

State of Hawai'i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawai'i 96813

December 7, 2023

Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

**Request for Final Approval to Amend and Compile Chapter 13-95, Hawaii
Administrative Rules, "Rules Regulating the Taking and Selling of Certain Marine
Resources"**

Submitted for your consideration and approval is a request to amend and compile chapter 13-95, Hawaii Administrative Rules (HAR), "Rules Regulating the Taking and Selling of Certain Marine Resources." The proposed amendments would:

- 1) Increase the minimum length for manini (Convict Tang) from five to six inches;
- 2) Establish a new minimum length of five inches for kole (Goldring Surgeonfish);
- 3) Establish a new noncommercial bag limit of four kala (Bluespine Unicornfish) per person per day;
- 4) Establish new restrictions on the commercial harvest and sale of kala, including:
 - a. Requiring commercial kala fishers to first obtain a \$100 annual commercial kala fishing permit;
 - b. Setting a commercial annual catch limit (ACL) for kala of 15,000 lbs.; and
 - c. Requiring commercial marine dealers who sell kala to register with the Department as commercial kala dealers;
- 5) Increase the minimum length for large-bodied uhu (Parrotfish) species from twelve to fourteen inches;
- 6) Establish a minimum length of ten inches for all other uhu species;
- 7) Establish a new noncommercial bag limit of two uhu per person per day;
- 8) Establish restrictions on the commercial harvest and sale of uhu, including:
 - a. Requiring commercial uhu fishers to first obtain a \$100 annual commercial uhu fishing permit;
 - b. Prohibiting the commercial harvest of any uhu species other than *Scarus rubroviolaceus* (uhu pālupaluka and uhu 'ele'ele);
 - c. Setting a commercial ACL for uhu of 30,000 lbs.; and
 - d. Requiring commercial marine dealers who sell uhu to register with the Department as commercial uhu dealers;
- 9) Extend the current closed season (May-August) for pāpa'i kualoa (Kona Crab) to May-September;
- 10) Allow the take of female pāpa'i kualoa; and
- 11) Make other minor housekeeping amendments for clarity and consistency with other chapters including adding new definitions, amending old definitions, and other stylistic and grammatical corrections throughout the chapter.

PURPOSE

The purpose of this rulemaking action is to promote the sustainable harvest of manini, kole, kala, uhu, and pāpa'i kualoa through science-based and stakeholder-informed regulations.

Manini, kole, kala, and uhu are important food fish targeted by fishers for recreational, subsistence, cultural, and commercial purposes. They are also important herbivores that contribute to the health and resiliency of coral reef ecosystems by feeding on algae. These statewide rules will provide baseline harvest restrictions for these species but should be viewed as only one of many management tools to ensure healthy herbivore populations. A statewide “one size fits all” regulatory approach is inadequate, by itself, to address the diversity of nearshore marine resource issues throughout the state. Statewide regulations tend to either broadly overprotect at the expense of fishing opportunities or broadly under protect at the expense of the resource. To manage effectively, statewide rules must be coupled with effective regional and place-based regulations and other non-regulatory management measures. The Division of Aquatic Resources (DAR), through the Holomua Marine Initiative, is facilitating a process for stakeholders to develop wholistic island-scale regulations to effectively manage nearshore marine resources, but the process will take time. These statewide manini, kole, kala, and uhu regulations will provide additional protections for these important herbivore species while the Holomua process plays out.

Pāpa'i kualoa (Kona crab) is a benthic crab species targeted by some noncommercial fishers and a small-scale commercial fishery. Current harvest levels are far below federally established sustainable harvest limits, due in large part to an unnecessary ban on the retention of female individuals. The proposed rule amendments would promote sustainable harvest of this underutilized species, providing additional opportunities for fishers to feed themselves and their communities.

BACKGROUND

The proposed rules are the result of extensive stakeholder engagement over the past three years. Prior to seeking approval from the Board of Land and Natural Resources (Board) to initiate formal public rulemaking proceedings, DAR conducted ten initial public scoping meetings in November and December 2020, six targeted scoping sessions with specific stakeholder groups in March 2021, and three follow-up statewide public scoping sessions in December 2021. DAR also collected feedback via an online form. The number of participants engaged through these scoping efforts are shown in **Table 1**, below.

Table 1. Initial statewide scoping meeting participation.

Island/Region	Date	# of Participants
O'ahu	November 17, 2020, 5:30pm – 7:30pm	38
O'ahu	December 2, 2020, 5:30pm – 7:30pm	33
Maui Nui	November 10, 2020, 5:30pm – 7:30pm	20

Maui Nui	November 24, 2020, 5:30pm – 7:30pm	17
Kaua'i	November 17, 2020, 5:30pm – 7:30pm	8
Kaua'i	December 1, 2020, 5:30pm – 7:30pm	32
West Hawai'i	November 10, 2020, 10:00am – 12:00pm	44
West Hawai'i	December 3, 2020, 5:30pm – 7:30pm	45
East Hawai'i	November 12, 2020, 5:30pm – 7:30pm	13
East Hawai'i	December 10, 2020, 5:30pm – 7:30pm	16
O'ahu Fishers	March 9, 2021, 5:30pm – approx. 11:00pm	~90
Native Hawaiian Gathering Rights Association	March 17, 2021, 5:30pm – 7:30pm	Total number unknown
Maui Fishers	March 4, 2021, 5:30pm – 7:30pm	7
Kau'āina ulu'auamo (KUA) Community	March 11, 2021, 4:00pm – 6:00pm	19
Kaua'i Fishers	March 11, 2021, 5:30pm – approx. 11:00pm	~90
Hawai'i Island Fishers	March 2, 2021, 5:30pm – 7:30pm	18
Statewide	December 11, 2021, 9:00 –11:00am	20
Statewide	December 13, 2021, 12:00 –1:45pm	51
Statewide	December 15, 2021, 5:30 – 7:30pm	90
Online Feedback Form		33 comments received
Total		> 684

A detailed description of these scoping efforts, including summarized notes from each scoping session, is included in DAR's December 8, 2022 submittal to the Board requesting approval to hold public rulemaking hearings (Item F-5), available on the Board's website at: <https://dlnr.hawaii.gov/wp-content/uploads/2022/12/F-5.pdf>.

On December 8, 2022, the Board considered DAR's initial request to hold public rulemaking hearings pursuant to Hawaii Revised Statutes (HRS) chapter 91. A number of commercial uhu and kala fishers attended the meeting and provided testimony on the impact the proposed rules would have on their livelihoods. A video recording of the discussion on this agenda item is available on the Board's YouTube channel at <https://www.youtube.com/watch?v=OjNogXAGsek> (1:29:15 to 3:30:50). In response to the testimony received, the Board deferred voting on the measure and requested that DAR update the proposed amendments to include accommodations addressing the concerns raised by the commercial uhu and kala fishers in order to allow further discussion on the issues through the public hearing process. DAR subsequently revised the proposal, in consultation with commercial uhu and kala fishers and dealers, to include separate uhu and kala rules for commercial marine license (CML) holders and commercial marine dealers, in addition to the originally proposed uhu and kala rules that would apply to noncommercial fishers.

On May 12, 2023, DAR presented a second request to the Board for approval to hold public rulemaking hearings. The revised rulemaking proposal added a suite of regulations to allow continued commercial harvest and sale of uhu and kala subject to various restrictions including specialized fishing permit requirements, higher daily commercial bag limits, seasonal restrictions, annual catch limits, dealer registration requirements, and (for uhu) commercial slot limits and species restrictions. A detailed description of the revised proposal, including a discussion on the rationale for the changes, is provided in DAR's May 12, 2023 Board submittal (Item F-2), available on the Board's website at: <https://dlnr.hawaii.gov/wp-content/uploads/2023/05/F-2.pdf>. The Board approved DAR's request to hold public hearings on the revised rulemaking proposal.

From August 1-7, DAR held four statewide public hearings via Zoom, with in-person host sites on Maui, Moloka'i, Lāna'i, Hawai'i island (Hilo and Kona), O'ahu, and Kaua'i. DAR accepted written testimony on the proposed rules from July 2, 2023 to August 14, 2023. DAR received a total of 112 testimonies (59 oral and 51 written) from 97 unique individuals or organizations (15 duplicate testimonies were received).

PUBLIC TESTIMONY

Herbivores

The majority of testimony focused on the proposed rules for herbivore species. Of the 97 individuals or organizations providing testimony, 18 were in full support of the herbivore rules as proposed, 34 were in opposition, 28 supported the noncommercial rules but opposed the commercial rules as proposed, 12 were in partial support with varied opposition or suggested amendments to certain parts of the rules, and 5 (5%) did not indicate a clear position (**Figure 1**).

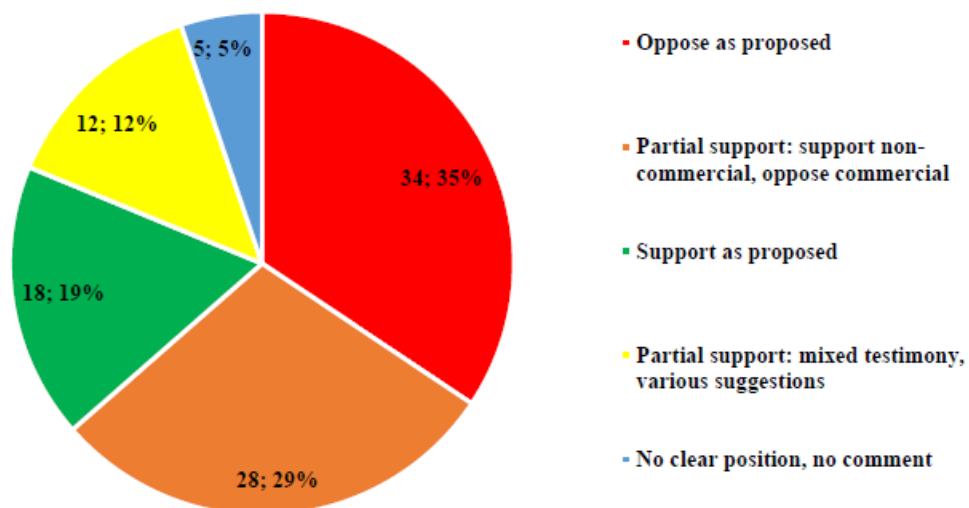


Figure 1. Separation of herbivore testimony received divided by general category.

Testimony in full or partial support (60% of total testimonies) generally expressed concern about ecosystem health and the need for further protections for herbivores. Within this group, some opposed any commercial harvest of these species, some suggested a decrease in the proposed commercial annual catch limit for uhu and kala, and some suggested that manini and kole should be regulated by bag limits rather than size limits.

Of the testimony in opposition (35% of total testimonies), some expressed a belief that the proposed rules were not justified by science, some felt that the proposed rules would infringe too heavily on fishing rights including subsistence harvest, and some who identified as commercial fishers testified that the rules would negatively impact their livelihood.

Some of the common themes raised among testimonies include the need for better scientific data and analysis, the need for place-based rules, the importance of subsistence fishing, the importance of good enforcement, concern regarding night spearfishing and SCUBA spearfishing, and the need for a Ka Pa'akai analysis.

Pāpa'i kualoa (Kona crab)

In total, sixteen testimonies included a position on the proposed Kona crab rule amendments. Of these testimonies, 11 were in support of the proposed amendments, 4 opposed the amendments, and 1 provided comment but did not give a clear indication of support or opposition (**Figure 2**).

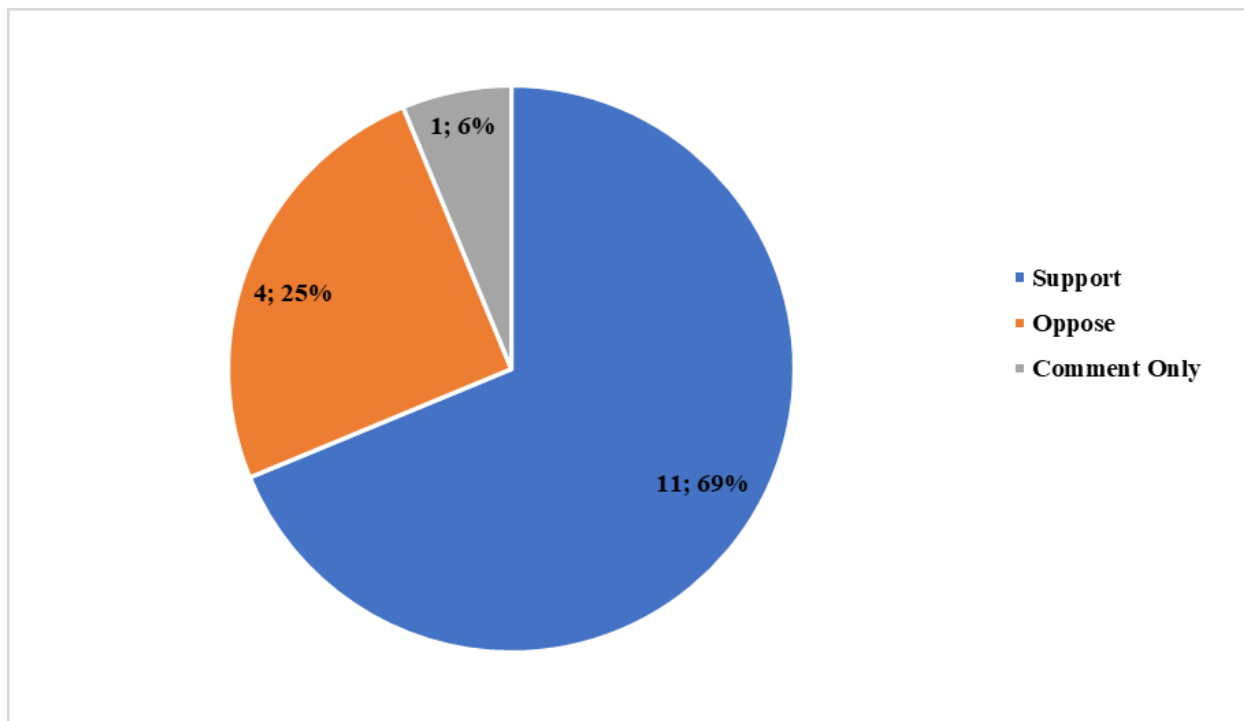


Figure 2. Testimony received regarding proposed amendments to Kona crab rules.

Testimony in support of the Kona crab rule amendments was typically concise with little follow-up justification. Some individuals expressed displeasure with the amount of time the process is taking to repeal the no-take of females. Opposition testimony expressed concern that the rule amendments are based on faulty scientific assumptions and cited the need for bag limits to protect against future excessive take. There was no opposition to the lengthening of the closed season. One testimony highlighted the importance of using the most recent scientific data to amend the Kona crab rules but did not express support or opposition to the rule.

The minutes from the public hearings are attached as **Exhibit 1**. Attached as **Exhibit 2** is the summary of public testimony, which includes direct links to the recordings of the public hearings for Kaua'i, O'ahu, Maui Nui, and Hawai'i Island (**Appendix A to Exhibit 2**) and copies of the written testimony (**Appendix B to Exhibit 2**).

CHANGES TO PROPOSED RULES

Based on the testimony received through the public hearing process and on subsequent internal DAR review and discussion, the Department proposes to make the following changes to the proposed rules:

Kala

- 1) **Raise the noncommercial daily kala bag limit from 2 to 4.** This will allow subsistence fishers (particularly net fishers) to retain a higher number of kala, which reduces the rule's impact on subsistence fishing practices and community sharing.
- 2) **Remove the 100-lb. catch/sale threshold requirement for permitted commercial kala fishers to maintain eligibility to renew their permit.** The original purpose of this requirement was to deter noncommercial fishers from entering the commercial fishery merely to gain access to a higher daily bag limit with no intent to sell. However, this would require additional staff resources to monitor and enforce. The Department believes that the commercial marine license (CML) and commercial kala fishing permit requirements are sufficient to deter most noncommercial fishers. Removing this provision simplifies the rules.
- 3) **Remove the commercial daily kala bag limit of 50 per person.** The original purpose of this provision was to distribute catch to prevent a race among fishers to catch their share of the annual catch limit (ACL). This was opposed by commercial fishers. Removing it simplifies the rules and gives commercial fishers more flexibility in harvesting strategies.
- 4) **Remove the seasonal closure (April – July) on the commercial harvest and sale of kala.** The commercial kala ACL is sufficient to limit harvest. Removing this provision simplifies the rules.
- 5) **Establish the period of validity for the commercial kala fishing permit based on the period of validity of the permittee's underlying CML, rather than on the commercial kala fishing season.** This simplifies administration of

the commercial kala fishing permit by tying it to the fisher's CML and avoiding two separate expiration dates.

- 6) **Raise commercial kala ACL from 10,000 to 15,000 lbs.** This increase is consistent with raising the non-commercial bag limit from 2 to 4. It will maintain commercial kala harvest near the current status quo while the stock is reassessed.

Kala Considerations:

- The 2016 stock assessment noted concerns about kala results. Preliminary follow-up investigation shows Main Hawaiian Island (MHI) kala stocks may not be depleted. DAR plans to re-assess kala stocks in the next year.¹
- Kala are not highly targeted by non-commercial and commercial fishers.
- Kala are algal browsers. Other species (nenu, umaumalei, etc.) provide functional redundancy of ecosystem services.
- The bulk of the commercial kala catch comes from the surround net fishery, which is made up of a few individuals/families on Oahu and Maui.
- Setting less restrictive statewide rules allows for more restrictive island-based or place-based rules (e.g., a smaller daily kala bag limit or a ban on commercial kala harvest).

Uhu

- 1) **Allow take of large-bodied terminal phase (TP) male uhu.** There are a number of theories about how taking of TP uhu may affect uhu population structure, spawning behavior, and ecosystem services. However, not enough is understood to justify a statewide ban. Establishing place-based experimental management areas to study the impacts of a TP ban could provide better information. The Department is currently analyzing Maui survey data to study the results of the 2014 TP uhu ban on the island of Maui.
- 2) **Remove the 340-lb. catch/sale threshold requirement for permitted commercial uhu fishers to maintain eligibility to renew their permit.** The original purpose of this requirement was to deter noncommercial fishers from entering the commercial fishery merely to gain access to a higher daily bag limit with no intent to sell. However, this would require additional staff resources to monitor and enforce. The Department believes that the CML and commercial

¹ The original proposal to strictly reduce the take of kala throughout the state was largely based on Nadon's 2016 length-based stock assessment, which found SPR to be 3%. Further review suggests that the model used in the assessment may be problematic as to kala. It was found that average lengths observed in both the MHI and those observed in the NWHI fell below L_{SPR30} (estimated average length when SPR=30%) and $L_{F=0}$ (estimated average length when there is no fishing). This meant that the model was finding the near-pristine NWHI kala population to be at an overfished state. A likely cause according to the author was that natural mortality was estimated using longevity (53 years) which may have resulted in an overestimate given the assumption that 5% of the population is left at maximum age. Alternatively, when average length of *N. unicornis* in the NWHI was used to calculate natural mortality, SPR increased to 36%. Though we are not suggesting that the SPR of 36% be used, the Department believes that further assessment of kala stocks is needed and that the original SPR of 3% should not be used to inform current management action.

uhu fishing permit requirements are sufficient to deter most noncommercial fishers. Removing this provision simplifies the rules.

- 3) **Remove the commercial daily uhu bag limit of 30 per person.** The original purpose of this provision was to distribute catch to prevent a race among fishers to catch their share of the ACL. This was opposed by commercial fishers. Removing it simplifies the rules and gives commercial fishers more flexibility in harvesting strategies.
- 4) **Remove commercial uhu slot limit of 14 to 20 inches.** The original purpose of this provision was to protect large uhu from commercial harvest. However, it may be difficult for commercial uhu fishers (who primarily use spearfishing methods) to gauge length underwater, which could potentially result in unnecessary regulatory discards. Removing this provision simplifies the rules and reduces the chance of waste. DAR believes that the commercial uhu ACL is sufficient to limit commercial harvest, but plans to conduct regular market sampling to collect data on uhu length, weight, and phase. This information will be used to develop an uhu management framework that may consider future commercial uhu slot limits if warranted.
- 5) **Remove the seasonal closure (February – May) on the commercial harvest and sale of uhu.** The commercial uhu ACL is sufficient to limit harvest. Removing this provision simplifies the rules.
- 6) **Establish the period of validity for the commercial uhu fishing permit based on the period of validity of the permittee’s underlying CML, rather than on the commercial uhu fishing season.** This simplifies administration of the commercial uhu fishing permit by tying it to the fisher’s CML and avoiding two separate expiration dates.
- 7) **Reduce commercial uhu ACL from 34,000 to 30,000 lbs.** 30,000 lbs represents approximately 67% (2/3) of the 5-year average sales from 2017-2021. The ACL is intended to cap commercial uhu harvest and prevents substantial expansion of the uhu fishery. Reducing the ACL from 75% to 67% provides a more conservative “cap” while an uhu management framework is developed.

Uhu Considerations:

- Uhu are highly targeted by both noncommercial and commercial fishers.
- The majority of uhu taken commercially are *S. rubroviolaceus*. Restricting commercial harvest to a single species will prevent commercial take of small-bodied uhu species that are currently not targeted by commercial fishers but would otherwise be subject to harvest if the minimum size is reduced to 10 inches.
- Large-bodied uhu are scrapers. There are no other species that perform the same ecosystem services (no functional redundancy).

Non-substantive technical changes

- 1) Add new definitions for “commercial kala fishing trip”, “commercial purpose”, “commercial uhu fishing trip” to clarify the meaning of these terms as used in the rules.

- 2) Add express reference to the Department's authority to establish additional restrictions on the commercial take or possession of kala and uhu pursuant to existing adaptive management authority under §187A-5(b), HRS.
- 3) Other minor edits for consistency within the chapter and with authorizing statutes.

No changes have been made to the proposed manini, kole, and pāpa'i kuloa rule amendments that were presented at public hearing. A redline draft of the revised proposed rule amendments to HAR chapter 13-95 drafted in Ramseyer format is attached as **Exhibit 3**. A clean version of the revised proposed rule amendments drafted in Ramseyer format is attached as **Exhibit 4**.

KA PA'AKAI ANALYSIS

On September 11, 2000, the Hawaii Supreme Court (Court) ruled in *Ka Pa'akai O Ka 'Āina vs. Land Use Commission, State of Hawaii*² (Ka Pa'akai) that State and government agencies have an obligation to "preserve and protect traditional and customary Native Hawaiian rights" and that an appropriate analytical framework was needed to assess whether these rights were unduly violated.³ The Court developed a three-pronged test, dubbed the "Ka Pa'akai Analysis," which is triggered when government agencies consider proposed uses of land and water resources that may impact the exercise of Native Hawaiian traditional and customary rights.

Although the Court stated that an agency's constitutional obligation to reasonably protect Native Hawaiian traditional and customary practices was widely applicable to all agency actions, the Court did not opine as to whether the Ka Pa'akai Analysis could or should be applied outside of contested case hearings. Then, on March 15, 2023, the Court ruled in *Flores-Case 'Ohana v. University of Hawaii*⁴ (FCO) that the obligation described in Ka Pa'akai not only applied to contested case hearings, but also to rulemaking actions.⁵ In doing so, the Court provided a modified Ka Pa'akai Analysis to be used in rulemaking actions. The analysis outlined in FCO requires agencies to consider:

- 1) The identity and scope of Native Hawaiian traditional and customary rights affected by the rule, if any;
- 2) The extent to which Native Hawaiian traditional and customary rights will be affected or impaired by the rule; and

² [Ka Pa'akai o ka 'Āina v. Land Use Comm'n \(Ka Pa'akai\), 94 Hawai'i 31, 7 p.3d 1068 \(2000\)](#) (Ka Pa'akai)

³ "Following up on PASH, we recognized in Ka Pa'akai that in contested case hearings, the State and its agencies have an 'affirmative duty ... to preserve and protect traditional and customary native Hawaiian rights' and provided a framework 'to effectuate the State's obligation to protect native Hawaiian customary and traditional practices while reasonably accommodating competing private interests.'" [Flores-Case 'Ohana v. University of Hawaii', 153 hawaii'i 76, at 83 \(2023\)](#) (quoting Ka Pa'akai at 45-47, 1082-1084)

⁴ [Flores-Case 'Ohana v. University of Hawaii', 153 hawaii'i 76, \(2023\)](#)

⁵ "In sum, the Ka Pa'akai framework applies to administrative rulemaking in addition to contested case hearings. Requiring the State and its agencies to consider Native Hawaiian traditional and customary rights in these contexts effectuate[s] the State's obligation to protect native Hawaiian customary and traditional practices[.]" [Flores-Case 'Ohana v. University of Hawaii', 153 hawaii'i 76, at 84 \(2023\)](#)

- 3) Whether the proposed rules reasonably protect Native Hawaiian traditional and customary rights, if they are found to exist, as balanced with the State's own regulatory right.

Subsequently, the Department has provided the following analysis on this proposal's effects on Native Hawaiian traditional and customary practices:

- 1) Identity and Scope of Native Hawaiian Traditional and Customary Rights Affected by the Rule, if Any**

The proposed rules would result in statewide changes to existing fishing regulations for manini, kala, uhu, and pāpa'i kualoa and a new statewide minimum size limit for kole. The rules would affect Native Hawaiian subsistence fishing rights and cultural practices statewide in two general ways. On one hand, the rules (in particular, more restrictive daily bag limits and higher minimum size limits) would restrict subsistence fishers' ability to gather food for themselves and their communities. On the other hand, the rules would protect against depletion of these species, thereby enhancing subsistence fishers' ability to gather food and perpetuate cultural practices.

- 2) Extent to Which Native Hawaiian Traditional and Customary Rights Will Be Affected or Impaired by the Rule**

During the public hearing process, at least six individuals testified that the herbivore rules would threaten their Native Hawaiian subsistence gathering rights and ability to feed their families. However, none of them suggested an alternative rule (e.g. a higher bag limit or smaller minimum size) that would allow them to meet their subsistence needs. The general sentiment of this group was that any new or amended fishing regulation would infringe on their autonomy to harvest resources.

The proposed rules would still allow for the take of these species, so the right to gather these species would remain, albeit subject to daily noncommercial bag limits for uhu and kala and minimum sizes for all. Further, the harvest of many other nearshore subsistence resources would remain open and without limit. Therefore, while subsistence gathering of specific types of fish such as uhu or kala may be reduced, the general ability to gather marine resources for family consumption or community sharing would remain.

A number of individuals identified themselves as Native Hawaiian fishers and provided testimony in support or partial support of the proposed rules without mentioning adverse impacts to subsistence fishing rights. Some testifiers noted that resource management is a cultural practice in support of the rules.

- 3) Reasonable Protections for Native Hawaiian Traditional and Customary Rights, if They are Found to Exist, as Balanced with the State's Own Regulatory Right**

The proposed rules seek to strike a balance between maintaining fishing access to important subsistence and cultural fishery resources and providing sufficient statewide protections to ensure long-term sustainability of these species. Throughout the rulemaking process the Department has listened to stakeholder input and made significant changes to the proposed rules. Following the initial rounds of public scoping, a number of herbivore species were removed from consideration for statewide rulemaking, including urchins, chubs, and 4 species of surgeonfish. In response to stakeholder testimony that kole and manini bag limits would negatively impact the harvest of large numbers for special cultural events, the Department removed the proposed daily bag limits, relying solely on minimum size limits instead. In response to testimony that noncommercial bag limits would impair subsistence harvest, the Department proposes to increase the noncommercial daily kala bag limit from 2 to 4. These changes are intended to reasonably protect fishing practices, including Native Hawaiian subsistence fishing, while providing sufficient protections to safeguard against overharvest and depletion of these species.

The Department believes that the proposed rules' adverse effects to any identified Native Hawaiian traditional and customary practices have been mitigated as much as reasonably possible. When balanced with the State's regulatory right, the proposed rules are justified by the State's interest in regulating the harvest of these species.

RECOMMENDATIONS:

"That the Board give final approval to amend and compile Hawaii Administrative Rules chapter 13-95, Rules Regulating the Taking and Selling of Certain Marine Resources, as set forth in **Exhibit 4** attached hereto."

Respectfully submitted,



BRIAN J. NEILSON, Administrator
Division of Aquatic Resources

APPROVED FOR SUBMITTAL



DAWN N. S. CHANG, Chairperson
Board of Land and Natural Resources

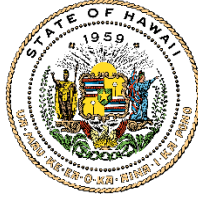
Attachments:

- Exhibit 1 – Public Hearing Minutes
- Exhibit 2 – Summary of Public Testimony
- Exhibit 3 – Redline Draft Proposed HAR chapter 13-95 (Ramseyer format)
- Exhibit 4 – Clean Draft Proposed HAR chapter 13-95 (Ramseyer format)

Item F-5, Exhibit 1

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

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
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FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

PUBLIC HEARING MINUTES

Amendments to and Compilation of Hawaii Administrative Rules Chapter 13-95, "Rules Regulating the Taking and Selling of Certain Marine Resources"

Hearing Date: August 1, 2023, 5:30 p.m. (Maui Nui)
Hearing Type: Hybrid Zoom with In-Person Host Sites
Host Site Locations:

- 1) Maui DAR Office,
130 Mahalani Street
Wailuku, Hawai'i 96793
- 2) Kūlana 'Ōiwi
600 Maunaloa Highway
Kaunakakai, Hawai'i 96748
- 3) Division of Boating and Ocean Recreation –
Lāna'i Office, Mānele Small Boat Harbor
Mānele Harbor Road
Lāna'i City, Hawai'i 96763

The full recording of the Maui Nui public hearing is available on the DAR
YouTube Channel at: <https://www.youtube.com/watch?v=tvCt4-7ar04>

Hearing Date: August 2, 2023, 5:30 p.m. (Hawai'i Island)
Hearing Type: Hybrid Zoom with In-Person Host Sites
Host Site Locations:

- 1) Aupuni Center Conference Room
101 Pauahi Street, Suite #1
Hilo, Hawai'i 96720
- 2) West Hawai'i Civic Center – Community
Meeting Hale
74-5044 Ane Keohokālole Highway
Kailua-Kona, Hawai'i 96740

The full recording of the Hawai'i Island public hearing is available on the DAR
YouTube Channel at: https://www.youtube.com/watch?v=lsKQghL_4xA

Hearing Date: August 3, 2023, 5:30 p.m. (Kaua'i)
Hearing Type: Hybrid Zoom with In-Person Host Site
Host Site Location: 1) Kaua'i Veterans Center
3215 Kapule Highway
Līhu'e, Hawai'i 96766

The full recording of the Kaua'i public hearing is available on the DAR YouTube Channel at: <https://www.youtube.com/watch?v=saE3ffqYTJk>

Hearing Date: August 7, 2023, 5:30 p.m. (O'ahu)
Hearing Type: Hybrid Zoom with In-Person Host Site
Host Site Location: 1) Stevenson Middle School Cafeteria
1202 Prospect Street
Honolulu, Hawai'i 96822

The full recording of the O'ahu public hearing is available on the DAR YouTube Channel at: <https://www.youtube.com/watch?v=ex5qtBDqip0>

I. INTRODUCTION

A. Opening Remarks

1. Introductions
2. Call to order
 - a. August 1 (Maui Nui) – 5:33 p.m.
 - b. August 2 (Hawai'i Island) – 5:33 p.m.
 - c. August 3 (Kaua'i) – 5:33 p.m.
 - d. August 7 (O'ahu) – 5:33 p.m.
3. Brief description of the proposal
4. Availability of draft rules for review
5. How to watch YouTube live stream

B. Purpose, Approval, and Notice

1. Purpose of the public hearing
2. Approval to conduct this public hearing was obtained from the Board of Land and Natural Resources at their board meeting on May 12, 2023.
3. The Legal Notices of the August 1, 2, and 3 public hearings were published in the July 1, 2023 Saturday issues of the Garden Island and West Hawai'i Today newspapers and the July 2, 2023 Sunday issues of the Honolulu Star Advertiser and Hawai'i Tribune Herald newspapers. The Legal Notice of the August 7 public hearing was published in the July 7, 2023 Friday issue of the Honolulu Star-Advertiser. Additionally, notice of this public hearing was posted on the Draft Rules and Public Notices page of the DAR website (where digital copies of the draft rules in Ramseyer format can be found) as well as posted on the Announcements page of the DAR website.

C. Hearing Procedures

1. Step-by-step overview of how the hearing will be conducted
2. Instructions on how to provide testimony
3. Step-by-step instructions on how testimony will be collected

II. PRE-RECORDED SLIDES WITH VOICE OVER

A. Proposed amendments to Hawaii Administrative Rules Chapter 13-95, “Rules Regulating the Taking and Selling of Certain Marine Resources”

1. Brief description and summary of the proposed amendments to HAR chapter 13-95.

III. TESTIMONIES

A. Collection of Oral/Video Testimonies

1. YouTube live streaming reminder for those not wishing to provide testimony but still wish to view the proceedings
2. Reminder on how to provide testimony and the process that testimony will be collected
3. Collection of testimony on **Lānaʻi** [No one wished to testify]
4. Collection of testimony on **Molokaʻi** [eight individuals testified]
5. Collection of testimony on **Maui** [Three individuals testified]
6. Collection of testimony on **Hawaiʻi** [Eleven individuals testified]
7. Collection of testimony on **Kauaʻi** [Five individuals testified]
8. Collection of testimony on **Oʻahu** [Thirty-one individuals testified]
9. Last call for all others wishing to provide testimony who were not called or for those wishing to provide additional testimony

B. Written Testimony

1. Announcement of deadline to provide written testimony: **Monday, August 14, 2023**
2. Instructions on how to provide written testimony via postal mail or via e-mail

IV. NEXT STEPS AND ADJOURNMENT

C. Extended Timeline

1. Outline of the projected timeline of the rules
2. Last call for questions

D. Adjournment

1. August 1 (Maui Nui) – 6:32 p.m.
2. August 2 (Hawaiʻi Island) – 6:44 p.m.
3. August 3 (Kauaʻi) – 6:05 p.m.
4. August 7 (Oʻahu) – 7:45 p.m.

Item F-5, Exhibit 2

Proposed Amendment and Compilation of Hawaii Administrative Rules
Chapter 13-95, “Rules Regulating the Taking and Selling of Certain
Marine Species”

Summary of Public Testimony

September 2023



1. Introduction

Public hearings related to proposed amendments to HAR 13-95 related to the taking of uhu, kala, manini, kole, and pāpa‘i kualoa (Kona crab) were held by the Division of Aquatic Resources (DAR) between August 1 and August 7, with hybrid (in-person and virtual) meetings occurring on Maui, Lāna‘i, Moloka‘i, Hawai‘i Island, Kaua‘i, and O‘ahu (Appendix A). Written testimony was received from July 2, 2023 (initial date of public notice) to August 14, 2023 (Appendix B).

This document attempts to give an overview of testimony received related to these proposed amendments including points of contention and common concerns raised. Due to the diversity of the individual amendments proposed and resulting complexity of testimonies received, capturing all sentiments voiced in a single document is difficult. It is strongly suggested that those interested in understanding the full breadth of testimony submitted take time to read each individually.

1.1 Testimony Submitted

In total, 112 testimonies were received with a relatively even split between oral (n = 59) and written (n = 53; Table 1). Fifteen testimonies were duplicates (both written and oral provided), bringing the total of unique testimonies to 97. Of the 59 oral testimonies provided, 31 (53%) were from O‘ahu with smaller contributions from Hawai‘i Island (11; 19%), Moloka‘i (9; 15%), Kaua‘i (5; 8%), and Maui (3; 5%). Testimony was not received from Lāna‘i.

Table 1. Testimony received by type and location.

Testimony Type	Count
Oral - Hawai‘i	11
Oral - Kaua‘i	5
Oral - Maui	3
Oral - Moloka‘i	9
Oral - O‘ahu	31
Written	53
Total Received	112
Duplicate	15
Total Unique	97

Testimonies are quantified in this summary by the number of unique letters, emails, or oral testimonies received by DAR. We did not attempt to quantify total number of individuals represented by each testimony as many did not include this information. It is however still important to recognize that each testimony may represent the collective view of more than one individual. For example the Native Hawaiian Gathering Rights Association (NHGRA) submitted poll results with numerous respondents while other groups such as Kua‘aina Ulu ‘Auamo (KUA) noted in their testimony that they represent a broader community yet did not specify how many voices were represented. Again, we recommend taking time to review each testimony submitted.

2. Herbivores

2.2 Testimony Categorization

Testimony received was divided into five broad categories: Oppose as proposed, Support as proposed, Partial support (support non-commercial, oppose commercial), Partial support (mixed testimony), and No clear position/no comment. Given the multitude and diversity of amendments proposed, categorization was not always clear-cut. Testimonies that did not clearly fit into a group were categorized based on the overall sentiment of the testifier. For example, a testimony that voiced support for the amendments but noted the importance of place-based rules would still be categorized as “Support as proposed” because it is assumed that the lack of place-based rules in the amendments isn’t swaying their underlying sentiment of support. Conversely, a testimony that voiced support for management *in general* but also added that a complete ban on uhu harvest is needed would be categorized as “Oppose as proposed” because the testifier did not note their support for specific amendments proposed and supported an alternative that is fundamentally incompatible with the amendments.

The category Oppose as proposed was the largest at 35%, followed by Partial support (support non-commercial, oppose commercial) at 29%, Support as proposed at 19%, Partial support (mixed testimony) at 12%, and No clear position/no comment at 5% (Figure 1).

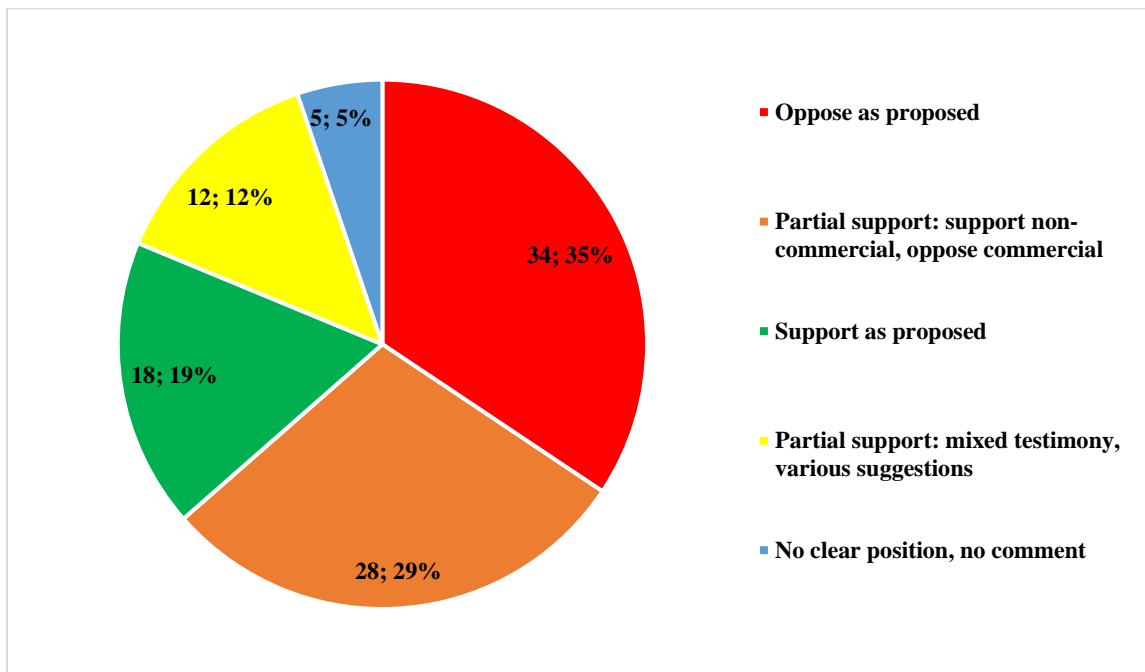


Figure 1. Separation of herbivore testimony received divided by general category.

