lifestyle and mindset of “feed your family and your neighbors, but don’t sell” required that no commercial harvest should be allowed. Most, however, agreed with the proposed exemptions for commercial take of akule and ta’ape, and many suggested that roi and to’au should also be exempted. One comment suggested that purse and surround netting only be allowed to take those commercially allowed species, and that the same gear cannot be used to take other species. One commercial fisherman suggested that weke ‘ula (*Mulloides vanicolensis*, also known as red weke) also be allowed for commercial harvest, citing his personal catch records and sustainable practices that did not interfere with subsistence fishing.

Many comments expressed concern that the proposal would have a significant adverse impact on bottomfishers and trollers, who mainly target deep seven bottomfish and pelagic species. These fishers tend to fish along various depth contours, which often run inside the proposed 1-mile CBSFA boundary. To address this concern, there was a suggestion to allow commercial take of pelagic and deep seven bottomfish species in the area. Supporting comments suggested that since fishing was allowed, it would be nearly impossible to enforce the no commercial take provision of the proposed rules. It was also pointed out that pelagic fish were highly migratory, and that subsistence fishers would derive no benefit from prohibiting the commercial take of pelagic species. They also felt that these resources were not being heavily utilized by subsistence fishers, who instead tended to focus more on the nearshore reef species.

There was an alternative suggestion to move the seaward boundary closer to shore (e.g. ¼ miles from shore) or set the boundary along a depth contour. Ideas for depth boundaries ranged from 100 feet to 40 fathoms (240 feet). There were suggestions to create a special commercial fishing permit to fish commercially for akule and ta’ape within the area and to limit the number of permits. Some did not want to allow for charter boat fishing as they felt charter fishers were really commercial fishers as well. One comment pointed out that the original legislative Act 271 in 1994 provided for the continuation of fishing by commercial fishers, saying that “the livelihood of commercial fishers may be adversely affected if they are restricted in their fishing areas and as a result, every effort should be made to incorporate the concerns of commercial fishers.” Some comments suggested that the sale of all nearshore reef associated fish should be banned statewide.

A few comments questioned the definition of “commercial” and noted that a ban would impact fishers who primarily fished recreationally, but sold some of the catch to cover some costs. One comment suggested creating a list of species to be protected from commercial harvest, implying that everything else should be allowed. One comment argued that the original intent of the CBSFA statute (HRS §188-22.6) was to grandfather in commercial fishers, and suggested the state should consider including such a provision in the Mo‘omomi CBSFA rules.

Questions:

- Is there a lot of commercial activity in this area?
- What is considered “commercial” fishing? Are subsistence fishers who sell some fish to cover expenses considered commercial?
- If you ban commercial fishing, where do non-fishermen buy fish?

- Do commercial fishermen have to report where they fish and what they catch? Can you use this to verify complaints or usage?

Suggestions:

- Add roi and to'au on same exemption as ta'ape and akule
- Allow commercial take of pelagic species and deep 7 bottomfish species
- Make a list of species that may not be harvested commercially
- Move CBSFA boundaries closer to shore or follow 100' – 240' depth contours to minimize impact on commercial trollers and bottomfishers
- Require special permits for commercial fishers to take akule and ta'ape
- Only allow purse and surround netting to take akule and ta'ape. Don't allow purse or surround nets to be used to take other species.

Kawa'aloa Bay

Regulations for Kawa'aloa Bay Nursery Area Only (see map for boundaries)

- Fishing or gathering in Kawa'aloa Bay is not allowed, except for the following allowed activities:
 - Gather a'ama crab from the shoreline by hand-harvest only
 - Gather limu from the shoreline from 6am-6pm by hand-harvest only
 - Throw net from 6am-6pm
 - Hook-and-line from shoreline from 6am-6pm using artificial lures only
- No swimming, surfing, body boarding, snorkeling, diving, operating a vessel, or engaging in any other in-water recreational activity (to minimize disturbance by non-subsistence activities)

