

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

January 24, 2025

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

**Request for Final Approval to Adopt a New Chapter Under Title 13 of the Hawaii
Administrative Rules as Chapter 48.5, "Maunalua Bay Fisheries Management
Area, O'ahu"**

Submitted for your consideration and approval is a request to adopt Hawaii Administrative Rules (HAR) Title 13, Chapter 48.5, "Maunalua Bay Fisheries Management Area, O'ahu" ("Maunalua Bay FMA") to ensure abundant stocks of priority species and high-quality fishing now and in the future for residents and visitors to Maunalua Bay.

PURPOSE

The purpose of this rulemaking action is to:

- Create long-term sustainable fishing within Maunalua Bay;
- Implement fisheries management actions that protect ecologically critical and socially important marine life while minimizing impacts to sustainable fishing practices;
- Develop and implement monitoring and data collection processes that integrate western, indigenous, and citizen science (including empirical knowledge from Maunalua Bay users) to provide decision-makers with a diversity of accurate, abundant, and timely information that contributes to fisheries management decision-making; and
- Develop and implement an inclusive, transparent, adaptive stakeholder-endorsed and science-based decision-making process that lends to long-term sustainable fishing within Maunalua Bay.

The proposed rules would:

- 1) Outline the purpose of the Maunalua Bay FMA;
- 2) Provide definitions for key terms throughout the chapter;
- 3) Prescribe the duration of the Maunalua Bay FMA (until June 30, 2036);
- 4) Delineate the boundaries of the Maunalua Bay FMA;
- 5) Prescribe the permitted and prohibited activities within the Maunalua Bay FMA, including:

- a. Restrictions on the take and/or possession of: ‘alakuma (7-11 crab), horned helmet, Triton’s trumpet, ula (spiny lobster) and ula pāpapa (slipper lobster); and
- b. Between one half hour after sunset and one half hour before sunrise:
 - i. restrictions on the use or possession of any spear while diving;
 - ii. restrictions on the possession of both diving equipment and a spear at the same time; and
 - iii. restrictions on the possession of both diving equipment and any specimen of speared aquatic life at the same time;
- 6) Carve out an exception allowing vessels in possession of restricted gear or species to traverse through the Maunalua Bay FMA as long as they remain in active transit;
- 7) Establish the administrative and criminal penalties that may be imposed for violations of this chapter;
- 8) Recognize the State’s asset forfeiture authority as an enforcement tool for violations of this chapter; and
- 9) Include a severability clause.

The proposed rules are described in detail in the Division of Aquatic Resources’ (DAR’s) July 12, 2024 submittal to the Board of Land and Natural Resources (Board) (Item F-1), available on the Board’s website.¹

BACKGROUND

The proposed rules are the result of extensive stakeholder engagement over the past eight years. Prior to seeking approval from the Board to initiate formal public rulemaking proceedings, Malama Maunalua, a non-profit community stewardship group, conducted extensive outreach to the broader Maunalua community and refined the proposal incorporating feedback from a wide variety of stakeholder engagement forums. A detailed description and summary of these scoping efforts is documented in Malama Maunalua’s draft Maunalua Bay Fishery Management Area Management Plan.²

On Friday, May 10, 2024, DAR provided an informational briefing to the Board explaining the proposed rules, including historical background information, outreach efforts, management plan development and finalization, and an overview of the proposed administrative rules. A copy of this non-action item submittal (Item F-6) is available on the Board’s website.³

On Friday, July 12, 2024, the Board approved the Department’s request to hold statewide public rulemaking hearings pursuant to Hawaii Revised Statutes (HRS)

¹ <https://dlnr.hawaii.gov/wp-content/uploads/2024/07/F-1.pdf>

² See pp. 21-38 of the May 10, 2024 BLNR submittal, available at <https://dlnr.hawaii.gov/wp-content/uploads/2024/05/F-6.pdf>

³ <https://dlnr.hawaii.gov/wp-content/uploads/2024/05/F-6.pdf>

chapter 91 to adopt HAR chapter 13-48.5, “Maunalua Bay Fisheries Management Area, O’ahu.” A copy of this submittal (Item F-1) is available on the Board’s website.⁴

On Wednesday, October 2, 2024, DAR held a statewide public hearing via Zoom, with an in-person host site at Kalani High School in Honolulu on the island of O’ahu. The public hearing minutes are attached as **Exhibit 1**. DAR accepted written testimony on the proposed rules from September 1, 2024 to October 9, 2024. DAR received a total of 24 testimonies (11 oral and 13 written) from 16 individuals and 6 organizations, with 2 individuals/organizations providing duplicate or similar oral and written testimony.

Testimony on the proposed rules was mixed, with 8 individuals/organizations expressing full support of the proposed rules, 3 individuals/organizations expressing full opposition to the proposed rules, and 11 individuals/organizations providing comments. The content of the 11 comments varied widely. Some commentors expressed concerns about the make up and transparency of the “Maunalua Bay Advisory Council,” an informal council established by Malama Maunalua to monitor and evaluate the ecological status of Maunalua Bay and provide updates and recommendations to DAR.⁵ Many of these same commentors stated that they were unaware of Malama Maunalua community meetings or thought that Malama Maunalua had been inactive since 2019. Other commentors expressed concerns with a particular study that DAR used as one of its justifications for establishing the Maunalua Bay FMA,⁶ saying that the study was flawed. Two commentors associated with the Hawaii Kai Marina Community Association expressed concerns that the proposed rules would allow DAR to create more restrictive rules on other forms of fishing, such as netting and trapping, and could also create restrictions on non-fishery related activities, such as commercial thrillcraft operation.⁷ Two commentors expressed opposition to the proposed rules due to a lack of consultation with the Office of Hawaiian Affairs (OHA).⁸ These same commentors expressed concern that a ban on night dive spearfishing in Maunalua Bay could result in the relocation of night dive spearfishing efforts to the Waimanalo area.⁹ Two commentators expressed opposition to the night dive spearfishing ban, stating that night dive spearfishing was a cultural practice for some. One commentor noted that because

⁴ <https://dlnr.hawaii.gov/wp-content/uploads/2024/07/F-1.pdf>

⁵ The Maunalua Bay Advisory Council is not a part of this proposed rules package and is not mentioned or included in the proposed rules. While DAR appreciates the Council’s efforts to monitor and evaluate the ecological health of Maunalua Bay and present its findings to DAR, DAR is under no obligation to change or amend the proposed rules based on future recommendations from the Maunalua Bay Advisory Council.

⁶ *Assessment of Fish in Maunalua Bay, O’ahu; Findings from Three Years of Marine Surveys (2009-2012)*, Dr. Dwayne Minton, et al., The Nature Conservancy, 2014

⁷ One of these testifiers, “Status Quo for Maunalua Bay,” attached with their testimony a list of 106 signatures in favor of keeping the status quo in Maunalua Bay and opposing any additional rules. It is unclear, however, to determine exactly what the signatories were signing as the signature sheets do not provide that information. See **Exhibit 2**, attached.

⁸ DAR sent a copy of the proposed rules, along with the July 12, 2024 BLNR request to hold public hearings, to OHA on October 10, 2024 and October 17, 2024 and gave OHA extended time to submit comments. As of this date, DAR has not received comments about the proposed rules from OHA.

⁹ Although beyond the scope of this submittal, DAR is open to working with the Waimanalo community to address this concern, whether through rulemaking or other means.

sunrise/sunset times change throughout the year, the night dive spearfishing prohibition should be from 30 minutes after sunset to 30 minutes before sunrise instead of 6:00pm until 6:00am. Much of the testimony that was neither in full support nor in full opposition to the proposed rules expressed frustration at the lack of enforcement of already established statewide fisheries rules.

The public hearing was live broadcast to DAR's YouTube channel¹⁰ where a video recording of the hearing is available for review.¹¹ Additionally, copies of the written testimonies received has been compiled and attached as **Exhibit 2**.

CHANGES TO PROPOSED RULES

As mentioned in the previous section, testimony on the proposed Maunalua Bay FMA varied widely, but the majority of testimony supported some form of management plan for the bay. Concerns that the rigidity of the proposed ban on night dive spearfishing from 6:00pm until 6:00am could unfairly burden daytime spearfishers during different times of the year were noted by DAR and led to the only change in the proposed rules. Instead of a 6:00pm until 6:00am ban on dive spearfishing, DAR has amended the language in the proposed rules to ban dive spearfishing in the Maunalua Bay FMA between one half hour after sunset to one half hour before sunrise. This amendment allows some flexibility for dive spearfishers to get back to shore after sunset or enter the water earlier than sunrise during different times of the year. With this amendment, the rules more accurately reflect the reality that seasonal changes to daylight hours can affect the ability for daytime dive spearfishers to legally fish. This amendment also conforms to similar hunting regulations enacted by the Division of Forestry and Wildlife (DOFAW) regarding game mammal hunting¹² and similar fishing regulations enacted by DAR regarding the take or possession of marine life while diving at night within the Kipahulu Community Based Subsistence Fishing Area.¹³ This proposed amendment to the originally proposed HAR chapter 13-48.5 rules is drafted in both Ramseyer and Standard format and is attached as **Exhibit 3 and 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 Hawai'i*¹⁴ (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

¹⁰ <https://bit.ly/DARYouTubeChannel>

¹¹ <https://www.youtube.com/watch?v=OiTNCOdXkhw&t=1s>

¹² See HAR 13-123-6 – Hunting hours ("Hunting is permitted from one-half hour before sunrise to one-half hour after sunset. No person shall hunt from one-half hour after sunset to one-half hour before sunrise, except where specified differently.")

¹³ See HAR 13-60.11-16 & 17

¹⁴ [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)

needed to assess whether these rights were unduly violated.¹⁵ 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 Hawai‘i*¹⁶ (FCO) that the obligation described in Ka Pa‘akai not only applied to contested case hearings, but also to rulemaking actions.¹⁷ 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
- 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.