2.2.1 Oppose as Proposed (35%)

Outright opposition to the proposed amendments were largely based on three main opinions. First, some testifiers felt that the scientific basis, analysis of scientific data, justification, or data quality did not support the proposed amendments. Second, some testifiers opposed the regulations as they further infringed too heavily on fishing rights including harvest for subsistence purposes. Third, some testifiers

who identified as commercial fishers found the rules to likely impact their livelihood negatively. Multiple individuals within this group included in their testimony that they felt that land-based impacts (water quality, erosion, lack of freshwater, etc.) were being ignored resulting in fishers being targeted disproportionately to their impact on marine resources.

2.2.2 Support as Proposed (19%)

Testimony expressing outright, or near-outright support for the proposed amendments were typically the simplest as most did not offer detailed reasoning for their support. In general, these individuals appeared to be influenced by their concerns regarding ecosystem health and the understanding that further protections for the herbivore species proposed are needed.

2.2.3 Partial Support: Support Non-Commercial, Opposed Commercial (29%)

Among those that expressed partial support for the amendments, the majority fell into a distinct group that supported the non-commercial rules but opposed the commercial rules. Motivation for opposing the commercial rules could be subdivided into three general categories. First, some testifiers objected to commercialism in these fisheries outright and felt that it that it would violate cultural and/or ethical standards. Second, some testifiers did not expressly oppose the idea of commercial catch though they felt like it should be a low priority in comparison to non-commercial fisheries. These individuals often noted the disparity between the proposed commercial and non-commercial daily allowances and felt they do not reflect the correct priorities of the state. It was a common sentiment among these individuals that commercial catch should bear the brunt of regulation if management action is needed. Third, some testifiers did not oppose the idea of commercial catch, but noted that a major decrease in the proposed Annual Catch Limit (ACL) should occur. This group also includes individuals that expressed general concern about the rationale and science of the proposed commercial rules.

2.2.4 Partial Support: Mixed Testimony (12%)

This group was diverse in that they commented on or took issue with multiple amendments that spanned both commercial and non-commercial. Included were individuals that opposed the commercial rules *as well as* some of the non-commercial rules and those that supported some of the rules but suggested revisions to each. It's noteworthy that at least five of the individuals in this group made comments regarding the proposed manini and kole regulations. Included were questions regarding why no bag limits were proposed for these species. Opposition to the manini and kole size limit rules was also seen in the Oppose as proposed group's testimony and was driven by questions regarding the efficacy of size limits without bag limits, ability to gauge size under water, and importance of manini as a fish targeted by young spearfishers. While this group has no common position, they all shared the call for revisions to the amendments.

2.2.5 No Clear Position/No Comment (5%)

This group included testimony in which no comment was made regarding the proposed herbivore rules or it was unclear what position the individual took on the amendments. It should be noted that the testimony of KUA was placed in this category in that it stated that due to the varying opinions among their community they would not be taking a position, though they did make comments referencing some of the amendments.

2.3 Common Concerns

Though the above groups were divided in their positions there were some concerns that were voiced within more than one or all of them.

2.3.1 Need for Better Data, Science, and Analysis

A common concern among several of the groups was the science and analysis used by DAR to create the amendments. Those in opposition as well as some with partial support noted that they felt like the scientific basis for prioritizing herbivores as species for protection was lacking and that the surveys, studies, and stock assessment used to inform the amendments did not clearly support the actions proposed. Some individuals opposing the commercial rules noted their concern that the ACLs may be based off poor data or limited assumptions regarding commercial catch. This included using prior reported commercial catch and sales to set an ACL as well as a lack of non-commercial take considerations.

2.3.2 Support for Place-Based Rules

The need for island, or place-based rules was voiced by individuals among multiple groups. The sentiment in general was that due to varying resource status, cultural practices, and subsistence needs, a single statewide approach to resource management is inadequate. Some of these individuals supported the use of Community Based Subsistence Fishing Areas (CBSFAs) as a means to allow traditional fishing communities to take an active role in setting regulations.

2.3.3 Subsistence Fishing Needs

The importance of subsistence fishing was a common topic across groups. This appeared as opposition to non-commercial rules in that they would restrict current subsistence fishing practices and the ability to feed both individuals and communities. It was also noted that subsistence fishing should be categorized separately from non-commercial fishing, with subsistence fishers being allowed more take than all other resource users or bearing the smallest regulatory burden if needed.

2.3.4 Importance of Enforcement

Enforcement was identified at least eight times as a critical need to manage resources. The underlying sentiment was that regulations without adequate enforcement would be ineffective.

2.3.5 Concern Regarding Night/Scuba Spearfishing

Though not as prevalent as some of the other suggestions/concerns, the idea of banning night and/or scuba spearfishing was raised across groups by at least six individuals.

2.3.6 Need for Ka Pa‘akai Analysis and general community outreach/consultation

Among the various groups there were concerns raised that DAR had not taken adequate steps to gauge community voice and impacts on Native Hawaiian communities and practices. In particular, at least six testimonies noted specifically that a Ka Pa‘akai analysis was needed.

3. Kona Crab

In total, sixteen testimonies included a position on the proposed amendments to the existing Kona crab rules. Of these testimonies, 69% were in support of the proposed amendments, 25% opposed the amendments, and 6% provided comment but did not give a clear indication of support or opposition (Figure 2).

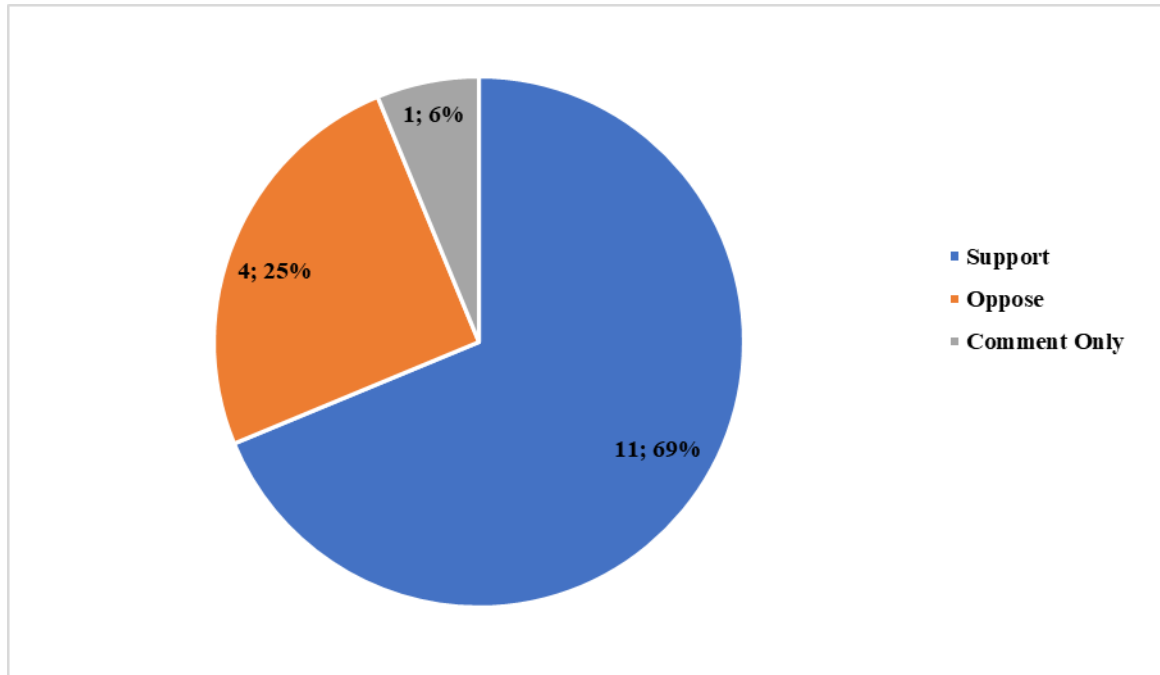


Figure 2. Testimony received regarding proposed amendments to Kona crab rules.

Support for the Kona crab amendments was typically concise with little follow-up justification. However, displeasure with the amount of time the process is taking to repeal the no-take of females was expressed. Those in opposition cited the need for bag limits, future excessive take, and faulty scientific assumptions as leading to their concern. There was no opposition to the lengthening of the closed season. One testimony highlighted the importance of using the most recent scientific data to amend the Kona crab rules but did not oppose nor support. It should also be noted that one testifier who provided written testimony in support of the proposed Kona crab amendments later noted in their oral testimony that they were unsure after hearing the testimony of those in opposition. This individual did not provide follow-up testimony, so their position was kept as Support.

Appendix A: Links to Video Testimony

Kaua'i

<https://www.youtube.com/watch?v=saE3ffqYTJk>

O'ahu

<https://www.youtube.com/watch?v=ex5qtBDqip0>

Maui Nui

<https://www.youtube.com/watch?v=tvCt4-7ar04>

Hawai'i Island

https://www.youtube.com/watch?v=lsKQqhL_4xA

Appendix B: Written Testimony

Aloha - I would like to express my support for DAR's proposed rules to help replenish herbivore populations in Hawaii. As an active researcher who has spent over 35 years and thousands of hours underwater on every reef in the Hawaiian Archipelago from South Point to Kure, I have seen the declines in herbivore populations and the impact that this has had on local fishing communities and the associated coral reefs. Myself and others have published extensively in peer-reviewed scientific journals about the decline of these herbivore populations and the effect that these declines have had on coral reef health through the overgrowth of limu. Hawaii possesses some of the top coral reef scientists in the world and the amount of information produced by these scientists is unprecedented both spatially and temporally. The scientific evidence from Hawaii and elsewhere is overwhelming and I strongly support DAR's effort to replenish these populations and feel that even more needs to be done so that Hawaii's reefs provide food security, cultural perpetuation, and improved ecosystem health for generations to come.

Aloha - Alan

Alan Friedlander, Ph.D.

Aloha,

Please see the below letter written by my husband Stacy Pacheco. Also, my testimony follows for your records.

“Aloha,

My name is Stacy Pacheco and I am a life-long resident and fisherman from Kīlauea and from an ‘ohana that has fished the North Shore of Kaua’i for generations. I have learned from my kupuna how to malama one of the largest ‘apapa (reef) in the state of Hawaii. We have counted on these reefs for generations to feed our family and I continue this tradition to feed my family and the kupuna that no longer can themselves.

I agree with the Kona crab changes but I am in strong opposition to the regulations of the fish being limited to 2 per person per day while allowing marine dealers to take 30 per day. I think this proposal is money driven and not family driven and does not have the consideration of the people at its heart.

Thank you for your attention in this matter.

Aloha,

Stacy Pacheco”

May I also say that I agree with Kona crab proposed changes and opposed to limiting fishermen to 2 per day and being the daughter of a fisherman raised here on Kaua'i the feeding of our 'ohana is very important and I don't believe we should be regulating the few fisherman who do fish these types of fish to feed the few of our people that still eat these types of fish. And if the issue is lack of fish then why are we opening up to allow people taking these fish for profit to harvest so many per day. That is 30 per day = 150 fish per week! Where are all these replacing of our resources coming from? Also, I don't see any limitations of number permits that are allowed to be issued or areas restricted to marine dealer fishing? I see rights being taken away to sustain our 'ohana and very large benefits given to "for profit" license holders.

Mahalo for your consideration,

Kalena Estrella Pacheco

Mr Sakoda and Division of Aquatic Resources,

RE: Comments on Proposed Amendment and Compilation of Hawaii Administrative Rules Chapter 13-95, "Rules Regulating the Taking and Selling of Certain Marine Species," to Update Rules for Manini, Kala, Uhu, and Pāpa'i Kualoa (Kona Crab), to Establish Rules for Kole

- ***I SUPPORT the proposed non-commercial rules as they are consistent with those in place at the community level (Miloli'i CBSFA, 2022) and island-wide (Maui Rules, 2014)***
- ***I, OPPOSE the commercial rules for Uhu and Kala and recommend they be removed from commercial take***

The proposed rules fail to recognize the importance of ALL herbivorous reef fish, notably, surgeonfishes, which have been taken by the millions over decades, by the commercial aquarium pet trade. In fact, the vast majority of reef fish extraction by the commercial aquarium pet trade is in herbivores. We commend the Board for directing DAR to remove its earlier proposal to exempt aquarium collectors from the proposed kole rules.

I support the proposed non-commercial fishing regulations as they are consistent with existing Community Based Subsistence Fishing Area regulations which are based on long practiced Iawai'a pono fishing practices to best manage marine resources for future generations. However, I do not believe subsistence and cultural fishers should bear the entire burden of protecting our reefs by reducing take, while commercial interests continue to extract large numbers of these important reef species for sale to the public, or potentially, to those outside of Hawaii.

I find this encouragement of commercial resource extraction a continuation of the colonialist tradition that

has raided these islands for 200 years and must stop in favor of community indigenous based management practices.

Mahalo for this opportunity to make comment and support Hawaiian traditional practices that proved sustainable.

Diane Ware

Aloha,

My name is Glenna Wong and I am a regular swimmer from Kaimana Waikiki area for over 20 years.

The on/off rules for spear fishing simply does not work. During the "on years in Waikiki", the spearers decimate everything in a matter of weeks. It takes longer than one "off year" for the herbivore population to come back - I am a witness to that.

Without the herbivores, the corals are dying due to no natural scrubbing by the Uhu and Manini and others. The corals are smothered with bad, gorilla type limu and simply cannot survive and the ocean water gets dirty. Please come and see for yourself.

I appreciate your consideration to instill new rules to prevent the slaughter of the herbivores.

I do respect the Hawaiian culture, I am a Hawaiian myself, but our ancestors did not kill all the fish, and were always mindful of our ocean, aina, and our next generation(s) of keiki.

A complete ban would not work, but rules must be implemented to save our coral reefs and fish in the ocean.

Thank you,
Glenna Wong

I produce a local television show called "Hawaii Goes Fishing". This has given me a unique perspective of Hawaii's fisheries, as I get to talk with both users and managers of this important natural resource. I was a council member of the Western Pacific Regional Fishery Management Council for three years and am also vice president of the Pacific Islands Fisheries Group, which conducts research and provides educational information that is intended to ensure a sustainable resource.

I would recommend a complete review of the proposed herbivore rules as they're based on inadequate information and some faulty assumptions.

The major concern is the protection of coral reef. While herbivores play a role in a healthy reef system, it's not the only, nor the most important factor, in ensuring a thriving ecosystem. Other factors, such as silt washing into nearshore waters, and toxic compounds in runoff, do tremendous damage to the various habitats surrounding our islands. The loss of natural freshwater springs and wetlands that used to feed the littoral zones have led to a catastrophic loss of mullet runs that used to number in the hundreds of thousands on Oahu alone. Historic mullet catch data shows a precipitous drop in the catch rate of mullet at the time Hawaii Kai took the place of Kuapa Pond. The hundreds of mullet fishing stands along Oahu's southern coastline disappeared when the great migrations stopped.

What affects fish behavior most, and often drives them away from shallower waters, is the presence of thousands of people and their activities such as jet ski operations, assorted dive and snorkel tours, and just splashing around in the sandy shallows. When the pandemic struck and the beaches were closed, large schools of oama and halalu were photographed right in front of Waikiki hotels and Ala Moana beach. When thousands of people returned to the beaches to swim and wade, the fish again disappeared.

These factors need much more attention than the harvesting of certain species of fish. And, of course, there's the issue of climate change that is affecting environments worldwide.

It should be noted that fishermen are the victims of the reduction of fish stocks in near shore waters, not the perpetrators. They have healthy fisheries in their own best interests. The majority are mindful users of the resource and take care to ensure it will be available in perpetuity. And it is this highly diverse group of commercial and non-commercial fishermen who provide locally caught fish that have been highly valued throughout Hawaii's history.

Some of the recommendations raised included banning night spearfishing and scuba spearfishing. These restrictions aren't based upon a realistic assessment of their effects on fisheries. It needs to be noted that both fishing methods are more selective than fishing with hook-and-line, net, or day spearing. Divers have the time to accurately assess the species and size before deciding to take any particular fish. That's not possible with any other method except trapping. And with bag limits in place, there is a tight control of the numbers harvested by anyone at any time.

It's hoped that a well-designed set of rules can both protect habitats and fisheries, while allowing continued access and reasonable harvest of resources, that our local communities depend upon.

Thank you for your time and thoughtful consideration.

Aloha,
Dean Sensui
Executive Producer, Hawai'i Goes Fishing dean@HawaiiGoesFishing.com

Aloha,

I'd like to submit my support of the regulations currently being considered to protect the herbivore fish populations here in Hawai'i.

I work closely with Kuleana Coral Restoration and Fish Pono Hawaii and believe that more efforts to protect the reef and its inhabitants will allow for a healthier ocean ecosystem for all.

Mahalo for your consideration and thank you so much for all your hard work.

Best,

Jeddie

Jeddie Kawahatsu

Studio & Community Manager

Ember Media HI

Aloha,
Please count my vote for
supporting replenishment of herbivore populations.
Mahalo,
Dennis

Aloha Division of Aquatic Resources

DAR must steer our future towards a restorative and regenerative future around Hawaii Administrative Rules (HAR) Chapter 13-95. We live in a time when all herbivore species are in a degraded state of mass decline—a CRISIS.

We thank you for the intent of this rules package and offer the following recommendations and comments. We also thank you for your extensive effort in this rules package and for holding public hearings at each of our counties.

The tipping point for a coral collapse is here. We lack a healthy ecology and symbiotic relationships; therefore, drastic measures to protect them are necessary. Uhu perform a critical function on our reefs, that we as humans can not be a substitute for. We need Uhu on our reefs in abundance for more than just food. We need them on our reef to increase reef resilience, and we must do all we can to make that happen!

We need transparency and cohesive rules that quantify the path to definitive restoration and regenerative impact, as how we interact with the ocean impacts its health and whether it can perpetuate life in perpetuity.

Therefore:

- I, SUPPORT the proposed non-commercial rules as they are consistent with those in place at the community level (Miloli'i CBSFA, 2022) and island-wide (Maui Rules, 2014)

- I, OPPOSE the commercial rules for Uhu and Kala and recommend they be removed from commercial take.

Thank you for taking the time to address community concerns.

Aloha

Noriko Morisaki Donna
Holualoa, HI 96725

Division of Aquatic Resources, State of Hawaii,

I am writing in strong support of efforts to replenish herbivore populations in our coastal waters and on the state's coral reef ecosystems. One of the greatest contributors to the decline of Hawaii's coastal coral reefs is land-based sources of pollution, notably sediment from terrigenous runoff. Filamentous and fleshy algae trap these sediments, forming reservoirs that continue to negatively impact reefs for extended periods of time. Sediments cover coral surfaces, interfering with heterotrophic feeding of polyps, require the expenditure of coral colony energy to slough off sediment cover, and increase turbidity due to resuspension, which interferes with photosynthesis of symbiotic zooxanthellae that can contribute up to 90% of a coral's daily energy needs. Due to coastal runoff and eutrophication from sediment input, nutrient-enriched surface and ground water discharges, and sewage, algae gain a competitive growth advantage over slower growing corals. Herbivores, notably parrotfish, perform valuable ecosystem services by grazing down filamentous and flashy algae, which is essential to supporting coral reef health, resilience and sustainability. When corals die from a variety of reasons, including from mass bleaching events, the rapid and unchecked growth of algae can lead to an alternate stable state where algae dominate surfaces, preventing new corals from recruiting. Additionally, algae respire at night, causing elevated biological oxygen demand, making reef surfaces inhospitable to any coral larvae that do settle. Hawaii's coastal waters are notably overfished, and this is a particular problem with regard to herbivores.

A study on Molokai found that sediments trapped in filamentous and flashing algae had long-term detrimental effects on coastal reefs through resuspension events, with the results indicating one kg of sediment had the effects of several thousands of kg due to resuspension of trapped and accumulated sediment, without the addition of any new material.

I strongly support DAR efforts to address the need to protect and enhance herbivore populations in our coastal waters. This is an essential and effective means of ensuring a legacy of vital reefs for future generations.

Respectfully submitted,

Robert H. Richmond, Ph.D.

Hi, i'm La'a Poepoe, a Molokai native descendant and customary lawai'a practitioner providing this email testimony "For the Proposed Amendment and Compilation of Hawaii Administrative Rules Chapter 13-95, Rules Regulating the Taking and Selling of Certain Marine Species to Update Rules for Manini, Kala, Uhu, and Pāpa'i Kualoa (Kona Crab), to Establish Rules for Kole, and to Update the Chapter with Other Various Housekeeping Amendments".

I am generally supportive of the rule EXCEPT for the exemption proposed for commercial take. For the sake of maintaining integrity, rules involving public resources must be applied uniformly and proportionately to every individual member of the public, so the benefit of this rule will be consistent with the original intent of supporting reef health. Allowing exceptions for commercial reef fishing is unpopular and contradictory to the reason for proposing this rule.

Thank you.

Aloha DAR,

Thank you for helping to improve our critically and chronically depleted herbivore population. Corals are keystone species in our near shore marine environments, and herbivores allow them to survive and thrive: no herbivores, no corals. It is as critically simple as that.

Friends of Hanauma Bay is therefore in full support of strong and immediate herbivore replenishment efforts.

Mahalo for everything you do to conserve, protect, and restore Hanauma Bay!

Lisa

Lisa Bishop

Friends of Hanauma Bay I President

My name is Robert Cambra, JR. I fish out of Kawaihae Harbor. My dad and I sell Kona crab commercially. If you do decide to allow everyone to keep four inch female Kona crab will you consider making a limit for female crabs per person and non commercial sale. If you do decide to open with no limit and commercial sale then within two to five years there will be a huge decline of Kona crab. Then, you will most likely have to stop people from catching four inch female crabs around that time and September will still be closed. Thank you.

Sent from my iPad

Aloha Division of Aquatic Resources,

Mahalo for the tremendous effort you have put into this rules package and being responsive to the BLNR. I support the non-commercial rules as proposed. I do not support the commercial take of uhu and kala and recommend they be removed from commercial take.

I felt compelled to put effort into understanding the huge and complex task you have undertaken and provide the following mana'o and recommendations.

- Non-commercial rules are more consistent with community level promulgated rules (Miloli'i CBSFA, 2022) and moku-based (Maui, 2014) and therefore, I support the proposed non-commercial rules. These (2) rule package references reflect a more focused and thorough evaluation of natural resources, human use, and stewardship for their respective area of focus – Miloli'i for their community and Maui for the moku.
- I strongly support moku-based rules as it provides a more thorough and focused evaluation of the conditions of natural resources of the moku, the communities, fishers of the moku, and the DLNR and community resources providing support and stewardship to their moku.
 - Moku-based rules would be a precursor to considering statewide rules. The protective needs of a specific moku gets diminished when we zoom out and compromise those needs with statewide conditions and needs.
 - Very clear messaging was given from Molokai Nui A Hina testimony that speak to their lifestyle. Statewide rules should not be imposed that hinders their ability to remain resilient and self-sufficient.
- We must invest to increase reliable data to improve monitoring and inform policy decision making.

In DAR briefings to BLNR (and other decision makers), define and make clear what data contributes to measuring:

- 'enough fish to eat'
- 'keep coral reefs healthy' – What data defines a threshold of 'healthy coral reefs' to be measurably assessed, while factoring nearshore pollution, human use, etc..

With these measurements and threshold, what are the respective assessments of coral reefs per moku?

If we are truly attempting to address the health of our coral reefs with the rules being proposed for uhu (the primary stewards of our reefs), we should clearly understand how this is being accomplished with the proposed rules. According to (slide 5 of the briefing slidedeck) the herbivore biomass per moku, O'ahu reefs are in the poorest of health, O'ahu has the greatest of uhu take, and that large commercial take of uhu is further secured in the proposed commercial rule.

- Adaptive Management Rule should be considered to be exercised for our coral reefs. Although mentioned in the purpose of this rules package, our reefs require its own focus to address the necessary preparedness for the inevitable climate impact. The adaptive management rule may allow for necessary rule changes as we learn how best to combat the conditions of our reefs and make them more resilient.
- Consider the true voice behind testimony of opposition posed against DAR recommendations.

Does the voice and opinions also represent the position of kuleana that DAR, other state recognized co-managers, and the decision makers must make? While providing a very important function of catch/sell of fish to kūpuna and families for their traditional meals, do testimonies reflect their role and their actions to be of responsible manner? Have they considered, like the community of Miloli'i who sacrificed feeding their kūpuna their desired pāku'iku'i, to provide an alternative fish. The sacrifice to be made recognizes that there is no other species or that we, as kānaka can be a substitute for the function of what uhu do for our reefs. We need these true stewards to remain on our reefs.

- Should you still consider to allow commercial take of uhu and kala, I recommend a restrictive class of commercial fishers to be established and the take of uhu and kala be allowed at their average ACL.

- ACL be established based on the average of annual catch by spear (only)

- Take by spear only

Implement gear restriction and do not allow net harvest. With the proposed commercial allowable take of pālukaluka only, net harvest would increase bycatch of all other uhu species with undeniable fatal scale injury to many.

- No take at night

Consider the fishers that have already been fishing by spear only be those that would be “community fishers” who among all commercial fishers, better reflect the discipline of subsistence fishers, they feed ‘ohana of their communities, and are the knowledge keepers for their place and lawai‘a practices. These subset of current commercial fishers are those who have been testifying in the BLNR meeting and DAR public hearings (before the singular event presence of large commercial fishers).

The community depends on these fishers and these ‘community’ fishers depend on their community.

Let us recognize this 'community' class of fishers based on their annual catch and their gear use, that reflects a sustainable harvest method and low impact to the health and resilience of the coral reefs for their moku.

As we are in the final 24-hr period of providing testimony, I resolve to recommending removing uhu and kala from the commercial take list.

Please make the housekeeping admendment to remove the definition of Aquarium fish permit.

Mahalo for allowing me to provide testimony.

U'ilani Naipo

Lineal descendant of Miloli'i, Kapalilua, Kona Hema, Moku O Keawe

Miloli'i CBSFA Marine Management Program Administrator

Aloha Department of Aquatic Resources,

DAR must steer our future towards a restorative and regenerative future around Hawaii Administrative Rules (HAR) Chapter 13-95. We live in a time when all herbivore species are in a degraded state of mass decline—a CRISIS.

We thank you for the intent of this rules package and offer the following recommendations and comments. We also thank you for your extensive effort in this rules package and for holding public hearings at each of our counties.

* This [NEW land-to-sea research](#) that was published on August 9th, 2023 is old news for our Kama'aina, Konohiki, Kūpuna, and it is meant to get Western scientists and responsible organizations like DAR to be on the same page.

The tipping point for a coral collapse is here. We lack a healthy ecology and symbiotic relationships; therefore, drastic measures to protect them are necessary. Uhu perform a critical function on our reefs, that we as humans can not be a substitute for. We need Uhu on our reefs in abundance for more than just food. We need them on our reef to increase reef resilience, and we must do all we can to make that happen!

We need transparency and cohesive rules that quantify the path to definitive restoration and regenerative impact, as how we interact with the ocean impacts its health and whether it can perpetuate life in perpetuity.

Therefore;

- I **SUPPORT** the proposed non-commercial rules as they are consistent with

those in place at the community level (Miloli'i CBSFA, 2022) and island-wide (Maui Rules, 2014)

- I **OPPOSE** the commercial rules for Uhu and Kala and recommend they be removed from commercial take.

Mahalo nui for taking the time to address community concerns.

Hannah R. Hartmann

96781

Laboratory to Landscape: Biorestation

<https://www.labtlandscape.com/>

Attention: Mr. Sakoda and staff of the Department of Aquatic Resources,

If one truly realized the actual import of the *polycrises* now converging on us, we would hardly be debating these arcane fishing "rules" at all. Such minutiae-minding harkens back to medieval theologian's arguments over how many *angels* can dance on the head of a pin.

Nevertheless, someone at DAR has figured out that fish generally, and *herbivores* in particular (include all scrapers, grazers and browsers), are performing tremendously valuable 'eco-services' on our fast dying coral reefs!

And Dr. Greg Asner's marine research team, with painstaking scientific rigor, points out in a newly released report (<https://www.nature.com/articles/s41586-023-06394-w>), the health of our reefs, the ability to survive bleaching events, and the ability to withstand the pernicious effects of "global warming", is most effectively explained and dealt with by **human caused land-to-sea impacts** as well as **relative fish abundance** (or lack thereof due to unrestrained takings).

Traditional managers of marine resources in the Hawaiian islands had very deep and long experiential understandings of inter-species relationships (including with our own) which helped establish rules and protocols that provided a truly sustainable way of using them; many of which are only now being appreciated by later day professionals. So, the information coming from this recent study will not be new to Kama'aina, Konohiki, Kūpuna. **The point of the study is to get the facts straight among the scientists and regulators.**

I DO SUPPORT THE SELF IMPOSED RESTRICTIONS AND RULES OF LOCAL SUBSISTENCE FISHERS AS CONSTITUTED BY RECOGNIZED "COMMUNITY BASED SUBSISTENCE FISHING AREAS" (CBSFA)

But a persistent preoccupation by DAR seems to be the sustainment of **commercial takings** at all cost, despite this further handwriting on the wall. In particular, allowance for some select few to make big bucks in the *commercial Aquarium trade* is still *legally sought and defended* in and across matters of DAR/DLNR policy - *despite the continuing and overwhelming public denouncements over many, many years.*

And this proceeding's acceptance of commercial takings for Uhu and Kala at the expense of subsistence fishers is just another example of how **DLNR inverts its own stated**

"hierarchy of uses" principles!

So, with that, and as long as massive takings of Yellow Tang (a once abundant *herbivorous* reef fish) for the Aquarium trade remain 'off the menu' for rules and relief, *no confidence, no credibility, and no goodwill* can be ascribed to these proceedings.

Sincerely,
R A Culbertson
Honokaa

Aloha Department of Aquatic Resources

I am a life long (72 years) user of Hawaii's reefs. The following is very obvious as we see the degradation of our reefs.

The tipping point for a coral collapse is here. We lack a healthy ecology and symbiotic relationships; therefore, drastic measures to protect them are necessary. Uhu perform a critical function on our reefs, that we as humans can not be a substitute for. We need Uhu on our reefs in abundance for more than just food. We need them on our reef to increase reef resilience, and we must do all we can to make that happen!

We need transparency and cohesive rules that quantify the path to definitive restoration and regenerative impact, as how we interact with the ocean impacts its health and whether it can perpetuate life in perpetuity.

Therefore;

- I SUPPORT the proposed non-commercial rules as they are consistent with those in place at the community level (Miloli'i CBSFA, 2022) and island-wide (Maui Rules, 2014)***

- ***I, OPPOSE the commercial rules for Uhu and Kala and recommend they be removed from commercial take.***

Thank you for taking the time to address community concerns.

Aloha

Jean Jewell

96725

Thank you for protecting our irreplaceable marine environment. I noticed that you've increased the size of legal catch and limited the amount of take in other instances. Isn't it true that larger fish are the primary reproducers? I know you take a lot of heat from the fishing community, but they may not realize that the science based rules you apply to our community actually benefit them. To that end, I would recommend not only a minimum size limit, but also a maximum size limit.

Also, I urge you to not make any exceptions for commercial activities. In fact, commercial take from our reefs should be banned across the board. The climate crisis is in full gear now and it's going to get much worse. I think it would be prudent to prepare for the worst and hope for the best. Hawaii has already lost 50% of its coral due to the climate crisis and the rest are in peril.

It's getting harder and harder to ignore people like me. If I told you last month that Lahina would be vaporized by an insane climate conflagration, you would most likely have rolled your eyes and called me an alarmist. Yet, what happened in Lahina was predicted by scientific models. We saw Paradise CA burst into flames, Lytton Canada, Australia, Greece and now Lahina.

Now the scientific community, of which you are an integral part of, is warning us that coral bleaching and death is getting worse and worse. Given this fact, I would say you should be much more assertive in your regulation of our marine environment. If we make it through this crisis, a long shot at this point, then you can repeal some of the more drastic regulations.

Finally, I would like to share with you my experience with what I saw in Grenada. My Cousins and I sailed around the island and we dove on many reefs and they're all dead; 100% dead. There will never be a live reef in that part of the Caribbean again. Seeing is believing. Dead, gray, dust, rubble, not even the skeletal remains of the corals. No fish, no life, just dead, extinct. I'll never recover from that, it haunts me to this day. Death is something you can't undo. Don't make a mistake here, or Hawaii's reefs will end up looking like Lahina.

Thank you for considering my advice and all your hard work.

--

Fight with aloha,

Topher Dean

Founder, Clean The Pacific

President, Recycle Hawaii

To: the Division of Aquatic Resources (DAR)
Re: Proposed herbivore fishing rules

Mahalo for the opportunity to submit written testimony for the August 2023 Statewide Herbivore meetings. On behalf of the nonprofit WAI (Wastewater Alternatives & Innovations), we are writing to testify in support of the intent of the proposed herbivore rules, with reservations/concerns about the commercial exceptions. Thank you for presenting the proposed rules with the intent to increase herbivore populations for the survival of Hawai'i's coral reefs.

Herbivores are critical to Hawai'i's reefs

Healthy herbivore populations are absolutely essential to the survival of Hawai'i's coral reefs. Herbivores like *uhu* and *kala* graze on turf algae and macroalgae, which allows space for coral larvae to settle and continue building the reef, and additionally overgrowth of algae leads to "microbialization" of reef habitats where oxygen becomes depleted during the night hours - these conditions are unfavorable for corals to survive (Nelson et al., 2023). Herbivores are key regulators of algae and coral reef health.

Healthy herbivore populations support reef resilience in the face of climate change

There is an urgent need to move forward on marine management actions that can help Hawai'i's reefs and nearshore fisheries to be more resilient in the face of climate change. By 2040, we could see annual extreme coral bleaching events which will inevitably result in coral die-off and the loss of the sustaining habitat for nearshore fisheries (Dr. Mark Hixon, pers. Comm.; van Hooidonk et al. 2016 supplements). We must act locally to increase our reef ecosystems' resilience to warming and bleaching events by reducing additional stressors and creating the best possible environment for maintaining diversity and fish biomass (Donovan et al. 2021).

Managing herbivores is one of the most important actions we can take to save reefs

There are actions that we can take locally to dramatically increase reef resilience. These include strengthening herbivore populations, which control the growth of algae on the reef and allow complex, biodynamic coral-based systems to thrive instead (Gove et al. 2023), reducing wastewater pollution by repairing aging sewer infrastructure and converting cesspools (Gove et al. 2023), and reducing sedimentation by rehabilitating watersheds and restoring natural streamflow (Rogers, 1990). All of these actions are extremely important and deserve attention and funding.

More fishing = more herbivore depletion

Fish abundance surveys throughout the islands have shown that herbivore and fishery-targeted species correlate negatively with human populations, while non-targeted species do not - these data show that fishing pressure is the primary cause of herbivore depletion (Friedlander et al., 2018). In general, we support reductions in allowable catch for commercial and recreational fishing as well as the size and phase limits.

New rules for commercial fishers should reduce allowable catch even more

The exceptions for commercial fishing need to do more to reduce commercial catch to allow populations to recover, and commercial fishing rules should be made in consultation with cultural practitioners from each moku to ensure that commercial catch feeds the local community sustainably, and that overall commercial catch is reduced by at least 50% to allow the populations to recover. Referencing the testimony of Drs. Friedlander, Winter, Hixon, and Kosaki, the current proposal for commercial rules only reduces the allowable catch by 25% or less. Overall, we at WAI support the intent of the proposed herbivore rule changes, and urge DAR to consider further reducing the catch limits for commercial fishing of *uhu* and *kala* to allow for more population recovery.

Mahalo for the opportunity to testify,

Christina Comfort, M.Sc.

Water Quality Specialist, WAI: Wastewater Alternatives & Innovations

Ph.D. Candidate, University of Hawai'i at Mānoa, Department of Oceanography

Stuart Coleman, M.F.A.

Executive Director, WAI: Wastewater Alternatives & Innovations

Peer-reviewed literature:

Donovan, M.K., Burkepile, D.E., Kratochwill, C., Shlesinger, T., Sully, S., Oliver, T.A., Hodgson, G., Freiwald, J. and van Woesik, R., 2021. Local conditions magnify coral loss after marine heatwaves. Science, 372(6545), pp.977-980.

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Friedlander, A. M., M. K. Donovan, K. A. Stamoulis, I. D. Williams, E. K. Brown, E. J. Conklin, E. E. DeMartini, K. S. Rodgers, R. T. Sparks, and W. J. Walsh. 2018. Human induced gradients of reef fish declines in the Hawaiian Archipelago viewed through the lens of traditional management boundaries. Aquatic Conservation: Marine and Freshwater Ecosystems 28:146-157.

Rogers, C.S., 1990. Responses of coral reefs and reef organisms to sedimentation. Marine

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Christina Comfort, M.Sc. she/her

Program Manager

WAI: Wastewater Alternatives and Innovations

Dear Division of Aquatic Resources,

I am writing in strong support of the proposed amendment to Hawaii Administrative Rules Chapter 13-95 to update regulations for herbivorous reef fish and Kona crab. As a professional in artificial intelligence and video/image analysis, particularly of reef fish and commercially caught vessel fish, I work closely with scientists across the world and especially in Hawaii. Based on the information my company gathers through our own analysis and from respected scientists, I believe Hawaii's herbivorous reef fish are severely overfished. I strongly support this measure to sustainably manage these species and protect Hawaii's reef ecosystems.

I particularly support the proposed rules for Uhu, as data shared by leading researchers indicates this species provides immense ecological benefits to coral reefs. Additionally, as someone who grew up in these waters spearfishing, I am aware Uhu are highly vulnerable to unsustainable fishing practices like night spearing. Establishing stricter size limits, possession limits, seasonal closures, and commercial fishing regulations for Uhu, as outlined in this amendment, are prudent steps toward preserving this important specie's populations.

My colleagues and I frequently witness the impacts of overfishing on coral reefs worldwide. This highlights the importance of proactive management before it is too late. I applaud the Department of Land and Natural Resources for taking action to conserve Hawaii's valuable marine resources. Please finalize these critically important rules to benefit current and future generations.

Due to the sensitive nature of the subject matter and the position my company is in, I asked that my testimony remain anonymous but I'm happy to answer any questions from the DLNR, should any arise.

Thank you for considering my testimony. Please contact me if I can provide any additional information on this issue. I look forward to seeing these responsible regulations enacted.

Aloha my name is Bert Weeks, I'm born and raised on Oahu. These opinions are based on my own experiences diving. I spearfish around Oahu, mostly on the South and West side and often shoot herbivores with a three prong, and I try and take at least a manini for my aunty who likes that fish, so i try and bring her one.

I'm supportive of herbivore rules and I'll lay out a couple of reasons here.