Summary

There was a lot of support for the protections of the Kawa'aloa Bay nursery area. The intent of minimizing human impacts to help the fish and other marine life that use the area was generally well supported. Some comments opposed the ban on swimming and questioned why it was necessary. Others felt that shoreline ulua fishermen would be opposed to the rule. A number of comments noted that it was a traditional practice not to swim or dive at Kawa'aloa Bay. Most people supported Option 1, which included the submerged rocks within the boundary. This area is believed to be an important habitat for fish. A couple people preferred Option 2 because they like to dive near the rocks. A couple of comments suggested that the nursery area should be expanded. There were also a number of questions regarding the purpose and justification of the special Kawa'aloa Bay rules.

Questions:

- How much disturbance is caused by swimming?
- What is the problem with ulua fishing?
- Why restrict fishing during nighttime hours?
- Can you be more specific on shoreline use? What types of fishing is allowed (casting, etc.)?
- What is the reasoning for stopping the nursery areas and not extending to Manae or other areas?
- Is that the only nursery area they're going to designate for the area?

- At any time in future, if resources really replenish, will it be possible to allow swimming in bay?
- Who will enforce these rules?
- Why allow throw net if it is a nursery area?
- Is lay net allowed in Kawa‘aloe Bay?
- Is this coming from traditional practices?
- Hatchery for turtles? I don't feel that this is important for turtles.

Suggestions:

- At least allow swimming
- Maybe we should expand the nursery area to give more areas to reproduce

Boundaries

- From Kalaeoka‘ilio (‘Ilio Point) in the west to Kaholaiki Bay in the east, from the shoreline out to one nautical mile.

Summary

There were a significant number of comments and questions regarding the proposed CBSFA boundaries. The boundary discussion fell into two categories, lateral boundaries and seaward boundaries.

Lateral boundaries. There was general support for the proposed lateral boundaries. Many people felt that deference should be given to HMM's proposed boundary because they had conducted outreach with landowners and subsistence fishers within the Molokai community in the development of the proposal. Some people felt that the CBSFA would put increased fishing pressure on adjacent areas and suggested that the boundary be extended to include East Molokai or even the entire island. Some suggested that the boundaries be extended in the current proposal, while others favored a separate CSBFA designation proposal for East Molokai. Many who favored a separate East Molokai designation suggested that Kalaupapa be excluded from the current proposal and included with East Molokai.

There were also a number of people who felt that the proposed area was too large and suggested starting with a smaller area first and expanding if it was successful. They cited concerns with DLNR's ability to effectively patrol and enforce such a large stretch of coastline, which they feared might lead to increased vigilante enforcement. A large area would also be more difficult to monitor and assess to measure success. One comment also (incorrectly) posited that "the proposed CBSFA would trump the existing rules and regulations of Kalaupapa and open the area for outsiders to take their resources."

Questions:

- Why does the boundary only extend to Kaholaiki? (why not further?)
- Will the designation put more pressure on areas outside the CBSFA?
- What is the justification for incorporating 26 miles of coastline into the proposed CBSFA?

Suggestions:

- Extend the boundary to include East Molokai or the entire island
- Explore the designation of an East Molokai CBSFA

- Have the boundaries go from ‘Īlio to Mo‘omomi (don’t include Kalaupapa)
- Begin with a CBSFA encompassing 3 – 5 miles of coastline with Mo‘omomi and Kawa‘aloa Bays in the center, and 1.5 miles of coastline in each direction.
- Start with a smaller area, see if it’s successful, and go from there

Seaward Boundaries. Comments were divided over the proposed 1-mile seaward boundary. Supporting comments suggested that the 1-mile distance was consistent with traditional ahupua‘a fisheries and management, as well as sufficient to protect nearshore subsistence resources and to provide access to offshore pelagic resources. Many people felt that it was easier to understand the boundary with a set distance from shore rather than using a depth contour.

