

**Re: Item F-1 – Opposition to Proposed Administrative Penalties  
Submitted by Mr. Konane I. Zager**

Aloha Members of the Board:

Mr. Konane I. Zager submits this written testimony on his own behalf, appearing pro se and with the assistance of counsel, in strong opposition to the proposed administrative penalties set forth in Item F-1.

For the reasons detailed below, the Department's submittal is factually incomplete and procedurally defective, lacks statutory support, and results in penalties that are grossly disproportionate —particularly in light of the Department's own conduct and omissions.

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**I. THRESHOLD JURISDICTIONAL DEFECT — ULTRA VIRES  
ENFORCEMENT BEYOND THREE NAUTICAL MILES**

Before addressing any factual allegations or proposed penalties, the Board must resolve a threshold jurisdictional defect that renders Item F-1 legally void ab initio.

DLNR's own reports and public statements confirm that the boarding and enforcement action occurred approximately seven (7) nautical miles offshore—well beyond the State of Hawai'i's lawful seaward boundary, which extends only three (3) nautical miles from shore under controlling federal law.

Under the Submerged Lands Act, 43 U.S.C. §§ 1301–1315, including specifically 43 U.S.C. § 1312 (Seaward Boundaries of States), Congress expressly approved and confirmed state seaward boundaries at three geographical miles unless a greater boundary had been established and approved by Congress prior to statehood.

The Hawai'i Admission Act, Pub. L. No. 86-3, § 5(i), 73 Stat. 4 (1959), made the Submerged Lands Act fully applicable to the State of Hawai'i and granted Hawai'i no special extension of maritime jurisdiction beyond that three-mile limit.

Accordingly, Hawai'i's sovereign jurisdiction for purposes of enforcing state law ends at three nautical miles.

DLNR has attempted—both publicly and implicitly in this proceeding—to justify offshore enforcement authority by invoking a supposed “12-nautical-mile state territorial sea,” referencing concepts derived from the United Nations Convention on the Law of the Sea (UNCLOS).

Notably, DLNR's own investigative report relies exclusively on UNCLOS as the jurisdictional framework for the enforcement action at issue, without citing any state statute, federal delegation, joint enforcement agreement, or other lawful source of authority.

This reliance is legally incorrect and jurisdictionally defective.

UNCLOS Article 3 permits a sovereign nation-state to claim a territorial sea up to twelve nautical miles under international law. In the United States, the relevant sovereign "state" is the United States of America—not the State of Hawai'i.

The United States has not ratified UNCLOS, and even where certain provisions are treated as customary international law, UNCLOS does not allocate enforcement authority among sub-national governments, does not expand state criminal or administrative jurisdiction, and does not authorize states to enforce their own statutes beyond federally defined boundaries.

Allocation of authority within the United States is governed exclusively by domestic federal law, not international conventions.

Under U.S. domestic law, Congress has expressly limited state maritime jurisdiction through the Submerged Lands Act, as applied to Hawai'i through the Hawai'i Admission Act. Beyond that boundary, enforcement authority lies with the federal government unless there is explicit congressional delegation authorizing state officers to enforce federal law.

No federal citation, federal case number, federal charging authority, or written deputization exists here.

Nevertheless, DLNR proceeded to apply Hawai'i Revised Statutes, conduct enforcement under asserted state authority, and seek administrative penalties based solely on state law for conduct alleged to have occurred outside the State's lawful jurisdiction.

Such action constitutes ultra vires enforcement—an exercise of power beyond DLNR's lawful authority.

Any purported Joint Enforcement Agreement, if one exists, cannot cure this jurisdictional defect. Joint enforcement agreements may permit state officers to act as agents of the federal government enforcing federal law, but they do not:

- extend Hawai'i statutes into federal waters;
- convert federal waters into state waters; or
- authorize state-law citations or state administrative penalties beyond three nautical miles.

To the extent DLNR contends that it possessed offshore enforcement authority through federal delegation, joint enforcement agreement, memorandum of understanding, or any other cooperative arrangement, DLNR bears the burden of producing the specific federal statute and publicly disclosed agreement conferring such authority.

DLNR has produced:

- no written delegation;
- no evidence of federal deputization;
- no federal charging instrument; and
- no documentation authorizing enforcement of Hawai'i Revised Statutes beyond the State's seaward boundary.

The absence of such proof confirms that the enforcement action was ultra vires, and no post hoc assertion of delegated authority can cure a jurisdictional defect that existed at the time of boarding and seizure.