1) Our reefs are about to get hit hard with bleaching and they need help. Try look at Florida right now to see what their corals are going through, its brutal. It's been a hot summer and I'm super worried in the next couple of months that our reefs are about to get hit with the same thing and bleach like they did in 2015, 2016 and 2019. The bleached corals aren't dead yet, and more herbivores can help prevent the bleached ones from getting overgrown by algae and dying. There's not a lot we, in Hawaii, can do about the ocean temperature, but increasing our herbivores is something that will protect our resources help when it does happens.

2) Better rules help educate fishers. The last couple years since covid, I notice there's a lot more spearfishers at popular beginner spots, such as kahe point and all the online message boards are asking, what do I shoot? The regulations book is often one of the first places people learn the names of the fish and what is good to take so it's importance to give them guidance on acceptable sizes.

The current 12 inch rule for uhu was enacted in 1998, 25 years ago. We know a lot more about uhu since then and the rules should be updated to reflect that.

For example, the new rules increase the minimum size for the whiptail and fantain uhu to 14 inches, but decrease the size for all other uhu to 10 inches like the bullethead uhu. This lines up better with what we know about uhu today, and allows you to take more types of uhu than before. These rules have already been in effect in Maui for almost 10 years and I think it makes sense to transfer those to the rest of the state.

I love eating uhu, but I definitely see less in those popular areas. I'd like to see more of them so I don't have to work so hard to bring one home.

I've heard a lot of valid criticisms of these rules, they're definitely not perfect, and I do see a lot of compromise from what was originally proposed especially when it comes to the commercial exceptions. Nobody is really happy with a compromise, but it's better than shutting out either side completely.

I'd like to see these rules also integrated into more place-based management. For example, some places that have tons of fish, don't need kala bag limits, and might be good to grant exemptions from some of these regulations there, but letting the fishers from those communities direct where that might be.

There are a lot of other, kinda technical, reasons for some of the rules, so I'd like to see more education about the rule justifications, such as with the blue uhu ban, which has a lot of good reasons, but is kinda complicated. I'm pretty sure that there's a lot of people who will could use more clarification.

I hope that through proper management, we can ensure that our reefs are healthy with plenty of fish so I can teach my kids, just like my dad and grandpas taught me.

Mahalo for the time

-Bert Weeks

I am submitting testimony for the proposed herbivore rules.

I support the change in the Kona crab laws.....I do not support the increase in size limit for Manini and Kole, those fish are speared by kids, its how they learn, increasing the size is basically taking away that learning opportunity. And a 6 in. Manini is awfully big....Kole doesn't need a minimum size, it needs a bag limit instead.....I do not support the restriction on Kala simply because the state should've included all species of Kala under this rule, though I do appreciate the attempt at regulating the commercial fishers.....I have no comment on the Uhu proposed rules since Maui already has the bag limit in place...however....these proposed rules should've been done by island, instead of blanketing the whole state.....Since MAUI is undergoing the Holomua process, it would be better to leave out the entire island of Maui for any rule affecting the fin fish, Maui can accept the Kona crab rule change, but for any fin fish rule in this package it would be better to hold off and allow the Holomua navigation team the opportunity to address those species in the rules it is going to propose...if not, it may cause confusion amongst maui fishers if these rules for the whole state are passed, but then the Holomua team enacts some changes to them.

Darrell

I am a fisherman in Kona, Hawaii county. I fish for kona crab and kala, but do not fish for manini, kole, or uhu.

I am in favor of the proposed kona crab rules, both the take of females and the adjusted season.

I am in favor of Increasing the minimum size for manini (Convict Tang) from five inches to six inches and establishing a minimum size of five inches for kole (Goldring Surgeonfish);

I am in favor of Increasing the minimum size for uhu pā lukaluka and uhu 'ahu'ula from twelve to fourteen inches; I am also in favor of establishing a minimum size of ten inches for all other uhu.

I am in favor of establishing commercial limits for kala and uhu, as proposed, but against the qualification criteria. Commercial permits should be available to all CML holders.

I am strongly against the per-day non-commercial limits for kala and uhu. All non-commercial fishers who wish to catch kala and uhu should be allowed an annual limit and should have to fill out a tag showing the date and number of fish caught, and should not exceed 100 fish per year. This allows for fishers to catch two fish on every weekend, or 8 fish per month, or 100 fish in a year. As I do not fish regularly, I might catch 5 fish on my monthly fishing trip - this system would allow me to do this. A daily limit of two fish is not enough. It is not worth it for me. I would like to retain a 3rd or 4th fish, and not fish another day. This works well for occasional fishers. This also works for me to catch fish for an event such as a wedding or baby birthday where I may need to catch more than 2 kala.

Phil Fernandez
Holualoa, HI

Aloha,

I am providing testimony in my personal capacity, as not only a Native Hawaiian born and raised, but also as a previous caretaker for the 88-acre loko i'a at He'eia in Kaneohe Bay, Oahu. I currently work as an Environmental Scientist for the U.S. where my main responsibility is to enforce environmental compliance, and I can state with certainty that regulation is one of the most important tools for conservation. If we want change, it can't be solely dependent on the goodwill of the average person, unfortunately.

Pollution and habitat loss of course impact declining fish populations. But in my time as a fishpond caretaker, I witnessed many of my fellow locals continue to fish extensively, despite knowing better than anyone how depleted our fisheries are. As a Native Hawaiian I can understand the argument that fishing is a part of our culture and heritage. However, I would argue that sustainably safeguarding our natural resources is equally a part of our culture—Hawaiians had strict kapu fishing rules to preserve our fish well before any were written down. Herbivores are a critical part of our coral reef ecosystems; fishing them out will cause harm to not only their populations, but the coral reefs of Hawai'i and all life that inhabits them. Enough endangered species have sadly died out forever in our waters. This is harm that cannot be undone.

Doing this to further suck any remaining life out of our reefs is not worth the money for a few people to make. I STRONGLY SUPPORT the implementation of the proposed rules and urge stricter ones for commercial fishers in Hawai'i. Thank you for considering my personal testimony.

Sincerely,

Loea Morgan

Native Hawaiian and Former Paepae o He'eia Aquaculture Technician

Aloha,

I OPPOSE the proposals to increase the minimum size for Manini and to create a minimum size for Kole. If the objective here is to prevent the largescale removal of these species from our reef is the purpose of these proposals it still won't work! A skilled fisherman can still remove a large amount of these species at the sizes proposed, and these are the fish with the most roe bearing capacity. Additionally, these two fish are some of the most popular "gateway " fish that beginner fishermen /keiki will target to learn the aspects and nuances of spearfishing. A 6 inch Manini is big by today's standards; a 5" kole is not commonly found in shallower waters as they used to be even a few short years ago. This regulation will not have the desired end result of more of these fish because the largescale removal of the larger members of the schools will further decimate the populations by having less spawn.

IF THE GOAL IS TO HAVE MORE OF THESE SPECIES ON THE REEF THEN THE MOST IMPORTANT MANAGEMENT TOOL TO IMPLEMENT IS TO ESTABLISH A BAG LIMIT ON THE TAKE REGARDLESS OF SIZE! A dead fish is mentioned above, a skilled fisherman can still harvest as many 6" Manini and 5" kole as he wants to; it doesn't make any sense to force him to target the largest breeders without a limit on how many he can harvest. Please consider abandoning this minimum size approach to management and consider a reasonable bag limit instead.

Mahalo,

BRIAN M. YOSHIKAWA
FISHERMAN

Hello Regulators,

I want to support strongly the proposed amendment and compilation of Hawaii Administrative Rules (HAR) chapter 13-95, updating rules for manini, kala, uhu, and pāpa'i kualoa (Kona crab), establishing rules for kole, and updating the chapter with other various housekeeping amendments. When I moved to Hawai'i in 1984 I was a serious spear fisherman. I was used to the strict rules and enforcement in California, and knew when I returned to the beach after a fishing dive the odds were good that there would be a fish and game officer waiting to measure my catch. I always followed the rules because I knew they were for the protection of the resource.

My first few dives off O'ahu in that year were depressing. The reefs were already over-fished, and only small and not good eating fish were available. I am sure locals who knew the waters better were able at that time to find good fish, but my experience led me to discard my spears and become a tourist diver instead of a fisherman. I hope a few fish more survived because of that decision, but my experience since then has not given me much hope. It seems that a significant number of the locals do not really care about the fish stocks and only want to optimize their take. Most depressing, I to this day have not seen any enforcement officers present when I come out of the water. I don't carry a spear, but many still do. Does the state only make rules and then not enforce them?

I hope supporting this rule change will not be a total waste of time.

Charles Morgan

My name is Len Nakano from Captain Cook on the Big Island. I wanted to say that i support the amendments proposed for Kona crab fishery.

I am in support of the intent to make changes in the herbivore issue to preserve the fishery. However, after hearing testimony i have reservations about the overall current way it is written.

I have alot more to learn on this issue and will comment at a later time if allowed when i have more information.

Thank you for your time.

Len Nakano

I would like to commend the Department of Aquatic Resources with the new rule changes for herbivores. The herbivorous coastal fish community is vital to supporting our coral reef system and without them the system would collapse. The coral reef habitat is already threatened by warming ocean temperatures and chemical pollution.

I encourage you to implement these rules particularly as they apply to commercial fishing. This industry can destroy whole fisheries. Please be vigilant in monitoring these populations and ensure that these rules are sufficient to maintain a healthy community.

Mahalo -

Dorothy Norris
resident of Kailua-Kona
Retired Marine Biologist

Aloha kākou,

I am writing in strong support of the proposed amendments for herbivore fishing rules statewide. The proposed amendments give our herbivorous fish a fighting chance for stock rebound but also, help to retain critical ecosystem balance and functionality for coastal reef ecosystems. I am an ocean conservationist based on O'ahu who works in coral restoration on West O'ahu, in conservation policy and community based education.

Despite opposition, please consider the ways in which these rules can build coastal resilience and support our fishers, economy, and ocean.

With aloha
Carissa Cabrera

I support your protecting these fish: Ahu, Kala, Manini and Kole.

They are valuable in so many ways. Please pass laws to limit taking them.

Sandy Shimmon

Aloha mai,

I am providing testimony in my personal capacity, as a lifelong resident of O'ahu, currently living in family land in Pūpūkea.

I **STRONGLY SUPPORT** the implementation of these rules, and urge stronger & stricter rules for commercial fishers in particular, and especially for our beautiful, precious, overfished, & tired **uhu** species. I love eating uhu, it is my favorite fish, but I have not in years because I feel that they are so overfished, especially here on O'ahu. My hope is that my 2 year old daughter will be able to enjoy, see, eat, love, and care for these fish as much as I do. I'm so worried that she will not.

Why are the commercial fishers allowed to take sooo much uhu, and especially in comparison to other islands? This is Not Right. These are such important fish to our unique & fragile ecosystem & culture, PLEASE do SOMETHING to better protect them. Please do your Ka Pa'akai analysis & consider the testimony of the kākana subsistence fishers, the ones that do not gain financially from fishing - the ones that truly care for & love our i'a & kai. These are the voices that have been ignored/sidelined for far too long in the interest of commercial interests. These i'a will not be here forever if we don't protect them for future generations. They need our help, they are our family!

Mahalo nui for considering my personal testimony.

‘O ke aloha i’a no nā kau ā kau,

Olan Leimomi Fisher

Olan Leimomi Morgan Fisher

"Kama 'ia ke aloha 'āina ā pa'a i loko."

TWIMC,

As a surfer with over fifty years' experience in Hawai'ian waters, I have witnessed firsthand the depredation and degradation of Oahu's reefs. My fellow waterman, Dr. Mark Hixon of UH Dept. of Life Sciences, has made me aware of proposed legislation to save what remains of the coralline elements of our reefs. It is apparent to all of us who spend time on or above the reefs that there has been accelerating accumulation of vegetation, both native and invasive, on the lava and scant remaining coral heads. Coincident with or more likely preceding the overgrowth of algae has been a reduction in the number reef fish I see, especially uhu, that used to be common and are largely responsible for cleaning the reefs of these fecund algal species, thus allowing coral to reestablish themselves. Please put me down as an ocean enthusiast, who supports thoughtful restriction on the overharvesting of these herbivorous fish species.

David R. Jones, M.D.

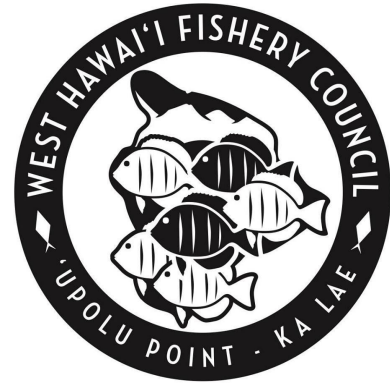
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West Hawai'i Fishery Council

August 14th, 2023

Hawai'i Division of Aquatic Resources

1151 Punchbowl Street, Room 330, Honolulu, HI 96813



To Whom It May Concern:

We, the West Hawai'i Fishery Council, are writing in support of HAR 13-95 proposed amendments for herbivore rules and Kona Crab. We are a community-based, multi-stakeholder council representing community interests in the West Hawai'i Regional Fishery Management Area (WHRFMA). Our volunteer members represent subsistence, recreational, and commercial fishers, as well as Hawaiian cultural practitioners, recreational swimmers, aquaculturists, scientists, and others who depend on and care for the WHRFMA. It is part of our mission to provide advice to the DAR regarding the development and implementation of rules that affect the WHRFMA.

While the majority of the council offer support for the proposed changes overall, members raised concerns regarding several specific rules, which we outline below. Although we write in overall support, we hope the Division of Aquatic Resources (DAR) will seriously consider our concern and opposition to specific aspects of specific species rules below. We strongly recommend that the DAR consider the following changes to the proposed rules:

- Reduce the bag limit of 50 kala for commercial use. The rule as it stands places strict limits on non-commercial fishers (2/person/day) but allows significant take by commercial interests. This fails to protect the fishery from overfishing while simultaneously punishing non-commercial fishers.
- Several of our members are concerned about the lack of a bag limit for kole and manini. These fish are popular for social gatherings (e.g. ~30 fish served) and we would like to see that practice supported. However, we are concerned about possible future take of much larger numbers (e.g. hundreds or thousands) by aquarium collectors. We recommend that the DAR evaluate the possible need for bag limits based on available data with the future take by aquarium collectors in mind. This could be a future rule amendment if needed as we would not like this change prevent passage of the current proposed rules.
- Consider limiting the number of commercial permits issued overall. Do not use last year's landings as a requirement, this rewards fishers who take the largest amounts while also preventing younger or new fishers from entering the fishery.
- Consider a ban on taking uhu at night.
- We agree with the rules for Kona crab but admonish the DAR for taking such a long time to implement rules for a law that was passed over 2 years ago.

West Hawai'i Fishery Council Mission Statement:

"To provide for substantive involvement of the community in resource management decisions; encourage scientific research and monitoring of the nearshore resources and environment from Upolu Point to Ka Lae; to work toward and advise about the resolution of conflicts of use and the enhancement of nearshore resources; and to assist in the development and implementation of management plans for minimizing resource depletion; per legislative mandate to the Department of Land and Natural Resource."

Thank you for considering these comments.

Mahalo,



Amber Datta (Co-Chair)



Chris Funada (Co-Chair)

On behalf of the West Hawai'i Fishery Council.

West Hawai'i Fishery Council Mission Statement:

"To provide for substantive involvement of the community in resource management decisions; encourage scientific research and monitoring of the nearshore resources and environment from Upolu Point to Ka Lae; to work toward and advise about the resolution of conflicts of use and the enhancement of nearshore resources; and to assist in the development and implementation of management plans for minimizing resource depletion; per legislative mandate to the Department of Land and Natural Resource."

August 14, 2023

Division of Aquatic Resources
1151 Punchbowl Street, Room 330
Honolulu, HI 96813

Via e-mail: DLNR.Aquatics@hawaii.gov

RE: Support for the “Proposed Amendment and Compilation of Hawaii Administrative Rules Chapter 13-95, ‘Rules Regulating the Taking and Selling of Certain Marine Species,’ to Update Rules for Manini, Kala, Uhu, and Pāpa‘i Kualoa (Kona Crab), to Establish Rules for Kole, and to Update the Chapter with Other Various Housekeeping Amendments.”

Aloha Division of Aquatic Resources:

The Nature Conservancy (TNC) of Hawai'i and Palmyra supports the Hawai'i Division of Aquatic Resources' (DAR) proposal to refine statewide rules governing recreational fishing for critical herbivorous fishes. These rules will better ensure the long-term sustainability of these fisheries and the reefs that rely on them.

Coral reefs are vital to Hawai'i's economy, culture and lifestyle, but are facing unprecedented threats now and into the future that jeopardize their ability to continue to provide for the residents of Hawai'i. While providing food, livelihoods, coastal protection, recreational opportunities, and cultural connections for residents and visitors, our islands' nearshore reefs provide more than \$2 billion¹ each year in flood protection and reef-related tourism alone. The U.S. government estimates that Hawai'i's reefs protect more than \$830 million in coastal infrastructure each year², with healthy coral reefs reducing up to 97% of the wave energy reaching our coastlines³, protecting important coastal properties, roads, and resources such as beaches, fishponds, and estuaries. Research has also shown that nearshore

¹ Storlazzi, C.D., Reguero, B.G., Cole, A.D., Lowe, E., Shope, J.B., Gibbs, A.E., Nickel, B.A., McCall, R.T., van Dongeren, A.R., Beck, M.W., 2019, Rigorously valuing the role of U.S. coral reefs in coastal hazard risk reduction: [U.S. Geological Survey Open-File Report 2019-1027](#).

USACE, 2018, Hawaiian Islands National Shoreline Management Study. Alexandria, VA Available at: <https://usace.contentdm.oclc.org/digital/collection/p16021coll2/id/2963/>.

² Storlazzi, C.D., Reguero, B.G., Cole, A.D., Lowe, E., Shope, J.B., Gibbs, A.E., Nickel, B.A., McCall, R.T., van Dongeren, A.R., Beck, M.W., 2019, Rigorously valuing the role of U.S. coral reefs in coastal hazard risk reduction: [U.S. Geological Survey Open-File Report 2019-1027](#).

³ Ferrario, F., Beck, M.W., Storlazzi, C.D., Micheli, F., Shepard, C.C., and Airoidi, L., 2014, The effectiveness of coral reefs for coastal hazard risk reduction and adaptation: Nature Communications, vol. 5, 9 p.

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fisheries can produce as many as seven million meals for Hawai'i families each year, valued at over \$10 million annually⁴.

But Hawai'i reefs and the benefits they provide for our communities are threatened by a combination of stressors, such as land-based pollutants, direct damage from storms and ship groundings, unsustainable harvest, and, increasingly, by the impacts of climate change, including rising sea levels and sea-surface temperatures. Scientists estimate that live coral cover in some areas of Hawai'i has declined by 60% and, following the state's first mass coral bleaching event in 2015, some reefs experienced up to 90% coral mortality⁵. The best available projections of ocean warming indicate that reefs in Hawai'i may start bleaching every year within the next decade⁶.

Corals provide the structure and habitat essential for the diverse, productive reefs we rely on, and the loss of corals begins a process of degradation that leads to the loss of many of the benefits that reefs provide, including fish habitat. As reefs have declined over the past century, we have also lost up to 90% of some of Hawai'i's most valuable nearshore fisheries⁷. Action to restore the resilience of our reefs is essential and the need is urgent.

Ensuring that reefs have **healthy herbivore populations is one of the most important and effective actions we can take** to make reefs as resilient as possible in a changing world. Many stressors can kill corals and lead to the loss of the habitat they create, and the ability of reefs to recover from damage depends on the presence of an abundant, diverse population of herbivores that can keep seaweed populations in check, keeping reef area clear for new corals to settle and grow. Studies from around the world have demonstrated that resilience and recovery is enhanced by healthy herbivore populations⁸, and recent research in Hawai'i has reinforced this finding,

⁴ Grafeld S, Oleson KLL, Teneva L, Kittinger JN (2017) Follow that fish: Uncovering the hidden blue economy in coral reef fisheries. PLoS ONE 12(8): e0182104. <https://doi.org/10.1371/journal.pone.0182104>

⁵ Minton, D., E. Conklin, P. Weiant and C. Wiggins,. 2012, 40 Years of Decline on Puakō's Coral Reefs: A review of Historical and Current Data (1970-2010). TNC Technical report prepared for the National Fish and Wildlife Foundation. 140 pp.

⁶ van Hooidek, R., J. Maynard, J. Tamelander, J. Gove, G. Ahmadi, L. Raymundo, G. Williams, S. F. Heron and S. Planes, 2016, Local-scale projections of coral reef futures and implications of the Paris Agreement. Sci. Rep. 6, 39666. <https://doi.org/10.1038/srep39666>;

Maynard J, Williams G, Hum, K, Conklin E, 2022, Mapping coral reef vulnerability to climate change in Hawai'i to aid in planning a resilient managed area network and reef restoration. SymbioSeas technical report for the Lenfest Ocean Program, 17pp.

⁷ Friedlander AM., Nowlis J, Koike H. 2015. Stock assessments using reference points and historical data: stock status and catch limits. Pages 91-118 In: Applying Marine Historical Ecology to Conservation and Management: Using the Past to Manage for the Future (JN Kittinger, LE McClenachan, K Gedan, LK Blight ed.). University of California Press.

⁸ Graham, N. A. J., Jennings, S., MacNeil, M. A., Mouillot, D. & Wilson, S. K. Predicting climate-driven regime shifts versus rebound potential in coral reefs. Nature 518, 94–97 (2015).

with reefs in West Hawai'i that had abundant herbivores recovering more quickly from the impacts of the 2015 mass coral bleaching⁹.

There is very strong evidence, however, that **herbivore populations in Hawai'i are depleted**¹⁰. Communities across the state have voiced concerns that many species of herbivores are not as abundant as they used to be, and visual surveys conducted by many organizations across the state show that herbivore populations in many areas are far below what could and should be present on those reefs. A stock assessment conducted by fisheries scientists from the National Oceanic and Atmospheric Administration found that both the surgeonfish kala and parrotfish uhu palukaluka, both part of the DAR rule proposal, are experiencing overfishing (i.e., fish are being removed faster than they are replenished), with kala stocks particularly at risk. All herbivores are important for the health of the reef, but these two species play critical roles in reef function, with kala cropping back macroalgae that compete with corals for space and inhibit the recovery of bleached or damaged corals, and uhu palukaluka being the single most important species in Hawai'i for scraping the reef free of all algae and other coral-competitors so that new corals can settle and grow to repair reefs.

The recreational size and bag limits that DAR proposes would be important steps towards rebuilding healthy herbivore populations across the state. The size limits proposed for manini, kole, kala, and uhu would allow fish to reach reproductive age before harvest, providing the opportunity for them to spawn and help contribute to the next generation of fish for the reef before they are harvested. The rules proposed for uhu sensibly decrease the size limit for smaller-bodied uhu species, allowing more of them to be caught, while increasing the size limit for larger and longer-lived species to allow those fish to reach reproductive age before harvest. Fisheries model projections show that the size limit proposed for kole will likely both increase the sustainability of the fishery, and also lead to increased fishery harvest, as a more robust population creates more offspring for future harvest. Fisheries model projections similarly indicate that the proposed combination of size limits and bag limits for uhu and kala will lead to both healthier herbivore populations on the reef and increased harvest for fishers. This is a win-win¹¹.

The proposal also, however, includes **substantial exemptions to the above rules for commercial take that the best available science indicates would compromise the ability of the overall rules package to ensure that both the fisheries and reefs are healthy and sustainable into the future.** Long-term sustainable fisheries that can meet the needs of Hawai'i residents for locally-caught seafood and food security are essential, and we believe that **revising those commercial exemptions is necessary to provide the abundant herbivore populations our reefs and communities will need now and in the years to come.** In examining the DAR

⁹ Gove, J.M., Williams, G.J., Lecky, J. et al. Coral reefs benefit from reduced land–sea impacts under ocean warming. *Nature* (2023). <https://doi.org/10.1038/s41586-023-06394-w>

¹⁰ Nadon, M. O. 2017. Stock assessment of the coral reef fishes of Hawaii, 2016. U.S. Dep. Commer., NOAA Tech. Memo., NOAA-TM-NMFS-PIFSC-60, 212 p. doi:10.7289/V5/TM-PIFSC-60.

¹¹ Harford W, 2021, Simulation testing of size limits and bag limits for Hawaiian herbivorous fishes. Nature Analytics Technical Report prepared for the Hawai'i Division of Aquatic Resources, 123pp.

commercial catch data, we found that there were very few fishing trips reported by fishers for either uhu or kala that exceed the proposed bag limits (median catch per trip was only 3 fish for both species), meaning the bag limits would only lead to an approximately 10% reduction in the harvest of those species. Given ongoing population declines in both species at current fishing levels, it is highly likely that both species will continue to decline under the proposed commercial fishing rules. A greater reduction in commercial fishing pressure will be needed for population recovery.

In order to reduce the declines in abundance currently seen in each of these species and allow them to recover to the point where they can provide more robust fisheries and enhance the resilience of reefs to climate change and other impacts, a greater reduction in annual harvest is needed. We urge DAR to consider removing the commercial exemptions from the proposed rules, and develop alternatives to the exemptions. Such alternatives could include removing the commercial exemptions altogether, only having them apply to islands where there are active reported fisheries for those species, dramatically reducing the annual catch limit and/or bag limits proposed to allow more recovery of the depleted stock, and/or implementing restrictions on surround netting, trapping, and/or spearing methods that are particularly effective at harvesting these species and can lead to unsustainable harvest.

The ability of Hawai'i's reefs to sustain recreational, subsistence and commercial harvest now and for generations to come relies on our ability to allow depleted herbivore stocks to recover and restore the resilience of our reefs so that they can continue to provide the structure, diversity, and habitat essential for reef fish and so many of the benefits that reefs provide to the people of Hawai'i.

If modified to eliminate or significantly reduce commercial take, the proposed rules will be an important step towards improved management of our nearshore resources. We urge you to recognize the importance and need for meaningful herbivore rules by amending the proposed rules prior to finalizing the draft rule.

Mahalo for your support and stewardship of Hawai'i's natural resources.

The Nature Conservancy of Hawai'i and Palmyra is a non-profit organization dedicated to the preservation of the lands and waters upon which all life depends. The Conservancy has helped protect more than 200,000 acres of natural lands in Hawai'i and Palmyra Atoll. We manage 40,000 acres in 13 nature preserves and work in over 50 coastal communities to help protect and restore the nearshore reefs and fisheries of the main Hawaiian Islands. We forge partnerships with government, private parties, and communities to protect forests and coral reefs for their ecological values and for the many benefits they provide to people.



Aloha Division of Aquatic Resources

August 13th, 2023

HULI PAC is a political action committee dedicated to uplifting leaders of integrity, demanding accountability, and redirecting the goals and priorities for Hawai'i Island. We are community advocates from all backgrounds— from every moku of our island—united under a platform of issues and solutions based on Hawaiian values.

We align with our trusted community leaders and defer to their 'ike Hawai'i as vital collaborative information to steer DAR towards a **restorative** and **regenerative** future around Hawaii Administrative Rules (HAR) Chapter 13-95. We live in a time when all herbivore species are in a degraded state of mass decline—a *CRISIS*.

We thank you for the intent of this rules package and offer the following recommendations and comments. We also thank you for your extensive effort in this rules package and for holding public hearings at each of our counties.

Our recommendation is to follow the actions of Kānaka Maoli fisher communities, subsistence fishers, and lifetime fishers, utilizing Ka Pa'akai Analysis for thorough scoping such as what Miloli'i has done to set forth Miloli'i CBSFA rules (2022), Kauhakō 'Ohana Association (Ho'okena), Hui 'Ohana O Hōnaunau, and Ho'ōla Kealakekua. Another exemplary action was that of Maui for their work to amend their island-wide herbivore rules in 2014 and this recent [land-to-sea data](#).

The tipping point for a coral collapse is here. We lack a healthy ecology and symbiotic relationships therefore, drastic measures to protect them are necessary. Uhu perform a critical function on our reefs, that we as humans can not be a substitute for. We need Uhu on our reefs in abundance for more than just food. We need them on our reef to increase reef resilience, and we must do all we can to make that happen!

We need transparency and cohesiveness in alignment with our trusted community partners 'ike Hawai'i, as how we interact with the ocean (on land and at sea) impacts its health and whether it can perpetuate life in perpetuity.

Therefore;

- ***We SUPPORT the proposed non-commercial rules as they are consistent with those in place at the community level (Miloli'i CBSFA, 2022) and island-wide (Maui Rules, 2014)***
- ***We, OPPOSE the commercial rules for Uhu and Kala and recommend they be removed from commercial take.***

After hearing testimony from Molokai, we feel Molokai should be consulted and appropriate island-wide herbivore rules be made so as not to hinder their ability to remain resilient, given their limited access to food, provisions, and services.

Thank you for this opportunity to comment that impacts ALL of our future here in Hawai'i.

Maki Morinoue
HULI PAC
96725

31 July 2023

To: Division of Aquatic Resources (DAR)

Re: Proposed Herbivore Fishing Rules

Aloha,

We applaud DAR for addressing the chronic issue of depleted herbivore populations. Abundant and diverse herbivores are essential for our reefs to recover from past and present problems of sediment, fertilizers, sewage, and other pollutants that favor seaweeds over corals, as well as present and future threats of ever-increasing ocean warming and acidification. When coral dies for any reason, dead coral surfaces ultimately become covered by new coral only if herbivores are abundant and diverse enough to control seaweeds; no herbivores, no corals. Herbivores clearly present much more than a fishery issue alone.

Testifying as private citizens and as marine biologists who have studied Hawai'i's coral reefs and their herbivores for decades, we, first, concur that many herbivore populations are severely depleted, especially near major population centers, as detailed below. Second, while we are supportive of the intent of the proposed herbivore fishing rules, we urge DAR to consider the modifications we propose below.

Herbivores Depleted: Assertions from those opposing increased protections for herbivores argue that scientific data regarding the status of herbivore populations are lacking or inaccurate. These assertions are patently false. Despite problems and assumptions associated with indirect approaches such as fisheries stock assessments, there have been direct undersea surveys of herbivore populations across all moku of the main Hawaiian Islands, as well as Papahānaumokuākea (Edwards et al. 2014, Friedlander et al. 2018, Gorospe et al. 2018, Stamoulis et al. 2018). These surveys have revealed that herbivores are extremely depleted around O'ahu and parts of Maui and Kaua'i, at low abundance elsewhere on the main islands, and at moderately high abundance only around Kaho'olawe and Ni'ihau, as well as a few other relatively unpopulated moku on other islands. Compared to Papahānaumokuākea and other unfished locations, O'ahu's herbivore populations are less than 5% of their potential abundance. Importantly, the abundance of herbivores and other fishes targeted by fisheries declines with increasing human populations, yet the abundance of non-targeted fishes shows no pattern regarding the abundance of humans, demonstrating that water pollution and habitat loss are not the primary causes of herbivore declines.

Suggested Modifications of Proposed Herbivore Fishing Rules: We are particularly concerned about the proposed commercial rules regarding uhu (parrotfishes), which are the heavy lifters in keeping reef surfaces clean. We understand from information provided by DAR that the long-term commercial catch has fluctuated around 50,000 pounds per year, and that "anecdotally the majority of commercial uhu catch" has been Redlip Parrotfish (*Scarus rubroviolaceus*). The proposed rule is that only initial-phase Redlip Parrotfish be targeted with a commercial allowable catch limit (ACL) of 34,000 pounds. In asserting that this rule would

reduce the catch to 75% of the present estimated catch, DAR is assuming that about 90% of the present total catch or about 45,000 pounds per year is Redlip Parrotfish. Let's say instead that the actual Redlip "majority" is only 75% of the total catch, which would mean a long-term average catch about 37,000 pounds of that single species per year. If so, the proposed rule would cut the commercial catch of uhu by only 3,000 pounds, certainly not enough to allow the population to recover, let alone to levels where uhu could keep dead reef surfaces clean for new coral. In any case, we believe an ACL of 34,000 lb is too high. When faced with imprecise data, the wise course of action is to engage the precautionary principle (González-Laxe 2005). We suggest that the commercial catch of uhu (and kala, by similar analysis and reasoning) be reduced by at least 50% to give these populations a chance to recover before annual coral bleaching further threatens our reefs by the year 2040 (van Hooidek et al. 2016 supplements).

We also believe that the burden of replenishing our herbivore populations should fall more on commercial and recreational fishers than on subsistence fishers, who are the keepers of pono fishing traditions. In addition to the proposed herbivore rules, we support DAR's efforts to enact place-based rules, including community-based subsistence fishing areas.

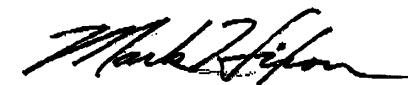
Finally, we urge the State of Hawai'i to invest more funds in (1) gathering more abundant and accurate fishery data, (2) producing public education campaigns to foster voluntary compliance with fishing regulations, and (3) expanding DOCARE to enforce the rules on those who do not fish pono.

In conclusion, herbivores are the potential saviors of our reefs, the living lawnmowers allowing the coral reef garden to flourish. We need abundant and diverse herbivores now more than ever to recover our reefs from past stressors and to allow them to endure worsening ocean warming and acidification. More living coral means more fish, sustaining and perpetuating our fisheries and the many other benefits provided by our reefs.

Mahalo,



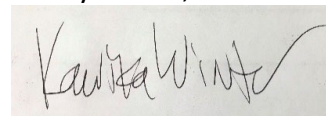
Alan Friedlander, Ph.D.



Mark Hixon, Ph.D.



Randy Kosaki, Ph.D.



Kawika Winter, Ph.D.

Peer-reviewed scientific literature cited:

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Testimony of: Ronald Tam

August 2023

The following testimony is provided in **OPPOSITION** of Department of Land and Natural Resources (DLNR) Division of Aquatic Resources (DAR) 2023 proposal to establish catch size and bag limits on specified herbivores.

The statements of DAR testimony and related finding of fact contained herein are from:

- I. The DLNR Land Board hearing of May 2023
- II. Artificial intelligence conducted research; and
- III. Other sources, as identified.

In brief,

- The nexus between coral bleaching and overfishing is "creative." I consider it "unique" that coral bleaching resulting from climate change segued into overfishing.
- The "science" identified/provided in support of the proposal is inadequate and inappropriate in terms of recognized fisheries management practices. Generally, the "science" is data poor, thereby evoking (too) many assumptions or "what ifs." It will be interesting to learn whether the DAR cited "science" used as the basis for the proposed rule(s), withstands rigorous, bona fide peer review, peer review being a standard practice within fisheries management. Absent bona fide peer review, the process the stakeholders experience is a sham: The Department "picks" the science, claims that the science is compelling, and the rest becomes meaningless.
- Separately, there is an absence of sufficient "science" to support the proposed bag and size limits.
- There are no provisions for regular and continuous monitoring and analysis of the impact(s) after establishment of the proposed rule(s). Based on past practice, this will result in the rules, once established, remaining in place regardless of merit.

- Like above, there are no provisions that ensure employment of adaptive management practices to implement change as may be warranted by the continuous monitoring and analysis of the impact(s) of establishment of the proposed rule(s).
- The one-size-fits-all approach is inappropriate. For example, what is applicable to Waikiki is not necessarily applicable to the north shore of Molokai.
- Fish is food. Consideration of subsistence fishing is appropriate.
- The proposed Kona crab rule change is supported.

TOPIC: Coral Bleaching. The following from the May 2023 Land Board hearing pertains:

PURPOSE OF RULEMAKING: WHY MANAGE HERBIVORES?

Hawai'i's Reefs in Danger

- **Current threats continue**
 - Pollution, Sedimentation, Heavy Fishing Pressure
- **Coral bleaching**
 - Hawai'i has experienced mass bleaching events in 2014, 2015, and 2019
 - Bleaching is expected to happen more often in the future
- **Survival of coral reefs depends on our ability to reduce stressors**
- **Herbivores keep our reefs resilient by preventing overgrowth of algae**

Maximum Summer Temperatures

Maximum Temperature (F)

Bleaching Threshold

Projected Temperature Increase

1950 1960 1970 1980 1990 2000 2010 2020 2030 2040 2050

05.12.2023 BOARD OF LAND AND NATURAL RESOURCES MEETING

Board of Land and Natural Resources DLNR
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DAR testimony is that coral bleaching provides basis for the proposed rulemaking / gives cause to manage herbivores.

FINDINGS OF FACT:

- 1) The first coral bleaching event referred to in the DAR presentation occurred in 2014–2015. It was attributed to the prolonged El Nino event, which led to elevated sea surface temperatures.
- 2) The second event took place in 2019. This bleaching event was also linked to elevated sea surface temperatures.
- 3) While human intervention can be beneficial for coral reef recovery, it is not a substitute for addressing the root causes of coral bleaching, particularly climate change.

CONCLUSION(S) :

- A. That citing coral bleaching as providing cause to implement herbivore management/harvest rules reflects lacking in candor.

B. That the implementation of the proposed harvest rules will have negligible impact in countering the impact of coral bleaching.

TOPIC: Stock Assessment. The following from the May 2023 Land Board hearing pertains:

The screenshot shows a YouTube video player with the following content:

- Video Title:** PURPOSE OF RULEMAKING: WHY MANAGE HERBIVORES?
- Text on Screen:**
 - Based on a length-based stock assessment (Nadon 2017) and a new scientific paper (Donovan et al., in review), herbivores need additional management. These species have an SPR lower than 0.3 suggesting overfishing.
- Species and SPR Values:**
 - 0.03
 - 0.26
 - 0.13
 - 0.23
- Bar Chart:** A horizontal bar chart showing Herbivore Biomass (g m⁻²) for various moku. The x-axis ranges from 0 to 250. Bars are colored red (upper quartile) or yellow (lower quartile). A legend states: "Bars are predicted means and error bars of 50% intervals in a given moku, Moku with mean values in the upper quartile (top fourth) are colored red, and moku with mean values in the lower quartile (bottom fourth) are colored yellow."
- Video Player:** Shows the video is from the "Board of Land and Natural Resources DLNR" channel, with 723 subscribers. The video is titled "05.12.2023 BOARD OF LAND AND NATURAL RESOURCES MEETING".

Relative to the above, DAR testimony: "Based on a length-based stock assessment in two thousand seventeen (2017) and a new scientific paper that is currently in review, there is evidence that herbivores need additional management."

FINDINGS OF FACT:

- 4) The referred to length-based stock assessment (Nadon 2017) is a NOAA Technical Memorandum dated February 2017.
- 5) The Memorandum is titled "Stock Assessment of the Coral Reef Fishes of Hawaii, 2016"
- 6) The "assessment" was developed "...using data from various sources collected during the 2003-2016 (emphasis added) period."
- 7) NOAA Technical Memoranda are typically internal reports. While these documents may contain valuable information, they are not typically intended to serve as formal stock assessments.

- 8) A stock assessment is a comprehensive evaluation of the status and trends of a fish or marine mammal population. It involves analyzing various data sources, such as catch statistics, biological data, and environmental factors to estimate population abundance, growth rates, mortality rates and other relevant parameters.
- 9) Formal stock assessments undergo rigorous peer review processes and incorporate a wide range of data sources and analytical methods to provide the best available science for sustainable fisheries management.
- 10) The referred to new scientific paper currently in review is apparently exactly that, i.e., not published. Therefore, to refer to the document as "evidence" is at question.