A substantial number of comments took the position that 1 mile was too far. These comments came mostly from commercial fishers who fish for pelagic and deep bottomfish species along various depth contours, which often occur within 1 mile from shore. Most of these fishers supported protecting nearshore resources such as kŭmŭ and ‘opihi, but felt that a 1-mile boundary was excessive and would unnecessarily impact their fishing practices. Many suggested establishing the CBSFA boundary closer to shore (e.g. ¼ miles) or along a depth contour (suggestions ranged from 100 feet to 40 fathoms). Boat fishers noted that it would be easier to understand and comply with a depth contour boundary rather than distance from shore.

Some felt the 1-mile boundary was not enough and suggested extending it to 2 or 3 miles offshore.

Questions:

- How was the 1-mile boundary established?
- Where (at what depth) do these nearshore species exist?
- What is the depth at 1 mile?
- How will the 1-mile boundary be marked? How will the fisherman know where the boundary is? Everything is by fathoms.
- Will there be a physical buoy or marker 1 mile out?

Suggestions:

- Tailor the boundaries to the regulated species and where they exist.
- Make the boundary ¼-mile from shore
- Make the boundary according to depth contour (100’ to 40 fathoms suggested)
- Extend the boundary to 2 or 3 miles out

Process

Summary

A number of comments raised questions and concerns about the CBSFA proposal and designation process. On one hand, some felt that the process was too exclusive and did not allow for sufficient stakeholder participation in the development of the proposal. A common question asked was, “who is the community?,” the implication being that all members of the public should have input, not just a few Molokai residents. There was a sentiment that HMM was given too much influence in the process, and that equal time should be given to other stakeholders to independently review the proposal. It was even suggested that meetings should be held on the

Big Island and Kauai to give residents of those islands an opportunity to provide input. There was also a suggestion to hold an additional meeting with the residents and workers at Kalaupapa to brief them on the proposal and get their input.

On the other hand, some felt that the public scoping process was too broad, and that it was inappropriate to hold scoping meetings on Oahu and Maui. There was a concern that the proposal would be watered down to accommodate off-island special interests. It was suggested that, at the very least, Molokai comments should be given greater weight.

Concerns were also expressed regarding the format of the public scoping meetings. Some felt that the State should have used a facilitator who was from Molokai. Some felt that the DLNR Chairperson and/or the DAR Administrator should have been present at the meetings. On Oahu, concerns were expressed that the small group discussion process eliminated the opportunity for the public to speak to the entire group and to hear what other people had to say. On Molokai, some felt that the process did not allow for enough conflict to be expressed and resolved through the community *ho'oponopono* process. Some concern was expressed that the process was top down and that comments provided at past community meetings were not integrated into the community's current proposal.

There were also a number of comments and questions about how the area would be monitored and evaluated if rules were established. Some suggested that Molokai residents should have a chance to participate in monitoring and that non-destructive methods should be used to collect data (i.e., no gill nets). Others suggested that assessments should be done by an outside, non-biased group.

Questions:

- Who is Hui Mālama O Mo'omomi?
- How is "community" defined?
- What are the next steps in the process?
- Can we give comments on the rest of the management plan?
- How do we get informed on the next public hearing?
- If the rules are adopted, what is the timeframe and process for modifying the rules in the future? Can the State change the laws without consulting the community?
- Is there going to be monitoring to measure the effectiveness of these regulations? Who will be doing the monitoring?
- Who came up with the species regulations?

Suggestions:

- Hold public scoping meetings on Kauai and the Big Island
- Hold a meeting with the residents and workers at Kalaupapa to brief them on the proposal and get comments
- Give greater weight to comments from Molokai residents
- Clarify how the area will be monitored and assessed

Enforcement/Compliance

Summary

Many comments expressed concern about DLNR's limited funding and resources (officers and equipment) to adequately patrol the area. Suggestions to address these concerns

included: consider other funding sources, such as the Transient Accommodation Tax (TAT), to fund more enforcement positions; reduce the size of the CBSFA to make enforcement more manageable; establish higher fines for violations; utilize informer's fees to encourage more people to report violations; and use drones and cameras for surveillance and enforcement. Some comments suggested that enforcement could be enhanced by establishing formal "Makai Watch" programs in collaboration with DOCARE. Some asked whether locals could be lawfully trained and hired in enforcement and be equal in status with DLNR/DOCARE for a cohesive partnership. Many comments highlighted the need for good outreach and education about the rules, reasoning that personal awareness and peer pressure is much more effective than a few more enforcement officers.