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 Maunalua Bay FMA would make it unlawful to take ‘alakuma (7-11 crab), horned helmet, Triton’s trumpet, ula (spiny lobster) and ula pāpapa (slipper lobster), as well as make it unlawful to use a spear while diving (i.e. spearfishing) between one half hour after sunset and one half hour before sunrise. The restriction on the take of the five invertebrate species listed above could affect Native Hawaiian subsistence fishing rights

¹⁵ “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 Hawai‘i, 153 hawai‘i 76, at 83 \(2023\)](#) (quoting Ka Pa‘akai at 45-47, 1082-1084)

¹⁶ [Flores-Case ‘Ohana v. University of Hawai‘i, 153 hawai‘i 76. \(2023\)](#)

¹⁷ “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 Hawai‘i, 153 hawai‘i 76, at 84 \(2023\)](#)

and cultural practices because the rules would restrict subsistence fishers' ability to gather these species for food or other uses for themselves and their communities.¹⁸

DAR received testimony on the proposed rules stating that night dive spearfishing was a cultural practice to some people, but the testimony did not specify that it was a Native Hawaiian traditional or cultural practice. While DAR recognizes the importance and cultural significance of forms of nighttime spearfishing, such as "torching" or "reef walking," to Native Hawaiians, DAR takes the position that night *dive* spearfishing is not a traditional and cultural practice of Native Hawaiians.

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

While restrictions on the take of 'alakuma (7-11 crab), horned helmet, Triton's trumpet, ula (spiny lobster) and ula pāpapa (slipper lobster) could infringe upon Native Hawaiian traditional and customary practices, these rules are being proposed based on reports of the decline of these species from Maunalua Bay waters, and these reports have come from Maunalua Bay community members. Therefore, one of the purposes of the restriction on the take of these species in the proposed rules is to take a precautionary approach to protecting these species so that traditional and customary fishing practices that involve these species are sustainable for future generations of Native Hawaiian fishers.

Furthermore, while DAR received testimony indicating that night dive spearfishing was a cultural practice to some people, there was no testimony that night dive spearfishing in Maunalua Bay is a traditional and cultural practice of Native Hawaiians. Therefore, DAR does not anticipate that Native Hawaiian traditional and customary rights will be impaired by the night dive spearfishing ban. Additionally, night dive spearfishing would only be banned in the Maunalua Bay FMA. The practice will still be allowed elsewhere around O'ahu.

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

As mentioned in the second prong of the analysis, the proposed rules are meant to serve as a protective or precautionary measure to promote the sustainability of 'alakuma, horned helmet, Triton's trumpet, ula, and ula pāpapa populations which, in turn, should strengthen any traditional and customary fishing practices with these species in Maunalua Bay in the long-term. Furthermore, and also mentioned in the second prong of the analysis, night dive spearfishing was not identified as a Native Hawaiian traditional or customary practice in Maunalua Bay. The Hawaii Constitution protects Native Hawaiian gathering rights, subject to the right of the State to regulate. Although the proposed rules could impact Native Hawaiian subsistence and gathering

¹⁸ However, DAR did not receive any testimony indicating that the proposed restrictions on the take of these species would affect Native Hawaiian traditional and customary rights.

rights as they pertain to the five listed species, the State has a Constitutional obligation and right to establish regulations to conserve the State's living marine resources.

RECOMMENDATIONS:

"That the Board give final approval to adopt Hawaii Administrative Rules chapter 13-48.5, "Maunalua Bay Fisheries Management Area, O'ahu," as set forth in **Exhibit 3** 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:

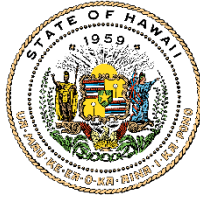
- Exhibit 1 – Public Hearing Minutes
- Exhibit 2 – Compiled Written Testimony
- Exhibit 3 – Proposed HAR Chapter 13-48.5 (Redline - Revised from Initial Draft)
- Exhibit 4 – Proposed HAR Chapter 13-48.5 (Final Draft - Clean)

EXHIBIT 1
MAUNALUA BAY FISHERIES MANAGEMENT
AREA, O'AHU
HAWAII ADMINISTRATIVE RULES 13-48.5

PUBLIC HEARING MINUTES

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

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



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

RYAN K.P. KANAKA'OLE
FIRST DEPUTY

CIARA W.K. KAHAHANE
DEPUTY DIRECTOR - WATER

BRIAN J. NEILSON, ADMINISTRATOR
DIVISION OF AQUATIC RESOURCES

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA
DIVISION OF AQUATIC RESOURCES
1151 PUNCHBOWL STREET, ROOM 330
HONOLULU, HAWAII 96813

PUBLIC HEARING MINUTES

Adoption of Hawaii Administrative Rules Chapters 13-48.5, "Maunalua Bay Fisheries Management Area, O'ahu"

Hearing Date: October 2, 2024, 6:30 p.m.
Hearing Type: Hybrid Zoom with In-Person Host Site
Host Site Location: Kalani High School, Cafeteria,
4680 Kalaniana'ole Highway
Honolulu, Hawaii 96821

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

INTRODUCTION

Opening Remarks

Introductions
Call to order - **6:32 p.m.**
Brief description of the proposal
Availability of draft rules for review
How to watch YouTube live stream

Purpose, Approval, and Notice

Purpose of the public hearing
Approval to conduct this public hearing was obtained from the Board of Land and Natural Resources at their board meeting on July 12, 2024.
The Legal Notice of this public hearing was published in the September 1, 2024 Sunday 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.

Hearing Procedures

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

PRE-RECORDED SLIDES WITH VOICE OVER

Proposed adoption of Hawaii Administrative Rules Chapter 13-48.5, “Maunalua Bay Fisheries Management Area, O‘ahu”

Brief description and summary of the proposed adoption of HAR chapter 13-48.5.

TESTIMONIES

Collection of Oral/Video Testimonies

YouTube live streaming reminder for those not wishing to provide testimony but still wish to view the proceedings

Reminder on how to provide testimony and the process that testimony will be collected

Collection of testimony on **O‘ahu (Kalani High School In-Person Site)**
[5 testimonies collected]

Collection of testimony on **Zoom** [4 testimonies collected]

Last call for all others wishing to provide testimony who were not called or for those wishing to provide additional testimony [2 additional in-person testimonies collected]

Written Testimony

Announcement of deadline to provide written testimony: **Wednesday, October 9, 2024**

Instructions on how to provide written testimony via postal mail or via e-mail

NEXT STEPS AND ADJOURNMENT

Extended Timeline

Outline of the projected timeline of the rules

Last call for questions

Adjournment – 7:19 p.m.

EXHIBIT 2
MAUNALUA BAY FISHERIES MANAGEMENT
AREA, O'AHU
HAWAII ADMINISTRATIVE RULES 13-48.5

COMPILED WRITTEN TESTIMONY

October 8, 2024

Public Comment: Malama Maunalua

Why is Malama Maunalua running a Division of Aquatic Resources meeting? Malama Maunalua and Conservation International are small special interest groups that are trying to dictate and establish rules that very few people support. Malama Maunalua did not inform the local community of the meeting or the purpose of the meeting, so they would not be bombarded with opposition. Malama Maunalua has been trying to dictate rules and policy ever since they tried to bring NOAA in our bay 9 years ago; which was rejected by the community. Malama Maunalua has falsified fish biomass studies in the past, and has even gone as far as to say our bay is “the worst in the state.” Maunalua Bay is not the “worst in the state.” I fish, surf and dive in this bay daily and see plenty of marine life. No special interest groups should be involved in making decisions for the community, especially when the community has already previously rejected their views. The stake holders of the community should be making the decisions. The stakeholders have spoken and said to leave Maunalua Bay alone. Malama Maunalua is also proposing to develop a one-sided advisory panel that will crush the community and stakeholders freedom. This one-sided advisory panel is all special interest groups, and no stakeholders. The Hawaii Kai Marina Association is the largest stakeholder, with over 10,000 residents, who have rejected Malama Maunalua’s policies in the past. The Hawaii Kai Marina Association is also not on Malama Maunalua’s proposed advisory panel.