CONCLUSION(S) :

- C. That citation of a non-published document as "evidence" reflects a lack in candor.
- D. That the (Nadon 2017) NOAA Technical Memorandum provides insufficient bases upon which to impose the proposed herbivore size and bag limits.
- E. That the (Nadon 2017) NOAA Technical Memorandum does not satisfy generally accepted fisheries management tests of a stock assessment used to justify harvest rules.

TOPIC: Spawning Potential Ratio (SPR). The following from the May 2023 Land Board hearing pertains:

PURPOSE OF RULEMAKING: WHY MANAGE HERBIVORES?

- Based on a length-based stock assessment (Nadon 2017) and a new scientific paper (Donovan et al., in review), herbivores need additional management. These species have an SPR lower than 0.3 suggesting overfishing.

0.03 0.26 0.13 0.23

0.03 0.26 0.13 0.23

Herbivore Biomass (g m⁻²)

Bars are predicted means and error bars of 50% intervals in a given moku, Moku with mean values in the upper quartile (top fourth) are colored red, and moku with mean values in the lower quartile (bottom fourth) are colored yellow.

05.12.2023 BOARD OF LAND AND NATURAL RESOURCES MEETING

Board of Land and Natural Resources DLNR

FINDINGS OF FACT:

- 11) (From the preceding slide): "Species have an SPR lower than 0.3 suggesting overfishing."
- 12) In addition to fishing pressure, multiple factors can contribute to changes in SPR. These include reproductive biology, natural mortality environmental factors, life history traits and population structure.
- 13) It is important to consider the above factors holistically when assessing and managing SPR.
- 14) Monitoring and maintaining an appropriate SPR are crucial for sustainable fisheries management
- 15) No plan to monitor, analyze and maintain SPR is provided for in the proposed rulemaking.

CONCLUSION(S):

- F. That the suggestion of overfishing based on SPR fails the test of holistic consideration of related factors.
- G. That the implication of (state-wide) herbivore overfishing attributable to low SPR is unfounded.

- H. That the proposed rulemaking could potentially better serve its intent if it is place-based, vice statewide. (The L50 section of this testimony which follows, is also applicable.)
- I. That the proposed rulemaking needs to include follow-on monitoring and analysis requirements and adaptive management, data supported rule change provisions.

TOPIC: Length of Maturity (L50). The following from the May 2023 Land Board hearing pertains:

MANINI (CONVICT TANG): STATEWIDE RULES

- **Current Rules:**
 - Minimum Length of 5 Inches
 - No Bag Limit
- **Proposed Rules:**
 - Minimum Length of 6 Inches
 - No Bag Limit

Length at Maturity (L50) = 5.0 to 6.1 inches

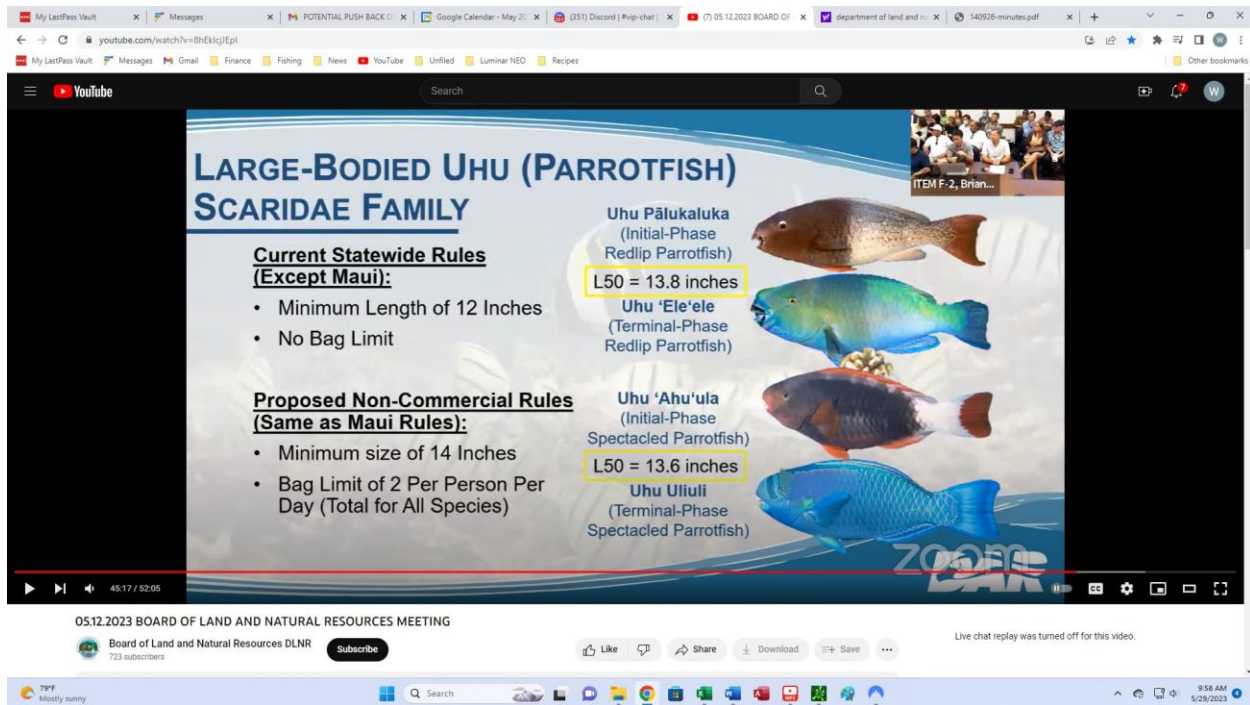
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FINDINGS OF FACT:

- 16) DAR testimony: For manini, "...proposing to increase the minimum size to six inches, maintaining no bag limit. ...based on L50, or the length where fifty percent of the population reaches reproductive maturity... That varies from five to six point one inches, depending on the location."
- 17) The proposed non-commercial, herbivore size limit rules are based on L50.
- 18) While L50 can be a useful measure, it is not typically used in isolation to establish size catch limits.
- 19) DAR recognizes that L50 for manini is not the same statewide.
- 20) DAR is silent on whether L50 is identical throughout the state for herbivores specified in the proposed rules.

SUB-TOPIC: L50 for Uhu (Maui Rule)



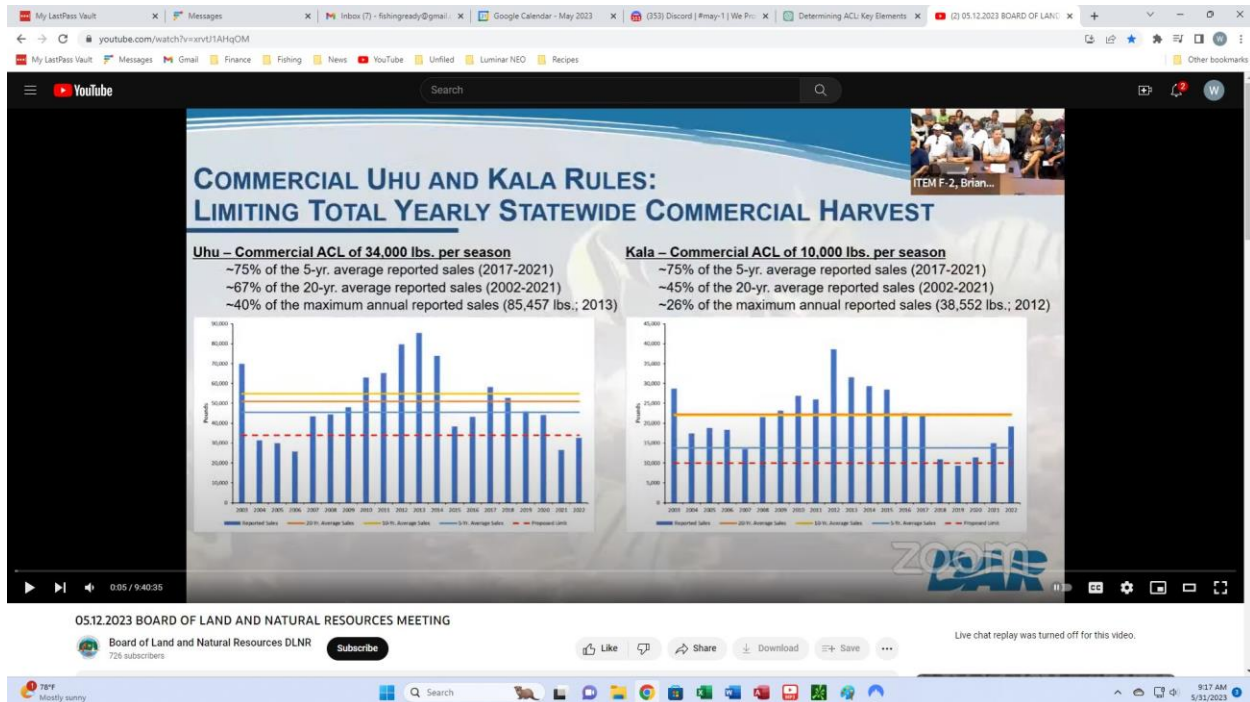
FINDINGS OF FACT (cont.):

- 21) That for uhu (DAR is) "...proposing to mirror that (sic) Maui rule for the statewide rule."
- 22) The Maui rules pertaining to the harvest of uhu were established effective November 1, 2014.
- 23) Incident to the establishment of the Maui rules, minutes of the September 26, 2014, Land Board meeting reflect that a marine biologist testified to the Land Board that the data used by DAR was independent of fisheries data. Further, that there was no science that said that based on the level of fishing currently occurring, you need a one or two bag limit. (That) There is no calculation that says the number of fish is this, the number of fishermen is this, so your daily bag limit is this. (Paraphrase of the testimony.)
- 24) After the establishment of the Maui size and bag limits, there is no evidence that documented monitoring and analysis of the impact(s) of the established size and bag limits have occurred.

CONCLUSION(S) :

- J. That the "science" used in support of the proposed non-commercial, herbivore size and bag limits rules is lacking.
- K. That to establish statewide, non-commercial uhu size and bag limits based on the "Maui rule" is with little merit.
- L. That establishment of statewide, non-commercial uhu size and bag limits based on the "Maui rule" is not warranted.
- M. That analysis of the impact(s) of previously established, non-statewide herbivore size and bag limits is requisite to moving forward.

TOPIC: Commercial Uhu and Kala Annual Catch Limits (ACL). The following from the May 2023 Land Board hearing pertains:



FINDINGS OF FACT:

25) DAR states that “we know how much is harvested, or at least how much is reported as harvested. So, that’s where a lot of these commercial limits came from.”

(Paraphrase) The commercial ACL is based on the stock assessment, the SPR, and the reported harvest.

26) As reflected in the preceding slide, apparently a percentage of previous years commercial harvest is factored into the proposed ACLs.

27) The determination of an ACL is based on several fundamental elements that are considered by fisheries management authorities, as follows:

- **Stock Assessment:** (Previously addressed in this testimony.)
- **Maximum Sustainable Yield (MSY):** MSY is the maximum amount of fish that can be harvested from a stock over the long term without compromising its ability to reproduce and replenish itself.
- **Overfishing Limit (OFL):** The OFL is the maximum allowable catch that can be taken from a fish stock without causing overfishing.

- Acceptable Biological Catch (ABC): The ABC is a precautionary catch level that incorporates scientific uncertainty and ensures a low risk of overfishing.
- Accountability Measure: Enforcement.
- Adaptive Management: Adaptive management involves regularly reviewing and updating ACLs to ensure they remain effective in sustaining fish populations while considering socioeconomic factors.

28) There is no evidence indicating that regular review and updating of the proposed ACLs are planned or required.

CONCLUSION(s):

- N) That the proposed ACLs are not determined based on fundamental elements considered by fisheries management authorities.
- O) That absent a requirement for regular review and updating of the proposed ACLs, and the use of adaptive management procedures and processes, the ACLs will remain in effect regardless of their validity.

TOPIC: Limiting Total Daily Statewide Commercial Harvest. The following from the May 2023 Land Board hearing pertains:

The screenshot shows a YouTube video player with the following content:

COMMERCIAL UHU AND KALA RULES: RULE OBJECTIVES

Decrease Commercial Catch of Uhu and Kala While Preserving a Commercial Fishery by.....

- 1) Limiting Total Yearly Statewide Commercial Harvest
- 2) Limiting Total Daily Statewide Commercial Harvest**
- 3) Protecting Targeted Species During Spawning
- 4) Protecting Key Sizes to Promote Healthy Spawning Population
- 5) Promoting Compliance, Reporting, and Accountability Among Commercial Fishers and Dealers

The video is from the 'Board of Land and Natural Resources DLNR' channel, which has 726 subscribers. The video title is '05.12.2023 BOARD OF LAND AND NATURAL RESOURCES MEETING'. The video player shows a progress bar at 3:32 / 9:40:35. The browser tabs include 'My LastPass Vault', 'Messages', 'Inbox (7) - fishingready@...', 'Google Calendar - May 20...', '(354) Discord | #wing-tr...', '40 05.12.2023 BOARD OF...', 'Determining ACL Key Et...', and 'nominal - Yahoo Search F...'. The system tray at the bottom shows a temperature of 79°F, 'Mostly sunny', and the date '5/31/2023' at '10:53 AM'.

FINDINGS OF FACT:

- 28) The proposed rule establishes a separate commercial annual catch limit (ACL) for uhu and kala.
- 29) The proposed rule provides for closure of each fishery, uhu and kala, if the ACL is attained before the "end of the season."
- 30) The proposed rule establishes a commercial daily bag limit separately for uhu and kala.
- 31) DAR does not provide evidence that supports the establishment of commercial daily bag limits to augment ACLs.

CONCLUSION:

- P) That clarification of the resource management value added of the proposed rule(s) limiting total daily statewide commercial harvest of uhu and kala in ADDITION to ACLs, is appropriate.

TOPIC: Permits to Commercially Harvest Uhu & Kala. The following from the May 2023 Land Board hearing pertains:

**UHU (PARROTFISH – ALL SPECIES)
COMMERCIAL FISHER AND DEALER RULES**

Proposed Commercial uhu fishing permit:

- Must possess valid CML
- Must pay \$100 permit fee
- Must have caught and sold 340 lbs of uhu within the past year if a commercial uhu permit was held

**Uhu Pālulukuka
(Initial-Phase
Redlip Parrotfish)**

Additional Proposed Rules:

- Commercial daily bag limit of 30 uhu pālulukuka per person
- Commercial slot limit (14-20")
- No commercial harvest or sale from February – May (spawning season)
- No commercial harvest or sale after ACL (34,000 lbs) is reached
- Dealers must register as commercial uhu dealer
- NO COMMERCIAL TAKE OF ANY OTHER VARIETY OR SPECIES OF UHU

L50 = 13.8 inches

05.12.2023 BOARD OF LAND AND NATURAL RESOURCES MEETING

Board of Land and Natural Resources DLNR
727 subscribers

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Live chat replay was turned off for this video.

79F Near record

3:10 PM 5/31/2023

FINDINGS OF FACT:

- 32) Currently, a fisher who sells fish is required to purchase a commercial marine license (CML)
- 33) The CML provides the licensee with the authority to sell fish.
- 34) It is proposed that fishers commercially targeting uhu and kala be required to purchase a permit, annually.
- 35) It is proposed that a separate permit be required for each species of fish, i.e., a separate permit for uhu, and a separate permit for kala.
- 36) It is proposed that each permit cost \$100.
- 37) DAR states (paraphrase) that maybe 100 nearshore commercial fishers catch uhu or kala
- 38) Mathematically, potentially up to \$20,000 in uhu and kala permit fees could accrue, annually.
- 39) DAR does not speak to a direct resource management benefit to be gained with the proposed adoption of requiring permits to commercially fish uhu and kala. (A tax?)

- 40) It is proposed to establish a daily bag limit of 30 uhu palukaluka per person applicable to commercial fishers.
- 41) It is proposed to establish a slot limit of 14-20 inches for the take of uhu palukaluka applicable to commercial fishers.
- 42) DAR states that conversing with fishers, the uhu palukaluka is the primary species harvested commercially. "Probably because they are the most abundant."
- 43) DAR states that the slot limit is proposed to protect smaller and larger fish from commercial harvest.
- 44) DAR provides no data in support of the proposed commercial slot limit.
- 45) Determining slot limits in fisheries management involves a careful analysis of several factors, including the species being targeted, population dynamics, life history characteristics, and the management objectives for the fishery. There is no one-size-fits-all approach. Some key considerations in determining slot limits are:
 - ❖ Species specific considerations
 - ❖ Population dynamics
 - ❖ Desired population outcomes
 - ❖ Stakeholder input
 - ❖ Monitoring and evaluation
 - ❖ Enforcement and compliance
- 46) There is no evidence indicating that regular review and updating of the proposed daily bag limit and slot limit for commercial uhu fishers is planned or required.
- 47) Establishment of separate commercial "no take" periods are proposed for commercial harvest of uhu and kala.
- 48) The proposed "no take" periods are aligned with the spawning season of each species.
- 49) No data is provided upon which to validate the impact(s) of the proposed "no take" periods.
- 50) No data is provided upon which to evaluate the socioeconomic impact of establishing "no take" periods.
- 51) The proposed "no take" period for Redlip Parrotfish is "from February-May (spawning season)."

52) In general, parrotfish in Hawaii, including the redlip parrotfish, tend to spawn during the summer months. The peak spawning period for many parrotfish species in Hawaii occurs between June and August.

CONCLUSION(s) :

- Q) That the resource management value added with the establishment of a permit requirement to commercially harvest uhu and kala requires clarification.
- R) That the proposed daily commercial bag limit is not warranted. (ACL prevails.)
- S) That the proposed commercial slot limit applicable to uhu palukaluka is not warranted.
- T) That proposed "no take" periods for commercial fishing of kala and redlip parrotfish require review.

TOPIC: Minimum Annual Catch to Renew Commercial Permit. The following from the May 2023 Land Board hearing pertains:

The screenshot shows a YouTube video player with the following content:

STEP-BY-STEP EXAMPLE: COMMERCIAL TAKE OF UHU UNDER THE PROPOSED RULES

- 1) Up to one month before the season starts, apply for a Commercial Uhu Permit.
 - a) Obtain a Commercial Marine License.
 - b) Submit a Commercial Uhu Permit application to DAR.
 - c) Agree to the terms and conditions of the permit.
 - d) Pay the \$100 permit fee.
 - e) Upon approval by DAR, receive a permit good for the upcoming or present 8-month season ONLY.
- 2) On June 1, permitted fishers may begin fishing for uhu pālūkāluka in accordance with established and agreed upon commercial rules.
- 3) Report all catch in a timely manner to DAR.

Note Fishers who have reported sales ≥ 340 lbs. in the past year will be granted a permit as an established fisher. Those without documented sales will be granted a probationary permit.

The video player shows a progress bar at 7:35 / 9:40:25. Below the video, the channel name is "Board of Land and Natural Resources DLNR" with 726 subscribers. The video title is "05.12.2023 BOARD OF LAND AND NATURAL RESOURCES MEETING".

Findings of Fact:

- 53) The proposed rule will not allow a commercial fisher who harvests less than 340 pounds of uhu during a season to renew the commercial uhu permit for the succeeding season.
- 54) A part-time fisher who sells his/her catch for income augmentation purposes will not necessarily harvest 340 pounds of uhu during a season.

CONCLUSION(s) :

- U) That the proposed 340-pound uhu catch minimum per commercial fisher, during a previous season, to qualify for a commercial uhu permit for the succeeding season is oppressive-like (and potentially counter-productive).
- V) That the proposed 340-pound uhu catch minimum per commercial fisher, during a previous season, to qualify for a commercial uhu permit for the succeeding season requires review.



"Solutions not Complaints"

Aloha no kakou,

The chapter 91 process is complex and the language of the proposed rules is not easily understood by the majority of the public. Understandably, your precise description is necessary to satisfy the legal requirements of the rule-making process but a simpler, down to earth summary should be provided to the public for a better way of understanding what is being proposed for the benefit of the public and allow for competent and informed feedback.

Online zoom meetings were held for the development of this proposed rules package but it may not have been adequate because many people may not be comfortable with this form of communication, not have had the time or did not feel that their voice would make a difference. The Hawaii Island hearing for the Ocean Stewardship Fee is an example, very few people testified and those that did were not well informed. Zoom is good because it affords more people the ability to participate but many of us are not at ease with expressing ourselves in this manner

The proposed rules do not address the real issues that the people of Hawaii are impacted by. The Annual Catch Limit for commercial fishermen seems like a lot of fish. What is the science behind that? Commercial fishermen are allowed to take thousands of pounds of fish while people who fish for food are severely limited in how much they can catch. An annual catch limit is established based upon historical harvest of a fishery without considering natural predation, pollution, and climate change. 30,000 lbs. of kala = approximately 10,000 fish. Are those fish being sold to our local families?

As a fisherman I have personally observed the disrespect and lack of regard for our families and our fishing traditions from the Aquarium Fish Collectors as they plundered our reef fish for many years. At its peak the AQ industry harvested hundreds of thousands of I'a from our West Hawaii coastline alone, which is a narrow reef shelf system that is very susceptible to overharvesting and pollution. They are more responsible for the depletion of our reefs than subsistence or other commercial and recreational fishermen combined. They violated the FRA's and the moratorium that was in effect for West Hawaii. Such a lucrative business encourages people to disregard any restrictions or regulations.

Our families harvest reef fish for personal use, to celebrate a baby's birthday, a graduation, or the passing of a kupuna or loved one. The benefit to our custom of harvesting and eating reef fish is the passing of traditions to our keiki and for the honor being expressed to the person being celebrated. These events are significant in their expression of Aloha for the child who is born into this challenging world, the girl or boy who is taking the next step in life as an adult, and the elder who is revered by everyone in the family because of the love and mana'o shared by them.

In its efforts to protect our fisheries, DAR has put together these proposed rules which are meant to benefit all of us but by considering the issuance of permits for the AQ industry, to once again harvest the I'a along our fragile West Hawaii coastline, it seems inappropriate and flawed. Our families today do not eat as much I'a as our kupuna and yet the fish have become scarcer and harder to catch. And now the AQ collectors are returning?

KAUHAKŌ OHANA ASSOCIATION



"Solutions not Complaints"

PO Box 38, Honaunau, HI. 96726

(808) 987-9149

namamo@yahoo.com

We are not the reason for the depletion but our traditions and our celebrations suffer. During a recent graduation party, I saw that there were no pakuikui being served. Pakuikui is treasured by our South Kona families but had not been part of the proposed rules package because, as I was told, no one else eats it. If we are the only ones that relish this fish, why is it depleted and a 2-year ban imposed? For two years that fish, which no one else eats except our South Kona families, is banned from being harvested along our West Hawaii Coastline. For 2 years, maybe longer, our keiki, makua and kupuna cannot eat that fish.

It is possible that invasive fish are responsible for the depletion, or climate change. But the declining fish population may also have been caused by the hundreds of thousands of fish that were taken from our reefs for many years. And there are no bag limits for kole and manini? Three of the fish which our kupuna and our families enjoy the most are being left unprotected.

Please include bag limits for manini and kole and add pakuikui to this list also.

Ke Aloha Nunui,

A handwritten signature in blue ink that reads "Damien Kenison".

Damien Kenison
Kauhakō Ohana Association

Herbivore rules

First let me state I am not against rules, regulations and FMAs. I am for science so first let me address the science.

The survey cited by DAR for the rule change is Nadon 2017. And for Kala the report stated that its near equilibrium. I will add that many other species are listed as near equilibrium yet has not received the same status from DLNR. I will also question the accuracy of this study which measures populations for 2007-2016. Its conclusions were To'au stable, Ta'ape decline from 2005 suggesting equilibrium, Roi steady. Clearly anyone in the water would contest these conclusions. Those three species numbers continue to increase and at an alarming rate. And I would add that of 5 species of parrotfish recorded one species low observation so no data, two rising, one rising but falling but still above 2007 levels and one fluctuating but steady. Methodology was varied and used data from many sources including DAR Asner and others and surveys conducted statewide. Many of these surveys had very differing methodology and results not all of them showed declining numbers as discussed below

Then we have Seattle Aquarium research which surveys 2009-2017 in West Hawaii which shows increasing numbers of all species including. This methodology was quite different using videos and doing counts on tapes. Areas and time of year consistent. And yet this study is not cited anywhere

I have not been able to access Cornell University study for west Hawaii but personal communication in 2018 numbers were increasing across all species. Again this study is not cited.

Asner 2020. West Hawaii Study Data collected 2008 April -October 2009, February -April, 2011 August September, 2014 October-December, 2018 February-April. Surgeon fish parrotfish wrasses goatfish and introduced species over 6 inches and Kole and Manini of over 4 inches. It did not count all fish only selective fish by size. its conclusion was that significantly greater biomass in 2008 compared to 2018. Similarly for herbivores browsers and grazer there were significantly more fish in 2008 compared to 2018. for browsers there was a fairly steady decrease in biomass while grazers showed a significant decline in biomass between 2014-2018. Scrapers on the other hand showed variable increases and decreases throughout the survey years with the greatest biomass in 2014. I am quoting this study almost verbatim for accuracy and discuss the issues with all studies below

So we have two surveys saying increases but not cited. One study that is questionable as to the accuracy but does show equilibrium with only one species of parrotfish falling but still above 2007 levels and two rising. Then we have a study which has varied seasonality and very selective size limitations. As a fisherman I know seasonality is real, as a scientist selectivity can often be limiting. Sizing fish underwater is subjective and subject to biased recording. A much better way and consistent with past surveys is to count all fish. In summation two surveys show an increase. One survey which DAR is using is questionable as data is either missing or lacking. And when data is available shows numbers are stable and in many cases rising. And the Asner study the varying seasons and subjective size selection needs to be questioned.

That said if the pressure of others to not look at the data with an objective eye the proposed new regulations should also be subject to the same scrutiny. Increasing size limits which means we are reducing the largest and most productive breeders makes little sense. It fosters a sense of trophy hunting which is not productive. Instead we should look at slot limits. Taking smaller individuals mean our breeding stock is preserved and recruitment will be at its highest. Slot limits have been very effective in many fisheries and is the new way forward. And as most of these species is taken by spear what happens if a fish is taken that is just under the limit? Its already taken. As spearing is selective picking out the medium size fish and leaving the larger individuals is much easier then deciding what's 5 inch or 6 inch

Then we have limits on numbers. I would remind all our locals that limiting the numbers dont take into account our culture of serving fish for our important cultural milestones. First Luaus, Graduations wedding and anniversaries. So again is the science supporting this large cultural change. And the only way you can take significant numbers of parrotfish is too spear at night. As such it should be banned. And I will add for enforcement reasons easily enforced. Banning night diving for Uhu would clearly be a way to preserve numbers if we really are worried about and overtake by individuals. So to be clear some see taking larger numbers as abhorrent. That is an individual judgement and has no bearing on science or biomass. A fisher may take a few as need is low and then when need is greater take more. That is clearly the definition of fishing pono.

Now the commercial catch being proposed. Commercial fishermen perform a very important function. They feed people. And while many will condemn those who fish commercially those same fishermen are just like our farmers and hunters . They monitor the stock, harvest only when numbers are up and are some of the most conservation minded people. No they are not preservationist. Neither are they raping and killing our waters. And I will admit that there may be a very few who dont fish pono but to say that all fishermen are bad would condemn all farmers hunters and gathers based on only a few. And in these hard times where many work multiple jobs or because of age cannot fish they perform a very important function. Feeding those who can't fish. However these new rules being imposed will be Hawaii's first entry into limited fisheries. And so I would caution all that some heavy thought go into this . Qualifying is a good thing but then how do new fishers come in? How are licenses passed on should a fisher leave? If the idea is that to slowly phase out commercial fishers by limiting licenses with no future plans that is a very dangerous precedent.

In closing I'm sure you will hear much from those who believe that all fish should not be caught or eaten. Im sure many of them are against hunters and ranchers. You will also hear about how the ocean is an ice box and only to be used feed ohana and not for commercial purposes. To the first Id say that is a personal choice but that choice should not be imposed on others. To the latter, I grew up where fishermen were honored and looked up to they caught fish sold fish and every commercial fisherman gives away fish. That has no changed. Commercial fishing in Hawaii is has been a cultural mainstay for at least a century. For reef fish commercial sales in the early years almost exclusively have been native hawaiians and there are still many native hawaiian fishing ohanas. They have fed Hawaii and supported financial their ohanas. To say its not cultural what do you say to those fishing families? However those that did not grow up with that culture or deny this have been influenced those who dont understand. And that I'm ashamed to say is another loss of Hawaii culture

So inclosing please look heavily at the science. Look at the proposed rules and are the imposition of limits justified and if so are the proposed rules the right path? I would say no. We have a choice to go in a different and better way. Lets make that choice

Steve Kaiser
Hawi Hawaii

August 7, 2023

Division of Aquatic Resources
1151 Punchbowl Street, Room 330
Honolulu, HI 96814

Testimony of: William Chang - CML holder

Thank you for this opportunity to testify and offer comments.

The following testimony is provided in **OPPOSITION** of Department of Land and Natural Resources (DLNR) Division of Aquatic Resources (DAR) 2023 proposal to establish catch size and bag limits on specified herbivores.

1. The "science" identified/provided in support of the proposal is inadequate and inappropriate in terms of recognized fisheries management practices.
2. There is an absence of "science" to support the proposed bag and size limits.
3. DAR/DLNR has relied solely on a flawed stock assessment and unproven assessments.
4. There are no provisions for regular and continuous monitoring and analysis of the impact(s) after establishment of the proposed rules
5. There are no provisions that ensure employment of adaptive management practices to implement change as may be warranted by the continuous monitoring and analysis of the impact(s) of establishment of the proposed rule(s).
6. The one-size-fits-all approach is inappropriate. For example, what is applicable to Waikiki is not necessarily applicable to the north shore of Molokai.
7. Fish is food. Consideration of subsistence fishing is appropriate.
8. I oppose the DAR 2023 proposal to establish catch size and bag limits on specified herbivores



To: Division of Aquatic Resources (DAR)

DLNR.Aquatics@hawaii.gov

From: Hawai'i Reef and Ocean Coalition (by Ted Bohlen)

Re: Proposed Herbivore Fishing Rules

Date: August 11, 2023

Aloha:

The Hawai'i Reef and Ocean Coalition (HIROC) is a group of scientists, educators, filmmakers and environmental advocates who have been working since 2017 to protect Hawaii's coral reefs and ocean. **The Hawai'i Reef and Ocean Coalition STRONGLY SUPPORTS adoption of rules that provide increased protection of herbivores in Hawai'i.**

Tighter rules on herbivore takes are not just a fishing issue. Amending the herbivore rules now is essential to future coral survival!

Hawai'i's coastline, recreation-based economy, beaches, and lifestyle all depend on healthy coral reefs. But, our coral reefs face a grim future with a warmer and more acidic ocean and land-based pollution including nutrients that fertilize seaweeds that choke the reefs. We need to protect our fragile coral reefs now so they have a chance of surviving the coming stresses by, among other things, ensuring abundant and diverse stocks of herbivores, which clean the reefs by consuming seaweeds. As noted in an article recently published in Nature,

mitigating both local land and sea-based human impacts, especially in terms of pollutants and over-fishing, provides coral reef ecosystems with the best opportunity to persist under climate change.¹

Herbivore populations are extremely depleted on Oahu. Direct undersea surveys of herbivore populations have been performed across all moku of the main Hawaiian islands and Papahānaumokuākea.² Herbivore species targeted for fishing here are far below their potential abundance levels as compared to Papahānaumokuākea and other unfished locations.

More complete and accurate data would likely improve the analyses and more data should be gathered. But, in the absence of more complete data, the DAR should **follow the precautionary principle**, which the Hawaii Supreme Court has recognized as an inherent attribute of the Public Trust Doctrine, especially given the risks of herbivore depletion to coral and other aquatic public trust resources.³

While the Hawai'i Reef and Ocean Coalition supports the adoption of tighter rules on herbivore takes, there are a few modifications that should be made to the proposed rules.

1. In particular, the commercial annual catch limit (ACL) for uhu (parrot fishes) is too high (34,000 lbs. for initial phase Redlip Parrotfish). To allow recovery of stocks of this critical reef-cleaner before annual coral bleaching occurs (projected to be by 2040⁴), **the commercial catch limits for parrot fish should be reduced by at least 50%. The same applies to kala.**

¹ Jamison M. Gove, Gareth J. Williams, Joey Lecky, Eric Brown, Eric Conklin, Chelsie Counsell, Gerald Davis, Mary K. Donovan, Kim Falinski, Lindsey Kramer, Kelly Kozar, Ning Li, Jeffrey A. Maynard, Amanda McCutcheon, Sheila A. McKenna, Brian J. Neilson, Aryan Safaie, Christopher Teague, Robert Whittier, Gregory P. Asner. **“Coral reefs benefit from reduced land–sea impacts under ocean warming.”** *Nature*, 2023; DOI: [10.1038/s41586-023-06394-w](https://doi.org/10.1038/s41586-023-06394-w)

² Edwards et al. 2014, **“Global assessment of the status of coral reef herbivorous fishes: evidence for fishing effects”**; Friedlander et al. 2018, **“Human induced gradients of reef fish declines in the Hawaiian Archipelago viewed through the lens of traditional management boundaries”**; Gorospe et al. 2018, **“Local biomass baselines and the recovery potential for Hawaiian coral reef fish communities”**; Stamoulis et al. 2018, **“Seascape models reveal places to focus coastal fisheries management.”**

³ Gonzales-Laxe 2005, **“The precautionary principle in fisheries management.”**

⁴ van Hooidek et al 2016 supplement, **“Local-scale projections of coral reef futures and implications of the Paris Agreement.”**

2. The rules should restrict takes by all categories, but should focus more on commercial and recreational takes, rather than subsistence fishing.
3. The rules should be place-based, including community-based subsistence fishing areas.

Mahalo for taking action to protect our reefs,

Hawaii Reef and Ocean Coalition (by Ted Bohlen)

13 August 2023

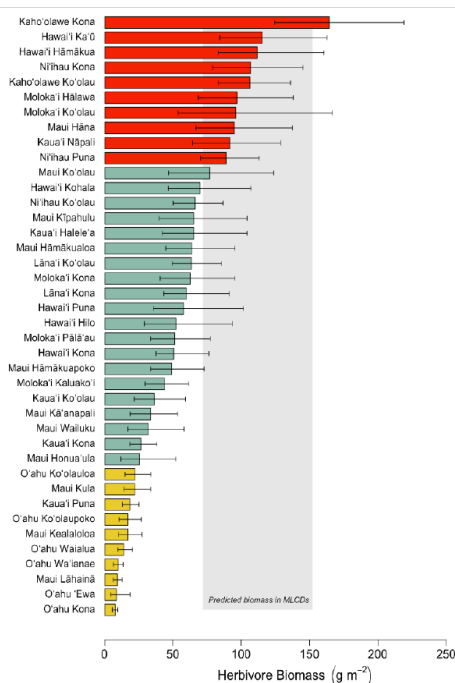
TO: Hawai'i Division of Aquatic Resources
FROM: Mark Hixon
RE: **Proposed Herbivore Fishing Rules**

Aloha. This is a more detailed and referenced version of the oral testimony I offered at the August 7 public hearing:

I am the Hsiao Endowed Professor of Marine Biology at UH Mānoa, testifying as a private citizen. I've studied coral-reef herbivores in Hawai'i on-and-off since the 1970s (e.g., Hixon & Brostoff 1983, 1996, Christie et al. 2010). Having listened to all the recent DAR public hearings about the proposed herbivore fishing rules, I feel compelled to address scientific inaccuracies I've heard from both those who support and those who oppose these proposals. I also offer some alternate policy options that may be more effective than some of those proposed. I have five main points, each of which is backed by peer-reviewed science.

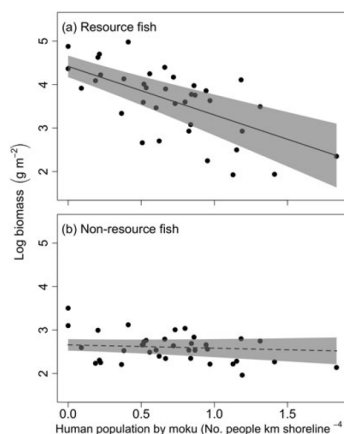
First, there is no doubt whatsoever that herbivores are extremely important in recovering and maintaining the health of our reefs. A high abundance of both individuals and species are needed to keep our reefs clean of macroalgae so new corals can thrive (reviews by Hixon 2015, Williams et al. 2019 supplement). Few herbivores means few baby corals survive. And high herbivore abundance means much greater biomass than some arbitrary overfished threshold. This fact has been well documented on coral reefs throughout the world, including Hawai'i (see above references). In short, fewer herbivores means fewer corals, which eventually means less fish and less fishing.

Second, there is no doubt whatsoever that herbivore populations are depleted in many parts of the main Hawaiian Islands, especially where human populations are high (Edwards et al. 2014, Friedlander et al. 2018, Gorospe et al. 2018, Stamoulis et al. 2018). This fact is evident even if one discounts the NOAA herbivore stock analysis. Herbivore biomass around Oahu is less than 5% of its potential (Donovan et al. ms). This fact was revealed by coral-reef surveys comparing all the moku of the main Hawaiian Islands. More people meant fewer herbivores:



← Estimated biomass of herbivorous fishes off each moku of the main Hawaiian Islands. Note that higher abundances are off less populated moku. Source: Donovan et al. ms

Given that there was no pattern in the abundance of non-targeted fishes among moku shows that neither habitat nor pollution was the cause of herbivore depletion (Friedlander et al. 2018):



← Biomass of targeted vs. non-targeted fish in relation to human population by moku in the main Hawaiian Islands. Source: Friedlander et al. (2018).

Yes, west Hawai'i Island, has seen some long-term increases in some herbivores, but that's due to the unique and effective network of Fishery

Replenishment Areas (FRAs) there (Tissot et al. 2004). Analyses also show that *all* sectors of the fishing community – not just the commercial sectors -- have contributed to herbivore depletion (McCoy et al. 2018). Further, it's important to realize that “ecological succession” or other misunderstood and misrepresented scientific concepts at these hearings will not save our reefs without changes in human behavior. Oh, and parrotfishes (*uhu*) are in fact herbivores – they are different from other herbivores in that they digest the microalgae they scrape off the inside dead coral skeletons, which opens space for crustose coralline algae to settle, which in turn attracts coral larvae (Jayewardene 2009).

Third, there is great variation between moku and between islands in herbivore abundance (Donovan et al. ms), making blanket statewide rules problematic. Logic dictates a regional approach similar to the “Maui rules,” including community-based management and other spatially explicit approaches, which have clearly worked (Williams et al. 2016).

Fourth, size limits, including slot limits, are difficult to follow unless illegal fish can be released unharmed (Francis et al. 2007). Gear and spatial restrictions are easier to implement and enforce. One blanket rule that could clearly help replenish herbivore populations would be banning SCUBA spearfishing, especially at night, when *uhu* and other sleeping species are especially vulnerable (Walsh 2013). Some 60 nations and states have banned SCUBA spearfishing altogether.

Fifth, the proposed commercial Allowable Catch Limits are based on poorly documented assumptions (see written testimony by Friedlander et al.), which calls for a precautionary approach (González-Laxe 2005) whereby catches should be reduced even *more* than proposed. Additionally, proposed non-commercial rules wrongly pool recreational and subsistence fishing, which are based on different social and cultural practices and ethics.