Comments also expressed concern that DOCARE officers were limited in their ability to conduct inspections of coolers and catches due to legal constraints. There was a suggestion to explore legal amendments and policy changes to give enforcement officers the ability to inspect and enforce as needed. There was a feeling that unless these constraints were lifted, increasing the number of officers would not be very helpful.

Many comments also expressed concern that designation of a CBSFA will lead to a sense of ownership of those waters and increased vigilante enforcement. Some fishermen felt threatened, citing past incidents of vigilantism involving civil rights violations and threats of violence on Molokai, Oahu, and other areas of the State. People wanted to know what the consequences would be if people engaged in vigilante enforcement. There were suggestions to make it really clear who is responsible and authorized for enforcement.

Some comments expressed concern about the enforceability of the "no commercial fishing" law. When boats come from off-island, many asked how DLNR would know what was caught or whether the fish were sold. There was a suggestion to either allow trolling and bottomfishing or prohibit it.

Questions:

- Who will enforce these rules?
- Can volunteers be lawfully trained in enforcement and deputized?
- What are the consequences if people engage in vigilantism?

Suggestions:

- Consider other funding sources, such as the Transient Accommodation Tax (TAT), to fund more enforcement positions
- Reduce the size of the CBSFA to make enforcement more manageable
- Establish higher fines for violations
- Utilize informer's fees to encourage more people to report violations
- Use drones and cameras for surveillance and enforcement
- Establish a formal "Makai Watch" program in collaboration with DOCARE
- Explore legal amendments and policy changes to give enforcement officers the ability to inspect and enforce as needed
- Make it very clear who is responsible and authorized for enforcement
- Either allow trolling and bottomfishing or prohibit it

Access to Fishing

Summary

A number of comments raised questions and concerns about how the proposed CBSFA rules would affect access to fishing, both by boat and by land. Many of these concerns were based on language found in Appendix II, "Management Recommendations for Mokio Preserve by Mac Poepoe," an earlier proposal dated 2009. That document proposed a system for regulating activities in the area through a notification and catch reporting system for Molokai residents, and special access permits for non-residents. Despite DAR's efforts to clarify that this language was obsolete, and resubmittal of a revised proposal with that language removed, some individuals continued to express concern that the proposal will restrict access to fishing. There were also questions about who the rules would apply to.

Questions:

- What gives the Molokai people the right to that area? I've been fishing there for 30 years
- Please explain the access to area by on island Molokai resident only. If I own land on Molokai can I come from Oahu by boat?
- Who do you check with when the people want to go to go down? Where do they check in if they want to dive?
- Does this proposal restrict non-fishing vessels on the north coast and Mo'omomi? Please make it clear to the public that this proposal does not affect boat traffic.
- Why would DLNR consider turning their management authority over to the community when they (DLNR) are the ones entrusted with managing fisheries?
- Is this regulation only for Oahu people? People think HMM doesn't have to follow the rules.

Suggestions:

- Clarify how the proposed CBSFA rules would impact access to fishing

Ho'olehua Homestead Families Opposition

Summary

Many families expressed concern and/or outright opposition to the proposed rules. They expressed that HMM did not consult with them, and that they do not support HMM as a representative community organization. These families were very united in their opposition and concerns with HMM, but did not offer any other suggestions for resource management of the area. Ten families submitted written comments expressing these concerns. One family also listed an additional nine families that were related to them and did not support the CBSFA designation (some of these relative were still living on Molokai and others lived elsewhere but still returned home and used the Mo'omomi area). Many of the statements made in opposition reflected personal conflict with members of HMM.