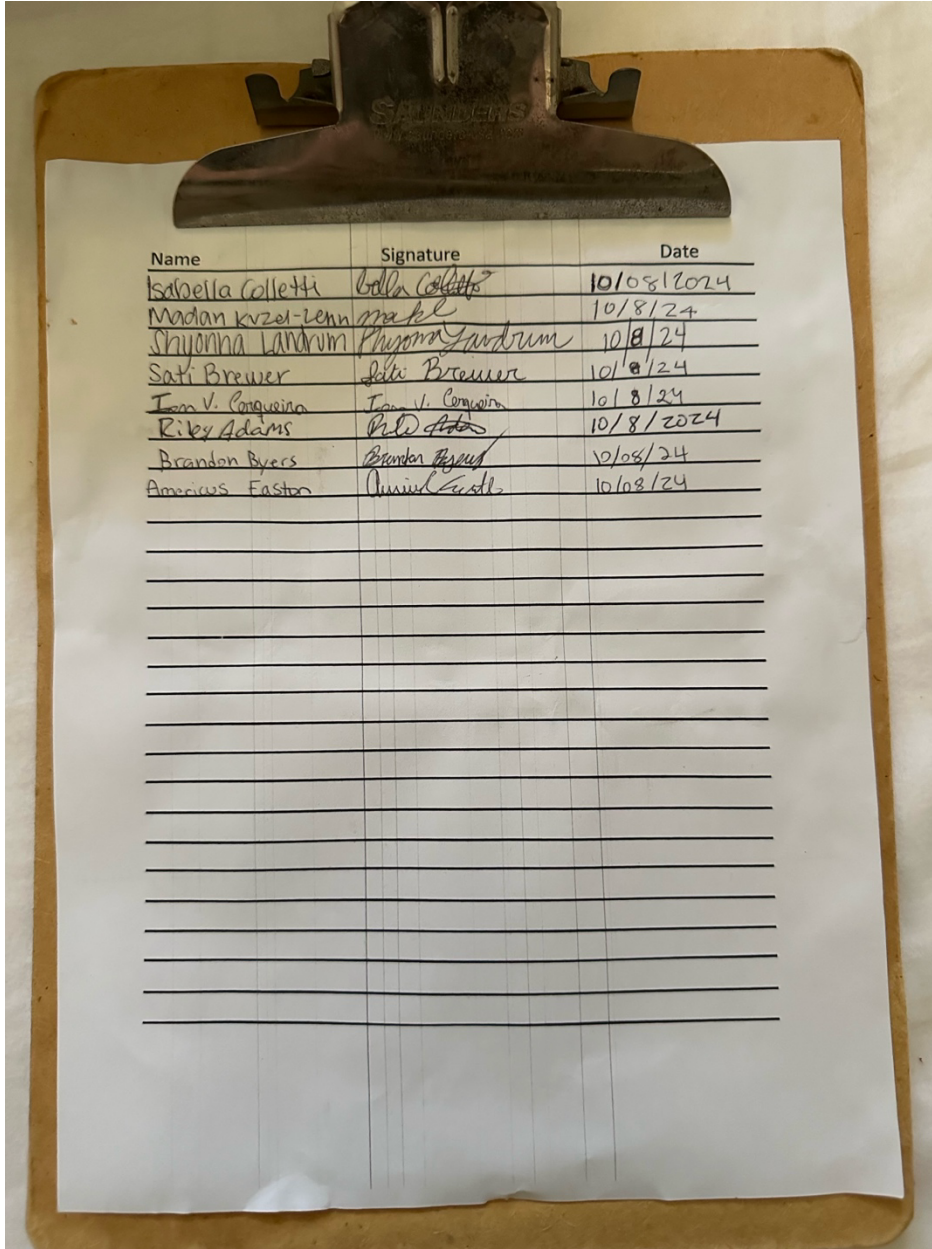
Commercial operators, surfers, divers, sailors, boaters, and other stakeholders do not want more rules. What we do want is better enforcement on illegal netting, and nighttime Micronesian illegal mass collection of reef fish.

We want the bay to be LEFT ALONE and to keep STATUS QUO.

Mahalo,
FRIENDS OF MAUNALUA BAY HUI

Please see attached 114 “STAKEHOLDER” signatures opposing the new rules, and requesting Status Quo.”

October 8, 2024



Name	Signature	Date
Isabella Colletti	Isabella Colletti	10/08/2024
Madian Kuzel-Lenn	Madian Kuzel-Lenn	10/8/24
Shayonna Landrum	Shayonna Landrum	10/8/24
Sati Brewer	Sati Brewer	10/8/24
Tom V. Conquerra	Tom V. Conquerra	10/8/24
Riley Adams	Riley Adams	10/8/2024
Brandon Byers	Brandon Byers	10/08/24
Americus Easton	Americus Easton	10/08/24

October 8, 2024

Name	Signature	Date
Sam Montgomery Jr		10/8/24
Michelle Montgomery - Michelle Montgomery		10-8-24
Brady Montgomery		10-8-24
Ryder Montgomery		10-8-24
Sam ^W MONTGOMERY	Sam ^W MONTGOMERY	10-8-24
Mahina Bettencourt	Mahina Bettencourt	10/8/24
Linda Montgomery - LINDA MONTGOMERY		10/8/24
John Montgomery		10/8/24
Christa Westphal		10/08/2024
Chel Salmer		10/08/2024
Ryan Young		10/8/2024
Col FRENCH	CLF	10/8/2024
Kalei Vincent	Kalei Vincent	10-8-24
Dana Wishtrom	Dana Wishtrom	10/8/24
Boone Freund	Boone Freund	10/8/24
Chloe Symmonds	Chloe Symmonds	10/8/24
Beverly A. Little	Beverly A. Little	10/8/24
Joey Zbin	Joey Zbin	10/8/24
Peter Watkins	Peter Watkins	10/8/24
Ryan Dyson	Ryan Dyson	10/8/24
Steve Alce	Steve Alce	10/8/24
Shane Powell	Shane Powell	10/8/24
Nick Couetti	Nick Couetti	10/8/2024
Greg Hense	Greg Hense	10/8/24
James Montenero	James Montenero	10/8/24
Ed Campbell	Ed Campbell	10/8/24

October 8, 2024

Name	Signature	Date
David Neil Bettcount	David N. Bettcount	10/8/24
Henry H. Ross	Henry H. Ross	10/8/24
Howard H. Reeves	Howard H. Reeves	10-8-24
Jade Roblox-Reeve	Jade Roblox-Reeve	10-8-24
Polly CARVALHO	Polly Carvalho	10-8-24
Michèle Saibilis	Michèle Saibilis	10-8-24
SHANOGITANI	Shanogitani	10-8-24
Carmelota Andria	Carmelota Andria	10-8-24
Robert Andria	Robert Andria	10-8-24
Alberto CARVALHO	Alberto Carvalho	10-8-24
Polly Carvalho	Polly Carvalho	
Theresa Anne	Theresa Anne	10/9/24
CLINT SMITH	Clint Smith	10/9/24
Andre Ayoto	Andre Ayoto	10/9/24
Scott Atong	Scott Atong	10/9/24
Keoni Keaunui	Keoni Keaunui	10-9-24
scott Lima	Scott Lima	10-9-24
Lorie Nakamura	Lorie Nakamura	10/9/24
doobey Koechu	Doobey Koechu	10/9/24
Jason Kaehu-Ledward	Jason Kaehu-Ledward	10/9/24
Dan Habel	Dan Habel	10/09/24
Shellie Habel	Shellie Habel	10/09/24
Lauren Jaramillo	Lauren Jaramillo	10/09/24
Jake Aitaro	Jake Aitaro	10/09/24
Satoshi Mitsuda	Satoshi Mitsuda	10/09/24
Haruka Iwata	Haruka Iwata	10/09/24
Lacey Piency	Lacey Piency	10/09/24

October 8, 2024

Name	Signature	Date
Yomna Campbell		10/8/24
Makana Alexander		10/8/24
Hekai Reeves		10/8/24
Scott Fong Sr		10/8/24
Scott Fong Jr.		10/8/24
Lauren Graham		10/8/24
Erik Rutka		10/8/24
Garrett Carson		10/8/24
Lauren Carson		
MICAH COLBY		10/9/24
Camron Church		10/9/24
Devon Turch		10/9/24
KEOLA MAYES, RN		10/9/24
DAVID DIP MATU		10/9/24
Laura Teramoto		10.9.24
Stacy DiPilato	Stacy DiPilato	10-9-24
Trace Harrington	Trace Harrington	10-9-24
Lisa Harrington	Lisa Harrington	10-9-24
Ernest Fratelli	Ernest Fratelli	10-9-24
Hoku Alexander	Hoku Alexander	10-9-24
Faith Burns	Faith Burns	10.9.24
Rob Burns	Robert Burns	10/9-24
Steve Maurer		10/9/24

October 8, 2024

Name	Signature	Date
Emmett Copp.		10/9/24
Freddy Sole		10/9/24
BLANE HISAO		10/9/24
JAY DACALID		10/9/24
CHANE HANAWAHI		10/9/24
Jason Maene		10/9/24
Jarvis Hamel		10/9/24
Fernando Herrera		10/9/2024
JAY FAUROT		10/9/2024
MICAH KALUNA		10/9/2024
MARC ZANDERIGO		10/9/2004
Keone Thomas		10/09/2024
Samuel W. Sotley		10/09/2024
PISA IGA		10/9/24
ROBERT TRAYA		10/9/2024
Gregory Tabieros		10/9/2024
Gregg Stueber		10/9/2024
Robin Stueber		10/9/24



October 9, 2024

Via email

Department of Land and Natural Resources
Division of Aquatic Resources (“DAR”)
1151 Punchbowl Street, Room 330
Honolulu, Hawaii 96813
DAR.Testimony@hawaii.gov

Re: Public Comment from Hawaii Kai Marina Community Association
Proposed Hawaii Administrative Rules (“HAR”), Chapter 13-48.5
“Maunalua Bay Fisheries Management Area, O’ahu”

Dear DAR and BLNR,

This letter is being submitted to the Department of Land and Natural Resources (“DLNR”), Division of Aquatic Resources (“DAR”) on behalf of the Hawaii Kai Marina Community Association (“HKMCA” “Association” or “Marina”). HKMCA is a non-profit organization which owns and operates the Hawaii Kai Marina, and consists of approximately 2,400 homes surrounding the Marina along with the three major shopping centers known as Hawaii Kai Towne Center, Hawaii Kai Shopping Center, and Koko Marina Center. There are approximately 7,000 individuals residing within Association homes. There are approximately 1,600 vessels registered by Association members with the Marina.

For the past seven (7) years, HKMCA, through members of its Board of Directors and other Association members, has attended numerous meetings regarding the potential creation of a Fisheries Management Area (“FMA”) within Maunalua Bay. The issue of whether to create an FMA has been dormant from the Marina’s perspective since August of 2019 when an email was circulated asking the DLNR to initiate a scoping process. HKMCA has been involved in no meetings since that time and was largely surprised by DAR’s announcement that a public hearing would be held to review the proposed adoption of HAR Chapter 13-48.5 on October 2, 2024.

For many years, HKMCA has stressed the importance of transparency and community stakeholder involvement in the creation of statutes and regulations that affect the use of Maunalua Bay. HKMCA’s stance on making certain that all stakeholders have knowledge of what is being proposed and the opportunity to participate in meetings and hearings has been present and well documented as to NOAA’s proposed expansion of the National Humpback Whale Sanctuary, the Maunalua Bay Recreation Advisory Committee (“M-RAC”) process, and

other initiatives. The recent public notice on this matter and communications from those organizations pushing for the creation of an FMA in Maunalua Bay does not reflect the ideology of making certain all stakeholders are informed and participate in the process. After a hiatus of multiple years, suddenly DAR, Malama Maunalua, Conservation International, and HFACT are fast-tracking the creation of the proposed FMA. With the Board of Land and Natural Resources (“BLNR”) set to vote on final approval of this measure in December this year, HKMCA’s Board of Directors is left wondering what has occurred during the past years of relative silence.