In summary, both peer-reviewed science and traditional ecological knowledge tell us that herbivores are important for maintaining healthy coral reefs, that their populations are depleted in many areas, and that some blanket rules may not be the most efficient approach to replenish these populations. Importantly, with ever-worsening coral bleaching on the horizon – Hawai'i's reefs are predicted to bleach every single year starting before the 2040s (von Hooidonk et al. 2016 supplement) – we have little time remaining to replenish our herbivore populations so they can help save our reefs.

Mahalo,



Mark Hixon

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August 14, 2023

To the Division of Aquatic Resources regarding the proposed herbivore fishing rules,

My name is Ellie and I am a marine scientist, spearfisher, and resident of Mānoa Valley on O‘ahu, testifying as a private citizen. I commend the Division of Aquatic Resources for their efforts in passing this rule package, embracing their kuleana of caring for our reef communities in Hawai‘i while making sure all voices are heard. I support these rules and their intent to increase numbers of herbivorous fishes on reefs in Hawai‘i in order to preserve healthy reef communities and support robust populations of kala, uhu, manini, and kole for the next seven generations to fish.

As a marine scientist, I support this rule package because it is based on the best available peer-reviewed science. Herbivorous fishes are vitally important to both the health and resilience of coral reefs, but they are in decline in Hawai‘i. Herbivores are important to coral reef health because they mitigate the growth of alien algae and maintain reefs as coral-dominated communities with habitat to house diverse species and provide multiple ecosystem services. Herbivores are important to reef resilience because after severe bleaching events, herbivores clean areas of the reef for new corals to settle and grow. Without herbivores, there is a high risk of reefs becoming algae-dominated with less coral, less habitat availability, and therefore, less fish for fishing in the future. If we want our reefs to have ample fish for the next seven generations to eat, we need to ensure that our current fisheries take is sustainable.

As a spearfisher, I support this rule package because it allows continued take for subsistence, recreational, and commercial fishers while increasing protections for key herbivorous species. I would also like to note this rule package has gone through key changes after requests for public hearings with the Board of Land and Natural Resources in 2022, and now contains concessions included after community input. The fishing community has asked DAR to reach out to them and include their input, and I know DAR staff have responded to this by meeting regularly with group of fishers to gather their mana‘o and advice. This rule package represents a compromise that proposes a way forward to allow take and set regulations that will help increase herbivore populations. I commend the DAR staff for spending so much time and effort gathering research, writing a proposal, reviewing community input, and revising the proposal to create a rule package that reflects the spoken and written needs of each individual who gave time and energy to provide input in this process.

As a resident of O‘ahu, protecting our reefs and providing them the best defenses we can in the face of global climate change is of the utmost importance to me. Our reefs provide the islands of Hawai‘i with food, jobs, and enjoyment and right now, they are in trouble. We know that our reefs will continue to bleach into the future with increased effects from climate change. Even if we reduce our carbon emissions, the amount of carbon we have put into the atmosphere to date will continue warming our oceans in the future. Corals will continue to bleach, and if we do not act now to provide them with the best defenses at our disposal, we will lose them, as we are seeing the Florida Keys lose reefs in swaths this summer due to their mass bleaching event. I believe these reef defenses include not only herbivorous fish, but also better water quality, less foot traffic from overtourism by parties uneducated about how to care for reefs, and less

pollution from cesspools. I urge the State of Hawai'i to continue funding projects that look into these kinds of regulations that can also provide defenses for the reefs so fishers do not always feel like the targets of increased regulations for the sake of the reefs. However, my desire to support these additional measures of reef defenses does not in any way diminish my support for the herbivore rules proposed today. I believe that increasing herbivore populations in Hawai'i is one of our first lines of defense to protect our reefs into the future, and therefore, I support this rule package.

Mahalo for your time,

A handwritten signature in black ink, consisting of a large, stylized 'E' followed by a long horizontal line that tapers to the right.

Ellie Sophie Jones



August 14, 2023

ATTN: Hawai'i Department of Land & Natural Resources
Division of Aquatic Resources
1151 Punchbowl Street, Room 330
Honolulu, Hawai'i 96813
Submitted via Email: DLNR.Aquatics@hawaii.gov

SUBJECT: Comments on Proposed Amendment and Compilation of Hawai'i Administrative Rules Chapter 13-95, "Rules Regulating the Taking and Selling of Certain Marine Species," to Update Rules for Manini, Kala, Uhu, and Pāpa'i Kualoa, to Establish Rules for Kole, and to Update the Chapter with Other Various Housekeeping Amendments

Aloha pumehana kākou:

Kua'āina Ulu 'Auamo ([KUA](#)) submits this letter in response to the Hawai'i Department of Land and Natural Resources (DLNR), Division of Aquatic Resources (DAR)'s request for public comments regarding updates to Hawai'i Administrative Rules (HAR) Chapter 13-95 (hereinafter "Herbivore Rules Updates"). **Due to the various differing viewpoints within our KUA community, we are not taking a position on this rules package, but offer general COMMENTS on the proposal that are reflective (but not exhaustive) of some of the mana'o (perspectives) shared with us from community members.**

"Kua'āina Ulu 'Auamo" stands for "grassroots growing through shared responsibility," and our acronym "KUA" means "backbone." Our mission is to connect and empower communities to improve their quality of life through the collective care for their biocultural (natural and cultural) heritage, serving as a "backbone organization" that supports creative and community-driven solutions to problems stemming from environmental degradation. Hawai'i's biocultural resources continue to be negatively impacted by political, economic, and social changes, and the increasing dangers of climate change make fostering and empowering resilient communities acutely critical.

KUA works to increase our communities' resiliency, adaptation, and transformation through community-based biocultural (natural and cultural) resource management, currently supporting three major networks of: (1) almost 40 mālama 'āina (caring for our 'āina or "that which feeds") community groups collectively referred to as E Alu Pū (moving forward together); (2) over 60 loko i'a (fishpond aquaculture systems unique to Hawai'i) and wai 'ōpae (anchialine pool systems) sites in varying stages of restoration and development, with numerous caretakers, stakeholders, and volunteers known as the Hui Mālama Loko I'a ("caretakers of fishponds"); and (3) the Limu Hui made up of over 50 loea (traditional experts) and practitioners in all things "limu" or locally-grown "seaweed." Our shared vision is to once again experience what our



kūpuna (ancestors) referred to as 'āina momona – abundant and healthy ecological systems that sustain our community resilience and well-being.

The fish species included in these Herbivore Rules Updates are extremely important not only for the health of our coral reefs, but also culturally to Native Hawaiian and local fishers alike. For example, the **uhu** is one of the most beloved i'a in Native Hawaiian culture, with all of the various phases given their own names, and legends of supernatural uhu such as Uhumāka'ika'i, raised by the lawai'a Puniakaia. Similarly, the **kala** is a celebrated i'a in Hawai'i, known for its distinct pungent odor, and taking on the fragrance of the limu that it eats, particularly in Keahi, Kailua, and Waikīkī, O'ahu areas. According to the mo'olelo of Lonoikamakahiki, the kala is considered a favored and sacred i'a. The **manini** is likewise a punahele (favorite) fish of Hawai'i, loved by both maka'āinana and ali'i. Mary Kawena Puku'i wrote of manini being so abundant in her birthplace of Ka'ū that it was caught and dried in the millions during the kauwela (summer) months, and preserved for year round enjoyment. (See *Generally, Native Use of Fish in Hawaii*, 1972). **Considering the significance of these i'a to our people, KUA appreciates DAR's efforts for this rulemaking, especially with recent studies showing that herbivore populations in parts of Hawai'i are extremely depleted, at less than 5% of potential abundance.**

From speaking with some of our KUA-network community members, below are some specific mana'o shared with us:

1. A major theme we see is that **communities want rules to be better tailored to their specific place, data, and needs** – each island is so different, as well as each moku, ahupua'a, 'ili, etc. Communities do not want to feel powerless; they want to be a part of the process and know that these rules represent them and their home waters specifically.
2. **Proposed updates for commercial-take rules appear grossly arbitrary and lax compared with non-commercial restrictions.** While we acknowledge the slight changes to commercial catch of kala and uhu, they are simply not in line with what data is showing is necessary to tackle overfishing and restore former abundance of these i'a. In particular, *commercial operators seem heavily favored in comparison to non-commercial fishers*, including our subsistence lawai'a that are protected under Article XII, Section 7 of the Hawai'i State Constitution.
3. **Restrictions without the proper enforcement are meaningless.** Specifically, how will DOCARE monitor take of only uhu pālupaluka, while also ensuring that other species are not harmed through bycatch? Damage to just one uhu scale can be fatal. Ensuring that DOCARE has the capacity and abilities to enforce any new rules is critical.



4. As Chairperson Chang has emphasized in several board meetings, **DLNR and DAR are responsible for conducting the Ka Pa'akai analysis, for this and other board actions.** In the future, meaningfully and thoughtfully conducting this analysis *prior* to the public hearing process would likely aid in more community support and understanding of these rules and other actions.
5. Although we appreciate that some of the proposed rule updates include rationals connected to spawning seasons, **better incorporating restrictions with understandings of i'a spawning and other Native Hawaiian 'ike would be the best and easiest approach for systemic and sustainable management.** For example, manini, at least for Moloka'i, have multiple spawning seasons each year and perhaps do not need to be included in this rules package.

Whatever the outcome of the proposed Herbivore Rules Updates, **KUA stresses the importance of direct and meaningful collaboration with communities, and placing strong focus and attention on the voices of subsistence fishers above those with commercial and recreational interests.**

Mahalo nui loa for considering our testimony comments.

Pūpūkahi i holomua e ho'okanaka!
Let us all unite to better the human condition!

'O ke aloha 'āina no nā kau ā kau,

Kevin K.J. Chang
Executive Director

Olan Leimomi Fisher
Kua'āina Advocate



August 5, 2023

To: Division of Aquatic Resources, 1151 Punchbowl Street, Room 330, Honolulu, HI 96813, DLNR.Aquatics@hawaii.gov.

Re: **SUPPORT WITH RESERVATIONS** for proposed amendment and compilation of Hawaii Administrative Rules (HAR) chapter 13-95, updating rules for manini, kala, uhu, and pāpa'i kualoa (Kona crab), establishing rules for kole, and updating the chapter with other various housekeeping amendments.

Aloha Division of Aquatic Resources,

Mālama Pūpūkea-Waimea (MPW) is the grassroots, community non-profit that actively works to care for, educate about, and protect our fragile, near-shore marine ecosystems. Our mission is "working to replenish and sustain the natural and cultural resources of the Pūpūkea and Waimea ahupua'a for present and future generations through active community stewardship, education, and partnerships."

We commend the Division of Aquatic Resources (DAR) for its efforts to improve the outdated rules in Chapter 13-95, Hawai'i Administrative Rules (HAR), to better protect our finite and precious resources here in Hawai'i.

MPW **supports** the proposed non-commercial rules for manini, kala, uhu, kole, and pāpa'i kualoa, **however, we have strong reservations** about the commercial allotment of kala and uhu. While limiting these fish seasonally to commercial take of 10,000 lbs. (kala) and 34,000 lbs. (uhu) is an improvement compared to current commercial take, the abundance of herbivorous fish on the reef is critical to a healthy and resilient marine ecosystem. Limiting subsistence fishers while allowing substantial commercial take is not in the best interest of the coral reef ecosystem.

Some questions to consider: Will catch under the Commercial Marine License for uhu and kala be limited to the island of origin by the license holder? Will DAR take into consideration that most of the opposition to the proposed rules comes from commercial interests whereas support for the proposed rule amendments comes from a diverse array of interests? Will DAR report back to stakeholders where commercial take is being sold?

MPW supports with reservations proposed amendments and compilation of Hawaii Administrative Rules (HAR) chapter 13-95, updating rules for manini, kala, uhu, and pāpa'i kualoa (Kona crab), establishing rules for kole, and updating the chapter with other various housekeeping amendments.

Mahalo for the opportunity to provide testimony.

Denise Antolini
Board President, Mālama Pūpūkea-Waimea

Mālama Pūpūkea-Waimea
Post Office Box 188
Hale'iwa, HI 96712

Board of Directors

Denise Antolini

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Leinau

Advisory Council

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Debbie Gowensmith

Maxx E. Phillips

Bill Quinlan

Palakiko Yagodich

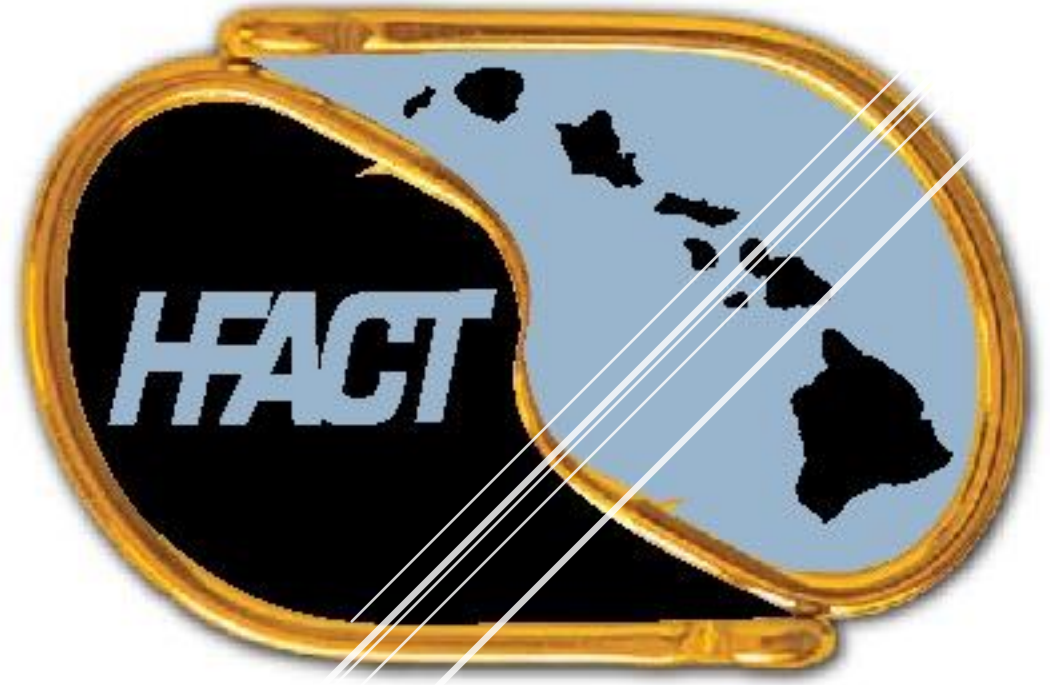
Staff

*Jenny Yagodich, Director of
Educational Programs &
Makai Watch Coordinator*

Federal Nonprofit Organization
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TESTIMONY
OPPOSING DLNR
PROPOSED
AMENDMENTS TO
CHAPTER 13-95,
HAR

8/1/23





OPPOSITION TESTIMONY WILL ADDRESS THREE AREAS OF CONCERN

- I. **Faulty Assumptions**
- II. **Faulty Science**
- III. **Legal Matters**

FAULTY ASSUMPTIONS

1. Lack of herbivores is resulting in algae overgrowth in some areas of reefs;
2. Lack of herbivores is caused by overfishing;
3. Algae are out-competing corals for space on the reefs;
4. Increasing herbivore numbers will result in less algae and more corals;
5. Manini, Kole, Kala, and Uhu will eat the problem algae and help resolve the problem.

FAULTY ASSUMPTION 1: LACK OF HERBIVORES IS RESULTING IN ALGAE OVERGROWTH IN SOME AREAS OF REEF

- **Algae overgrowth is due to environmental conditions that favor algae growth over corals**
- **Herbivore overfishing or the lack of algae grazing by herbivores are not the cause of algae overgrowth**

FAULTY ASSUMPTION 2: LACK OF HERBIVORES IS CAUSED BY OVERFISHING

- **Claims that herbivores are being overfished are a misrepresentation of the available information;**
- **DLNR has not provided any information to identify the areas of algae overgrowth compared to the areas where herbivores are claimed to be overfished;**
- **There is no evidence that a cause-and-effect relationship exists between herbivores and algae overgrowth;**
- **There is no evidence that the lack of herbivores is caused by fishing.**

FAULTY ASSUMPTION 3: ALGAE ARE OUTCOMPETING CORALS FOR SPACE ON THE REEFS

- **Corals are dying due to environmental stresses and not due to algae outcompeting corals**
- **Environmental stresses include higher water temperatures and nutrient levels**
- **Ecological succession theory predicts that when algae are removed, more algae will take its place**

FAULTY ASSUMPTION 4: INCREASING HERBIVORE NUMBERS WILL RESULT IN LESS ALGAE AND MORE CORALS

- Removal of algae will only result in more algae taking their place, not recolonization by corals
- Increasing the number of uhus will not decrease algae density because uhu are not algae eaters

FAULTY ASSUMPTION 5: MANINI, KOLE, KALA, AND UHU WILL EAT THE PROBLEM ALGAE AND RESOLVE THE PROBLEM

- The question of whether the cited species eat the problem algae is central; will these native fish species eat the alien problem algae?
- Logic would argue that native fish species would choose to eat native algae species rather than alien algae if given a choice;
- More importantly, will the native fish species eat large amounts of problem algae and make a significant difference in the ecosystem;
- The answer is: “No.” The cited fish species will not eat significant amounts of problem algae to the degree that justifies the proposed regulations.

ALTERNATIVE REGULATIONS ON UHU

- During statewide public meetings on the matter of potential regulations on uhu fisher support for a variety of common-sense measures were not included in the amendment
- Those measures addressed:
 - ✓ Night spearing;
 - ✓ Commercial exemptions for 1 or 2 large uhu for restaurant displays only;
 - ✓ Professional commercial licensing to identify which commercial licenses would have the commercial exemptions; and
 - ✓ No non-commercial take of terminal phase uhu.

OPPOSITION TESTIMONY WILL ADDRESS THREE AREAS OF CONCERN

- I. Faulty Assumptions
- II. **Faulty Science**
- III. Legal Matters



FAULTY SCIENCE

- Justification for claims of overfishing is based on Nadon (2016)
- An expert group of fisheries modelers had some serious questions about the Nadon study results that the author could not explain
- Nadon identifies one uhu (parrotfish) species may be overfished but the amendments are for all parrotfish; no scientific justification for DLNR to include all uhu in amendments as all uhu are not overfished
- Uhu are not herbivores
- Clements et al (2016) published a peer reviewed scientific article that suggested that uhu are microphages

FAULTY SCIENCE (CONT.)

- Uhu cannot correct an algae overgrowth problem if they do not eat algae
- No scientific evidence that a two daily limit on uhu is justified or sufficient to increase uhu numbers
- No scientific evidence that the annual catch limit should be based on 75% of the last five years of reported landings instead of 100%

FAULTY SCIENCE (CONT.)

RE. TAKE OF FEMALE KONA CRABS WITHOUT EGGS

- **Studies indicate that large female crabs are essential for successful reproduction in this species**
- **The females will only mate with smaller males**
- **Establish a maximum size for females to protect the larger females to ensure successful mating will occur**
- **Limb loss is a major cause of release mortality, using a double mesh hoop net will minimize limb loss**
- **Establish release protocols of unwanted crabs (undersized or other measures) to ensure survival of crabs during or after release**



OPPOSITION TESTIMONY WILL ADDRESS THREE AREAS OF CONCERN

- I. Faulty Assumptions
- II. Faulty Science
- III. **Legal Matters**

INSUFFICIENT LEGAL AUTHORITIES: RE. COMMERCIAL KALA FISHING PERMIT

- **Section 13-95-11(c), HAR provides for a commercial kala fishing permit;**
- **This “permit” is in fact a license, not a permit;**
- **DLNR has no authority to adopt this license;**
- **The source notes for this section indicate the authority for the “permit” is pursuant to section 190-3, HRS and implemented pursuant to sections 188-53 and 190-4, HRS;**
- **The authorities cited are only for areas designated under Chapters 188 and 190, HAR; these amendments do not establish such areas and cannot be used to authorize this “permit” statewide**

INSUFFICIENT LEGAL AUTHORITIES: RE. REGISTERED COMMERCIAL KALA DEALER

- **Section 13-95-11(f), HAR provides for a registered commercial kala dealer;**
- **The DLNR has no statutory authority to require this registration of the commercial kala dealer;**
- **The source notes for this section indicates the authority for the registration is pursuant to Sections 187A-5 and 190-3, HRS and implemented pursuant to sections 188-53 and 190-4, HRS;**
- **The sections listed do not authorize a registration of commercial marine dealers**

INSUFFICIENT LEGAL AUTHORITIES: RE. REGISTERED COMMERCIAL KALA DEALER

- **Section 13-95-11(f), HAR provides for a registered commercial kala dealer;**
- **The DLNR has no statutory authority to require this registration of the commercial kala dealer;**
- **The source notes for this section indicates the authority for the registration is pursuant to Sections 187A-5 and 190-3, HRS and implemented pursuant to sections 188-53 and 190-4, HRS;**
- **The sections listed do not authorize a registration of commercial marine dealers**

INSUFFICIENT LEGAL AUTHORITIES: RE. COMMERCIAL KALA ANNUAL CATCH LIMIT

- **Section 13-95-11(h), HAR provides for a commercial kala annual catch limit;**
- **DLNR has no statutory authority for an annual catch limit**
- **The source notes list authorities in Sections 187A-5, 188-53, and 190-3, HRS, that do not authorize the use of annual catch limits**

INSUFFICIENT LEGAL AUTHORITIES: RE. REGISTERED COMMERCIAL UHU DEALER

- **Section 13-95-16(h), HAR provides for a registered commercial uhu dealer;**
- **DLNR has no statutory authority to require this registration of the commercial uhu dealer;**
- **The source notes for this section indicates the authority for the registration is pursuant to Sections 187A-5 and 190-3, HRS and implemented pursuant to sections 188-53 and 190-4, HRS;**
- **The sections listed do not authorize a registration of commercial marine dealers**

INSUFFICIENT LEGAL AUTHORITIES: RE. COMMERCIAL UHU ANNUAL CATCH LIMIT

- **Section 13-95-16(j), HAR provides for a commercial uhu annual catch limit;**
- **DLNR has no statutory authority for an annual catch limit**
- **The source notes list authorities in Sections 187A-5, 188-53, and 190-3, HRS, that do not authorize the use of annual catch limits**

INSUFFICIENT LEGAL NOTICE

- The legal notice does not mention the commercial kala or uhu fishing permit requirements
- The legal notice does not mention the registered commercial kala or uhu dealer requirements
- The legal notice does not mention the commercial kala or uhu annual commercial catch limit requirements
- The legal notice is considered deficient due to the lack of proper notice to include the foregoing significant requirements and should be re-noticed

INSUFFICIENT LEGAL NOTICE

- The legal notice does not mention the commercial kala or uhu fishing permit requirements
- The legal notice does not mention the registered commercial kala or uhu dealer requirements
- The legal notice does not mention the commercial kala or uhu annual commercial catch limit requirements
- The legal notice is considered deficient due to the lack of proper notice to include the foregoing significant requirements and should be re-noticed

SUNSHINE LAW CONCERN

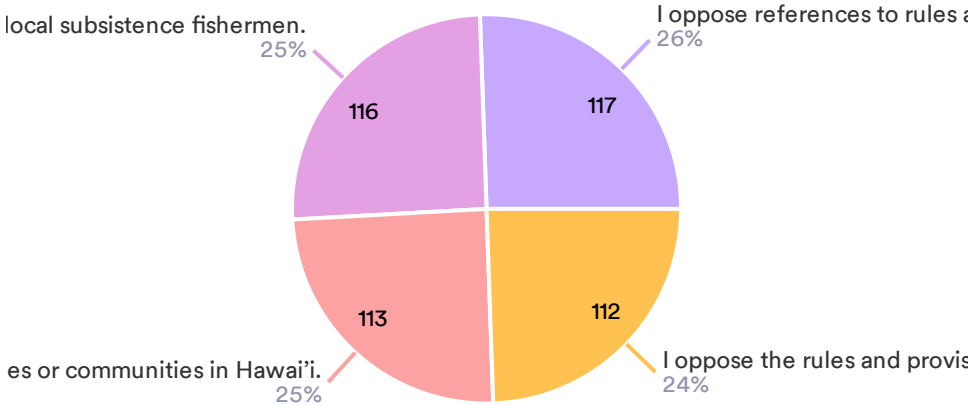
- The Board of Land and Natural Resources (BLNR), at its meeting of May 12, 2023, took an action to remove a provision relating to an exemption for commercial aquarium permit holders;
- At the subsequent meeting of May 26, 2023, the proposed amendment did not include this provision;
- The title only stated that the request to the Board was to approve for public hearings the proposed rule amendments, but did not specifically indicate that the aquarium provision had been removed;
- The request to the BLNR, at its meeting of May 12th, was simply to approve, or not, the draft rules for public hearings and did not include the option to amend the proposed amendments;
- The removal of the exemption for commercial aquarium permit holders should have been clearly stated in the title at its meeting of May 26th;
- The removal should have been left in the rule amendment for statewide public discussion and the decision to remove the exemption, or not, be part of the final decision after statewide public testimonies had been received and reviewed.

Online Petition to Oppose Herbivore Management Plan Form

Online Petition to Oppose Herbivore Management Plan Form

Here is a list of specific reasons we oppose this management plan and future ones that are similar, including CBSFA's. This are some points of our opposition. Please check ALL that apply.

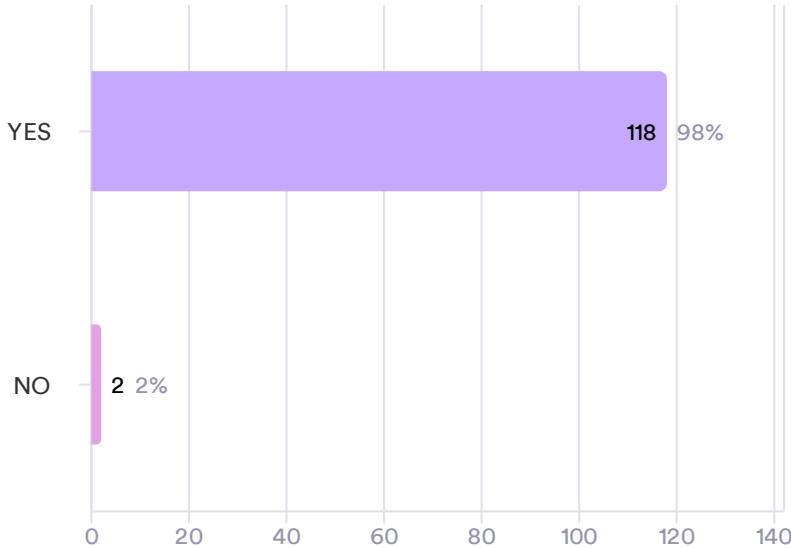
458 Responses



- I oppose references to rules and restrictions that minimize or limit gathering practice...
- I oppose this management plan because it has the sound of science and culture, but...
- I oppose references to rules and restrictions that impose on subsistence fishermen (l...
- I oppose the rules and provisions of commercial marine license holders because the...

I strongly oppose DAR's Herbivore Management Plan and the Holomua Initiative and any proposed rules and restrictions that are specifically targeting fishermen. We want our voices to be heard because these types of plans are creating an increase in community disputes and causing fishermen and community members to argue about these issues among each other. We want to be united as Hawaiian, Hawai'i, fishermen, and more.

120 Responses



Online Petition to Oppose Herbivore Management Plan Form

Comments (especially share any experiences that the rules and restriction have impacted you and your families, etc.)

34 Responses- 86 Empty

Data	Responses
Disagree	2
Lost knowledge, restriction on access or gathering of resources, feels like our rights are being taken away and we would be giving them permission	1
There is no proof that fishermen are over fishing these types of fishes. The proposed restrictions does not serve as a solution to whatever problems DAR is claiming we have	1
I shoreline and reef fish to feed my family, but i can't go more than once a week, which doesn't produce enough	1
People need to eat, enjoyment	1
My ohana has been impacted by rules created, in limiting what we can eat. Especially the Kona Crab rules, which now prevent us from what used to be a staple on our table, and at luaus. I have been fishing and crabbing for 48 years, and I don't see any less crab coming up in my nets. These rules created by	

E-mail

120 Responses

Data	Responses
joakaka11@gmail.com	5
dollymawae@gmail.com	4
uluahunter89@gmail.com	3
akaka.jason@yahoo.com	3
hoewaalayson@gmail.com	2
palanisimon@hotmail.com	2
mauimarcia808@gmail.com	2
UKIAHA808@GMAIL.COM	1
hoaina61@gmail.com	1

Online Petition to Oppose Herbivore Management Plan Form

Name

120 Responses

Data	Responses
Joseph K Akaka	2
D. U'ILANI KIAHA	1
Phillip Stephens	1
Shaun Gorgonio	1
Lexy Gorgonio	1
Stan Gung Luke Lau	1
Kelvin P Keanini	1
Cedric Kaiponohea Bertelmann	1
Kūpono KN Ling	1

Please share what Hawaiian island you reside on. (ex. Moloka'i, Mo'omomi to Hale o Lono or Maui, East to to North West like Hana, Keanae, Paia, Wailuku, Waiehu, Waihee, etc.)

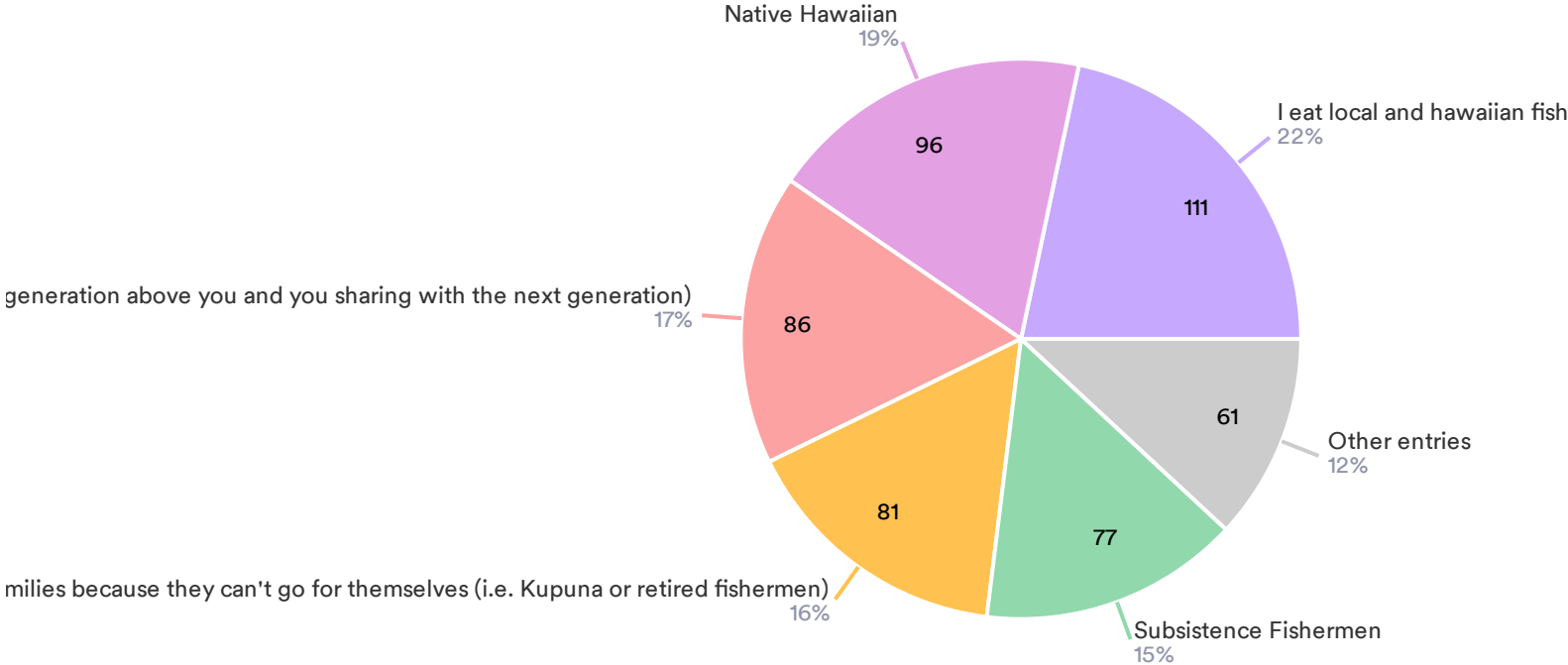
110 Responses- 10 Empty

Data	Responses
Molokai	34
Oahu	21
Maui	4
Wailuku, Maui	4
Waiehu	2
Moloka'i	2
Molokai, Mo'omomi	2
O'ahu	2

Online Petition to Oppose Herbivore Management Plan Form

Please check all that apply to you

512 Responses- 1 Empty



Thank You!

Online Petition to Oppose Herbivore Management Plan Form

TESTIMONY

SUBJ: PROPOSED HERBIVORE RULES

August 2023

Name: Mike Sur

This testimony **OPPOSES** establishment of proposed herbivore size and bag limits for the following reasons:

1. I am convinced that the science being used to justify the proposed limits does not justify the establishment of the proposed limits.

I am not a marine scientist. However, everyone that I have spoken with to learn more about the science and the quality of the science being used to justify the proposed limits, and my personal knowledge as a lifelong fisherman, causes me to doubt the reasonableness of the "science."

DLNR/DAR needs to convince me (and other stakeholders) of the adequacy of the "science."

2. The proposed rule needs to consider, gear type. The proposal to require catching and selling 340 lbs. of uhu within the past year, if a commercial permit was held, to qualify for a commercial permit in the following season, fails to recognize that a trap fisherman who occasionally captures uhu to augment his/her income, will unlikely qualify for a commercial permit in successive seasons.

Gear type considerations that recognize harvest limitations based on gear type need to be incorporated into the proposed rule relating to commercial permit qualification in succeeding seasons.

3. (Again) Stakeholders were not involved in the front of the process that has resulted in where we are today. The above concern is a recent example. If there was community engagement on the above, I did not receive an invitation to participate and here we are now, addressing a matter that could have been discussed and hopefully resolved with the stakeholders prior to bringing it to the BLNR.

I realize that DAR has been working on the proposed rule for two years, conducted 19 scoping sessions, and engaged 651 participants. The detail of the foregoing is not clear. I know that I, as a member of the Fishers' Working Group, a

group of fishers recognized by DLNR/DAR, was **informed** of the outcome of those sessions rather than being participatory to the sessions. The group was informed of the sessions' outcome when the proposed rule(s) was released to the public. The group was **not** provided a draft to review and comment on. Many of the ongoing issues would likely have been addressed and resolved before bringing the matter to the BLNR.

I attended a Senate Land and Water Committee hearing earlier this year. The hearing addressed "30 X 30", a DLNR/DAR initiative. The clear message I took away from the hearing was "get the stakeholders involved in the beginning of the process." In this instance, comprehensive collaboration did not occur.

Everyone would benefit from DLNR/DAR respecting the takeaway message from the Committee. It would be a win-win-win.

4. Recognition of and accommodation for subsistence fishing needs to be incorporated into the proposed rule.
5. I support the Kona crab rule change.

Again, I **OPPOSE** establishment of the proposed rule(s).

Thank you for the opportunity to provide this testimony.

ALOHA

I'M MOANA HILLEN. THIS IS ON BEHALF OF MY DAD FRED HILLEN AND MYSELF. OUR POINT OF VIEW IS THAT THERE SHOULD BE NO REGULATIONS ON KALA AND UHU.

FROM OUR EXPERIENCE OF DIVING AND FISHING ALL OUR LIFE, WE SEE TONS OF SCHOOLS OF KALA AND UHU ALL OVER THE ISLAND. MOST PEOPLE DON'T SEE IT BECAUSE THEY ARE NOT IN THE OCEAN. ALTHOUGH THE FISH ARE GETTING SMARTER AND MOVING AROUND TO DIFFERENT AREAS, THERE ARE STILL A LOT AROUND.

WE SURROUND FISH AND DO BULLPEN, THEN WE CALL GUY TAMASHIRO AND SEE HOW MUCH HE NEEDS AND THE REST OF THE LIVE FISH IS LET GO.

A REGULATION WOULD NOT ONLY HURT OUR BUSINESS BUT ALSO TAMASHIRO MARKET AND THE REST OF THE OTHER COMMERCIAL FISHERMEN AS WELL.

YOU USED TO SEE FISH IN ONE AREA, NOW WHEN YOU GO BACK YOU DON'T SEE ANY. THE FISH ARE MOVING. THEY ARE NOT IN THE SAME PLACE AS 10 YEARS AGO BUT THEY ARE OUT THERE. YOU NEED TO EXPAND YOUR GROUNDS AND CHECK WITH THE FISHERMEN BECAUSE THEY KNOW WHATS GOING ON IN THE OCEAN.

PLEASE DONT MAKE ANY NEW REGULATIONS FOR KALA AND UHU AND LISTEN TO THE FISHERMEN WHO KNOW MORE. THIS IS OUR LIVELYHOOD THATS BEING TAKEN AWAY. WE'VE BEEN DOING IT FOR GENERATIONS AND WOULD LIKE OUR KIDS TO CONTINUE.

**THANK YOU
FRED HILLEN
MOANA HILLEN
STACY HILLEN**

WRITTEN TESTIMONY OF GUY K. TAMASHIRO

Vice President & Manager
Tamashiro Market, Inc.

Before the

**THE DEPARTMENT OF LAND NATURAL RESOURCES
DIVISION OF AQUATIC RESOURCES**

August 7, 2023 Hearing on
Rules Regulating the Taking and Selling of Certain Marine Species

I'm Guy Tamashiro from Tamashiro Market.

Testimony for the Proposed Amendment and compilation of Hawaii Administrative Rules Chapter 13-95, "Rules Regulating the Taking and Selling of Certain Marine Species."

MANINI: Increasing the minimum length from five inches to six.
We are okay with this.

KOLE: Creating a minimum length of five inches.
This is fine.

KONA CRAB: We are happy that the females can be sold! The one month increase in the closed season is a fair trade.

KALA: Apparently the goal of these regulations are to reduce the catch of kala by 25%. These multiple "solutions" are overkill!

By having the closed season for four months in the most productive time of the year should more than accomplish the 25% reduction of catch. By having an Annual Catch Limit (ACL), also insures the 25% goal. Redundant! (Probably don't need bag limits!)

Best Solution:

Closed season from April thru July for the commercial fisherman.
During the open season, 100 pieces bag limit per day.
For non-commercial, bag limit 4 pieces per day and open year round.

UHU:

For uhu, proposing a seasonal closure and an Annual Catch Limit (ACL) again is overkill! Should be one or the other.

There are several species of uhu in Hawaii. The majority of the people do not know the different species by their scientific or Hawaiian name other than uhu, Neither do I, and I've been in the industry for almost 50 years, selling reef fish. We need to "Keep it Simple and Sensible (KISS).

Keep all species at 12 inches, not lowering some to 10 inches and others at 14 inches.

Considering a size maximum of 20 inches is much too small. That's only a 6 pound fish! We separate the uhu by size and pay accordingly. Our medium size is 4½ to 6½ pounds, the large is 7 pounds and up

Let nature do its job, uhus are sequential hermaphrodites: all start as females, then some changes to males. We do not need to ban the catch and sale of the terminal males (blue uhu). Many of the blue uhu that are caught are in transition, you can see both blue and red... what would we classify it as?