Other Comments, Questions, and Concerns

- **Community-based co-management** – Many comments expressed strong support for the general concept of the State partnering with communities to manage fisheries based on

traditional knowledge, rather than pushing top-down management plans. Many felt that the proposed rules would effectively protect ocean resources and ensure the perpetuation of cultural fishing practices and subsistence lifestyles of Molokai residents. It would also enhance fishing opportunities for the general public. There was some concern that the public scoping process has a tendency to diminish the importance of centuries old traditional knowledge because other stakeholders' needs take precedence and because there is a lack of understanding the deeper foundations and reasoning integrated from kūpuna knowledge. Many felt that laws and policies should reflect that traditional knowledge.

- **Setting precedent** – Some expressed concern about the precedent being set by the designation of CBSFAs. The concern is that eventually the State's waters will be divided up into many different fishing areas, which will be very complex and expensive to manage. There was also concern that this would open the door to similar regulations (restricting fishing) in other places.
- **Data/scientific justification** – Some expressed concern that there was insufficient scientific data justifying the proposed regulations. Some suggested the need for fisheries assessments based on Maximum Sustainable Yield (MSY). Some claimed that fisheries resources were not in danger, and that the rules were unnecessary because Molokai's North Shore is naturally regulated by nature.
 - Do you have data showing how much fish there is?
 - What are the bases for size and bag limits?
 - Has Maximum Sustainable Yield (MSY) been established?
- **Special interests** – Some comments suggested that CBSFAs are a tool for special interest groups, especially large land owners, to take away fair and equal access to fishing. Some accused HMM of getting paid to establish a CBSFA.
 - Who pays for the CBSFA?
- **Invasive species** – There were a number of comments expressing concern about invasive species such as roi, ta'ape, and to'au. Some suggested that they are ruining the fisheries by eating all the baby fish and lobster. Others questioned how much damage they were really doing. There were suggestions to focus on eradication programs and creating a market for these invasive species.
 - Concern that introduced species are eating juvenile fish; eating other species (uhu, kūmū, lobster)
 - How can we make it so that there is a market for invasive fish? Getting rid of those would have huge effects on the health of our fish populations.
 - Are roi and ta'ape causing so much damage that it's really affecting fisheries?
- **Monk Seals** – There were a number of comments and questions about the impact of monk seals on fish populations. Some felt that seals were more abundant than in the past and were the reason the resources were declining, not because of overharvesting by people. Some suggested that monk seal numbers somehow be reduced in the area. Others asked whether studies had been done to determine their impact. There was a request to study this more and report back to the community.
 - How much do seals eat every day?
 - How do you distinguish the impact of the monk seals on the fish population from human impact?

- As it becomes available, collect info about what seals are eating and give back to the community.
- **Salt** – One individual noted that salt was not protected under the proposal and expressed concern that it could be overharvested.
- **Turtle** – Some comments mentioned that they wanted to be able to harvest and eat turtle and asked why they were protected.
- **Other fishery species** – There were some questions about whether other fish not mentioned in the CBSFA proposal (e.g., ‘opelu, kala, palani) were open to harvest.
 - Can anyone harvest them? Any amount?
 - Should halalu be limited to let them get bigger?
- **Integration with other fishing rules** – Some asked for clarification about how CBSFA regulations would work with other state laws. There was a suggestion to make it very clear in outreach materials that current state rules apply and that the CBSFA rules are an added layer (instead of creating an open season for anything not listed). Some questioned why Molokai needed special rules other than the statewide rules. (Why should the north shore of Molokai be more important than Kaneohe Bay, Waikiki, etc?)
- **Native Hawaiian rights** – A number of people expressed concern that the proposal would take away their native Hawaiian gathering rights, but did not explain how their rights would be impacted. One individual asked about the penalties for native Hawaiians who violate the rules and proposed that community service or other penalties outside of jail should be options.
- **Education and outreach** – There were lots of suggestions to increase education regarding these regulations and why they are being proposed. Some suggested giving out tide/moon calendars with monthly seasons and size/bag limits. The feeling was that the kids need to be educated, and they can help inform the older generation. The children are the future resource managers.
- **State responsibility, culpability, and fiduciary duty** – Some felt the State would be culpable of knowingly creating a substantial and unjustifiable risk for boaters and fishermen to the area, by inadvertently and consequently creating a situation for even more vigilantism and Civil Rights violations to occur as a direct or indirect result of developing an unintended false sense of ownership of the CBSFA. Some felt that the State knows that DOCARE is limited and that the proposed 27 x 1 mile area is large—thus leaving an enforcement gap that would lead to more vigilantism and no protection for boaters and fishermen in the area. Finally, some felt that the DLNR and BLNR have fiduciary duties to the public trust and must be held to those fiduciary standards when making policy such as the Mo‘omomi CBSFA.