Without clear public participation, including all stakeholders, maintaining the *status quo* is the only fair and reasonable option.

During the October 2, 2024 public hearing, a representative from Malama Maunalua stated there had been over 200 meetings regarding the potential creation of this FMA. Where and when did these meetings occur? How many people attended? Who ran the meetings? What meeting minutes were made public? What public notices were issued? What attempts to communicate with stakeholders were there? Regardless of the contents of the proposed creation of HAR 13-48.5, the public has not been adequately consulted and has not had the time or opportunity to engage in the process.

As to the contents of HAR 13-48.5, it is clear that this regulation is aimed at creating a framework for future regulations, and not just for the two (2) Prohibited Activities listed under §13-48.5-5. Prior discussions regarding the creation of an FMA have included prohibitions on netting, trapping, and species-specific regulation. Is the current intent to set up a framework defining the boundaries of the FMA, then later fast-tracking “adaptive” decision-making to include other prohibitions? If that is the case, then what are the future potential regulations that are being considered?

The outlined “purpose” of adopting this new HAR chapter is stated in part as being to, “Develop and implement an **inclusive, transparent, adaptive stakeholder-endorsed** and science-based decision-making process that lends to long-term sustainable fishing within Maunalua Bay.” These words ring hollow given how the process has recently played out. Review of the Maunalua Bay Fishery Management Area Management Plan illustrates this clearly, particularly as to the proposed “Advisory Panel” which would be “a recognized communication link” between the public and the government. As can be seen on page 11 of the Management Plan, the Advisory Panel would include only eight (8) positions. **Of these positions, five (5) would be nominated by special interest groups including Malama Maunalua, Conservation International, and HFACT.** Notwithstanding that these groups do good work in many areas, they do not represent the stakeholders of Maunalua Bay.

If any Advisory Panel is formed, it should include positions nominated by HKMCA, which again has 2,400 homes, 7,000 members, and 1,600 vessels registered and in use in Maunalua Bay. An Advisory Panel should also include nominations from community members and community groups. The proposed composition of the Advisory Panel is concerning, as it

puts groups in charge of communicating with the public who, (i) have failed to engage all stakeholders adequately thus far, and (ii) who have conflicts of interest given they will benefit from dictating the regulatory framework. The fact that Malama Maunalua hosted and presented the proposed regulations during the October 2nd meeting, *as opposed to DAR itself*, is telling as to the forces driving the creation of an FMA and related regulations.

Finally, HKMCA must question the DLNR as to why it seeks to create more regulations when it does not enforce the regulations currently in place. For example, on October 23, 2023, HKMCA submitted a letter to the DLNR and BLNR regarding numerous commercial vessels operating without liability insurance and without applying for, or obtaining Commercial Use Permits as required by HAR § 13-256-3. This letter outlined serious violations, included relevant evidence, and was sent after HKMCA discovered the commercial operator submitted doctored Certificates of Insurance for the years 2020 through 2023. This letter specifically requested the BLNR review the matter and to notify the Marina when the item was added to the BLNR's agenda. *That never occurred, and HKMCA received no response from the BLNR.* Instead, the individual owning the offending vessels and entities managed to sell the assets off with zero recourse or penalty from DLNR. With such blatant violation, and no enforcement efforts whatsoever, what is the purpose of putting more regulations on the books?

As to the immediate measure, because public stakeholders have not been adequately consulted, and because the proposed management strategy will be driven by conflicted special interest groups, HKMCA is unable to support the adoption of the new regulation and recommends the BLNR reject the proposed additions to the Hawaii Administrative Rules and maintain the *status quo*.

Sincerely,

Board of Directors

Hawaii Kai Marina Community Association



September 30, 2024

ATTN: Ms. Dawn Chang, Chairperson
Board of Land and Natural Resources (BLNR)
Department of Land and Natural Resources (DLNR)
Submitted via Email at blnr.testimony@hawaii.gov

SUBJECT: Testimony in Support of Proposed Adoption of Hawai'i Administrative Rules, Chp. 13-48.5, "Maunalua Bay Fisheries Management Area, O'ahu"
Public Hearing, October 2, 2024, 5:30 p.m. - 8:30 p.m., Kalani High School

Aloha mai e Chairperson Chang,

Kua'āina Ulu 'Auamo (KUA) **strongly supports** approval of the proposed adoption for new rules regarding the Maunalua Bay Fisheries Management Area (FMA).

[Kua'āina Ulu 'Auamo](#) (KUA) means "grassroots growing through shared responsibility," and we serve as a facilitator, consultant, trainer, liaison, and tool-builder for grassroots community stewardship efforts. We work to increase our communities' resiliency, adaptation, and transformation through community-based biocultural 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 nu'ukia (vision) is to once again experience what our kūpuna (ancestors) referred to as 'āina momona – abundant and healthy ecological systems that sustain our communities' resilience and well-being.**

As your Division of Aquatic Resources' (DAR's) [briefing submittal](#) for this proposed FMA (May 10, 2024 BLNR meeting) makes clear, Maunalua Bay and surrounding areas were once 'āina momona – thriving ecosystems full of abundant life – filling the bellies of all that cared for and enjoyed the riches, with the necessary structure, enforcement, and harmony provided through the Konohiki system of resource management and protection. Understandably with all the political changes and developments on nearby lands, and the destruction of the loko i'a, it is no wonder why "the quality and quantity of the living marine resources of Maunalua Bay has declined significantly over the past 100 years." Indeed, surveys from over ten years ago found that the total fish biomass is significantly lower than other comparable sites on O'ahu, concluding that "**Maunalua Bay reef assemblage is in poor condition and is among the most adversely impacted in the entire state.**"

Mālama Maunalua is a cherished member of the E Alu Pū network, for which KUA was founded to organize and facilitate. They annually participate in network gatherings and events, and provide leadership on issues dealing with cleaning and managing our shorelines, and the interdependence with mauka activities. Mālama Maunalua is also a member of E Alu Pū's



Lawai'a Pono Hui, a smaller community-fishery focused working group that discusses and shares successes, challenges, ideas, and policies on how to better manage our fisheries by working with different communities and our government.

The historical-cultural significance of Maunalua Bay (aka West Waimānalo) and its surrounding communities is well-known. We applaud DAR staff and the diverse community drivers that worked for years to push this FMA forward. Indeed, some KUA team members attended meetings and supported these efforts in the early 2000s at the inception of some of the discussions that bring us to this precipice today. KUA works closely with some of the mālama 'āina practitioners in this area. This includes Mālama Maunalua and the Maunalua Fishpond Heritage Center, and those connected with [Kalauha'īha'i Loko I'a](#), which we sadly hear still awaits approval of its state lease. Bureaucratic barriers like this stand in the way of community efforts to partner with the state and properly mālama this sacred place. With increased interest in the Maunalua area, we hope more support for Kalauha'īha'i will take shape as well, especially after reading the briefing submittal which contained the heartbreaking history of the destruction of Keahupuaomaunalua ("shrine for baby mullet") also known as Kuapā Loko I'a, once the largest fishpond on O'ahu.

With this information in mind, **we strongly support the purpose of these proposed rules to increase the 'āina momona of Maunalua Bay's nearshore fisheries over time to allow for sustainable fishing practices and protection of important marine life for generations to love and enjoy.** We like the use of the Four Pillars (place-based planning, pono practices, monitoring, and protection & restoration) to analyze and plan for the FMA next steps. We hope this illustrates that the Holomua Guide really can be utilized to better integrate community driven collaboration, management, and informed decision-making within DLNR/DAR going forward. We also greatly appreciate the inclusion of KUA as a nominating entity for the Advisory Panel's Cultural Practitioner. **We recognize the forward-thinking approach of this draft FMA, and think it is a great start toward further community engagement and the development of more adaptive management practices and protections for Maunalua Bay.** This effort could serve as a beautiful example and inspiration for other communities statewide.

Mahalo for the opportunity to share our support.

"E kuahui like i ka hana."

Let everybody pitch in and work together.

'O ke aloha 'āina nō no nā kau ā kau, mau ā mau,

Kevin K.J. Chang
Executive Director

Olan Leimomi Fisher
Kua'āina Advocate

Alex Connelly
E Alu Pū Coordinator

From: Doug Harper <dkharper@malamamaunalua.org>
Sent: Friday, October 4, 2024 1:40 PM
To: DLNR.AR.Rulemaking <dar.rulemaking@hawaii.gov>
Subject: [EXTERNAL] Maunalua Bay FMA Public Comment

Aloha,

I am writing to express Malama Maunalua's (MM) support for the proposed FMA. We have been a part of the process from day 1, and it has been a model of inclusivity and transparency. With over 200 meetings with stakeholders of all stripes, the process followed by the Maunalua Bay FMA hui is one that should be a model throughout the state.

Hawaii's resources are critical for the livelihood of Hawaii's residents. Fish in particular hold a special place in Hawaii's history, culture, recreational enjoyment, and food security. Unfortunately, in most of the state fish populations are down, and they are especially down in Maunalua Bay where fish populations are some of the lowest in the state. With the impending threat of climate change and further human interference, it's vital we take action now to better manage our resources for long term sustainability. This effort is a key step in that.

It is for these reasons I think the FMA should be approved. If you have any questions, please feel free to reach back out to me.

Mahalo.