Especially with uhu and its several species, we want to manage the fishery, not micromanage it. The best step in the right direction is a seasonal closure during the spawning cycle. It is clean and simple and should do the job.

If bag limits must be added on...

for commercial fishermen, close season from February thru May;

open season, bag limit 60 pieces.

For non-commercial fishermen, bag limit 4 pieces per day and open year round.

The commercial fisherman are not the bad guys! They provide food for the public just like beef, pork and chicken producers. Many of us do not have the knowledge, skill or health to catch fish. Fisherman respect the ocean and are very diligent about protecting the resource, it's their livelihood!

TO: DLNR, DIVISION OF AQUATIC RESOURCES

FROM: CAROL WILCOX

DATE: AUGUST 7, 2023

RE: Testimony in support of the Proposed Amendment and Compilation of Hawaii Administrative Rules Chapter 13-95, "Rules Regulating the Taking and Selling of Certain Marine Species," to Update Rules for Manini, Kala, Uhu, and Pāpa'i Kualoa (Kona Crab), to Establish Rules for Kole, and to Update the Chapter with Other Various Housekeeping Amendments.

Thank you for the opportunity to testify. I support these rules and thank you for your hard work.

My name is Carol Wilcox. I've lived on Maunalua Bay, which goes from Koko Head (Kawaihoa) to Black Point (Kupikipiki'ō), for the last 50 years. My backyard is a cove called *Kapuhi* at the westernmost area of the Bay, tucked inside Black Point. This is one of the two most productive areas of the Bay, and one I was hoping would be considered for the 30 X 30 protection program.

I am not a scientist or fisherman. But using my eyes and snorkel and mask I've observed changes over the years. For instance, a few years ago I suspected a sea level rise of over 12 inches, and that was confirmed by scientific measurements in Honolulu Harbor. (It turned out to be true and also temporary.)

Because this area is so productive, there is a lot of fishing here. Ninety nine percent of fishermen are responsible, respectful and observe the laws. It doesn't take much to destroy a resource. A small handful of people, even one person, can do irreparable harm.

For many years there was a nice variety of reef fish here. For four years I visited three pair of fourspot butterflyfish (lauhau) that colonized a certain section of reef. These are long lasting, territorial fish that mate for life. One day 5 aquarium fishermen came through collecting in a line that spanned from shore to reef. These fishermen came through at about the same time of year for 3 years. Most of the reef fish are gone, and I've not seen a four-spot pair since. Those fishers don't come any more.

Kapuhi is well known for shoals of juvenile fish and sardines. On a particularly robust year, shortly before COVID, a net fishermen came every day for 10 days with a fine mesh net. This man was known and sought after by marine patrol, but he was canny and they were understaffed, and he got away with pretty much every last fish. He too hasn't been seen recently.

During COVID there were three squid fishermen who came every day for one month and fished for 2-3 hours every day. Since then very few squid fishermen have been here, they are probably pretty much fished out.

For seven years a large school of yellowfin surgeonfish (pualu) resided at the rocky point. Three years ago they were gone. At about the same time, three schools of large moorish idols also disappeared, along with a small school of nice size kala. These are examples of a what harm a handful of fishermen, some illegally and some within the law, can do. *Kapuhi* has not recovered.

We cannot know what impact our actions have on these complicated interconnected systems. Which is why I strongly support protected no-take areas such as Hanauma Bay. Enforcement is easy. There is no question about what is or is not legal in a no-take or strictly limited gear (such as casting only) area.

There is potential to severely harm an ecosystem by removing a keystone species. I wondered if by any chance the squid was key to this ecosystem. So I started researching the role of squid in Hawaiian tradition. And found that squid was frequently and aggressively protected by traditional Hawaiian laws and konohiki restrictions. It bothers me that there is absolutely no restrictions on squid in Hawaii.

There is one modern exception, and that is in the recently authorized Haena CBSFMA, which confines squid take to 2 per day and taken by stick only.

Bag limits	'Opihi, pipipi, kūpe'e, and pūpū: limit of 20 total combined per day from the 'Opihi Management Area only. Lobster: limit of two per day, hand harvest only. Urchins: limit of five per species per day. He'e: limit of two per day; may be taken only by hand harvest or with a stick no more than two feet in length.
	'Opihi Management Area

Sections of a preliminary report regarding the Fishing Laws of Hawaii was presented to the US Congress in in the Pacific Advertiser, February 18, 1902. (link at end of this testimony). While some are skeptical of modern scientific theories about best practices, there seems to be more acceptance of traditional cultural practices. These biases discount the fact that in both cases conclusions evolve from extended periods of observation. And in the case of protecting the Hawaiian marine ecosystem both contemporary science and cultural knowledge arrive at the same conclusions regarding marine resource protection.

The historic Fishing Laws of Hawaii relied on protected species rather than size limits, on seasons rather than determination of fecundity, on distinction between inner and outer reef, on knowledge and protection of where shoals of fish congregate. There were distinctions as to who could fish and where. (Generally speaking you had to live in the district in order to fish its nearshore waters.) Distribution of catch was governed by protocols. Enforcement relied on a network of chiefs, agents, tax collectors, konohiki and the people themselves. Consequences for unlawful acts could be harsh.

Sec. VIII. The royal fish shall appertain to the Hawaiian Government and shall be the following, viz.:

First. The bonito when off any part of the coast of Lanai.

Second. The albacore of Hawaii.

Third. the mullet of Huleia, Anahola, and Hanalei; the squid and freshwater fish of Kauai.

Fourth. The shoal fish at the following places noted for the abundance of fish frequenting them: Off Oahu: 1 kalia; 2, keehi; 3, kapapa; 4, malaeakuli, and 5, pahihī.

Fifth. Off Molokai: 1, punalau; 2, ooia; 3, kawai; 4, koholanui; 5, kaonini; 6, aikoolua; 7, waiokama, and 8, heleiki.

Sixth. And off Maui, the kuleku of Honuaula; and the same whenever found off said island.

Seventh. All the following transient fish, viz.: 1, the kule; 2, the anaeholo; 3, the alalauwa; 4, the uhukai; 5, the kawelea; 6, the kawakawa; 7, the kalaku.

These shall be divided equally between the King and fishermen. But on all the prohibited fishing grounds the landlords shall be entitled to one species of fish and those who have walled fish ponds

Commercial fishing as we know it today did not seem to play a significant role.

The path by which DLNR became the custodian of the fisheries started with the King. The King had the Big Picture and absolute power over the laws of the land and the sea. Offenders could be expelled from their 'aina or even put to death. The Great Mahale of 1848 diminished that absolute power over the resource and shifted some of it to those ali'i who now owned the land and the appurtenant marine resources. As land ownership changed, management areas started to divide into smaller and smaller areas, and eventually rules and enforcement was left to the citizenry who had only the power of persuasion.

Big Picture management was lost altogether after Annexation in 1897 and the Organic Act of 1900, which determined that marine resources belonged to all the people, not the "landlords" of the appurtenant lands. This gave rise to decades of lawsuits, which didn't finally resolve until the 1950s, when the last remaining fishing konohiki rights were dissolved. Here are some words from two of those remaining ones.

RULES AND REGULATIONS OF THE PAIKO FISHING HUI

1. Since the purpose of the Hui is for the pleasure and protection of its members, no commercial fishing is permitted. There shall be no selling of fish, lobster, crab or squid caught in Hui waters.
2. All members must observe the fish and game laws of the Territory of Hawaii.
3. Any fish may be caught during the open season for that fish and any legal method of fishing is permitted.
4. Limits on the number of catch during any twenty-four (24) hour period for any one member and his guests and household are:
 - 30 fish
 - 5 lobster
 - 5 squid
 - (no limit on crabs)

From a letter from the konohiki of the Niu Fishery to the members of that Fishing Hui

Several members are abusing their privileges as members. They are cleaning up all the squids as well as bringing in outsiders. Ignoring another By-Law, No. 10, they are neglecting their duty to Mrs. Lucas. All de-

Throw nets were allowed only on the breaking reef, not near the shore, and there were limits on fish and crustaceans that no longer even exist in these areas.

This progression of less and less regulation over the fisheries has resulted in their degradation. Very few fisheries are still available to the non-commercial fisherman. The laws now favor commercial fishing over the fish.

Your job used to belong to the King. You have responsibility for the Big Picture, without the absolute power. But you do have tools within your kit that would make a difference. Chief among these is fishing licenses, which would grant the right to inspect coolers, require catch reports, and raise money for enforcement. You can identify and protect appropriate areas, as was envisioned in the 30 X 30 initiative. As mentioned earlier, this reduces the enforcement requirements. Appropriate application of this method has proven to enhance the fishing outside of the protected areas.

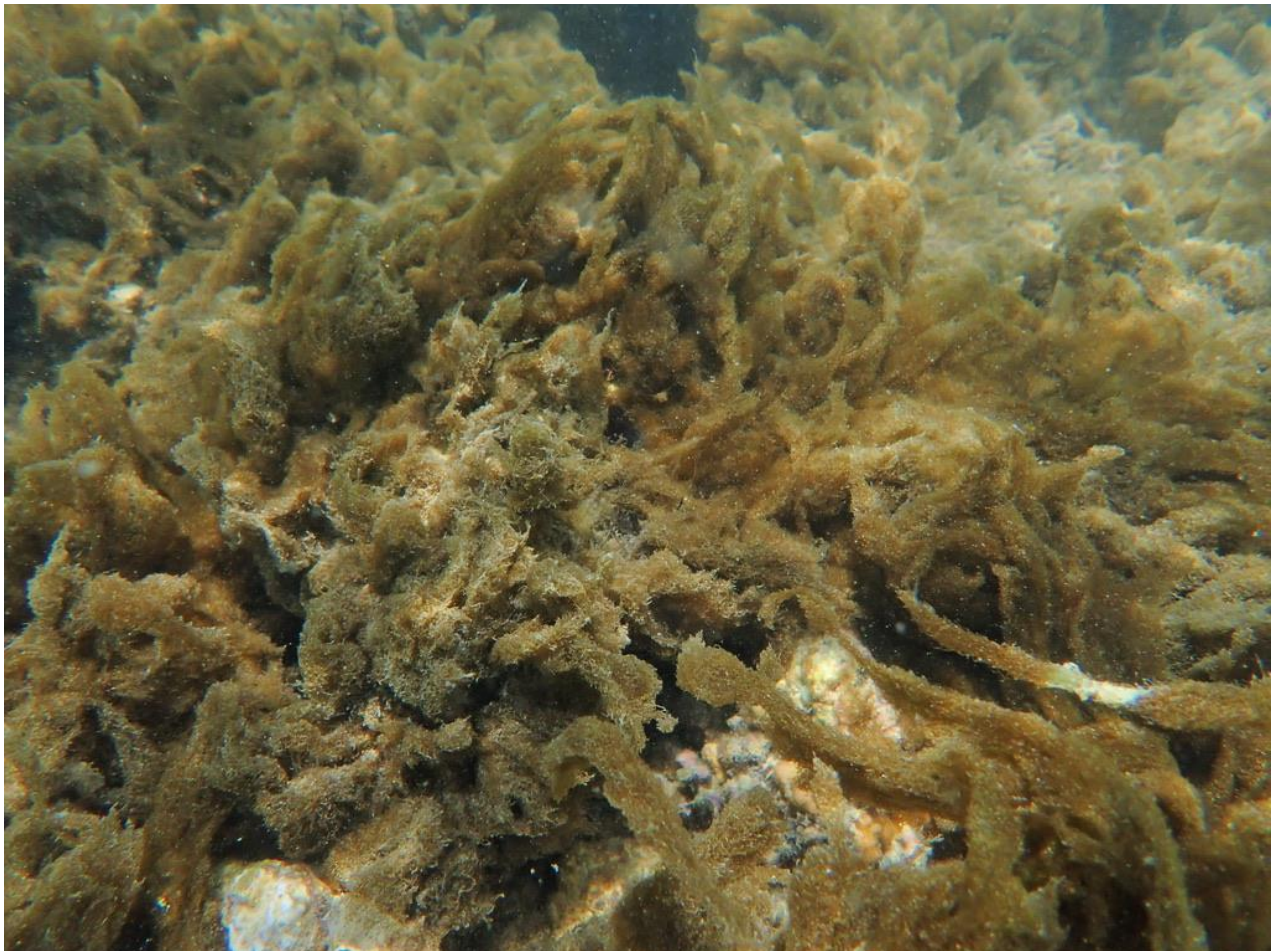
The pressures on you to **not** do this are as powerful as any in the history of Hawaii. They may be too strong a force for you to resist. We understand. We don't envy your position.

But in the meantime, back at Kapuhi, my little section of the water world, cyanobacteria is moving in, covering the reef, poisoning the ecosystem, and may possibly turn this once vibrant and still hopeful place into a lifeless one. A picture of cyanobacteria is attached.

Thank you again for your attention. We deeply appreciate your work.

Link to Laws of Fisheries: "Plans for Saving Sea Food of Islands from Pacific Advertiser Feb 18, 1902". Partial section of preliminary report to Congress

<https://chroniclingamerica.loc.gov/lccn/sn85047084/1902-02-18/ed-1/seq-11/#date1=1770&index=6&rows=20&words=FISHERIES+fisheries+Fisheries+fishery&searchType=basic&sequence=0&state=Hawaii&date2=1963&proxtext=fisheries&y=0&x=0&dateFilterType=yearRange&page=1>



August 5, 2023

Division of Aquatic Resources
1151 Punchbowl Street, Room 330
Honolulu, HI 96814

From: Roy N. Morioka, CML Holder – Oahu (emailed to DAR 8-5-2023)

Subject: Testimony, Comments and Recommendations RE: Statewide Herbivore Rules

Thank you for this opportunity to testify and offer comments and recommendations specifically addressing the proposed herbivore rules. I have chosen to write my testimony as the time limits imposed on online and in person is unreasonable to effectively communicate my concerns and suggest DAR/DLNR revise their house rules regarding testimony at public hearings.

ABSENT EMPIRICAL SCIENCE CONSIDERATIONS - The term empirical basically means that it is guided by scientific experimentation and/or evidence. Likewise, a study is empirical when it uses real-world evidence in investigating its assertions. DAR/DLNR has relied solely on a flawed stock assessment and unproven assessments.


INCOMPLETE RATIONALE, CONTEMPORAY SCIENCE ABSENT SUPPORTING EVIDENCE BASED UPON LIMITED, NARROWLY FOCUSED CONTEMPORARY SCIENCE PROTOCOLS

- IF these rules are intended to address ecosystem considerations regarding coral reef health, these proposed fishery management plans fail to assert that the taking of the noted species are detrimental to the health of our coral reefs.
 - a. The basis of revising the State’s herbivore rules relies upon an incomplete stock assessment that “presumes” that the 12 species used in the stock assessment constitute the majority of the species that contribute to the herbivory on coral reefs. How many other species are there?
 - b. To focus on the decline in catch and effort is myopic as it may be the result of changing diets or fish preferences from reef dwelling herbivores to nearshore pelagic and deep ocean and pelagic species as our island cultures diversify. Has DAR included such analysis in their stock assessment?
 - c. Absent are the mechanisms and science to determine whether or not the effects of limiting the size and/or taking of the identified species are the cause of declining coral reef health.
 - d. Our indigenous community led by real time on-line fishery scientists known as the *konohiki* observed and monitored individual species relying upon knowledge gained over generations of fish behavior and abundance, effects of fishing effort and not upon numerical formulae based upon short-term fish counts, catch, etc., and
 - e. Today without understanding these individual species, characteristics, habits, favored forage, habitat and jumping to “do something” fails to assess the effects of natural or anthropogenic changes affecting our coral reef health.

So today wea are being asked to testify on a limited stock assessment absent a review and analysis of “other” causes and impacts. A non-profit fisheries organization recently completed a historical

literature search and observational analysis of the effects of anthropological events and activities that has seriously impacted a once vibrant and productive coastal ecosystem known as Maunalua Bay, Oahu. Their study and analysis found that one of the most serious impact affecting the overall health and vibrancy of the bay was the loss of groundwater and muli'wai (estuaries) caused by coastal development. Our indigenous host culture was ever mindful of the mauka-makai relationship and within each ahupua'a closely monitored activities to ensure best use practices were being followed and adhered to for the welfare of residents today and future generations. I suggest that we have lost our way in addressing the problems and to seek and address the cause(s) resulting in the perceived problem.

Are the herbivores really gone because their preferred limu are gone? An article from the Maunalua Fishpond Heritage Center's provided the following.

 **Maunalua Fishpond Heritage Center** 1 hr




When the Limu Kala Disappears


This reef along Maunalua Bay was thickly carpeted with golden limu kala. Then, five years ago something caused the entire field of limu kala to disappear. Limu kala is Hawaiian medicine from the sea. It is difficult to put in words the significant cultural value of this limu.

Along with forgiveness and prayer, limu kala is an essential part of ho'oponopono and purification ceremonies. Kala means to loosen or release. There is no staying dry when gathering this limu, as it grows in the breaking surf. Those who are sick wear a lei of limu kala while swimming seaward, to cleanse disease and burdens. A natural pain reliever, it is applied to cuts and bruises (1).

When the limu kala goes, so do fish like kala, enenuie and palani that feed on it. The alternate name limu honu, reminds us of the turtles who also favor this food source (2). #maunaluafishponds. #limukala.

(1)(2) Reference: Ike Kuuna Limu by Kamaui Aiona



 17

2 Shares

I therefore strongly urge the DAR/DLNR to table these proposed rule changes and redouble its commitment and effort toward the restoration of ground water to our few remaining muli'wai (estuaries) such as the Kalauha`iha`i Fishpond (aka Lucas Pond) and related anthropologic coastal impacts.

Additionally, find attached a DLNR article dated August 2021, titled Hawaiian Estuaries that clearly describes the root causes of the problem and exert its authority as the protector of our scarce and unique natural resources.

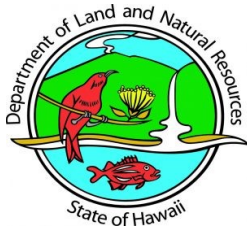
Respectfully Submitted,

Roy N. Morioka, Resident of Maunalua Bay

Attachment: Hawaiian Estuaries – DLNR Resources Dated August 2021



Hawaiian Estuaries



Protection of estuaries is vital for sustainable fishing, protecting biological diversity as well as for our businesses and economy. Our goal is a statewide commitment to understand, restore and conserve estuarine resources for the people of Hawai'i.

Did you know:

- Hawai'i has the most remote estuaries on Earth.
- The most common native fish is an endemic species, āholehole.
- Estuaries feed many local families with fish that use this resources as nursery and foraging habitats.
- 9 out of 10 of our commercial harbors are estuaries.
- Pearl Harbor, a vital military asset, is the largest estuary in Hawaii and ranks among the most historically significant estuaries in the world.
- While many Hawaiian estuaries fit into one of three basic estuary types, others are so unusual that new terminology is being developed to classify them.
- On a single day in a small estuary on Maui over 50 species of fish were documented.—this is a level of fish diversity that rivals that of our coral reefs.

Estuaries (muliwai) form where marine, freshwater, and terrestrial ecosystems merge. A diverse array of aquatic life is supported by estuaries, including endemic species. Young fish (pua) begin their coastal life here sustained by the abundance of food needed for rapid growth. Waterbirds and shore birds feed, nest, and rest along these productive shorelines.

As popular recreational and cultural places, estuaries are sought out by residents and visitors for fishing, gathering, boating, birding, surfing, and exploring.



An abundance of aquatic life is supported by estuaries, including young fish.

What are the environmental challenges?

Estuaries are shrinking in size and declining in productivity from both acute and chronic stressors, factors that jeopardize the health of this ecosystem. Some estuaries are invaded by introduced species that displace native ones. Other estuaries suffer from reduced freshwater input caused by decades of stream diversion. Hawai'i's estuary health is closely tied with the health of upland forests. Healthy forests dramatically reduce erosion and sedimentation that pollutes streams, nearshore waters, and clogs fishponds. Estuaries in poor condition

are bottlenecks for coastal fisheries productivity.

As coastal ecosystems, estuaries are situated in the path of impacts linked to climate change. Armoring shorelines in response to rising sea levels as well as adapting to changing storm patterns both loom large on the horizon for our estuaries.

Developing adaptive strategies to address these challenges is vital. Working towards resiliency and restoration of estuaries and their species supports fisheries and feeds local families. Estuaries are productive

ecosystems that support sustainable fishing, recreation and infrastructure needed for the commerce that powers Hawai'i's economy.



Health of estuaries is closely tied to the conservation of upland forests, groundwater, and streams.

Department of Land and Natural Resources

Address of contact

Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii 96813

Phone: 808-587-0400

Website: dlnr.hawaii.gov

Email: someone@hawaii.gov

Enhance, protect, conserve and manage Hawai'i's unique and limited natural, cultural and historic resources held in public trust for current and future generations of the people of Hawai'i nei, and its visitors, in partnership with others from the public and private sectors.



Climate-adaptive actions for Hawaiian estuaries

Earth's changing climate presents fundamental challenges for maintaining ecological services provided by the estuaries of Hawai'i. As a result, estuaries are experiencing a range of stressors at accelerating rates. Changes in precipitation are altering freshwater inflow. Storm and wave intensity are both predicted to increase. As the climate warms and glaciers melt sea level is rising. Fringing wetlands in many estuarine areas will become permanently flooded, reducing their productivity for juvenile fish. To conserve and restore estuaries we can adopt climate-adaptive strategies that anticipate and manage climate-linked risks, respond constructively as the climate changes, and learn to recover efficiently from extreme events. Meeting this challenge is contingent upon different interest groups, including conservationists, fishers, and business leaders, to communicate and work together to create the actions needed for climate-adaptive management of our estuaries.



Return of the muliwai at Kalauha'iha'i Fishpond



A key measure of estuarine health is adequate freshwater inflow. In the mid-1990s contractors unintentionally broke through lava tubes that carried groundwater under Kalaniana'ole Highway to Kalauha'iha'i Fishpond. This unintended diversion caused the fishpond to dry up and its downstream estuary in Maunalua Bay to disappear. With this loss, the schools of pua that kapuna remember were gone too. Nui

Coastal Spring Restoration has secured funds to drill a pipe flow pathway from the mauka side of the highway to the fishpond on the makai side to increase groundwater flow both to the historic fishpond and its estuary. Anticipating that schools of pua will return once again, the DLNR DAR Estuary Project is monitoring how fish respond to this restoration.

'Ahihi-Kina'u Natural Area Reserve, located on the dry slopes of Haleakala, protects anchialine pools, home to endemic Hawaiian shrimps, as well as downstream estuaries that are fed by the same coastal groundwater.



August 8, 2023

Division of Aquatic Resources
1151 Punchbowl Street, Room 330
Honolulu, HI 96814

From: Roy N. Morioka, CML Holder – Oahu (emailed to DAR 8-5-2023)

Subject: ADDENDUM to Testimony, Comments and Recommendations RE: Statewide
Herbivore Rules Dated August 5, 2023

Thank you for this opportunity to provide additional testimony and comments and recommendations specifically addressing the proposed herbivore rules.

INCOMPLETE ANALYSES OF EVIDENCE DUE TO THE LIMITED, NARROWLY FOCUSED CONTEMPORARY SCIENCE PROTOCOLS USED TO SUPPORT CONCLUSIONS AND RESULTANT PROPOSED RULES.

1. Are Uhu herbivores?

Clements et al (2016) published a peer reviewed scientific article titled:

Integrating ecological roles and trophic diversification on coral reefs: multiple lines of evidence identify parrotfishes as microphages

[https://german.bio.uci.edu/images/PDF/Clements%20et%20al.%20\(2016\)%20BJS_print.pdf](https://german.bio.uci.edu/images/PDF/Clements%20et%20al.%20(2016)%20BJS_print.pdf)

From Clements' paper:

".....We examine several lines of evidence including feeding observations, trophic anatomy, and biochemical analyses of diet, tissue composition and digestive processes to show that the prevailing view (including explicit models) of parrotfishes as primary consumers of macroscopic algae is incompatible with available data. Instead, the data are consistent with the hypothesis that most parrotfishes are microphages that target cyanobacteria and other protein-rich autotrophic microorganisms that live on (epilithic) or within (endolithic) calcareous substrata, are epiphytic on algae or seagrasses, or endosymbiotic within sessile invertebrates. This novel view of parrotfish feeding biology provides a unified explanation for the apparently disparate range of feeding substrata used by parrotfishes, and integrates parrotfish nutrition with their ecological roles in reef bioerosion and sediment transport. Accelerated evolution in parrotfishes can now be explained as the result of (1) the ability to utilize a novel food resource for reef fishes, i.e. microscopic autotrophs; and (2) the partitioning of this resource by habitat and successional stage. © 2016 The Linnean Society of London, Biological Journal of the Linnean Society, 2016, 00, 000–000."

2. **To develop fishery rules on incomplete data reliant upon absent and questionable "recreational/non-commercial" data (HMRFSS) fails to accurately assess this segment of the community's catch and effort data on the identified herbivore species. This failure to better assess the number of participants and their catch and effort as compared to the CML herbivore**

fishing community leads to an inaccurate analysis of stocks to quantify take to be used in rule making.

I estimate that the number of CML participants in this fishery has declined dramatically over the years as the demand for herbivores due to the aging community accustomed to eating these species and the changing tastes of our younger generation and growing population of malihini. In contrast, the growing non-commercial dive community with technological advances requires that DAR redouble its effort to improve the collection of catch and effort data on this long neglected segment of fishermen actively taking affected species.

Thank you for including my addendum to my previous testimony. Let's work with the fishermen to improve the rulemaking process as has been shown in the D7 fishery to improve the understanding of the conduct of the CML segment of a fishery by fishery biologists and work toward the implementation of improved and innovative, least intrusive and less objectionable processes to begin the collection of recreational/non-commercial catch and effort data. A collaborative inclusive working relationship with the fishing community improves the knowledge, communication and an understanding environment from which to promulgate rules that are supported and thus reducing enforcement requirements.

Respectfully Submitted,

Roy N. Morioka, Resident of Maunalua Bay

Aloha! Re. Chapter 13-95

I would like to share with you, heart to heart, my response to the proposed Amendment & compilation of Hawaii Administrative Rules Chapter 13-95 "Rules regulating the taking & selling of certain marine species" to update the chapter with various housekeeping amendments.

Disapprove: 1. Creating a bag limit will create a need to go get before "no more" or "no can catch". I would like to get a better count on what's available not statistics but physical. If there is a impact, How much Kala & water is left?

2 Approve: Increasing the minimum length of manini from 5" to 6" is most appropriate and accepted. Increasing size of tropical fishes should also be increased. ~~And birds~~

~~is felt?~~ I have almost 60 yrs of farming our waters. 60 yrs farming and the answer to that is there is an abundant amount of fish ^{with a large} ~~out~~ there you just got to know how to fish for them and that's why it called fishing. No Statistic just stands on Knowledge.

What I have taken, I have made sure that more will replenish themselves. This is my livelihood and way of life & why would I deplete my resources.

There is no need for Prohibiting the take of wha ila ila on wha ulu ulu because they are more readily available than other wha species that's why you see more of them in markets and catches by Recreational fishermen - increasing their sizes is well taken.

Kole & all other tropical fishes edible are sent all over, these are products (fish) that should be kept on island waters for future reproduction & fisherman. increasing their size is good but all island tropical fishes edible should stay on island waters & not in tanks.

Kona Crab season ~~that~~ should be extended as proposed but the taken of female Kona Crab will only deplete the crab faster than you realize.

Licenses to fish recreational or commercial should for now, be left the same.

Putting a specific license on a certain fish with minimum catch & penalize if not met creates a "force to catch" to keep license "remember" ~~to~~ in

it's called "FISHING". Fish don't stay at one place! if you specifically create a license permit for whis's what about the many other species being caught. where does this end?

Truth is maybe we do need a change but before we do, we need to get informed properly. Communication is imperative. Important. Just by statistics & hands on procedures must work hand in in, we must find out why? is there a problem?

pollution, trash, dirty boat harbors, dirty brown water etc, sewer, you've heard it all. Did we resolve it? I haven't heard or read about it. I and maybe other fishers have not received any kind of documents at all.

is it? I'm a concerned FISHER
MAN, Show me, take me.

Don't just make rules &
laws. FACT, introduction of
Taape & Ro. by the state is
a major problem introduced
by state & unmonitored. These
Two species consume
everything & anything, a lot
of our new born fishes and
smaller fishes gone! I could
go on & on I hope I gave
you a ~~little~~ little ^{insight}.

We need 1. Better communication

2. better documented
research

3. Work with other
agencies, dept. of
Health, Board of
water

4. Dept of permitting

5. And so on

like talking about making
Laws that will affect, me

Please help, Think about it, we are surrounded by water, 1st, 2nd, Third, etc coral reefs, so many variables to consider.

Aloha

STANLEY "Butch"
Jacobe

Lic
PH



Item F-5, Exhibit 3

Amendment and Compilation of Chapter 13-95
Hawaii Administrative Rules

(date of adoption)

1. Chapter 13-95, Hawaii Administrative Rules, entitled "Rules Regulating the Taking and Selling of Certain Marine Resources", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART V PROTECTED MARINE FISHERIES RESOURCES

CHAPTER 95

RULES REGULATING THE TAKING AND SELLING
OF CERTAIN MARINE RESOURCES

§13-95-1 Definitions
§13-95-1.1 Licenses, permits, and other exemptions
§13-95-2 Penalty
§13-95-3 Severability
§13-95-4 Āholehole
§13-95-5 Manini

§13-95-6	Moano
§13-95-7	Kūmū
§13-95-8	`Ama`ama (striped mullet)
§13-95-9	Awa
§13-95-10	`Ō`io
§13-95-11	Kala
§13-95-12	Kala `ōpelu
§13-95-13	`Ōpakapaka
§13-95-14	`Ula`ula koa`e (onaga)
§13-95-15	Uku
§13-95-16	Uhu (parrotfish)
§13-95-17	`Ahi
§13-95-18	`Ōpelu
§13-95-19	Akule
§13-95-20	`Iao
§13-95-21	Nehu
§13-95-22	Ulua
§13-95-23	Moi
§13-95-24	Weke `ā
§13-95-25	Kole
§§13-95-26 to 49	(Reserved)
§13-95-50	Pāpa`i kūhonu (white crab)
§13-95-51	Pāpa`i kualoa (Kona crab)
§13-95-52	Samoan crab
§13-95-53	Ula (spiny lobster)
§13-95-54	Ula pāpapa (slipper lobster)
§13-95-55	He`e (tako)
§§13-95-56 to 69	(Reserved)
§13-95-70	Stony corals
§13-95-71	Live rocks

§13-95-1 Definitions. As used in this chapter, unless otherwise provided:

"`Ahi" means any fish known as *Thunnus albacares* or *Thunnus obesus* or any recognized synonym. `Ahi refers to both yellowfin tuna (*T. albacares*) and bigeye tuna (*T. obesus*).

["`Aholehole"] "`Aholehole" means any fish known as *Kuhlia xenura* or *Kuhlia sandvicensis* or any recognized synonym. `Aholehole are also known as āhole, Hawaiian

flagtail, reticulated flagtail, or zebra-head flagtail.

"Akule" means any fish identified as *Selar crumenophthalmus* or [~~other~~] any recognized synonym. [~~This fish is~~] Akule are also known as [pa'a'a, halalu, hahalalu, and] pā'ā'ā, halalū, hahalalū, goggle-eyed scad, or big-eyed scad.

"'Ama'ama" means any fish known as *Mugil cephalus* or any recognized synonym between eight and twelve inches in length. Individuals of this species at other life stages are known as pua, kahaha, or 'anae. All life stages of this species are generally known as striped mullet.

"'Ane" means any fish known as *Mugil cephalus* or any recognized synonym greater than twelve inches in length. Individuals of this species at other life stages are known as pua, kahaha, or 'ama'ama. All life stages of this species are generally known as striped mullet.

"Annual catch limit" or "ACL" is the maximum commercial harvest in a given fishing year established for any marine fishery subject to closure. The catch is measured in whole wet weight through cumulative reported landings by commercial marine licensees.

"Aquarium fish permit" means a permit issued by the board pursuant to section 188-31, HRS, for the use of fine mesh nets and traps to take marine fish, freshwater nongame fish, or other aquatic life for aquarium purposes.

"Awa" means any fish known as *Chanos chanos* or any recognized synonym. Awa are also known as milkfish.

"Board" means the board of land and natural resources.

"Break" means to hit with, or to apply sufficient force to reduce to smaller pieces or to crack without actually separating into pieces.

"Carapace length" means the straight line measurement from the tip of the rostrum to the middle of the trailing edge of the body or carapace, not including the abdomen or tail.

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"Commercial kala fishing trip" means a fishing trip where any kala are taken for a commercial purpose, as evidenced by the possession of more than four kala per person. For a trip to be considered a commercial kala fishing trip, each participant must have both a valid commercial marine license and a valid commercial kala fishing permit. For vessel-based fishing trips, each person onboard the vessel is deemed a participant.

"Commercial marine licensee" means a person who has been issued a commercial marine license pursuant to section 13-74-20 and section 189-2, HRS.

"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.

"Commercial uhu fishing trip" means a fishing trip where any uhu are taken for a commercial purpose, as evidenced by the possession of more than two uhu per person. For a trip to be considered a commercial uhu fishing trip, each participant must have both a valid commercial marine license and a valid commercial uhu fishing permit. For vessel-based fishing trips, each person onboard the vessel is deemed a participant.

"Damage" means to scrape, smother, poison, or otherwise cause any physical or physiological harm to the living portion of a stony coral or live rock.

"Day" means a twenty-four hour period.

[~~"He'e"~~] "He'e" means any mollusk known as *Octopus cyanea*, *Octopus ornatus*, or any recognized synonym. He'e are also known as octopus or tako.

~~"Initial phase uhu" means any uhu characterized by a dull red, brown, or gray body coloration and the absence of bright green or blue markings.~~

"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.

"'Iao" means any fish known as *Atherinomorus insularum* or any recognized synonym. 'Iao are also known as Hawaiian silverside or Hawaiian Islands silverside.

"Initial-phase uhu" means any uhu characterized by a dull red, brown, or gray body coloration and the absence of bright green or blue markings.

"Kahaha" means any fish known as *Mugil cephalus* or any recognized synonym between four and eight inches in length. Kahaha are also known as pahaha. Individuals of this species at other life stages are known as pua, 'ama'ama, or 'anae. All life stages of this species are generally known as striped mullet.

"Kala" means any fish known as *Naso unicornis*, *Naso brevirostris*, *Naso annulatus*, or any recognized synonym. Kala are also known as bluespine unicornfish, short-nosed unicornfish, spotted unicornfish, or whitemargin unicornfish.

"Kala 'ōpelu" means any fish known as *Naso hexacanthus* or any recognized synonym. Kala 'ōpelu are also known as 'ōpelu kala or sleek unicornfish.

~~["Kona crab" means any crab known as *Ranina ranina* or any recognized synonym.]~~

"Kole" means any fish known as *Ctenochaetus strigosus* or any recognized synonym. Kole are also known as kole tang, spotted surgeonfish, goldring surgeonfish, or yellow-eyed tang.

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

"Length" means the straight line measurement from the tip of the snout to the middle of the trailing edge of the tail.

"Live rock" means any natural hard substrate to which marine life is visibly attached or affixed.

"Manini" means any fish known as *Acanthurus triostegus sandvicensis* or any recognized synonym. Manini are also known as convict tang or convict surgeonfish.

"Mitigation" means activities carried out in accordance with this chapter in order to avoid, minimize, restore, or compensate for losses of certain

marine resources due to authorized activities.

"Moano" means any fish known as *Parupeneus multifaciatus* or any recognized synonym. Moano are also known as banded goatfish, five-barred goatfish, manybar goatfish, or multibarred goatfish.

"Moi" means any fish known as *Polydactylus sexfilis* or any recognized synonym. Moi are also known as six-fingered threadfin or yellowthread threadfin.

~~["Mullet" means any fish known as *Mugil cephalus* or any recognized synonym.]~~

"Nehu" means any fish known as *Encrasicholina purpurea* or any recognized synonym. Nehu are also known as Hawaiian anchovy.

"Net" means any of various fishing devices of mesh material made into various shapes, such as but not limited to, a bag, sack, pouch, or curtain, used to entangle, surround, or concentrate aquatic life.

~~["Ōio"]~~ "Ō'io" means any fish known as *Albula glossodonta* or *Albula virgata* or any recognized synonym. Ō'io are also known as roundjaw bonefish, shortjaw bonefish, Indo-Pacific bonefish, sharpjaw bonefish, or smallmouth bonefish.

~~["Opelu kala" means any fish known as *Nase hexacanthus* or any recognized synonym.]~~

"Ōpakapaka" means any fish known as *Pristipomoides filamentosus* or any recognized synonym. Ōpakapaka are also known as Hawaiian pink snapper, pink snapper, kinme himedai, or ohimedai.

"Ōpelu" means any fish of the genus *Decapterus*. Ōpelu are also known as mackerel scad.

"Pāpa'i kualoa" means any crab known as *Ranina ranina* or any recognized synonym. Pāpa'i kualoa are also known as pāpa'i kua loa, Kona crab, frog crab, or spanner crab.

"Pāpa'i kūhonu" means any crab known as *Portunus sanguinolentus* or *Portunus hawaiiensis* or any recognized synonym. Pāpa'i kūhonu are also known as pāpa'i kuahonu, kūhonu, kuahonu, blood-spotted swimming crab, or white crab.

"Pua" means any fish known as *Mugil cephalus* or any recognized synonym between zero and four inches in

length. Pua are also known as pua 'ama, pua 'ama'ama, pua po'olā, or pua 'o'olā. Individuals of this species at other life stages are known as kahaha, 'ama'ama, or 'anae. All life stages of this species are generally known as striped mullet.

"Renewable energy projects" means projects developed by renewable energy producers, as the term is defined in section 171-95, Hawaii Revised Statutes, that reduce the consumption of non-renewable energy resources or produce renewable energy.

"Samoa crab" means any crab known as *Scylla serrata* or any recognized synonym. The Samoa crab is a type of swimming crab and is also known as mud crab or mangrove crab.

"Sell" means to solicit and receive an order for; to have, or keep, or offer, or expose for sale; to deliver for value or in any other way than purely gratuitously; to peddle; to keep with intent to sell; and to traffic in.

"Spear" means any device or implement that is designed or used for impaling aquatic life. Spears may include but are not limited to spear gun shafts, arbaletes, arrows, bolts, Hawaiian slings, tridents, or three-prong spears.

~~"Speared" means [to capture aquatic life by stabbing with a spear or other such pointed device. The presence of any puncture wound on the external surfaces of the aquatic life, which are fresh and does not show signs of healing, shall be evidence that the aquatic life was speared.]~~ pierced, impaled, penetrated, stuck, or run through by a sharp, pointed implement.

~~["Slipper lobster" means any crustacean of the species *Scyllarides squammosus* or *S. haanii*, or recognized synonyms. These animals are also known as rock lobster, mole lobster, shovel-nosed lobster, or ula papapa.~~

~~"Spiny lobster" means any crustacean of the genus *Panulirus*. These animals are also known as lobster, Hawaiian spiny lobster, red lobster, green lobster, or ula.]~~

"Stony coral" means any invertebrate species belonging to the Order Scleractinia, characterized by having a hard, calcareous skeleton, that are native to the Hawaiian Islands.