Because jurisdiction is a prerequisite to enforcement, DLNR's lack of authority renders:

- the boarding ultra vires;
- the seizure unauthorized;
- the application of Hawai'i statutes invalid; and
- the proposed administrative penalties void ab initio.

Item F-1 must therefore be rejected in its entirety on jurisdictional grounds alone.

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## **II. THE ADMINISTRATIVE RECORD PRESENTS AN INCOMPLETE AND MISLEADING ACCOUNT OF THE FISH SALE**

The DLNR submittal alleges that Mr. Zager violated HRS §189-2.5(b) because he "sold two ahi taken with longline fishing gear."

This allegation appears in the following sections of the record:

Page 8:

"ZAGER sold two ahi that were taken with longline fishing gear..."  
(Item F-1 – Longline Zager – 11....)

Page 9:

"On May 8, 2025, KONANE I. ZAGER sold two of the three ahi he caught..."  
(Item F-1 – Longline Zager – 11....)

However, DOCARE omitted the following critical facts:

DOCARE seized the two fish from Mr. Zager's vessel on May 7..

DOCARE officers while having the fish in their possession, then directed Mr.Zager to meet them the next morning at Kona Fish Company.

DOCARE instructed him to meet them at Kona Fish Company specifically for weighing documentation and sale.

The sale occurred under DOCARE's instruction, direction, and supervision.

Because DOCARE orchestrated, directed, and facilitated the sale, it cannot legally form the basis of any "sale violation" under HRS §189-2.5(b).

**The Department's reliance on an officer-created sale constitutes manufactured evidence, and using it as a penalty basis is improper, unlawful, and amounts to entrapment as defined under HRS §702-237.**

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### **III. THE DOCUMENT FALSELY CLAIMS A THIRD FISH WAS "TAKEN, INJURED, OR KILLED"**

DLNR seeks an additional \$1,000 penalty per specimen of aquatic life **"taken, killed, or injured,"** applying a \$3,000 resource-value fine for three tuna under HRS §187A-12.5(e).

This appears on:

Page 7:

"\$1,000 per killed or injured *ahi* specimen (\$3,000 total)."  
(Item F-1 – Longline Zager – 11....)

However, the same report repeatedly confirms the opposite, stating that the third ahi was released alive:

"One (~120 lbs) yellowfin tuna was released alive per officers' directive." — Page 4  
(Item F-1 – Longline Zager – 11....)

"One Yellowfin Tuna was clipped and released alive." — Page 17  
(Item F-1 – Longline Zager – 11....)

DOCARE officers themselves ordered the release and "observed the fish swim away alive."

DLNR has provided no evidence the third fish was killed or injured.

Therefore, the resource-value penalty for this fish is:

- unsupported by the factual record,
- directly contradicted by DLNR's own written statements, and
- unlawful under HRS §187A-12.5(e), which requires proof of injury or death.

Penalizing a fish that officers personally ordered to be released alive constitutes a material misrepresentation of evidence.

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#### **IV. BACKGROUND AND CONTEXT NECESSARY TO UNDERSTAND THE MAY 7, 2025 INCIDENT: PRIOR HARASSMENT AND DLNR'S FAILURE TO PROVIDE PROTECTION AND ENFORCE THE LAW**

To fully understand the circumstances surrounding the May 7, 2025 incident, the Board must consider the pattern of prior harassment, unresolved theft of fishing gear, and DLNR's repeated failure to provide protection or enforce the law in the period leading up to that date. For several years, Mr. Zager has been the repeated target of harassment, sabotage, gear theft, and violent acts committed by known and unknown hostile fishermen. In the course of these incidents, DLNR did not merely fail to intervene, but affirmatively participated in, facilitated, and legitimized the initial misconduct, and thereafter failed to take corrective or protective action as required under HRS Chapters 187A and 199. This failure constitutes a breach of DLNR's statutory duties to protect lawful fishermen and ocean users and to enforce fisheries laws impartially.

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#### **V. INCIDENT #1 – DECEMBER 16, 2023: TAMPERING, THEFT OF GEAR & FALSE ACCUSATIONS**

On December 16, 2023, known and unknown individuals stole two fully compliant under-one-mile shortline sets, later claiming—without verification—that "DLNR told them to do

so,” then illegally tied the sets together and presented the tampered gear to DLNR in an apparent effort to falsely implicate Mr. Zager in unlawful longline activity. As part of that same narrative, the individuals asserted that the gear had become entangled in their vessel's propellers; however, the physical condition of the recovered lines showed no damage consistent with propeller contact, and the explanation was facially implausible given the depth at which shortline gear is deployed—facts DLNR made no effort to verify.