Marine Resource Assessment of Moloka'i's North Coast (Īlio Point – Kalaupapa)

A comprehensive baseline assessment of the nearshore marine resources along the north shore of Moloka'i was conducted to document and evaluate the current status of the nearshore marine ecosystem, and to help guide future management actions.

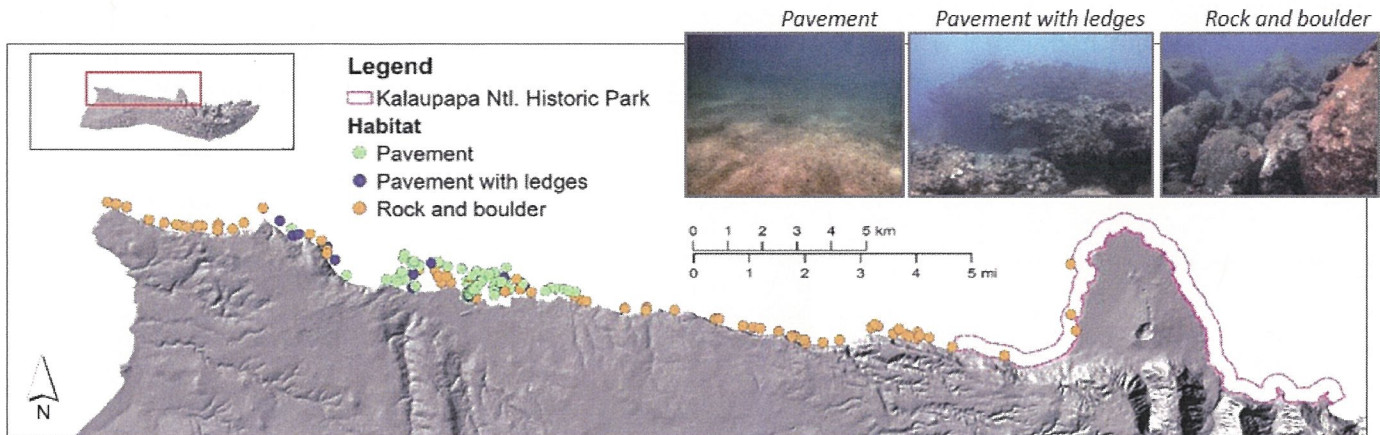


Fig 1. Underwater transect survey (n = 141) from May and August 2017 sampling periods; classified by habitat type.

Reef fish biomass

Estimated total biomass of reef fish on North Moloka'i was high, relative to other areas in the State of Hawai'i. Mean total biomass on North Moloka'i is nearly 3.5 times higher than the statewide average, approximately 3 times higher than that of other north-exposed shorelines (Fig. 2), and over 15 times higher than the north shore of heavily-fished O'ahu.