--

Doug Harper
Executive Director
Malama Maunalua
P: (808)395-5050 x3
C: (808)285-7509



PACIFIC
ISLANDS
FISHERIES
GROUP

150 Hamakua Drive, PBN#430
Kailua, Hawaii 96734

October 9, 2024

Pacific Islands Fisheries Group
150 Hamakua Drive, PBN 743
Kailua, Hawaii 96734

State of Hawaii
Board of Land and Natural Resources
P.O. BOX 621
HONOLULU, HAWAII 96809
Email: DAR.Testimony@hawaii.gov

Re: PIFG Testimony in response to Public Hearing Notice For The Proposed Adoption Of Hawaii Administrative Rules Chapter 13-48.5, “Maunalua Bay Fisheries Management Area, O ahu”

Aloha Chairperson Chang and Board of Land and Natural Resources,

Thank you for the opportunity to provide comments on the proposal to establish the Maunalua Bay Fishery Management Area. We participated in the public hearing session held at Kalani High School Cafeteria on Wednesday evening, October 2, 2024, on behalf of the Pacific Islands Fisheries Group.

Several community participants provided excellent comments on the proposed action to be considered by the Board of Land and Natural Resources. It was noted that dozens of planning meetings were held with the community in the development of the plan. However as the President of PIFG and members of our constituents, we were unaware of these meetings taking place on this effort.

PIFG has been working with the Maunalua Bay fishing community for years, addressing fishery management issues and ecosystem impacts on fish populations. PIFG published Maunalua Bay - Reclaiming Our Failed Kuleana (<https://www.fishtoday.org/fishing-heritage>) and a companion video (<https://vimeo.com/906146696/7c82cf81a9?share=copy>) in July 2023. We encourage you to review the report as it features the insight and knowledge gleaned from numerous interviews with generations of fishermen and traditional practitioners from the Maunalua Bay area. We gave several copies of that report to aquatic biologist Bryan Ishida that night.

Please consider the following comments, recommendations and questions on the draft HAR amendment:

1. Section 13-48.5-5(2): If a regulation to ban spearfishing at night is established to protect sleeping fish, the prohibition period should extend from sunset to sunrise daily – not from 6 p.m to 6 a.m. as proposed. As stated at the meeting, daylight hours change significantly in different times of the year.

2. The role, purpose and authority of the Advisory Panel is absent in the proposed revision of Chapter 13-48.5 Hawaii Administrative Rules (HAR), entitled “Maunalua Bay Fisheries Management Area, Oahu” Having the HAR remain silent on the unformed Maunalua Bay Fisheries Management Area’s Advisory Panel (MB FMA AP) creates great uncertainty on if and how the MB FMA AP recommendations, guidance and input will be considered in DAR’s rule making process (Chapter 91).

3. Proposed HAR amendment clearly states its purpose is to ”create long term sustainable FISHING within MB; implement FISHERIES management actions that protect ecologically critical and socially important marine life while minimizing impacts to sustainable FISHING practices; develop and implement monitoring and data collection processes...that contribute to FISHERIES management decision making; and develop and implement inclusive, transparent,sustainable FISHING with Maunalua Bay.” If fishing is the only activity the HAR amendment is to regulate, the MB FMA AP must include only community sectors and representatives that would be directly affected by changes in fishing regulations.

The following comments are regarding the draft MB FMA Advisory Panel:

4. The nomination and selection process for Advisory Panel members is unclear in the MB FMA Management Plan. Determining which communities will be represented on the Advisory Panel is critical to ensure the fair representation of the greater Maunalua Bay ocean user community, and more specifically, the fishing community. Some questions to clarified include:

a. How and who will determine the type of representatives to be included on the Advisory Panel be determined and who will make that determination?

b. How will persons or entities be nominated/solicited and selected for consideration to be appointed to the Advisory Panel?

c. Scientists (Governmental and Non-Governmental) should not be included on the AP. Scientists should provide technical information for the AP to use in its planning and monitoring processes. If Government scientists include staff from DAR, then technically DAR could be making regulatory recommendations to itself.

d. Naming Malama Maunalua, Conservation International, HFACT and KUA as the only entities to nominate AP representatives is inherently biased and limited. These organizations were the primary authors of the MB FMA Management Plan. The nomination process must be more transparent and inclusive, and encourage public solicitation through community publications, social media and other media forms.

e. Since this only affects fishing regulations and management, only community sectors or entities that will be impacted by changes in fishing regulations should be invited to sit as AP members. Public comments that might be asked to include all ocean user groups a seat at the table. However, unless proposed regulations will be considered and implemented to govern non-fishing activities (e.g. thrill craft, canoe, dive tours, etc.), membership on the AP should be limited to fishing sectors.

5. Presenters referred to the use of adaptive management in the MB FMA Management Plan which calls for the AP to review and annually generate a report, with a 5-year report going to DAR. The AP should instead generate annual reports that are provided to the DLNR board for the record.

The following comments are regarding the MB FMA Management Plan:

6. Objective 1.5 calls for the use of adaptive management. Appendix B refers to HRS 183D-3 which allows the implementation of rule modification by the Land Board based on AP recommendations WITHOUT public scoping sessions. Although this is linked to data collection and use of empirical

knowledge, this could easily be abused to bypass public input in regulatory decision making. A public scoping session would provide transparency in this process.

7. Goal 5; Objective 5.1 calls for establishment of the collection of non-commercial fisheries data. HDAR has been working with the Federal National Marine Fisheries Service for decades collecting fisheries data through Hawaii Marine Recreational Fisheries Survey, also known as HMRFS or MRIP. Whatever data collection system/program the AP develops and implements, it MUST be consistent and compatible with the data collection programs already established through State and Federal fisheries agencies.

Finally, we commend the Plan for having a clear vision with stated goals and objectives. We understand the Plan seeks to establish a data collection and monitoring program, a process through which information can be reviewed and evaluated, metrics through which progress can be assessed, education and outreach plan to inform the community, building of partnerships and networks, and various means to improve compliance.

All of these elements are critical to informed decision-making and building of an effective resource management regime. It is from the outcome of this process that sound management strategies can be identified, analyzed and implemented. Such a process can have lasting conservation that benefits the resource and, more importantly, the communities that depend upon those resources. For this reason, we recommend the draft HAR amendment regarding §13-48.5-5 Prohibited Activities NOT be included at this time.

Including fishing prohibitions in the initial establishment of the MB FMA program is premature for the following reasons:

1. Regulations that will impact community activities should be identified, developed and promulgated through the process being established in the proposed MB FMA.

2. The Assessment of fish in Maunalua Bay, Oahu published in 2014 by The Nature Conservancy, referenced in Appendix E, is one grey literature report comparing relative observed biomass across other areas across the state, with many being MLCDs. If prohibitive regulations are to be implemented for specific species, it should be based upon peer-reviewed stock assessments prepared for that specific species.

3. The TNC surveys were conducted during daylight hours. The species for which prohibitions are being proposed (7-11 crabs, slipper and spiny lobsters, horned helmet and triton's trumpet) are all nocturnal species. Also, paired swimming transect surveys are not effective methods for assessing cryptic and nocturnal species.

4. In comparison, in 2014 a population biomass study of reef fish was done in Maunalua Bay over a one year period with video sampling conducted monthly. The two photos shown in the attachment below demonstrate the influence of divers on the biomass of fish with and without a diver present.

- a. Photo A. 360-degree Photo of survey reef area with diver present. Keep in mind that this is a full 360-degree view of the area around the camera and no fish are observed in any direction.

- b. Photo B. 360-degree photo of the same survey reef area 12 minutes after the diver left; diverse schools of taape, weke; large jacks; opelu kala; mamo; mu; moana; and many other reef fish species re-appeared.

The TNC study used transect swimmers working at depths from 10 to 50 feet in a line 15 feet wide. They looked specifically for target species including parrotfish, goatfish, jacks, sharks, uku, surgeonfish, menpachi, aweoweo, and some large wrasses. It should be noted that menpachi and aweoweo hide in holes



Photo A. 360-degree Photo of survey reef area with diver present. Keep in mind that this is a full 360-degree view of the area around the camera and no fish are observed in any direction.

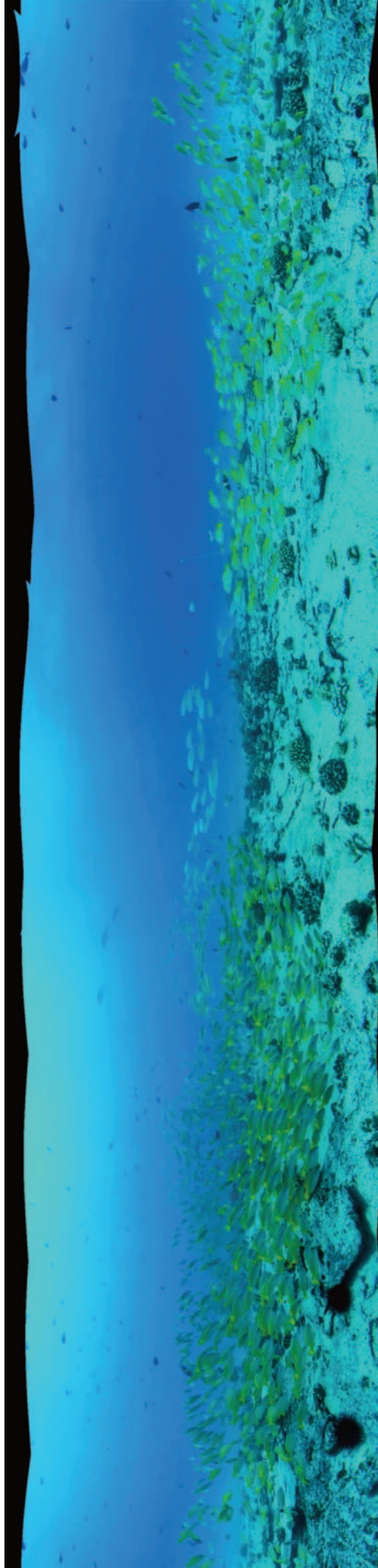


Photo B. 360-degree photo of the same survey reef area 12 minutes after the diver left; diverse schools of taape, weke; large schools of opelu kala; mamu; mu; moana; and many other reef fish species re-appeared.

during the day and cannot be observed without looking into the holes, something that transect swimmers don't do.