"Striped mullet" means any fish known as *Mugil cephalus* or any recognized synonym. The various life stages of striped mullet are known as pua, kahaha, 'ama'ama, or 'anae.

"Take" means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, or harvest, aquatic life. The use of any gear, equipment, tool, or any means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, or harvest, aquatic life by any person who is in the water, or in a vessel on the water, or on or about the shore where aquatic life can be fished for, caught, captured, confined, or harvested, shall be construed as taking.

"Terminal-phase uhu" means any uhu characterized by the presence of bright green or blue markings or a predominantly green or blue body coloration, often with bright pink, orange, or yellow patches.

"Uhu" means any fish [~~known as *Scarus dubius*, *Scarus psittacus*, *Scarus rubroviolaceus*, *Chlorurus sordidus*, *Chlorurus perspicillatus*, or any recognized synonym~~] belonging to the family Scaridae or any recognized synonyms. Uhu is a general term for parrotfish.

"Uhu 'ahu'ula" means any fish known as *Chlorurus perspicillatus* or any recognized synonym that has not reached its terminal phase. Uhu 'ahu'ula have a grayish brown body with reddish fins and a broad white band at the base of the tail. The terminal phase of these fish are known as uhu uliuli. Both uhu 'ahu'ula and uhu uliuli are known as spectacled parrotfish or fantail uhu.

"Uhu 'ele'ele" means any fish known as *Scarus rubroviolaceus* or any recognized synonym that has reached its terminal phase, indicated by a change in coloration from a predominantly brownish-red or yellowish-gray body with reddish fins, to a

predominantly green or blue-green body color with a green beak. Both uhu 'ele'ele and uhu pālupaluka are known as redlip or ember parrotfish or whiptail uhu.

"Uhu pālupaluka" means any fish known as *Scarus rubroviolaceus* or any recognized synonym that has not reached its terminal phase. Uhu pālupaluka have a predominantly brownish-red or yellowish gray body with reddish fins. The terminal phase of these fish are known as uhu 'ele'ele. Both uhu pālupaluka and uhu 'ele'ele are known as redlip or ember parrotfish or whiptail uhu.

"Uhu uliuli" means any fish known as *Chlorurus perspicillatus* or any recognized synonym that has reached its terminal phase, indicated by a change in coloration from a grayish brown body with reddish fins and 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 and the lack of a white tail band. Both uhu uliuli and uhu 'ahu'ula are known as spectacled parrotfish or fantail uhu.

"Uku" means any fish known as *Aprion virescens* or any recognized synonym. Uku are also known as uku palu, green jobfish, gray jobfish, blue-green snapper, Hawaiian blue-green snapper, gray snapper, slender snapper, or aochibiki.

"Ula" means any spiny lobster of the genus *Panulirus*. Ula are also known as lobster, Hawaiian spiny lobster, spiny lobster, red lobster, or green lobster.

"Ula pāpapa" means any crustacean of the species *Scyllarides squammosus* or *Scyllarides haanii*, or any recognized synonym. Ula pāpapa are also known as ula 'āpapapa, slipper lobster, ridgeback slipper lobster, or shovel-nosed lobster.

"'Ula'ula koa'e" means any fish known as *Etelis coruscans* or any recognized synonym. 'Ula'ula koa'e are also known as koa'e, onaga, long-tail red snapper, ruby snapper, scarlet snapper, or hamadai.

"Ulua" means any fish known as *Caranx ignobilis*, *Caranx lugubris*, *Caranx melampygus*, *Caranx sexfasciatus*, *Carangoides equula*, *Carangoides ferdau*, *Carangoides orthogrammus*, or any recognized synonym.

The young of these species are also known as [~~pāpio~~]
pāpio.

~~["Weke"]~~ "Weke 'ā" means any fish known as *Mulloidichthys flavolineatus* or any recognized synonym. [~~These fish~~] Weke 'ā are also known as [~~goatfish, yellowstripe goatfish, weke a, and the~~] goatfish or yellowstripe goatfish. The young of this fish [~~is~~] are known as [~~oama~~] 'oama. [Eff 12/03/98; am 1/11/02; am 12/09/02; am 12/19/02; am 5/01/14; am 10/19/18; am and comp 1/31/21; am and comp] (Auth: HRS §§187A-3.5, 187A-5, 190-3) (Imp: HRS §§187A-3.5, 187A-5, 190-3)

§13-95-1.1 Licenses, permits, and other exemptions. Notwithstanding the provisions of this chapter, the department may issue the following licenses and permits to exempt persons from the provisions of this chapter:

- (1) Licenses issued pursuant to sections 187A-3.5, 188-44, 188-57, or 189-6, HRS;
- (2) Permits issued pursuant to sections 187A-6, 188-23, 188-37, 188-68, or 190-4, HRS; or
- (3) As may be otherwise provided by law. [Eff 12/19/02; am 5/01/14; comp 1/31/21; comp] (Auth: HRS §§187A-3.5, 187A-6, 188-44, 188-45, 188-57, 188-68, 190-3) (Imp: HRS §§187A-3.5, 187A-6, 188-23, 188-37, 188-44, 188-45, 188-57, 188-68, 190-4)

§13-95-2 Penalty. (a) A person violating any section of this chapter may be subject to any applicable criminal or administrative penalties or both. 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.

(b) For the purpose of calculating the administrative penalties for violations of this chapter, if a fine per specimen may be applicable, fines per specimen may be imposed on the following basis:

- (1) For finfish, each individual;
- (2) For invertebrates, not including stony corals or live rock, each individual;
- (3) For solitary (having a single polyp) stony corals, each individual;
- (4) For colonial stony corals:
 - (A) Each damaged head or colony less than one square meter in surface area; or
 - (B) For a colony greater than one square meter in surface area, each square meter of colony surface area and any fraction remaining constituting an additional specimen;
- (5) For live rocks, each individual; but if the violation involves greater than one square meter of bottom area, on the basis of each square meter of bottom area. [Eff 12/03/98; am 5/01/14; comp 1/31/21; comp] (Auth: HRS §§187A-5, 190-3) (Imp: HRS §§183C-7, 187A-5, 187A-12.5, 187A-13, 188-53, 188-70, 189-4, 190-5)

§13-95-3 Severability. If any provision of this chapter, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff 12/3/98; comp 1/31/21; comp] (Auth: HRS §187A-5) (Imp: HRS §§187A-5, 1-23)

§13-95-4 [~~Aholehole.~~] Āholehole. It [~~shall be~~] is unlawful for any person to take, possess, or sell any [~~aholehole~~] āholehole less than five inches in length. [Eff 12/03/98; am 12/19/02; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-5 Manini. It [~~shall be~~] is unlawful for any person to take, possess, or sell any manini less than [~~five~~] six inches in length. [Eff 12/03/98; am 12/19/02; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-6 Moano. It [~~shall be~~] is unlawful for any person to take, possess, or sell any moano less than seven inches in length. [Eff 12/03/98; am 12/19/02; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-7 [~~Kumu.~~] Kūmū. It [~~shall be~~] is unlawful for any person to take, possess, or sell any [~~kumu~~] kūmū less than ten inches in length. [Eff 12/03/98; am 12/19/02; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-8 [~~Mullet.~~] 'Ama 'ama (striped mullet).
(a) It [~~shall be~~] is unlawful for any person to take, possess, or sell any [~~mullet~~] pua, kahaha, or 'ama 'ama less than eleven inches in [~~length.~~] length except as provided in subsection (b) of this section.
(b) It is unlawful for any person to wilfully fish for, or attempt to take by any means whatsoever, from any of the waters within the jurisdiction of the

State, or to sell, or have in possession any [~~mullet~~ pua, kahaha, 'ama'ama, or 'anae during the months of December, January, February, and March; provided that any owner or operator of a fish pond may lawfully catch [~~the young mullet known as~~ pua during the closed season, for the purpose of stocking the owner's or operator's pond; and provided further that any owner or operator of a fish pond or any commercial marine dealer may lawfully sell [~~pond-raised mullet~~ pond-raised pua, kahaha, 'ama'ama, or 'anae during the closed season after first procuring a license to do so pursuant to sections 13-74-40 or 13-74-43. [Eff 12/03/98; am 12/19/02; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-9 Awa. It [~~shall be~~ is] unlawful for any person to take, possess, or sell any awa less than nine inches in length. [Eff 12/03/98; am 12/19/02; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-10 [~~Oio~~] 'Ō'io. It [~~shall be~~ is] unlawful for any person to take, possess, or sell any [~~oio~~] 'Ō'io less than fourteen inches in length. [Eff 12/03/98; am 12/19/02; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-11 Kala. (a) It [~~shall be~~ is] unlawful for any person to take, possess, or sell any kala less than fourteen inches in length.

(b) Subject to subsections (e) and (g), it is unlawful for any person to take more than ~~two-four~~ kala per day or possess more than ~~two-four~~ kala at any one time.

(c) It is unlawful for any person to take kala for a commercial purpose without a valid commercial kala fishing permit.

(d) The department shall, upon receipt of a valid application and appropriate fee payment, issue a commercial kala fishing permit to any individual who:

~~(1) Possesses a valid commercial marine license;~~

~~(2) Provides proof of identity; and~~

~~(3) Has caught and sold at least 100 pounds of kala during the prior kala fishing season, if the individual held a commercial kala fishing permit for the prior kala fishing season.~~

The fee for the issuance or renewal of a commercial kala fishing permit shall be \$100. A commercial kala fishing permit shall be valid for the duration of the kala fishing season, which extends from August 1 of a given year through March 31 of the following calendar year from the date of issuance and shall expire on the expiration date of the permittee's commercial marine license.

(e) A commercial kala fishing permittee participating in a commercial kala fishing trip may take up to five more than four kala per day, and possess up to five more than four kala at any one time, provided that:

~~(1) Commercial harvest or sale of kala shall be prohibited from April through July; and~~

~~(2) Commercial harvest or sale of kala shall be prohibited when the commercial kala fishing season is closed pursuant to subsection (h); and~~

~~(2) The department may establish additional restrictions on the commercial take or possession of kala pursuant to adaptive management authority under §187A-5(b), HRS.~~

(f) It is unlawful for any commercial marine dealer to purchase, obtain, exchange, transfer, possess, or sell kala unless the commercial marine dealer has registered with the department as a commercial kala dealer.

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(g) A registered commercial kala dealer may purchase, obtain, exchange, transfer, possess and sell more than ~~two~~four kala if in compliance with section 189-11, HRS, provided that:

~~(1) No kala may be purchased, obtained, exchanged, transferred, possessed, or sold when the commercial kala fishing season is closed pursuant to subsection (h), provided further that kala legally obtained prior to the date of closure may be possessed and sold after the date of closure; and~~

~~(2) Paragraph (1) notwithstanding, no kala may be purchased, possessed, or sold from April through July.~~

(h) There is established an annual catch limit (ACL) of ~~10,000-15,000~~ pounds for the commercial kala fishery. Commercial kala catch shall be tallied beginning in August of each year. When the ACL is reached, the department shall notify commercial kala fishing permittees and registered commercial kala dealers that the commercial kala fishing season will close. Notice shall be made in writing by mail or email to the address on file with the department no less than three days prior to the closure of the season. [Eff 12/03/98; am 12/19/02; comp 1/31/21; am and comp] (Auth: HRS §§187A-5, 190-3) (Imp: HRS §§187A-5, 188-53, 190-4)

§13-95-12 [~~Opelu kala-~~] Kala 'ōpelu. It [shall be] is unlawful for any person to take, possess, or sell any [~~opelu kala~~] kala 'ōpelu less than sixteen inches in length. [Eff 12/03/98; am 12/19/02; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-13 [~~Opakapaka-~~] 'Ōpakapaka. (a) It [shall be] is unlawful for any person to possess with the intent to sell, or offer for sale, any [~~opakapaka~~] 'ōpakapaka less than one pound in weight.

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(b) It ~~[shall be]~~ is unlawful for any person to take with spear or possess any speared ~~[opakapaka]~~ 'opakapaka less than one pound in weight. [Eff 12/3/98; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-14 ~~[Onaga-]~~ 'Ula'ula koa'e (onaga). (a) It ~~[shall be]~~ is unlawful for any person to possess with the intent to sell, or offer for sale, any ~~[onaga]~~ 'ula'ula koa'e less than one pound in weight.

(b) It ~~[shall be]~~ is unlawful for any person to take with spear or possess any speared ~~[onaga]~~ 'ula'ula koa'e less than one pound in weight. [Eff 12/3/98; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-15 Uku. (a) It ~~[shall be]~~ is unlawful for any person to possess with the intent to sell, or offer for sale, any uku less than one pound in weight.

(b) It ~~[shall be]~~ is unlawful for any person to take with spear or possess any speared uku less than one pound in weight. [Eff: 12/3/98; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-16 ~~[Uhu[-] Uhu-(parrotfish)]~~. (a) ~~It [shall be] is~~ unlawful for any person to take, possess, or sell any uhu 'ele'ele, uhu uliuli, uhu pālupaluka, or uhu 'ahu'ula less than ~~[twelve]~~ fourteen inches in length. ~~(a) It is unlawful for any person to take, possess, or sell any uhu 'ele'ele or uhu uliuli at any time.~~ (b) ~~It is unlawful for any person to take, possess, or sell any uhu pālupaluka or any uhu 'ahu'ula less than fourteen inches in length.~~

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~~(eb)~~ Any other department size restriction notwithstanding, subject to subsections (a) ~~and (b)~~, it is unlawful for any person to take, possess, or sell any other uhu less than ten inches in length.

~~(ec)~~ Subject to subsections ~~(gf)~~ and ~~(ih)~~, it is unlawful for any person to take more than two uhu of any variety per day or possess more than two uhu of any variety at any one time.

~~(ed)~~ It is unlawful for any person to take uhu for commercial purposes without a valid commercial uhu fishing permit.

~~(fe)~~ The department shall, upon receipt of a valid application and appropriate fee payment, issue a commercial uhu fishing permit to any individual who:

~~(1) Holds~~ possesses a valid commercial marine license;

~~(2) Provides proof of identity; and~~

~~(3) Has caught and sold at least 340 pounds of uhu during the prior uhu fishing season, if the individual held a commercial uhu fishing permit for the prior uhu fishing season.~~

The fee for the issuance or renewal of a commercial uhu fishing permit shall be \$100. A commercial uhu fishing permit shall be valid ~~for the duration of the uhu fishing season, which extends from June 1 of a given year through January 31 of the following calendar year~~ from the date of issuance and shall expire on the expiration date of the permittee's commercial marine license.

~~(gf)~~ A commercial uhu fishing permittee participating in a commercial uhu fishing trip may take ~~up to thirtymore than two~~ uhu ~~pālupaluka~~ per day, and possess ~~up to thirtymore than two~~ uhu ~~pālupaluka~~ at any one time, provided that:

~~(1) Only~~ No species of uhu other than uhu ~~pālupaluka and uhu 'ele'ele under twenty inches in length~~ may be taken or possessed on a commercial uhu fishing trip;

~~(2) No other species of uhu may be taken or possessed on a commercial fishing trip;~~

~~(3) Commercial harvest or sale of uhu shall be prohibited from February through May; and~~

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~~(4)~~ Commercial harvest or sale of uhu shall be prohibited when the commercial uhu fishing season is closed pursuant to subsection ~~(j)~~(j); and

~~(3)~~ The department may establish additional restrictions on the commercial take or possession of uhu pursuant to adaptive management authority under §187A-5(b), HRS.

~~(g)~~ It is unlawful for any commercial marine dealer to purchase, obtain, exchange, transfer, possess, or sell uhu unless the commercial marine dealer has registered with the department as a commercial uhu dealer.

~~(h)~~ A registered commercial uhu dealer may purchase, obtain, exchange, transfer, possess, and sell more than two uhu if in compliance with section 189-11, HRS, provided that:

~~(1)~~ ~~Only~~ No species of uhu other than uhu pālukaluka and uhu 'ele'ele less than twenty inches may be purchased, obtained, exchanged, transferred, possessed, or sold; and

~~(2)~~ No other species of uhu may be purchased, possessed, or sold;

~~(3)~~ No uhu may be purchased, obtained, exchanged, transferred, possessed, or sold when the commercial uhu fishing season is closed pursuant to subsection ~~(j)~~(j), provided further that uhu legally obtained prior to the date of closure may be possessed and sold after the date of closure; and

~~(4)~~ Paragraph (3) notwithstanding, no uhu may be purchased, possessed, or sold from February through May.

~~(j)~~ There is established an annual catch limit (ACL) of ~~34,000~~30,000 pounds for the commercial uhu fishery. Commercial uhu catch shall be tallied beginning in June of each year. When the ACL is reached, the department shall notify commercial uhu fishing permittees and registered commercial uhu dealers that the commercial uhu fishing season will close. Notice shall be made in writing by mail or

email to the address on file with the department no less than three days prior to the closure of the season. [Eff 12/03/98; am 12/19/02; comp 1/31/21; am and comp

] (Auth: HRS §§187A-5, 190-3) (Imp: HRS §§187A-5, 188-53, 190-4)

§13-95-17 [~~Ahi.~~] 'Ahi. (a) It [~~shall be~~] is unlawful for any person to possess with the intent to sell, or offer for sale, any [~~ahi~~] 'ahi less than three pounds in weight.

(b) It [~~shall be~~] is unlawful for any person to take with spear or possess any speared [~~ahi~~] 'ahi less than three pounds in weight. [Eff: 12/3/98; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-18 [~~Opelu.~~] 'Opelu. It [~~shall be~~] is unlawful for any person at any time, to fish for or take, or be engaged in fishing or taking [~~opelu~~] 'opelu with fish or [~~animal bait~~] animal bait, also known as "chop-chop", within the waters off the coast of South Kona, [~~island of Hawaii,~~] Hawai'i Island, between the [~~Kiilae-Keokea~~] Ki'ilae-Keokea boundary and the [~~Kapu'a-Kaulanamauna~~] Kapu'a-Kaulanamauna boundary, except with [~~hook and line.~~] hook-and-line. [Eff 12/3/98; comp 1/31/21; am and comp

] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

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§13-95-19 Akule. (a) It [~~shall be~~] is unlawful for any person to take any akule measuring less than eight and one-half inches in length, with a net during the months of July, August, September, and October.

(b) It is unlawful for any person, other than marine seafood dealers, to possess or sell more than

two hundred pounds of akule measuring less than eight and one-half inches in length per day during July, August, September, and October; except as may be otherwise provided by law. [Eff 12/03/98; am 1/11/02; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-20 [~~Iao.~~] 'Iao. (a) It [~~shall be~~] is unlawful for any person at any time to sell, offer for sale, or trade, any dried or cured [~~iao~~] 'iao taken from the waters within the jurisdiction of the State.

(b) It is unlawful for any person to fish for, catch, or take in or from any of the waters within the jurisdiction of the State any [~~iao~~] 'iao; provided that the department may issue licenses pursuant to section 13-74-22, to take [~~iao~~] 'iao for use as bait only. [Eff: 12/3/98; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-21 **Nehu.** (a) It [~~shall be~~] is unlawful for any person at any time to sell, offer for sale, or trade, any dried or cured nehu taken from the waters within the jurisdiction of the State.

(b) It is unlawful for any person to fish for, catch, or take in or from any of the waters within the jurisdiction of the State any nehu; provided that the department may issue licenses pursuant to section 13-74-22, to take nehu for use as bait only and as [~~maybe~~] may be otherwise allowed under chapter 13-90. [Eff 12/3/98; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-22 Ulua. (a) It is unlawful for any person to take or possess any ulua less than ten inches in length.

(b) It is unlawful for any person to sell any ulua less than sixteen inches in length.

(c) It is unlawful for any person to take or possess more than twenty ulua measuring more than ten inches in length per day; provided that a commercial marine licensee may take, possess, and sell more than twenty such ulua; and further provided that a commercial marine dealer may possess and sell more than twenty such ulua with receipts issued for the purchase pursuant to section 189-11, ~~[Hawaii Revised Statutes.]~~ HRS. [Eff 12/19/02; comp 1/31/21; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

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Historical Note: Section 13-95-22 is based substantially upon Chapter 87 of Title 13. [Eff 5/26/81; am 1/25/82; R 12/19/02] Chapter 87 of Title 13 was based substantially upon Regulation 19 of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii. [Eff 3/28/58; am 10/6/58; R 5/26/81]

§13-95-23 Moi. (a) It is unlawful for any person to take, possess, or sell any moi less than eleven inches in length.

(b) It is unlawful for any person to take, possess, or sell more than fifteen moi per day during September through May; provided that a commercial marine dealer may possess and sell more than fifteen moi with receipts issued for the purchase pursuant to section 189-11, ~~[Hawaii Revised Statutes.]~~ HRS.

(c) It is unlawful for any person to take, possess, or sell any moi during June, July, and August. [Eff 12/19/02; comp 1/31/21; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

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Historical Note: Section 13-95-23 is based substantially upon Chapter 88 of Title 13. [Eff 5/26/81; am and comp 12/20/86; R 12/19/02] Chapter 88 of Title 13 was based substantially upon Regulation 20 [Eff: 3/20/58; am 10/6/58; am 7/9/59; am 5/4/68; R 5/26/81] and Regulation 21 [Eff: 3/28/58; am 10/6/58; am 7/9/59; R 5/26/81] of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii.

§13-95-24 [Weke-] Weke 'ā. (a) It is unlawful for any person to take or possess more than fifty ~~[weke]~~ weke 'ā less than seven inches in length per day.

(b) It is unlawful for any person to sell any ~~[weke]~~ weke 'ā less than seven inches in length. [Eff 12/19/02; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

Historical Note: Section 13-95-24 is based substantially upon Chapter 88 of Title 13. [Eff 5/26/81; am and comp 12/20/86; R 12/19/02] Chapter 88 of Title 13 was based substantially upon Regulation 20 [Eff: 3/20/58; am 10/6/58; am 7/9/59; am 5/4/68; R 5/26/81] and Regulation 21 [Eff: 3/28/58; am 10/6/58; am 7/9/59; R 5/26/81] of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii.

§13-95-25 Kōle. It is unlawful to take, possess, or sell any kōle less than five inches in length. [Eff and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§§13-95-26 to 13-95-49 (Reserved)

§13-95-50 [~~Kuhonu crab-~~] Pāpa'i kūhonu (white crab). (a) It [~~shall be~~] is unlawful for any person to possess with the intent to sell, or offer for sale, any [~~kuhonu crab~~] pāpa'i kūhonu less than four inches in length or in width across or along its back.

(b) It is unlawful for any person to [~~catch or take from any bays, harbors, or other waters of the State, or to expose or offer for sale, or to hold in possession with the intent of exposing or offering for sale, or to kill,~~] take, possess, or sell any [~~kuhonu crab~~] pāpa'i kūhonu [~~while~~] with eggs. Any [~~kuhonu crab~~] pāpa'i kūhonu with eggs caught must immediately be returned to the waters from which the crab was taken. The possession of any [~~kuhonu crab-~~] pāpa'i kūhonu, showing indications of [~~the~~] its eggs having been scraped or removed [~~therefrom, shall be~~] is prima facie evidence of [~~the~~] a violation of this section.

(c) [~~No person shall~~] It is unlawful for any person to pursue, take, or kill any [~~kuhonu crab~~] pāpa'i kūhonu in the State with a spear.

(d) [~~No person shall~~] It is unlawful for any person to offer for sale any speared [~~kuhonu crab-~~] pāpa'i kūhonu. [Eff 12/3/98; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-51 [~~Kona crab-~~] Pāpa'i kualoa (Kona crab). (a) It is unlawful for any person to take, possess, or sell any [~~Kona crab~~] pāpa'i kualoa less than four inches in carapace length.

(b) It is unlawful for any person to take, possess, or sell any [~~Kona crab~~] pāpa'i kualoa taken from the waters within the jurisdiction of the State [~~during the months of~~], from May[, June, July, and August.] ~~from May~~ through September.

(c) The possession of any [~~Kona crab~~] pāpa'i kualoa from May through September by any person

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~~[during the months of May, June, July, and August shall be]~~ is prima facie evidence that the person is guilty of a violation of this section; provided that any commercial marine dealer may sell, or any hotel, restaurant, or other public eating house may serve ~~[Kona crab]~~ pāpa'i kualoa lawfully caught during the open season by first procuring a license to do so pursuant to section 13-74-41.

(d) It is unlawful for any person to take, possess, or sell any ~~[Kona crab]~~ pāpa'i kualoa with eggs. Any ~~[Kona crab]~~ pāpa'i kualoa with eggs caught must immediately be returned to the waters from which the crab was taken. The possession of any ~~[Kona crab,]~~ pāpa'i kualoa showing indications of ~~[the]~~ its eggs having been scraped or removed ~~[therefrom, shall be]~~ is prima facie evidence of ~~[the]~~ a violation of this section.

(e) It is unlawful for any person to pursue, take, or kill any ~~[Kona crab]~~ pāpa'i kualoa in the State with a spear.

(f) It is unlawful for any person to possess or sell any speared ~~[Kona crab,]~~ pāpa'i kualoa.

~~[(g) It is unlawful for any person to take or kill any female Kona crab.]~~ [Eff 12/03/98; am 12/19/02; am and comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §§187A-5, 188-57)

§13-95-52 Samoan crab. (a) It is unlawful for any person to take, possess, or sell any Samoan crab less than six inches in width measured across the carapace or back.

(b) It is unlawful for any person to take, kill, possess, or sell any Samoan crab with eggs. Any Samoan crab with eggs caught must immediately be returned to the waters from which the Samoan crab was taken. The possession of any Samoan crab, showing indications of ~~[the]~~ its eggs having been scraped or removed ~~[therefrom, shall be]~~ is prima facie evidence of ~~[the]~~ a violation of this section.

(c) It is unlawful for any person to pursue, take, or kill any Samoan crab in the State with a spear.

(d) It is unlawful for any person to possess or sell any speared Samoan crab.

(e) It is unlawful for any person to take or kill any female Samoan crab. [Eff 12/3/98; am and comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

Historical note: Subsection 13-95-52(a) is based substantially upon chapter 84 of title 13. [Eff 5/26/81; am 1/25/82; R 1/31/21] Chapter 84 of Title 13 was based substantially upon Regulation 14 of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii. [Eff 11/25/41 (Governor's approval date); am 7/28/47; am and ren 3/28/58; R 5/26/81]

§13-95-53 [~~Spiny lobster.] Ula (spiny lobster).~~

(a) It is unlawful for any person to take, kill, possess, or sell any [~~spiny lobster~~] ula less than three and one-fourth inches in carapace length, measured in a straight line along the carapace or head, from the ridge between the two largest spines above the eyes to the rear edge of the carapace.

(b) It is unlawful for any person to take, kill, possess, or sell any [~~spiny lobster~~] ula taken from the waters within the jurisdiction of the State during the months of May, June, July, and August.

(c) The possession of any [~~spiny lobster~~] ula by any person during the months of May, June, July, and August [~~shall be~~] is prima facie evidence that the person is guilty of a violation of this section; provided that any commercial marine dealer may sell, or any hotel, restaurant, or other public eating house may serve [~~spiny lobster~~] ula lawfully caught during the open season by first procuring a license to do so pursuant to section 13-74-41.

(d) It is unlawful for any person to take, kill, possess, or sell any [~~spiny lobster~~] ula with eggs. Any [~~spiny lobster~~] ula with eggs caught must immediately be returned to the waters from which the [~~spiny lobster~~] ula was taken. The possession of any [~~spiny lobster,~~] ula showing indications of [~~the~~] its eggs having been scraped or removed [~~therefrom, shall be~~] is prima facie evidence of [~~the~~] a violation of this section.

(e) It is unlawful for any person to pursue, take, or kill any [~~spiny lobster~~] ula in the State with a spear.

(f) It is unlawful for any person to possess or sell any speared [~~spiny lobster.~~] ula.

(g) It is unlawful for any person to possess or sell any [~~spiny lobster~~] ula in a condition where the body is mutilated, or the carapace and tail are separated.

(h) It is unlawful for any person to take or kill any female [~~spiny lobster.~~] ula. [Eff 12/3/98; am and comp 1/31/21; am and comp]
(Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-57)

Historical note: Subsections 13-95-53(a) and (g) are based substantially upon Chapter 89 of Title 13. [Eff 5/26/81; am 6/6/83; am 6/25/84; am and comp 2/6/87; am and comp 5/5/88; am and comp 8/14/89; R 1/31/21] Chapter 89 of Title 13 was based substantially upon Regulation 22 of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii. [Eff 3/28/58; am 10/6/58; am 7/9/59; am 7/18/59 (Governor's approval date); am 9/17/60 (Governor's approval date); am 8/4/78; R 5/26/81]

§13-95-54 [~~Slipper lobster.~~] Ula pāpapa (slipper lobster). (a) It is unlawful for any person to take, kill, possess, or sell any [~~slipper lobster~~] ula pāpapa less than two and three-fourths inches in tail width, measured in a straight line across the widest

spot of the tail between the first and second abdominal segments.

(b) It is unlawful for any person to take, kill, possess, or sell any ~~[slipper lobster]~~ ula pāpapa taken from the waters within the jurisdiction of the State during the months of May, June, July, and August.

(c) The possession of any ~~[slipper lobster]~~ ula pāpapa by any person during the months of May, June, July, and August ~~[shall be]~~ is prima facie evidence that the person is guilty of a violation of this section; provided that any commercial marine dealer may sell, or any hotel, restaurant, or other public eating house may serve ~~[slipper lobster]~~ ula pāpapa lawfully caught during the open season by first procuring a license to do so pursuant to section 13-74-41.

(d) It is unlawful for any person to take, kill, possess, or sell any ~~[slipper lobster]~~ ula pāpapa with eggs. Any ~~[slipper lobster]~~ ula pāpapa with eggs caught must immediately be returned to the waters from which the ~~[slipper lobster]~~ ula pāpapa was taken. The possession of any ~~[slipper lobster,]~~ ula pāpapa showing indications of ~~[the]~~ eggs having been scraped or removed ~~[therefrom, shall be]~~ is prima facie evidence of ~~[the]~~ a violation of this section.

(e) It is unlawful for any person to pursue, take, or kill any ~~[slipper lobster]~~ ula pāpapa in the State with a spear.

(f) It is unlawful for any person to possess or sell any speared ~~[slipper lobster.]~~ ula pāpapa.

(g) It is unlawful for any person to possess or sell any ~~[slipper lobster]~~ ula pāpapa in a condition where the body is mutilated, or the carapace and tail are separated. [Eff 12/3/98; am and comp 1/31/21; am and comp] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-57)

Historical note: Subsections 13-95-54(a) and (g) are based substantially upon chapter 89 of title 13 [Eff 5/26/81; am 6/6/83; am 6/25/84; am and comp 2/6/87; am and comp 5/5/88; am and comp 8/14/89; R 1/31/21]

Chapter 89 of title 13 was based substantially upon regulation 22 of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii. [Eff 3/28/58; am 10/6/58; am 7/9/59; am 7/18/59 (Governor's approval date); am 9/17/60 (Governor's approval date); am 8/4/78; R 5/26/81]

§13-95-55 [~~He'e.~~] **He'e (tako).** It [~~shall be~~] is unlawful for any person to take, possess, or sell any [~~he'e~~] he'e less than one pound in weight. [Eff 12/19/02; comp 1/31/21; am and comp]
(Auth: HRS §187A-5) (Imp: HRS §187A-5)

Historical Note: Section 13-95-55 is based substantially upon Chapter 86 of Title 13. [Eff 5/26/81; R 12/19/02] Chapter 86 of Title 13 was based substantially upon Regulation 18 of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii. [Eff 3/28/58; am 10/6/58; R 5/26/81]

§13-95-70 Stony corals. (a) Except as otherwise provided in this section or authorized by law:

- (1) Subject to subsections (b) and (c), it is unlawful for any person to take, break, or damage any stony coral, except as provided in sections 171-58.5 and 205A-44, HRS;
- (2) It is unlawful for any person to damage any stony coral by any intentional or negligent activity causing the introduction of sediment, biological contaminants, or pollution into state waters;
- (3) It is unlawful for any person to sell any stony coral; except that stony coral rubble pieces or fragments imported for the manufacture and sale of coral jewelry, or dead stony coral obtained through legal

dredging operations in Hawaii for agricultural or other industrial uses, may be sold.

(b) No liability shall be imposed under subsection (a)(1) of this section for inadvertent breakage, damage, or displacement of an aggregate area of less than one half square meter of coral if caused by:

- (1) A vessel with a single anchor damage incident, in an area where anchoring is not otherwise prohibited, and not more frequently than once per year; or
- (2) Accidental physical contact by an individual person.

(c) The [~~Department~~] department may authorize damage to stony corals for the development or operation of renewable energy projects and shall require mitigation to offset any stony coral losses.

(d) Any person found in violation of any provision of this section pursuant to a criminal prosecution shall be subject to penalty as provided under section 187A-13, HRS. Any person found in violation of any provision of this section pursuant to civil or administrative action shall be subject to penalty as provided under section 187A-12.5, HRS. [Eff 12/03/98; am 12/09/02; am 5/01/14; am 10/19/18; comp 1/31/21; am and comp] (Auth: HRS §§187A-5, 189-6, 190-3) (Imp: HRS §§187A-6, 187A-12.5, 187A-13, 188-68, 189-6, 190-1, 190-3, 190-5)

§13-95-71 Live rocks. (a) Except as otherwise provided in this section or authorized by law:

- (1) Subject to subsections (b) and (c), it is unlawful for any person to take, break, or damage any live rock;
- (2) Subject to subsection (b), it is unlawful for any person to damage any live rock by any intentional or negligent activity causing the introduction of sediment,

biological contaminants, or pollution into state waters; and

(3) It is unlawful for any person to sell any live rock.

(b) No liability shall be imposed under subsections (a)(1) or (a)(2) of this section for inadvertent breakage, damage, or displacement of an aggregate area of less than one square meter of live rock bottom cover.

(c) The ~~[Department]~~ department may authorize damage to live rock for the development or operation of renewable energy projects and shall require mitigation to offset any live rock losses.

(d) Any person found in violation of any provision of this section pursuant to a criminal prosecution shall be subject to penalty as provided under section 187A-13, HRS. Any person found in violation of any provision of this section pursuant to civil or administrative action shall be subject to penalty as provided under section 187A-12.5, HRS." [Eff 12/03/98; am 12/09/02; am 5/01/14; am 10/19/18; comp 1/31/21; am and comp] (Auth: HRS §§187A-5, 189-6, 190-3) (Imp: HRS §§187A-6, 187A-12.5, 187A-13, 188-68, 189-6, 190-1, 190-3, 190-5)

2. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes and other notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 13-95, 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 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.

DAWN N.S. CHANG
Chairperson, Board of Land
and Natural Resources

APPROVED AS TO FORM:

Deputy Attorney General

Item F-5, Exhibit 4

Amendment and Compilation of Chapter 13-95
Hawaii Administrative Rules

(date of adoption)

1. Chapter 13-95, Hawaii Administrative Rules, entitled "Rules Regulating the Taking and Selling of Certain Marine Resources", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART V PROTECTED MARINE FISHERIES RESOURCES

CHAPTER 95

RULES REGULATING THE TAKING AND SELLING
OF CERTAIN MARINE RESOURCES

§13-95-1	Definitions
§13-95-1.1	Licenses, permits, and other exemptions
§13-95-2	Penalty
§13-95-3	Severability
§13-95-4	Āholehole
§13-95-5	Manini

§13-95-6	Moano
§13-95-7	Kūmū
§13-95-8	`Ama`ama (striped mullet)
§13-95-9	Awa
§13-95-10	`Ō`io
§13-95-11	Kala
§13-95-12	Kala `ōpelu
§13-95-13	`Ōpakapaka
§13-95-14	`Ula`ula koa`e (onaga)
§13-95-15	Uku
§13-95-16	Uhu (parrotfish)
§13-95-17	`Ahi
§13-95-18	`Ōpelu
§13-95-19	Akule
§13-95-20	`Iao
§13-95-21	Nehu
§13-95-22	Ulua
§13-95-23	Moi
§13-95-24	Weke `ā
§13-95-25	Kole
§§13-95-26 to 49	(Reserved)
§13-95-50	Pāpa`i kūhonu (white crab)
§13-95-51	Pāpa`i kualoa (Kona crab)
§13-95-52	Samoan crab
§13-95-53	Ula (spiny lobster)
§13-95-54	Ula pāpapa (slipper lobster)
§13-95-55	He`e (tako)
§§13-95-56 to 69	(Reserved)
§13-95-70	Stony corals
§13-95-71	Live rocks

§13-95-1 Definitions. As used in this chapter, unless otherwise provided:

"`Ahi" means any fish known as *Thunnus albacares* or *Thunnus obesus* or any recognized synonym. `Ahi refers to both yellowfin tuna (*T. albacares*) and bigeye tuna (*T. obesus*).

~~["Āholehole"]~~ "Āholehole" means any fish known as *Kuhlia xenura* or *Kuhlia sandvicensis* or any recognized synonym. Āholehole are also known as āhole, Hawaiian

flagtail, reticulated flagtail, or zebra-head flagtail.

"Akule" means any fish identified as *Selar crumenophthalmus* or [~~ether~~] any recognized synonym. [~~This fish is~~] Akule are also known as [pa'a'a, halalu, hahalalu, and] pā'ā'ā, halalū, hahalalū, goggle-eyed scad, or big-eyed scad.

"'Ama'ama" means any fish known as *Mugil cephalus* or any recognized synonym between eight and twelve inches in length. Individuals of this species at other life stages are known as pua, kahaha, or 'anae. All life stages of this species are generally known as striped mullet.

"'Aanae" means any fish known as *Mugil cephalus* or any recognized synonym greater than twelve inches in length. Individuals of this species at other life stages are known as pua, kahaha, or 'ama'ama. All life stages of this species are generally known as striped mullet.

"Annual catch limit" or "ACL" is the maximum commercial harvest in a given fishing year established for any marine fishery subject to closure. The catch is measured in whole wet weight through cumulative reported landings by commercial marine licensees.

"Aquarium fish permit" means a permit issued by the board pursuant to section 188-31, HRS, for the use of fine mesh nets and traps to take marine fish, freshwater nongame fish, or other aquatic life for aquarium purposes.

"Awa" means any fish known as *Chanos chanos* or any recognized synonym. Awa are also known as milkfish.

"Board" means the board of land and natural resources.

"Break" means to hit with, or to apply sufficient force to reduce to smaller pieces or to crack without actually separating into pieces.

"Carapace length" means the straight line measurement from the tip of the rostrum to the middle of the trailing edge of the body or carapace, not including the abdomen or tail.

"Commercial kala fishing trip" means a fishing trip where any kala are taken for a commercial purpose, as evidenced by the possession of more than four kala per person. For a trip to be considered a commercial kala fishing trip, each participant must have both a valid commercial marine license and a valid commercial kala fishing permit. For vessel-based fishing trips, each person onboard the vessel is deemed a participant.

"Commercial marine licensee" means a person who has been issued a commercial marine license pursuant to section 13-74-20 and section 189-2, HRS.

"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.

"Commercial uhu fishing trip" means a fishing trip where any uhu are taken for a commercial purpose, as evidenced by the possession of more than two uhu per person. For a trip to be considered a commercial uhu fishing trip, each participant must have both a valid commercial marine license and a valid commercial uhu fishing permit. For vessel-based fishing trips, each person onboard the vessel is deemed a participant.