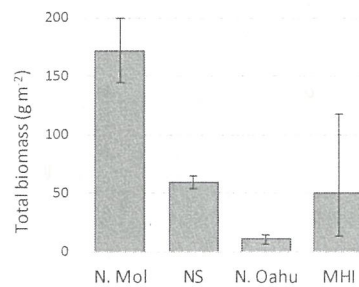
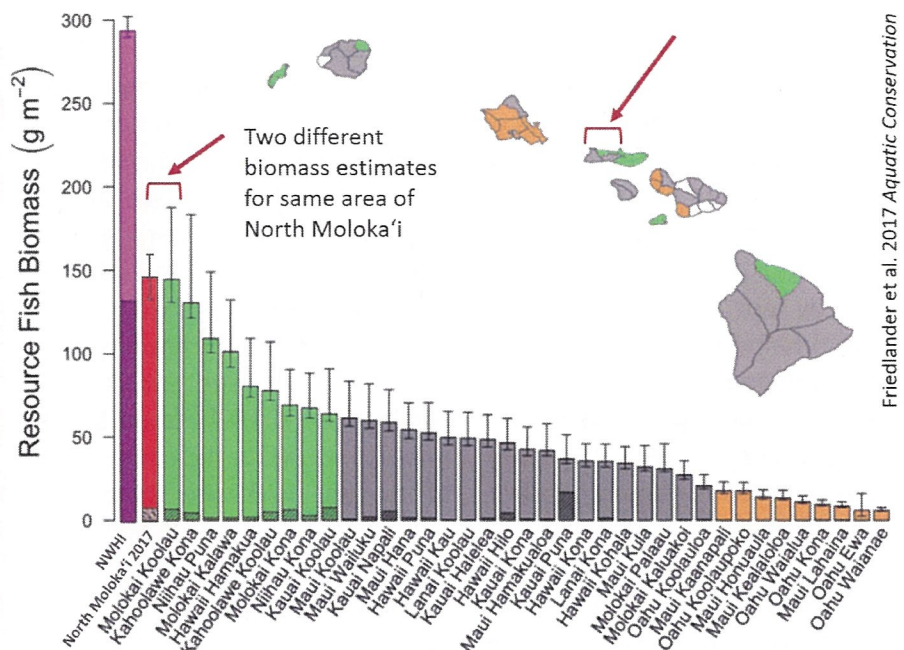


Fig 2. Total biomass of reef fish (with 95% confidence intervals), for N. Molokai, other north shores, N. Oahu, and all MHI (MHI estimate from Friedlander et al. 2017).

Mean biomass of resource species estimated from May and August 2017 survey data is consistent with estimates from Friedlander et al.'s (2017) analysis of resource biomass by moku (Fig. 3), which indicated that North Moloka'i had the highest estimated biomass of resource species in the state.

Fig 3. Mean biomass of resource fish from North Molokai 2017 surveys (red bar), compared with biomass from other areas of the main Hawaiian Islands (Friedlander et al. 2017). Cross-hatched areas represent proportion of biomass comprising reef sharks and jacks. Molokai Koolau is the same area as the 2017 sampling; both estimates indicate this area has the highest biomass in the state, but far from the biomass in the pristine Northwest Hawaiian Islands (NWHI; purple bar).



Friedlander et al. 2017 Aquatic Conservation

Species of interest

Mean biomass of selected resource species (kole, *Ctenochaetus strigosus*; kumu, *Parupeneus porphyreus*; uhu, *Scarus rubroviolaceus**) varied substantially by habitat (Fig. 4). Kole occurred exclusively in rock and boulder habitat. Kumu was observed in rock and boulder habitat, as well as pavement with ledges and cracks, but had very low biomass in flat pavement habitats, a pattern also observed in uhu.

Rock and boulder habitats and pavement areas with ledges and overhangs have greater structural complexity than flat pavement habitats. Higher complexity provides more holes and spaces that fish can use for refuge, and these patterns of higher biomass in habitats of greater structural complexity are further supported by analyses of rugosity rankings.