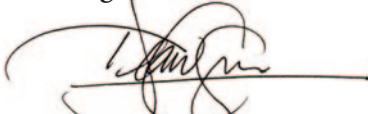
The study excluded taape, toau, roi, akule, tako, mullet, oio, kole and a multitude of other fish that aren't usually sought for consumption. The depths studied miss much of what is often found in water just a foot deep, and many of the other species that are found from 60 to 90 feet deep such as tako and nabeta. Sandy habitats, which weren't part of the transect study, is home to nabeta and Kona crab as well as certain types of weke.

The exclusion of taape is especially important since that particular species has overwhelmed the habitat that used to be occupied by a variety of goatfish such as weke, moana and kumu and displaced much of those desired species. They're also known to be voracious feeders, consuming anything on the reef that they're able to swallow.

TNC's surveys were also done just once a year and not all in the same month. The 2014 video study was conducted on a monthly basis for a year with changes in the proportions of species observed over time. There's much to be considered if stock assessments are to be used to determine regulations. Most importantly, those assessments should be designed with a firm understanding of species-specific behavior, habitat preference, and life history.

Once again we would like to thank you for the opportunity to provide comments on the draft plan and HAR amendments to establish the Maunalua Bay FMA. Please let us know if you have any comments or questions regarding any of the information provided. Mahalo!

Regards,

A handwritten signature in black ink, appearing to read 'Dean Sensui', written over a horizontal line.

Dean Sensui
President, PIFG

**Testimony of The Nature Conservancy
In Support of the adoption of HAR, Title 13, Chp. 48.5,
“Maunalua Bay Fisheries Management Area, O‘ahu” (Maunalua Bay FMA)”**

**Department of Land and Natural Resources, Division of Aquatic Resources Public Hearing
October 2, 2024, 6:30 PM
Kalani High School Cafeteria 4680 Kalaniana'ole Highway, Honolulu, Hawai'i 96821**

Aloha representatives of the Division of Aquatic Resources:

The Nature Conservancy Hawai'i and Palmyra (TNC) strongly supports the adoption of HAR Title 13, Chp. 48.5 of the Maunalua Bay Fisheries Management Area (FMA).

Guided by science and our mission to conserve the lands and waters on which all life depends, TNC works with government and academic partners and more than 30 communities across the state to restore and protect the coastal habitats that support Hawaii's culture, fisheries, economy, and way of life. Our past efforts to support the conservation of Maunalua Bay include leading the successful federally-funded, multi-year Great Huki to remove alien algae from reef flats, working with community organization Mālama Maunalua to develop their first conservation action plan, and conducting annual coral reef and fish surveys from 2009–2012.

Those surveys concluded that the “Maunalua Bay reef assemblage is in poor condition and is among the most adversely impacted in the entire state”. Maunalua Bay and the adjacent Kuapā Fishpond have been severely affected by land conversion and development, pollution, as well as the overfishing and illegal fishing that this proposal aims to address. The community-based efforts in Maunalua Bay, including those of Mālama Maunalua, fishers, community and conservation organizations, and others, seek to promote sustainable fisheries management, undertake restoration and stewardship efforts, mitigate negative impacts of land-based sources of pollution, and support functioning ahupua'a systems.

The proposed FMA is an example and embodiment of those efforts. We support the purpose of this proposed FMA to create long-term sustainable fishing within Maunalua Bay, develop and implement meaningful community-engaged monitoring, and advance an adaptive decision-making process for the management of the FMA.

We ask that the Board support and approve the adoption of HAR Title 13, Chp. 48.5 of rulemaking for Maunalua Bay FMA to increase the health and resilience of its reefs and communities. Mahalo for your support and stewardship of Hawai'i's ocean resources.

BOARD OF TRUSTEES

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Founders: Samuel A. Cooke Herbert C. Cornuelle

The Nature Conservancy, Hawai'i and Palmyra
October 1, 2024
Page 2

Sincerely,

A handwritten signature in black ink, appearing to read 'Alohi' followed by a stylized flourish.

‘Alohi Nakachi
O‘ahu Marine Program Manager
The Nature Conservancy Hawai‘i and Palmyra
923 Nu‘uanu Avenue
Honolulu, HI 96817

From: Kanela Kamahalohanuilai <kkamaha@hawaii.edu>

Sent: Wednesday, October 9, 2024 6:57 AM

To: DLNR.AR.Rulemaking <dar.rulemaking@hawaii.gov>

Subject: [EXTERNAL] Testimony in Opposition to the Maunalua Bay Fisheries Management Area Proposal

Aloha,

My name is Kanela Kamahalohanuilai. I am an advocate, constituent, mother, native Hawaiian, and Kanaka Maoli, born and raised on the island of Oahu, with ancestral ties to the land and sea. I am writing this testimony in opposition to the Maunalua Bay Fisheries Management Area Proposal.

The following points outline my concerns:

1. Consultation with OHA: Hawai'i Revised Statutes (HRS) Section 10-13.5 mandates that all state agencies "shall consult with the Office of Hawaiian Affairs (OHA)" on matters that may impact the welfare and rights of Native Hawaiians. It has come to my attention that the planning for these new fishery boundaries has not adhered to this requirement, undermining my rights and my family's rights.
2. Lack of Proper Notice: The public notice regarding this proposal has not been adequately accessible online, hindering my awareness and participation in the conversation. This lack of transparency violates The relevant statute is HRS § 1-28, which mandates that state agencies provide public notice of certain actions and proposals. This includes the requirement to publish notices in a newspaper of general circulation in the affected area to ensure public awareness and participation. Since access to the newspaper online and hard copy was not made access for myself the lack of proper has impacted me greatly. HRS § 92-7.5 addresses the requirement for public notice and access to information. It ensures that agencies provide adequate notice of meetings and decisions to the public. If a public notice is considered inaccessible, individuals may invoke provisions under HRS § 92-1.5, which emphasizes transparency and public participation in government processes. Additionally, HRS § 91-9 requires agencies to adopt rules that promote public awareness and accessibility regarding their activities. These statutes collectively protect public rights to information and participation.
3. Impact on Native Hawaiian Rights: The failure to consult with OHA deprives the Native Hawaiian community of the opportunity to voice concerns on issues that critically affect our cultural practices and livelihoods. This oversight risks irreparable harm to our relationship with the marine ecosystems essential to our traditions.
4. Request for Transparency: I urge the DLNR, BLNR, and DAR also, any associated agencies to halt all planning related to the new fishery boundaries until a full and documented consultation with OHA occurs, as mandated by law. Additionally, I request a detailed report outlining the planning process, the anticipated impacts on Native Hawaiian rights and practices, and evidence of communication with OHA.
5. Community Engagement: It is essential for the State Departments to engage with community members, especially those in the Hawaii Kai, Waimanalo, Kahala, and Diamond Head areas etc. I have

reviewed neighborhood board meeting minutes and agendas, and I see no discussions related to this critical matter. Genuine dialogue with our community is vital.

In closing, I implore the State Departments to uphold their responsibility to the people they represent. Failure to do so may necessitate further action from myself and other alike.

Mahalo,

Kanela K.

From: Jack Kittinger <jkittinger@gmail.com>

Sent: Tuesday, October 8, 2024 3:14 PM

To: DLNR.AR.Rulemaking <dar.rulemaking@hawaii.gov>

Subject: [EXTERNAL] Testimony in Support of the Maunalua Bay Fishery Management Area

Dear DAR,

I am writing in support of the proposed Fishery Management Area for Maunalua Bay. A resident of Maunalua (Niu Valley) for 15 years, I am in strong support of additional management measures that will support the health of the Bay and the many benefits it provides to our community.

I am a conservationist and scientist and conducted research, with Malama Maunalua and other community groups, more than 10 years ago. The research interviewed fishers with long-time history of fishing in Maunalua. I attach a high level overview of the results, which show astonishing declines in some of the most important reef food fish in Maunalua.

Harmful fishing practices such as indiscriminate night-time spearfishing are important to ban and other species, such as the limitation on harvesting certain crustaceans included in the FMA package are a good step forward. More importantly, I hope the FMA and the advisory council that it creates will provide the building blocks to address other important issues and threats, including land-based pollution, invasive species and other threats that continue to result in decline in the quality of the bay's habitats and subsequently its biodiversity, benefits to people, and overall resilience.

Thank you for the opportunity to provide supporting testimony.

Jack Kittinger

Dear Department of Aquatic Resources,

I am writing to formally express my concerns regarding the proposed restrictions on night diving as part of the recent regulatory measures aimed at addressing overfishing in our waters. While I fully support the prohibition on the take or possession of 'alakuma ("seven-eleven crab"), horned helmet, Triton's trumpet, ula ("spiny lobster"), and ula papapa ("slipper lobster"), I believe that the specific targeting of night diving is both unwarranted and potentially harmful to the local community of recreational and subsistence fishermen.

Night diving is not merely a recreational activity; for many fishermen, it is a vital means of sustaining their families and preserving their way of life. During the recent hearing, I listened to the department's presentation and found it difficult to comprehend why night diving is being singled out as a solution to the issue of overfishing, especially given the myriad of fishing practices that contribute to this problem.

As a lifelong fisherman and boater who has grown up around Maunalua Bay, I have witnessed firsthand the impact of commercial fishing methods such as seine and draw net fishing, which continue to be employed in our waters. These methods often lead to significant bycatch, even when operated by the most diligent fishers. In contrast, diving is a highly selective fishing technique that results in little to no bycatch as each individual fish is targeted and speared.

I urge the agency to reconsider the rationale behind the restrictions on night diving and to explore solutions that address overfishing without disproportionately impacting recreational fishermen. Collaborative efforts that encompass all fishing practices would be far more effective in ensuring the sustainability of our marine resources.

Thank you for considering my comments.