"Damage" means to scrape, smother, poison, or otherwise cause any physical or physiological harm to the living portion of a stony coral or live rock.

"Day" means a twenty-four hour period.

["He'e"] "He'e" means any mollusk known as *Octopus cyanea*, *Octopus ornatus*, or any recognized synonym. He'e are also known as octopus or tako.

"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.

"'Iao" means any fish known as *Atherinomorus insularum* or any recognized synonym. 'Iao are also known as Hawaiian silverside or Hawaiian Islands silverside.

"Initial-phase uhu" means any uhu characterized by a dull red, brown, or gray body coloration and the absence of bright green or blue markings.

"Kahaha" means any fish known as *Mugil cephalus* or any recognized synonym between four and eight inches in length. Kahaha are also known as pahaha. Individuals of this species at other life stages are known as pua, 'ama'ama, or 'anae. All life stages of this species are generally known as striped mullet.

"Kala" means any fish known as *Naso unicornis*, *Naso brevirostris*, *Naso annulatus*, or any recognized synonym. Kala are also known as bluespine unicornfish, short-nosed unicornfish, spotted unicornfish, or whitemargin unicornfish.

"Kala 'ōpelu" means any fish known as *Naso hexacanthus* or any recognized synonym. Kala 'ōpelu are also known as 'ōpelu kala or sleek unicornfish.

~~["Kona crab" means any crab known as *Ranina ranina* or any recognized synonym.]~~

"Kole" means any fish known as *Ctenochaetus strigosus* or any recognized synonym. Kole are also known as kole tang, spotted surgeonfish, goldring surgeonfish, or yellow-eyed tang.

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

"Length" means the straight line measurement from the tip of the snout to the middle of the trailing edge of the tail.

"Live rock" means any natural hard substrate to which marine life is visibly attached or affixed.

"Manini" means any fish known as *Acanthurus triostegus sandvicensis* or any recognized synonym. Manini are also known as convict tang or convict surgeonfish.

"Mitigation" means activities carried out in accordance with this chapter in order to avoid, minimize, restore, or compensate for losses of certain marine resources due to authorized activities.

"Moano" means any fish known as *Parupeneus multifaciatatus* or any recognized synonym. Moano are

also known as banded goatfish, five-barred goatfish, manybar goatfish, or multibarred goatfish.

"Moi" means any fish known as *Polydactylus sexfilis* or any recognized synonym. Moi are also known as six-fingered threadfin or yellowthread threadfin.

~~["Mullet" means any fish known as *Mugil cephalus* or any recognized synonym.]~~

"Nehu" means any fish known as *Encrasicholina purpurea* or any recognized synonym. Nehu are also known as Hawaiian anchovy.

"Net" means any of various fishing devices of mesh material made into various shapes, such as but not limited to, a bag, sack, pouch, or curtain, used to entangle, surround, or concentrate aquatic life.

~~["Ōio"]~~ "'Ō'io" means any fish known as *Albula glossodonta* or *Albula virgata* or any recognized synonym. 'Ō'io are also known as roundjaw bonefish, shortjaw bonefish, Indo-Pacific bonefish, sharpjaw bonefish, or smallmouth bonefish.

~~["Ōpelu kala" means any fish known as *Naso hexacanthus* or any recognized synonym.]~~

"'Ōpakapaka" means any fish known as *Pristipomoides filamentosus* or any recognized synonym. 'Ōpakapaka are also known as Hawaiian pink snapper, pink snapper, kinme himedai, or ohimedai.

"'Ōpelu" means any fish of the genus *Decapterus*. 'Ōpelu are also known as mackerel scad.

"Pāpa'i kualoa" means any crab known as *Ranina ranina* or any recognized synonym. Pāpa'i kualoa are also known as pāpa'i kua loa, Kona crab, frog crab, or spanner crab.

"Pāpa'i kūhonu" means any crab known as *Portunus sanguinolentus* or *Portunus hawaiiensis* or any recognized synonym. Pāpa'i kūhonu are also known as pāpa'i kuahonu, kūhonu, kuahonu, blood-spotted swimming crab, or white crab.

"Pua" means any fish known as *Mugil cephalus* or any recognized synonym between zero and four inches in length. Pua are also known as pua 'ama, pua 'ama'ama, pua po'olā, or pua 'o'olā. Individuals of this species at other life stages are known as kahaha,

'ama'ama, or 'anae. All life stages of this species are generally known as striped mullet.

"Renewable energy projects" means projects developed by renewable energy producers, as the term is defined in section 171-95, Hawaii Revised Statutes, that reduce the consumption of non-renewable energy resources or produce renewable energy.

"Samoa crab" means any crab known as *Scylla serrata* or any recognized synonym. The Samoa crab is a type of swimming crab and is also known as mud crab or mangrove crab.

"Sell" means to solicit and receive an order for; to have, or keep, or offer, or expose for sale; to deliver for value or in any other way than purely gratuitously; to peddle; to keep with intent to sell; and to traffic in.

"Spear" means any device or implement that is designed or used for impaling aquatic life. Spears may include but are not limited to spear gun shafts, arbaletes, arrows, bolts, Hawaiian slings, tridents, or three-prong spears.

"Speared" means [to capture aquatic life by stabbing with a spear or other such pointed device. The presence of any puncture wound on the external surfaces of the aquatic life, which are fresh and does not show signs of healing, shall be evidence that the aquatic life was speared.] pierced, impaled, penetrated, stuck, or run through by a sharp, pointed implement.

~~["Slipper lobster" means any crustacean of the species *Scyllarides squammosus* or *S. haanii*, or recognized synonyms. These animals are also known as rock lobster, mole lobster, shovel-nosed lobster, or ula papapa.~~

~~"Spiny lobster" means any crustacean of the genus *Panulirus*. These animals are also known as lobster, Hawaiian spiny lobster, red lobster, green lobster, or ula.]~~

"Stony coral" means any invertebrate species belonging to the Order Scleractinia, characterized by having a hard, calcareous skeleton, that are native to the Hawaiian Islands.

"Striped mullet" means any fish known as *Mugil cephalus* or any recognized synonym. The various life stages of striped mullet are known as pua, kahaha, 'ama'ama, or 'anae.

"Take" means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, or harvest, aquatic life. The use of any gear, equipment, tool, or any means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, or harvest, aquatic life by any person who is in the water, or in a vessel on the water, or on or about the shore where aquatic life can be fished for, caught, captured, confined, or harvested, shall be construed as taking.

"Terminal-phase uhu" means any uhu characterized by the presence of bright green or blue markings or a predominantly green or blue body coloration, often with bright pink, orange, or yellow patches.

"Uhu" means any fish [~~known as *Scarus dubius*, *Scarus psittacus*, *Scarus rubroviolaceus*, *Chlorurus sordidus*, *Chlorurus perspicillatus*, or any recognized synonym.~~] belonging to the family Scaridae or any recognized synonyms. Uhu is a general term for parrotfish.

"Uhu 'ahu'ula" means any fish known as *Chlorurus perspicillatus* or any recognized synonym that has not reached its terminal phase. Uhu 'ahu'ula have a grayish brown body with reddish fins and a broad white band at the base of the tail. The terminal phase of these fish are known as uhu uliuli. Both uhu 'ahu'ula and uhu uliuli are known as spectacled parrotfish or fantail uhu.

"Uhu 'ele'ele" means any fish known as *Scarus rubroviolaceus* or any recognized synonym that has reached its terminal phase, indicated by a change in coloration from a predominantly brownish-red or yellowish-gray body with reddish fins, to a predominantly green or blue-green body color with a green beak. Both uhu 'ele'ele and uhu pālukaluka are known as redlip or ember parrotfish or whiptail uhu.

"Uhu pālukaluka" means any fish known as *Scarus rubroviolaceus* or any recognized synonym that has not reached its terminal phase. Uhu pālukaluka have a predominantly brownish-red or yellowish gray body with reddish fins. The terminal phase of these fish are known as uhu 'ele'ele. Both uhu pālukaluka and uhu 'ele'ele are known as redlip or ember parrotfish or whiptail uhu.

"Uhu uliuli" means any fish known as *Chlorurus perspicillatus* or any recognized synonym that has reached its terminal phase, indicated by a change in coloration from a grayish brown body with reddish fins and 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 and the lack of a white tail band. Both uhu uliuli and uhu 'ahu'ula are known as spectacled parrotfish or fantail uhu.

"Uku" means any fish known as *Aprion virescens* or any recognized synonym. Uku are also known as uku palu, green jobfish, gray jobfish, blue-green snapper, Hawaiian blue-green snapper, gray snapper, slender snapper, or aochibiki.

"Ula" means any spiny lobster of the genus *Panulirus*. Ula are also known as lobster, Hawaiian spiny lobster, spiny lobster, red lobster, or green lobster.

"Ula pāpapa" means any crustacean of the species *Scyllarides squamosus* or *Scyllarides haanii*, or any recognized synonym. Ula pāpapa are also known as ula 'āpāpapa, slipper lobster, ridgeback slipper lobster, or shovel-nosed lobster.

"'Ula'ula koa'e" means any fish known as *Etelis coruscans* or any recognized synonym. 'Ula'ula koa'e are also known as koa'e, onaga, long-tail red snapper, ruby snapper, scarlet snapper, or hamadai.

"Ulua" means any fish known as *Caranx ignobilis*, *Caranx lugubris*, *Caranx melampygus*, *Caranx sexfasciatus*, *Carangoides equula*, *Carangoides ferdau*, *Carangoides orthogrammus*, or any recognized synonym. The young of these species are also known as [~~pāpio~~] pāpio.

~~["Weke"]~~ "Weke 'ā" means any fish known as *Mulloidichthys flavolineatus* or any recognized synonym. ~~[These fish]~~ Weke 'ā are also known as ~~[goatfish, yellowstripe goatfish, weke a, and the]~~ goatfish or yellowstripe goatfish. The young of this fish ~~[is]~~ are known as ~~[oama.]~~ 'oama. [Eff 12/03/98; am 1/11/02; am 12/09/02; am 12/19/02; am 5/01/14; am 10/19/18; am and comp 1/31/21; am and comp] (Auth: HRS §§187A-3.5, 187A-5, 190-3) (Imp: HRS §§187A-3.5, 187A-5, 190-3)

§13-95-1.1 Licenses, permits, and other exemptions. Notwithstanding the provisions of this chapter, the department may issue the following licenses and permits to exempt persons from the provisions of this chapter:

- (1) Licenses issued pursuant to sections 187A-3.5, 188-44, 188-57, or 189-6, HRS;
- (2) Permits issued pursuant to sections 187A-6, 188-23, 188-37, 188-68, or 190-4, HRS; or
- (3) As may be otherwise provided by law. [Eff 12/19/02; am 5/01/14; comp 1/31/21; comp] (Auth: HRS §§187A-3.5, 187A-6, 188-44, 188-45, 188-57, 188-68, 190-3) (Imp: HRS §§187A-3.5, 187A-6, 188-23, 188-37, 188-44, 188-45, 188-57, 188-68, 190-4)

§13-95-2 Penalty. (a) A person violating any section of this chapter may be subject to any applicable criminal or administrative penalties or both. 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.

(b) For the purpose of calculating the administrative penalties for violations of this

chapter, if a fine per specimen may be applicable, fines per specimen may be imposed on the following basis:

- (1) For finfish, each individual;
- (2) For invertebrates, not including stony corals or live rock, each individual;
- (3) For solitary (having a single polyp) stony corals, each individual;
- (4) For colonial stony corals:
 - (A) Each damaged head or colony less than one square meter in surface area; or
 - (B) For a colony greater than one square meter in surface area, each square meter of colony surface area and any fraction remaining constituting an additional specimen;
- (5) For live rocks, each individual; but if the violation involves greater than one square meter of bottom area, on the basis of each square meter of bottom area. [Eff 12/03/98; am 5/01/14; comp 1/31/21; comp
] (Auth: HRS §§187A-5, 190-3) (Imp: HRS §§183C-7, 187A-5, 187A-12.5, 187A-13, 188-53, 188-70, 189-4, 190-5)

§13-95-3 Severability. If any provision of this chapter, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff 12/3/98; comp 1/31/21; comp
] (Auth: HRS §187A-5) (Imp: HRS §§187A-5, 1-23)

§13-95-4 [~~Aholehole.~~] Āholehole. It [~~shall be~~] is unlawful for any person to take, possess, or sell any [~~aholehole~~] āholehole less than five inches in

length. [Eff 12/03/98; am 12/19/02; comp 1/31/21; am
and comp] (Auth: HRS §187A-5) (Imp:
HRS §187A-5)

§13-95-5 Manini. It [~~shall be~~] is unlawful for
any person to take, possess, or sell any manini less
than [~~five~~] six inches in length. [Eff 12/03/98; am
12/19/02; comp 1/31/21; am and comp]
(Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-6 Moano. It [~~shall be~~] is unlawful for
any person to take, possess, or sell any moano less
than seven inches in length. [Eff 12/03/98; am
12/19/02; comp 1/31/21; am and comp]
(Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-7 [~~Kumu~~] Kūmū. It [~~shall be~~] is
unlawful for any person to take, possess, or sell any
[~~kumu~~] kūmū less than ten inches in length. [Eff
12/03/98; am 12/19/02; comp 1/31/21; am and comp
] (Auth: HRS §187A-5) (Imp: HRS
§187A-5)

§13-95-8 [~~Mullet~~] 'Ama`ama (striped mullet).
(a) It [~~shall be~~] is unlawful for any person to take,
possess, or sell any [~~mullet~~] pua, kahaha, or `ama`ama
less than eleven inches in [~~length~~] length except as
provided in subsection (b) of this section.

(b) It is unlawful for any person to wilfully
fish for, or attempt to take by any means whatsoever,
from any of the waters within the jurisdiction of the
State, or to sell, or have in possession any [~~mullet~~]
pua, kahaha, `ama`ama, or `anae during the months of
December, January, February, and March; provided that

any owner or operator of a fish pond may lawfully catch [~~the young mullet known as~~] pua during the closed season, for the purpose of stocking the owner's or operator's pond; and provided further that any owner or operator of a fish pond or any commercial marine dealer may lawfully sell [~~pond raised mullet~~] pond-raised pua, kahaha, 'ama'ama, or 'anae during the closed season after first procuring a license to do so pursuant to sections 13-74-40 or 13-74-43. [Eff 12/03/98; am 12/19/02; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-9 Awa. It [~~shall be~~] is unlawful for any person to take, possess, or sell any awa less than nine inches in length. [Eff 12/03/98; am 12/19/02; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-10 [~~Oie.~~] 'Ō'io. It [~~shall be~~] is unlawful for any person to take, possess, or sell any [~~oie~~] 'ō'io less than fourteen inches in length. [Eff 12/03/98; am 12/19/02; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-11 Kala. (a) It [~~shall be~~] is unlawful for any person to take, possess, or sell any kala less than fourteen inches in length.

(b) Subject to subsections (e) and (g), it is unlawful for any person to take more than four kala per day or possess more than four kala at any one time.

(c) It is unlawful for any person to take kala for a commercial purpose without a valid commercial kala fishing permit.

(d) The department shall, upon receipt of a valid application and appropriate fee payment, issue a commercial kala fishing permit to any individual who possesses a valid commercial marine license. The fee for the issuance or renewal of a commercial kala fishing permit shall be \$100. A commercial kala fishing permit shall be valid from the date of issuance and shall expire on the expiration date of the permittee's commercial marine license.

(e) A commercial kala fishing permittee participating in a commercial kala fishing trip may take more than four kala per day, and possess more than four kala at any one time, provided that:

- (1) Commercial harvest or sale of kala shall be prohibited when the commercial kala fishing season is closed pursuant to subsection (h);
and
- (2) The department may establish additional restrictions on the commercial take or possession of kala pursuant to adaptive management authority under §187A-5(b), HRS.

(f) It is unlawful for any commercial marine dealer to purchase, obtain, exchange, transfer, possess, or sell kala unless the commercial marine dealer has registered with the department as a commercial kala dealer.

(g) A registered commercial kala dealer may purchase, obtain, exchange, transfer, possess and sell more than four kala if in compliance with section 189-11, HRS, provided that no kala may be purchased, obtained, exchanged, transferred, possessed, or sold when the commercial kala fishing season is closed pursuant to subsection (h), provided further that kala legally obtained prior to the date of closure may be possessed and sold after the date of closure.

(h) There is established an annual catch limit (ACL) of 15,000 pounds for the commercial kala fishery. Commercial kala catch shall be tallied beginning in August of each year. When the ACL is reached, the department shall notify commercial kala fishing permittees and registered commercial kala dealers that the commercial kala fishing season will

close. Notice shall be made in writing by mail or email to the address on file with the department no less than three days prior to the closure of the season. [Eff 12/03/98; am 12/19/02; comp 1/31/21; am and comp] (Auth: HRS §§187A-5, 190-3) (Imp: HRS §§187A-5, 188-53, 190-4)

§13-95-12 [~~Opelu kala.~~] **Kala 'ōpelu.** It [~~shall be~~] is unlawful for any person to take, possess, or sell any [~~opelu kala~~] kala 'ōpelu less than sixteen inches in length. [Eff 12/03/98; am 12/19/02; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-13 [~~Opakapaka.~~] **'Ōpakapaka.** (a) It [~~shall be~~] is unlawful for any person to possess with the intent to sell, or offer for sale, any [~~opakapaka~~] 'ōpakapaka less than one pound in weight. (b) It [~~shall be~~] is unlawful for any person to take with spear or possess any speared [~~opakapaka~~] 'ōpakapaka less than one pound in weight. [Eff 12/3/98; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-14 [~~Onaga.~~] **'Ula 'ula koa 'e (onaga).** (a) It [~~shall be~~] is unlawful for any person to possess with the intent to sell, or offer for sale, any [~~onaga~~] 'ula 'ula koa 'e less than one pound in weight. (b) It [~~shall be~~] is unlawful for any person to take with spear or possess any speared [~~onaga~~] 'ula 'ula koa 'e less than one pound in weight. [Eff 12/3/98; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-15 Uku. (a) It [~~shall be~~] is unlawful for any person to possess with the intent to sell, or offer for sale, any uku less than one pound in weight.

(b) It [~~shall be~~] is unlawful for any person to take with spear or possess any speared uku less than one pound in weight. [Eff: 12/3/98; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-16 Uhu[-] (parrotfish). (a) It [~~shall be~~] is unlawful for any person to take, possess, or sell any uhu 'ele'ele, uhu uliuli, uhu pālukaluka, or uhu 'ahu'ula less than [~~twelve~~] fourteen inches in length.

(b) Any other department size restriction notwithstanding, subject to subsection (a), it is unlawful for any person to take, possess, or sell any other uhu less than ten inches in length.

(c) Subject to subsections (f) and (h), it is unlawful for any person to take more than two uhu of any variety per day or possess more than two uhu of any variety at any one time.

(d) It is unlawful for any person to take uhu for commercial purposes without a valid commercial uhu fishing permit.

(e) The department shall, upon receipt of a valid application and appropriate fee payment, issue a commercial uhu fishing permit to any individual who possesses a valid commercial marine license. The fee for the issuance or renewal of a commercial uhu fishing permit shall be \$100. A commercial uhu fishing permit shall be valid from the date of issuance and shall expire on the expiration date of the permittee's commercial marine license.

(f) A commercial uhu fishing permittee participating in a commercial uhu fishing trip may take more than two uhu per day, and possess more than two uhu at any one time, provided that:

- (1) No species of uhu other than uhu pālukaluka and uhu 'ele'ele may be taken or possessed on a commercial uhu fishing trip;
- (2) Commercial harvest or sale of uhu shall be prohibited when the commercial uhu fishing season is closed pursuant to subsection (i); and
- (3) The department may establish additional restrictions on the commercial take or possession of uhu pursuant to adaptive management authority under §187A-5(b), HRS.

(g) It is unlawful for any commercial marine dealer to purchase, obtain, exchange, transfer, possess, or sell uhu unless the commercial marine dealer has registered with the department as a commercial uhu dealer.

(h) A registered commercial uhu dealer may purchase, obtain, exchange, transfer, possess, and sell more than two uhu if in compliance with section 189-11, HRS, provided that:

- (1) No species of uhu other than uhu pālukaluka and uhu 'ele'ele may be purchased, obtained, exchanged, transferred, possessed, or sold; and
- (2) No uhu may be purchased, obtained, exchanged, transferred, possessed, or sold when the commercial uhu fishing season is closed pursuant to subsection (i), provided further that uhu legally obtained prior to the date of closure may be possessed and sold after the date of closure.

(i) There is established an annual catch limit (ACL) of 30,000 pounds for the commercial uhu fishery. Commercial uhu catch shall be tallied beginning in June of each year. When the ACL is reached, the department shall notify commercial uhu fishing permittees and registered commercial uhu dealers that the commercial uhu fishing season will close. Notice shall be made in writing by mail or email to the address on file with the department no less than three days prior to the closure of the season. [Eff 12/03/98; am 12/19/02; comp 1/31/21; am and comp

] (Auth: HRS §§187A-5, 190-3) (Imp:
HRS §§187A-5, 188-53, 190-4)

§13-95-17 [~~Ahi.~~] 'Ahi. (a) It [~~shall be~~] is unlawful for any person to possess with the intent to sell, or offer for sale, any [~~ahi~~] 'ahi less than three pounds in weight.

(b) It [~~shall be~~] is unlawful for any person to take with spear or possess any speared [~~ahi~~] 'ahi less than three pounds in weight. [Eff: 12/3/98; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-18 [~~Opelu.~~] 'Ōpelu. It [~~shall be~~] is unlawful for any person at any time, to fish for or take, or be engaged in fishing or taking [~~opelu~~] 'ōpelu with fish or animal bait, also known as "chop-chop", within the waters off the coast of South Kona, [~~island of Hawaii,~~] Hawai'i Island, between the [~~Kiilae-Keokea~~] Ki'ilae-Keokea boundary and the [~~Kapua-Kaulanamauna~~] Kapu'a-Kaulanamauna boundary, except with [~~hook and line.~~] hook-and-line. [Eff 12/3/98; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-19 Akule. (a) It [~~shall be~~] is unlawful for any person to take any akule measuring less than eight and one-half inches in length, with a net during the months of July, August, September, and October.

(b) It is unlawful for any person, other than marine seafood dealers, to possess or sell more than two hundred pounds of akule measuring less than eight and one-half inches in length per day during July, August, September, and October; except as may be otherwise provided by law. [Eff 12/03/98; am 1/11/02;

comp 1/31/21; am and comp] (Auth: HRS
§187A-5) (Imp: HRS §187A-5)

§13-95-20 [~~iao.~~] 'iao. (a) It [~~shall be~~] is unlawful for any person at any time to sell, offer for sale, or trade, any dried or cured [~~iao~~] 'iao taken from the waters within the jurisdiction of the State.

(b) It is unlawful for any person to fish for, catch, or take in or from any of the waters within the jurisdiction of the State any [~~iao~~] 'iao; provided that the department may issue licenses pursuant to section 13-74-22, to take [~~iao~~] 'iao for use as bait only. [Eff: 12/3/98; comp 1/31/21; am and comp
] (Auth: HRS §187A-5) (Imp: HRS
§187A-5)

§13-95-21 Nehu. (a) It [~~shall be~~] is unlawful for any person at any time to sell, offer for sale, or trade, any dried or cured nehu taken from the waters within the jurisdiction of the State.

(b) It is unlawful for any person to fish for, catch, or take in or from any of the waters within the jurisdiction of the State any nehu; provided that the department may issue licenses pursuant to section 13-74-22, to take nehu for use as bait only and as [~~maybe~~] may be otherwise allowed under chapter 13-90. [Eff 12/3/98; comp 1/31/21; am and comp
] (Auth: HRS §187A-5) (Imp: HRS
§187A-5)

§13-95-22 Ulua. (a) It is unlawful for any person to take or possess any ulua less than ten inches in length.

(b) It is unlawful for any person to sell any ulua less than sixteen inches in length.

(c) It is unlawful for any person to take or possess more than twenty ulua measuring more than ten inches in length per day; provided that a commercial marine licensee may take, possess, and sell more than twenty such ulua; and further provided that a commercial marine dealer may possess and sell more than twenty such ulua with receipts issued for the purchase pursuant to section 189-11, [~~Hawaii Revised Statutes.~~] HRS. [Eff 12/19/02; comp 1/31/21; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

Historical Note: Section 13-95-22 is based substantially upon Chapter 87 of Title 13. [Eff 5/26/81; am 1/25/82; R 12/19/02] Chapter 87 of Title 13 was based substantially upon Regulation 19 of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii. [Eff 3/28/58; am 10/6/58; R 5/26/81]

§13-95-23 Moi. (a) It is unlawful for any person to take, possess, or sell any moi less than eleven inches in length.

(b) It is unlawful for any person to take, possess, or sell more than fifteen moi per day during September through May; provided that a commercial marine dealer may possess and sell more than fifteen moi with receipts issued for the purchase pursuant to section 189-11, [~~Hawaii Revised Statutes.~~] HRS.

(c) It is unlawful for any person to take, possess, or sell any moi during June, July, and August. [Eff 12/19/02; comp 1/31/21; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

Historical Note: Section 13-95-23 is based substantially upon Chapter 88 of Title 13. [Eff 5/26/81; am and comp 12/20/86; R 12/19/02] Chapter 88 of Title 13 was based substantially upon Regulation 20 [Eff: 3/20/58; am 10/6/58; am 7/9/59; am 5/4/68; R

5/26/81] and Regulation 21 [Eff: 3/28/58; am 10/6/58; am 7/9/59; R 5/26/81] of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii.

§13-95-24 [~~Weke.~~] **Weke 'ā.** (a) It is unlawful for any person to take or possess more than fifty [~~weke~~] weke 'ā less than seven inches in length per day.

(b) It is unlawful for any person to sell any [~~weke~~] weke 'ā less than seven inches in length. [Eff 12/19/02; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

Historical Note: Section 13-95-24 is based substantially upon Chapter 88 of Title 13. [Eff 5/26/81; am and comp 12/20/86; R 12/19/02] Chapter 88 of Title 13 was based substantially upon Regulation 20 [Eff: 3/20/58; am 10/6/58; am 7/9/59; am 5/4/68; R 5/26/81] and Regulation 21 [Eff: 3/28/58; am 10/6/58; am 7/9/59; R 5/26/81] of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii.

§13-95-25 **Kole.** It is unlawful to take, possess, or sell any kole less than five inches in length. [Eff and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§§13-95-26 to 13-95-49 (Reserved)

§13-95-50 [~~Kuhonu crab.~~] **Pāpa'i kūhonu (white crab).** (a) It [~~shall be~~] is unlawful for any person

to possess with the intent to sell, or offer for sale, any [~~kuhonu crab~~] pāpa`i kūhonu less than four inches in length or in width across or along its back.

(b) It is unlawful for any person to [~~catch or take from any bays, harbors, or other waters of the State, or to expose or offer for sale, or to hold in possession with the intent of exposing or offering for sale, or to kill,~~] take, possess, or sell any [~~kuhonu crab~~] pāpa`i kūhonu [~~while~~] with eggs. Any [~~kuhonu crab~~] pāpa`i kūhonu with eggs caught must immediately be returned to the waters from which the crab was taken. The possession of any [~~kuhonu crab,~~] pāpa`i kūhonu, showing indications of [~~the~~] its eggs having been scraped or removed [~~therefrom, shall be~~] is prima facie evidence of [~~the~~] a violation of this section.

(c) [~~No person shall~~] It is unlawful for any person to pursue, take, or kill any [~~kuhonu crab~~] pāpa`i kūhonu in the State with a spear.

(d) [~~No person shall~~] It is unlawful for any person to offer for sale any speared [~~kuhonu crab.~~] pāpa`i kūhonu. [Eff 12/3/98; comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-51 [~~Kona crab.~~] Pāpa`i kualoa (Kona crab). (a) It is unlawful for any person to take, possess, or sell any [~~Kona crab~~] pāpa`i kualoa less than four inches in carapace length.

(b) It is unlawful for any person to take, possess, or sell any [~~Kona crab~~] pāpa`i kualoa taken from the waters within the jurisdiction of the State [~~during the months of~~] from May[, June, July, and August.] through September.

(c) The possession of any [~~Kona crab~~] pāpa`i kualoa from May through September by any person [~~during the months of May, June, July, and August shall be~~] is prima facie evidence that the person is guilty of a violation of this section; provided that any commercial marine dealer may sell, or any hotel, restaurant, or other public eating house may serve

~~[Kona crab]~~ pāpa`i kualoa lawfully caught during the open season by first procuring a license to do so pursuant to section 13-74-41.

(d) It is unlawful for any person to take, possess, or sell any ~~[Kona crab]~~ pāpa`i kualoa with eggs. Any ~~[Kona crab]~~ pāpa`i kualoa with eggs caught must immediately be returned to the waters from which the crab was taken. The possession of any ~~[Kona crab]~~ pāpa`i kualoa showing indications of ~~[the]~~ its eggs having been scraped or removed ~~[therefrom, shall be]~~ is prima facie evidence of ~~[the]~~ a violation of this section.

(e) It is unlawful for any person to pursue, take, or kill any ~~[Kona crab]~~ pāpa`i kualoa in the State with a spear.

(f) It is unlawful for any person to possess or sell any speared ~~[Kona crab.]~~ pāpa`i kualoa.

~~[(g) It is unlawful for any person to take or kill any female Kona crab.]~~ [Eff 12/03/98; am 12/19/02; am and comp 1/31/21; am and comp

] (Auth: HRS §187A-5) (Imp: HRS §§187A-5, 188-57)

§13-95-52 Samoan crab. (a) It is unlawful for any person to take, possess, or sell any Samoan crab less than six inches in width measured across the carapace or back.

(b) It is unlawful for any person to take, kill, possess, or sell any Samoan crab with eggs. Any Samoan crab with eggs caught must immediately be returned to the waters from which the Samoan crab was taken. The possession of any Samoan crab, showing indications of ~~[the]~~ its eggs having been scraped or removed ~~[therefrom, shall be]~~ is prima facie evidence of ~~[the]~~ a violation of this section.

(c) It is unlawful for any person to pursue, take, or kill any Samoan crab in the State with a spear.

(d) It is unlawful for any person to possess or sell any speared Samoan crab.

(e) It is unlawful for any person to take or kill any female Samoan crab. [Eff 12/3/98; am and comp 1/31/21; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

Historical note: Subsection 13-95-52(a) is based substantially upon chapter 84 of title 13. [Eff 5/26/81; am 1/25/82; R 1/31/21] Chapter 84 of Title 13 was based substantially upon Regulation 14 of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii. [Eff 11/25/41 (Governor's approval date); am 7/28/47; am and ren 3/28/58; R 5/26/81]

§13-95-53 [~~Spiny lobster~~] Ula (spiny lobster).

(a) It is unlawful for any person to take, kill, possess, or sell any [~~spiny lobster~~] ula less than three and one-fourth inches in carapace length, measured in a straight line along the carapace or head, from the ridge between the two largest spines above the eyes to the rear edge of the carapace.

(b) It is unlawful for any person to take, kill, possess, or sell any [~~spiny lobster~~] ula taken from the waters within the jurisdiction of the State during the months of May, June, July, and August.

(c) The possession of any [~~spiny lobster~~] ula by any person during the months of May, June, July, and August [~~shall be~~] is prima facie evidence that the person is guilty of a violation of this section; provided that any commercial marine dealer may sell, or any hotel, restaurant, or other public eating house may serve [~~spiny lobster~~] ula lawfully caught during the open season by first procuring a license to do so pursuant to section 13-74-41.

(d) It is unlawful for any person to take, kill, possess, or sell any [~~spiny lobster~~] ula with eggs. Any [~~spiny lobster~~] ula with eggs caught must immediately be returned to the waters from which the [~~spiny lobster~~] ula was taken. The possession of any [~~spiny lobster,~~] ula showing indications of [~~the~~] its

eggs having been scraped or removed [~~therefrom, shall be~~] is prima facie evidence of [~~the~~] a violation of this section.

(e) It is unlawful for any person to pursue, take, or kill any [~~spiny lobster~~] ula in the State with a spear.

(f) It is unlawful for any person to possess or sell any speared [~~spiny lobster.~~] ula.

(g) It is unlawful for any person to possess or sell any [~~spiny lobster~~] ula in a condition where the body is mutilated, or the carapace and tail are separated.

(h) It is unlawful for any person to take or kill any female [~~spiny lobster.~~] ula. [Eff 12/3/98; am and comp 1/31/21; am and comp]
(Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-57)

Historical note: Subsections 13-95-53(a) and (g) are based substantially upon Chapter 89 of Title 13. [Eff 5/26/81; am 6/6/83; am 6/25/84; am and comp 2/6/87; am and comp 5/5/88; am and comp 8/14/89; R 1/31/21] Chapter 89 of Title 13 was based substantially upon Regulation 22 of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii. [Eff 3/28/58; am 10/6/58; am 7/9/59; am 7/18/59 (Governor's approval date); am 9/17/60 (Governor's approval date); am 8/4/78; R 5/26/81]

§13-95-54 [~~Slipper lobster.~~] Ula pāpapa (slipper lobster). (a) It is unlawful for any person to take, kill, possess, or sell any [~~slipper lobster~~] ula pāpapa less than two and three-fourths inches in tail width, measured in a straight line across the widest spot of the tail between the first and second abdominal segments.

(b) It is unlawful for any person to take, kill, possess, or sell any [~~slipper lobster~~] ula pāpapa taken from the waters within the jurisdiction of the

State during the months of May, June, July, and August.

(c) The possession of any [~~slipper lobster~~] ula pāpapa by any person during the months of May, June, July, and August [~~shall be~~] is prima facie evidence that the person is guilty of a violation of this section; provided that any commercial marine dealer may sell, or any hotel, restaurant, or other public eating house may serve [~~slipper lobster~~] ula pāpapa lawfully caught during the open season by first procuring a license to do so pursuant to section 13-74-41.

(d) It is unlawful for any person to take, kill, possess, or sell any [~~slipper lobster~~] ula pāpapa with eggs. Any [~~slipper lobster~~] ula pāpapa with eggs caught must immediately be returned to the waters from which the [~~slipper lobster~~] ula pāpapa was taken. The possession of any [~~slipper lobster,~~] ula pāpapa showing indications of [~~the~~] eggs having been scraped or removed [~~therefrom, shall be~~] is prima facie evidence of [~~the~~] a violation of this section.

(e) It is unlawful for any person to pursue, take, or kill any [~~slipper lobster~~] ula pāpapa in the State with a spear.

(f) It is unlawful for any person to possess or sell any speared [~~slipper lobster.~~] ula pāpapa.

(g) It is unlawful for any person to possess or sell any [~~slipper lobster~~] ula pāpapa in a condition where the body is mutilated, or the carapace and tail are separated. [Eff 12/3/98; am and comp 1/31/21; am and comp] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-57)

Historical note: Subsections 13-95-54(a) and (g) are based substantially upon chapter 89 of title 13 [Eff 5/26/81; am 6/6/83; am 6/25/84; am and comp 2/6/87; am and comp 5/5/88; am and comp 8/14/89; R 1/31/21] Chapter 89 of title 13 was based substantially upon regulation 22 of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii. [Eff 3/28/58; am 10/6/58; am 7/9/59; am

7/18/59 (Governor's approval date); am 9/17/60
(Governor's approval date); am 8/4/78; R 5/26/81]

§13-95-55 [~~He'e.~~] **He'e (tako)**. It [~~shall be~~] is
unlawful for any person to take, possess, or sell any
[~~he'e~~] he'e less than one pound in weight. [Eff
12/19/02; comp 1/31/21; am and comp]
(Auth: HRS §187A-5) (Imp: HRS §187A-5)

Historical Note: Section 13-95-55 is based
substantially upon Chapter 86 of Title 13. [Eff
5/26/81; R 12/19/02] Chapter 86 of Title 13 was based
substantially upon Regulation 18 of the Division of
Fish and Game, Department of Land and Natural
Resources, State of Hawaii. [Eff 3/28/58; am 10/6/58;
R 5/26/81]

§13-95-70 Stony corals. (a) Except as
otherwise provided in this section or authorized by
law:

- (1) Subject to subsections (b) and (c), it is
unlawful for any person to take, break, or
damage any stony coral, except as provided
in sections 171-58.5 and 205A-44, HRS;
- (2) It is unlawful for any person to damage any
stony coral by any intentional or negligent
activity causing the introduction of
sediment, biological contaminants, or
pollution into state waters;
- (3) It is unlawful for any person to sell any
stony coral; except that stony coral rubble
pieces or fragments imported for the
manufacture and sale of coral jewelry, or
dead stony coral obtained through legal
dredging operations in Hawaii for
agricultural or other industrial uses, may
be sold.

(b) No liability shall be imposed under subsection (a)(1) of this section for inadvertent breakage, damage, or displacement of an aggregate area of less than one half square meter of coral if caused by:

- (1) A vessel with a single anchor damage incident, in an area where anchoring is not otherwise prohibited, and not more frequently than once per year; or
- (2) Accidental physical contact by an individual person.

(c) The [~~Department~~] department may authorize damage to stony corals for the development or operation of renewable energy projects and shall require mitigation to offset any stony coral losses.

(d) Any person found in violation of any provision of this section pursuant to a criminal prosecution shall be subject to penalty as provided under section 187A-13, HRS. Any person found in violation of any provision of this section pursuant to civil or administrative action shall be subject to penalty as provided under section 187A-12.5, HRS. [Eff 12/03/98; am 12/09/02; am 5/01/14; am 10/19/18; comp 1/31/21; am and comp] (Auth: HRS §§187A-5, 189-6, 190-3) (Imp: HRS §§187A-6, 187A-12.5, 187A-13, 188-68, 189-6, 190-1, 190-3, 190-5)

§13-95-71 Live rocks. (a) Except as otherwise provided in this section or authorized by law:

- (1) Subject to subsections (b) and (c), it is unlawful for any person to take, break, or damage any live rock;
- (2) Subject to subsection (b), it is unlawful for any person to damage any live rock by any intentional or negligent activity causing the introduction of sediment, biological contaminants, or pollution into state waters; and
- (3) It is unlawful for any person to sell any live rock.

(b) No liability shall be imposed under subsections (a)(1) or (a)(2) of this section for inadvertent breakage, damage, or displacement of an aggregate area of less than one square meter of live rock bottom cover.

(c) The [~~Department~~] department may authorize damage to live rock for the development or operation of renewable energy projects and shall require mitigation to offset any live rock losses.

(d) Any person found in violation of any provision of this section pursuant to a criminal prosecution shall be subject to penalty as provided under section 187A-13, HRS. Any person found in violation of any provision of this section pursuant to civil or administrative action shall be subject to penalty as provided under section 187A-12.5, HRS." [Eff 12/03/98; am 12/09/02; am 5/01/14; am 10/19/18; comp 1/31/21; am and comp] (Auth: HRS §§187A-5, 189-6, 190-3) (Imp: HRS §§187A-6, 187A-12.5, 187A-13, 188-68, 189-6, 190-1, 190-3, 190-5)

2. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes and other notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 13-95, 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 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.

DAWN N.S. CHANG
Chairperson, Board of Land
and Natural Resources

APPROVED AS TO FORM:

Deputy Attorney General