Each of the species of interest also showed higher mean biomasses on North Moloka'i, compared to other north shores in the main Hawaiian Islands, particularly North O'ahu (Fig. 5).

Fig 4. Mean biomass (\pm SE**) of species of interest, by habitat type.

PAV = pavement

PAVL = pavement w/ ledges

ROB = rock / boulder.

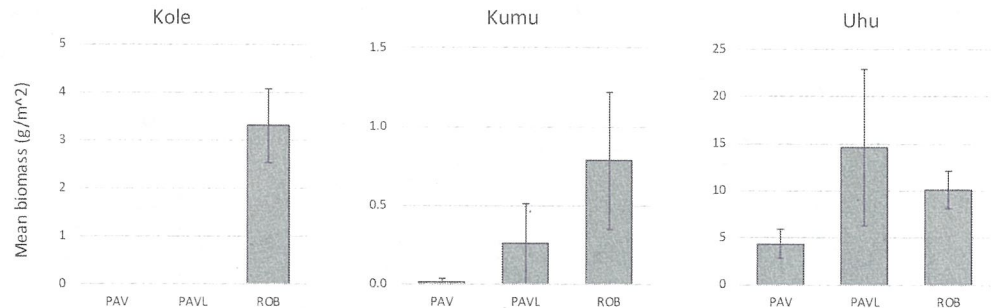
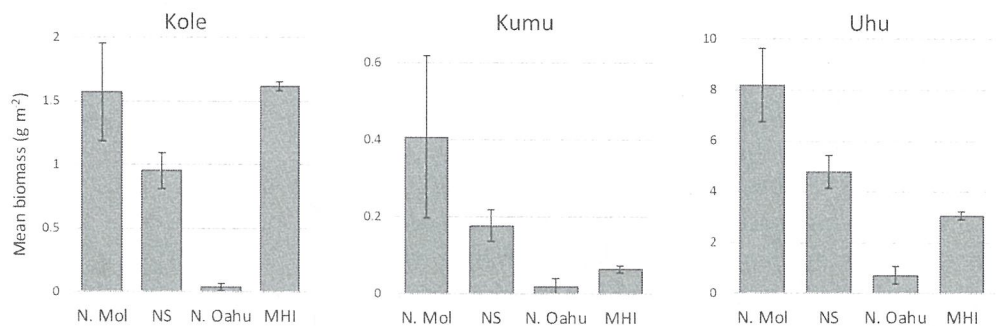


Fig 5. Mean biomass (\pm SE) of species of interest; North Molokai compared to all other north shores in the MHI, nearby North Oahu specifically, and statewide mean. Data source for comparisons: HIMARC 2018



**Chlorurus perspicillatus* was not abundant enough in surveys to be included in the analyses of uhu

**Note: Variance for species-specific data is Standard Error rather than 95% CI

Discussion

The north shore of Moloka'i has some of the healthiest nearshore ecosystems and highest biomass of reef fish in the state. The exposure of this shoreline to powerful waves and consistent rough water, as well as the limited shoreline access, has historically kept fishing pressure low, which has helped keep the area in its current exceptional state. However, long-term community fishers have expressed concerns with what they observe as recent declines in overall catches, as well as declining fish sizes. As resources throughout the state decrease, it is likely additional pressure will be placed on the

resources of this area. As a result, it is increasingly important to consider future management plans that will help maintain the quality of this ecosystem in the face of increasing fishing effort. The resources along the northern coastline of Moloka'i are important to the community, and a community-based subsistence fishing area (CBSFA) could be an important way for the community to partner with the State and help ensure the sustainability of their fishery resources for future generations.

Main points

- Mean reef fish biomass on North Moloka'i is nearly 3.5x higher than statewide average, and nearly 3x higher than other northern coastlines.
- Target species important to the community also show higher mean biomass than similar northern shorelines (~ 1.5 to 2x higher for kole, kumu, and uhu).
- Management efforts should be considered to maintain these valuable marine resources and help uphold sustainable subsistence practices into the future.