Kekoa D. Nakasone

998 Maniniholo St

Honolulu, HI 96825

From: Kahi Pacarro <kahi@parley.tv>
Sent: Wednesday, October 9, 2024 4:56 PM
To: DLNR.AR.Rulemaking <dar.rulemaking@hawaii.gov>
Subject: [EXTERNAL] Testimony

After reviewing the proposal I had this to add:

Last year while I was surfing and snorkeling out in Maunalua Bay I witnessed a duo (Saito Brothers) on the Chelsea S utilizing a gill net and scuba tank to encircle and capture massive quantities of reef fish. I found this technique to be excessive and potentially illegal. Upon returning back to shore I contacted DLNR and an officer let me know that this practice is actually legal. But they would love for it not to be legal. I asked what I can do as a concerned citizen? He said that the statute needs to be changed to prohibit this technique of fishing.

I've spoken to our elected leadership, and they are happy to support rule-making to regulate this practice. I hope you can add this specific regulation to the proposed rules.

Mahalo,
K

From: Wanna Fish <fishingready@gmail.com>

Sent: Thursday, October 3, 2024 11:38 AM

To: DLNR.AR.Rulemaking <dar.rulemaking@hawaii.gov>

Subject: [EXTERNAL] PROPOSED ADOPTION OF HAWAII ADMINISTRATIVE RULES CHAPTER 13-48.5, "MAUNALUA BAY FISHERIES MANAGEMENT AREA, O'AHU"

DLNR/DAR,

This email is to support the establishment of the proposed Fisheries Management Area (FMA) in Maunalua Bay (MB).

The establishment of the FMA and associated rules as proposed will help improve fisheries management within the area and lend to implementation of sustainable fishing practices therein. The 10 year sunset clause ensures review of the impact of the initiative(s).

Sincerely,
Ronald Tam

From: Wesley Johe <wesley.tobias@gmail.com>
Sent: Tuesday, October 8, 2024 8:47 PM
To: DLNR.AR.Rulemaking <dar.rulemaking@hawaii.gov>
Subject: [EXTERNAL] Maunalua Bay FMA

I am a local scientist, diver, spearo, and have lived in Hawaii most of my life. I get so angry when I see these people taking stuff out of season and keeping under sized catches. Especially in Maunalua Bay being right by my current residence on Oahu. I understand the need to proactively manage our fisheries and generally support these types of measures.

The problem in recent years is that the only ones you are affecting with these new laws are local law abiding citizens that already follow regulations. The people taking illegal catches are going to continue to do this regardless of the laws you make.

We need more enforcement of the laws we already have. Not more laws. It doesn't make a difference if you make a bunch of new laws and still have no one to enforce them. I know of one person on Oahu that works for the state and goes around checking people's catches. How is that level of enforcement sufficient for the protection of our fisheries?

Our fisheries are one of the most important natural resources we have. Isn't it time we give it the respect, protection, and funding it deserves? Hire more officers and create a division to specifically patrol beaches, marinas, harbors, and open water to enforce state fishing regulations!

If necessary start charging out of state residents for a fishing license! Start charging commercial sport/charter fishing boats for a fishing license! Especially if they're owned by an out of state owner! Add a fee to tourists entering the state that would fund conservation officers enforcing fishing regulations only! Heavily fine these violators. The current fines are a slap on the wrist!

Thank you for your time and consideration. I hope that in the future DLNR/DAR will invest resources to hire conservation officers that specifically enforce state fishing regulation.

Mahalo,

-Wesley Tobias

HAR 13-48.5

Submitted By: Haley Yoshioka

Organization: Individual

Testifier Position: Support with Concerns

Testify: Written Testimony Only

Aloha Chair Chang and Members of the Department of Land and Natural Resources,
Division of Aquatic Resources:

My name is Haley Yoshioka, and I am currently a J.D. Candidate at the University of Hawaii at Manoa William S. Richardson School of Law. I am testifying in **support** of the proposed adoption of Hawaii Administrative Rules Chapter 13-48.5, which seeks to establish the Maunalua Bay Fisheries Management Area on O‘ahu.

I was born and raised on O‘ahu, growing up on its southeast shores. A significant part of my life and upbringing has revolved around the ocean, particularly the waters of Maunalua Bay. My family has a long history of fishing and diving in Southshore waters for multiple generations. I hope that one day, my own children will have the opportunity to fish and dive in the same reefs and waters that my family has enjoyed for so many years.

Maunalua Bay is a vital ecological and cultural resource that provides sustenance, recreation, and livelihood for many in our community, including my family. The adoption of this rule will contribute positively to ensuring that future generations can continue to benefit from the bay’s rich biodiversity. As someone who cares deeply about the sustainable management of our marine resources, I believe these regulations represent a balanced and thoughtful approach to conserving Maunalua Bay’s ecosystem.

The prohibition of taking or possessing species such as ‘alakuma, horned helmet, Triton’s trumpet, ula, and ula pāpapa is necessary to protect these ecologically important species, which have faced significant pressure from overharvesting. Preserving these species is crucial to the long-term stability of the bay’s marine life.

While I support the proposed rules, I raise **concerns** about the restrictions on spearfishing during the nighttime hours of 6:00 p.m. and 6:00 a.m. While this restriction may reduce the risk of unsustainable harvesting practices, a complete prohibition on night diving raises concerns regarding access, cultural practices, and practicality.

Many local divers work regular daytime jobs and may only have the opportunity to dive in the early morning or at night. By prohibiting diving during these hours, these individuals lose access to an activity that is a vital part of their lifestyle, and for some, a means for food sustenance. In many cases, night diving is a practice passed down through generations, and a complete prohibition could disrupt and affect individuals’ connection to the ocean, especially in a place like Hawai‘i, where fishing practices are deeply rooted. Additionally,

banning night diving altogether could unfairly penalize responsible, law-abiding divers who have practiced sustainable night diving for years without contributing to overfishing. Lastly, the timing of the prohibition may also limit subsistence fishing opportunities, as some species are easier to catch at night and provide an important source of food for local divers and their families.

In closing, I respectfully encourage the Department of Land and Natural Resources to adopt the proposed rule, while considering concerns related to the prohibition on night diving. The creation of the Maunalua Bay Fisheries Management Area is an important step toward the conservation of our marine environment and will set a precedent for future fishing management efforts throughout the state.

Mahalo for the opportunity to testify in support of this important initiative. I look forward to seeing the positive impacts these regulations could have on both the ecosystem and the community that depends on it.

Sincerely,
Haley Yoshioka

EXHIBIT 3
MAUNALUA BAY FISHERIES MANAGEMENT
AREA, O'AHU
HAWAII ADMINISTRATIVE RULES 13-48.5

PROPOSED HAR CHAPTER 13-48.5
REDLINE – REVISED FROM INITIAL DRAFT

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-48.5
Hawaii Administrative Rules

(Date of adoption)

1. Chapter 13-48.5, Hawaii Administrative Rules, entitled "Maunalua Bay Fisheries Management Area, O'ahu" is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART II MARINE FISHERIES MANAGEMENT AREAS

CHAPTER 48.5

MAUNALUA BAY FISHERIES MANAGEMENT AREA, O'AHU

§13-48.5-1	Purpose
§13-48.5-2	Definitions
§13-48.5-3	Duration
§13-48.5-4	Boundaries
§13-48.5-5	Prohibited activities
§13-48.5-6	Penalty
§13-48.5-7	Severability

§13-48.5-1 Purpose. The purpose of this chapter regarding the Maunalua Bay Fisheries Management Area is to:

- (1) Create long-term sustainable fishing within Maunalua Bay;
- (2) Implement fisheries management actions that protect ecologically critical and socially important marine life while minimizing impacts to sustainable fishing practices;
- (3) Develop and implement monitoring and data collection processes that integrate western, indigenous, and citizen science (including empirical knowledge from Maunalua Bay users) to provide decision-makers with a diversity of accurate, abundant, and timely information that contributes to fisheries management decision-making; and
- (4) Develop and implement an inclusive, transparent, adaptive stakeholder-endorsed and science-based decision-making process that lends to long-term sustainable fishing within Maunalua Bay. [Eff]
(Auth: HRS §188-53) (Imp: HRS §188-53)

§13-48.5-2 Definitions. As used in this chapter, unless the context clearly indicates or is otherwise provided:

"`Alakuma" means any crab known as *Carpilius maculatus* or any recognized synonym. `Alakuma are also known as spotted reef crab, seven-eleven crab, blood spotted crab, dark-finger coral crab, and large spotted crab.

"Aquatic life" means any type or species of mammal, fish, amphibian, reptile, mollusk, crustacean, arthropod, invertebrate, coral, or other animal that inhabits the freshwater or marine environment and includes any part, product, egg, or offspring thereof; or freshwater or marine plants, including seeds, roots products, and other parts thereof.

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

"Diving equipment" means any gear commonly associated with the practice of diving, including but not limited to a mask, underwater breathing apparatus, or fins.

"Horned helmet" means any gastropod mollusk known as *Cassis cornuta* or any recognized synonym. Horned helmet are also known as yellow helmet shell and pū.

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

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

"Triton's trumpet" means any gastropod mollusk known as *Charonia tritonis* or any recognized synonym. Triton's trumpet are also known as giant triton and pū.

"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.

"Underwater breathing apparatus" means any apparatus that allows a person to breathe while his or her face is below the surface of the water, including but not limited to snorkels, SCUBA regulators, high

pressure cylinders, rebreathers, SNUBA, and hookah rigs. [Eff _____] (Auth: HRS §188-53) (Imp: HRS §188-53)

§13-48.5-3 Duration. These rules shall be effective until June 30, 2036, or until the effective date of new or amended rules implementing science-based, adaptive management measures as developed by the department in consultation with the Maunalua community and other interested parties, whichever occurs earlier. [Eff _____] (Auth: HRS §188-53) (Imp: HRS §188-53)

§13-48.5-4 Boundaries. (a) The Maunalua Bay Fisheries Management Area includes that portion of the southeastern coast of the island of O'ahu consisting of all state waters and submerged lands bounded by:

- (1) A straight line extending from the southern tip of Kawaihoa Point (Spitting Caves) at 21.25918°N, -157.70718°W westward to the Diamond Head buoy at approximately 21.24679°N, -157.81571°W;
- (2) A straight line extending from the Diamond Head buoy shoreward to the Diamond Head Lighthouse at 21.25523°N, -157.80967°W; and
- (3) A line drawn along the shoreline between the Diamond Head lighthouse and Kawaihoa Point.

The foregoing boundaries and reference points are shown on Exhibit A entitled "Map of the Maunalua Bay Fisheries Management Area, Oahu", dated June 24, 2020, located at the end of this chapter.

(b) For the purposes of this chapter, the shoreline shall be determined by the upper reaches of the wash of the waves on shore. Should there be a stream or river flowing into the ocean, the shoreline shall be determined by an imaginary straight line drawn between the upper reaches of the wash of the waves on either side of the stream or river. [Eff _____]

53)] (Auth: HRS §188-53) (Imp: HRS §188-

§13-48.5-5 Prohibited Activities. While within the Maunalua Bay Fishery Management Area, it is unlawful to:

- (1) Take or possess any specimen of the following species: 'alakuma, horned helmet, Triton's trumpet, ula, or ula pāpapa;
 - (2) ~~Between 6:00 p.m. and 6:00 a.m.~~ Between one-half hour after sunset to one-half hour before sunrise:
 - (A) Use or possess any spear while diving;
 - (B) Possess both diving equipment and a spear at the same time; or
 - (C) Possess both diving equipment and any specimen of speared aquatic life at the same time. [Eff]
- (Auth: HRS §188-53) (Imp: HRS §§187A-5, 188-53)

§13-48.5-6 Transit through Maunalua Bay FMA with restricted gear and species. Prohibited gear and restricted species as described in sections 13-48.5-5 may be possessed while onboard a vessel in active transit through the area, provided that no prohibited gear is in the water during the transit. Vessels that are adrift, anchored, or moored are not considered to be in active transit with the exception of vessels in line for the boat ramp and vessels actively loading and unloading at the wharf or on shore.

§13-48.5-7 Penalty. (a) Any person who violates any provision of this chapter or the terms and conditions of any permit issued as provided by this chapter, shall be subject to:

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

§13-48.5-8 Asset forfeiture. Any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of this chapter, may be seized and subject to forfeiture as provided by section 199-7 and chapter 712A, HRS. [Eff _____] (Auth: HRS §190-3) (Imp: HRS §199-7, ch. 712A)

§13-48.5-9 Severability. If any provision of this chapter, or the application thereof, to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable." [Eff _____] (Auth: HRS §188-53) (Imp: HRS §§1-23, 188-53)

2. The adoption of chapter 13-48.5, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

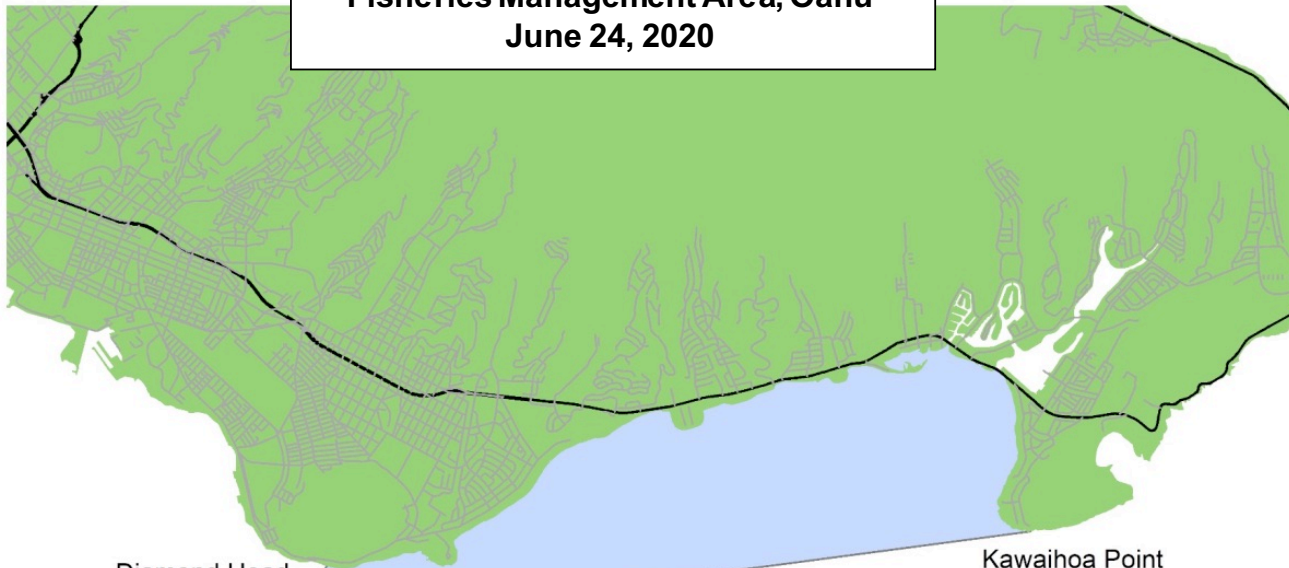
I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ and filed with the Office of the Lieutenant Governor.

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

APPROVED AS TO FORM:

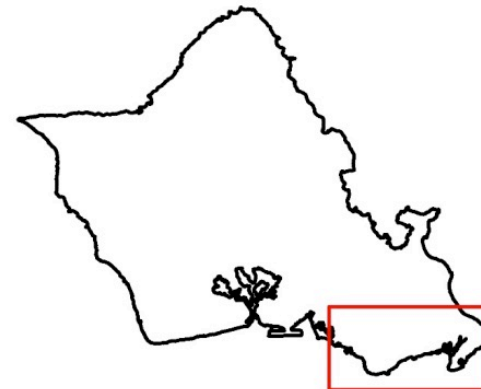
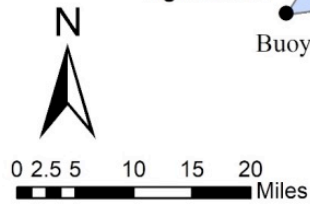
Deputy Attorney General

**Exhibit A. Map of the Maunalua Bay Fisheries Management Area, Oahu
June 24, 2020**



Diamond Head Lighthouse
Buoy

Kawaihoa Point



Proposed Boundary Coordinates:

Diamond Head Lighthouse: N21.25523, W157.80967
Diamond Head Buoy: N21.24679, W157.81571
Kawaihoa Point: N21.25918, W157.70718

EXHIBIT 4
MAUNALUA BAY FISHERIES MANAGEMENT
AREA, O'AHU
HAWAII ADMINISTRATIVE RULES 13-48.5

PROPOSED HAR CHAPTER 13-48.5
FINAL DRAFT - CLEAN

DEPARTMENT OF LAND AND NATURAL RESOURCES

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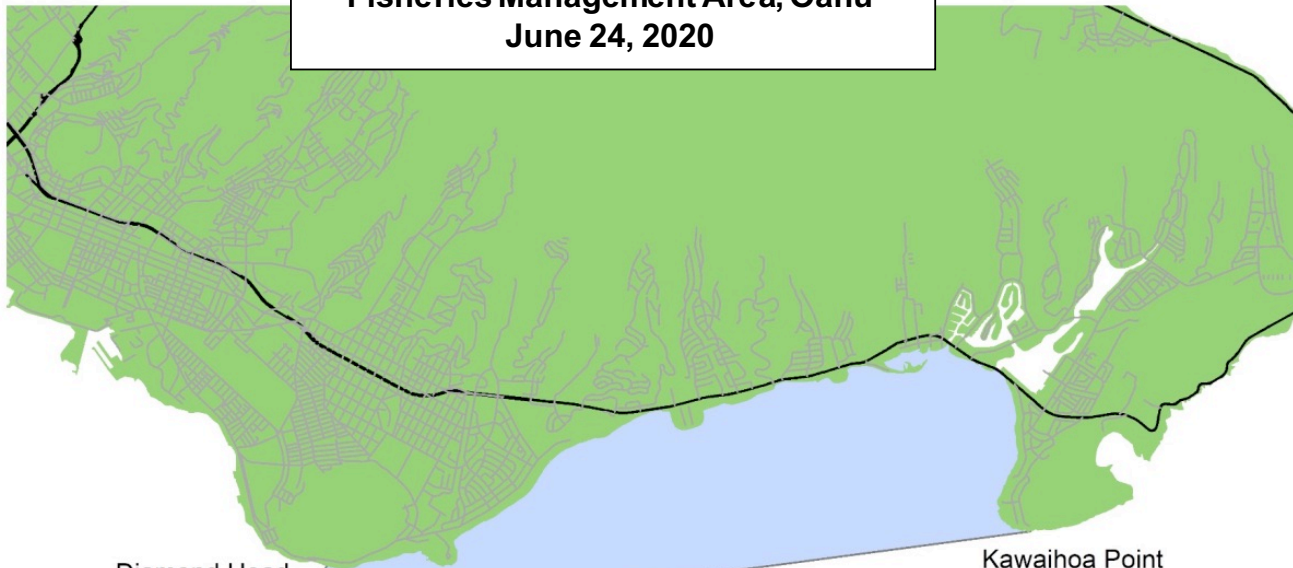
DAWN N.S. CHANG
Chairperson
Board of Land and Natural
Resources

APPROVED AS TO FORM:

John Dubiel

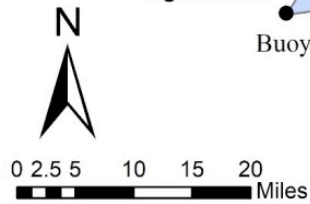
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June 24, 2020**



Diamond Head
Lighthouse
●
Buoy

Kawaihoa Point



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