Despite clear evidence of tampering, DLNR:

- accepted the illegally obtained gear as “evidence,”
- conducted no independent verification, measurement, or inspection,
- arrived at Mr. Zager's vessel with sirens activated, and
- accused him of illegal longlining without a shred of verified, probative, or substantial evidence, as required by HRS § 91-10.

**This course of conduct constituted harassment and abuse of enforcement authority, undertaken without probable cause, lawful jurisdiction, or procedural safeguards, and served no legitimate regulatory or public-safety purpose. DLNR officers deliberately stopped a lawful commercial fisherman in the course of his work, compelled him to abandon active fishing operations, and interfered with his ability to earn a living and provide for his family—despite issuing no citation, making no arrest, and identifying no substantiated violation.**

This conduct violated:

- Article I, Section 5 (Due Process)
- Article I, Section 7 (Unreasonable Seizure)
- HRS Chapters 187A & 199 (impartial enforcement duties)
- HRS § 710-1010 (Official Misconduct)

When Mr. Zager questioned where his gear was located, a DOCARE officer falsely stated, “We have your gear — it is at shore,” and ordered him to return to shore. Upon arrival, DLNR admitted that the gear was not at shore and remained at sea. Mr. Zager's vessel was boarded, a safety inspection was conducted, no citation was issued, and no enforcement action followed.

**Despite repeated written and verbal demands, over \$5,000 of Mr. Zager's essential commercial fishing gear has never been returned, constituting unlawful retention and conversion of property.**

The perpetrators' conduct constituted multiple felonies, including:

- Theft in the First Degree (HRS § 708-830),
- Criminal Property Damage, Second Degree (HRS § 708-823),
- Criminal Tampering (HRS § 708-827),
- False Reporting (HRS § 710-1015), and
- Receiving Stolen Property (HRS § 708-830(8)).

Instead of performing its statutory duty to protect lawful fishermen such as Mr. Zager, DLNR took no enforcement action whatsoever regarding these crimes. The Board must be aware that this record reflects serious misconduct, internal failures, and disorganized enforcement practices within DLNR that directly undermine the credibility, reliability, and integrity of the Department's allegations in this matter.

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## **VI. INCIDENT #2 – FIREARM DISCHARGED AT FISHING GEAR**

In a separate incident, Incident #2, Mr. Zager personally delivered to DOCARE a damaged fully compliant buoy worth approximately \$1,500 containing a bullet lodged inside it—direct physical evidence that someone had discharged a firearm at his legally deployed gear.

This conduct constitutes:

- Criminal Property Damage (HRS §708-823)
- Theft 2nd Degree (HRS §708-830)
- Criminal Tampering (HRS §708-827)
- Reckless Endangering (HRS §707-713)
- Potential Terroristic Threatening (HRS §707-715)

DLNR opened no investigation, created no report, made no attempt to identify a suspect, and took no enforcement action.

This failure constitutes:

- violation of Article I, Section 5 (Due Process & Equal Protection),
- violation of Article I, Section 7 (Property Rights),
- breach of duties under HRS Chapters 187A and 199,
- and official misconduct under HRS §710-1010.

DLNR officers, some of whom are private commercial fishermen with financial interests in the same fishery, engaged in selective enforcement, retaliation, and abuse of authority under color of law in violation of HRS §84-13, HRS §84-14, and HRS §710-1010. Their targeting of Mr. Zager for personal and competitive reasons constitutes an unlawful conflict of interest, official misconduct, and a violation of constitutional equal-protection guarantees.

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## **VII. INCIDENT #3 – MAY 7, 2025: GPS FAILURE, NECESSARY MEASURES TO PROTECT GEAR AMID DOCUMENTED THEFT, JURISDICTIONAL DEFECT, ULTRA VIRES ENFORCEMENT, UNLAWFUL “SEIZURE” OF VESSEL, DEFAMATION, AND DEPRIVATION OF LIVELIHOOD**

### **VII.A. Factual Background and GPS Failure**

On May 7, 2025 (Incident #3), Mr. Zager experienced an unexpected malfunction of his GPS tracking equipment—an issue he had never previously encountered and was unprepared to address in real time. At the time, he was severely sleep-deprived, having slept only approximately three (3) hours over a forty-eight (48) hour period, including an all-night effort catching live bait intended to support multiple fishing sets.

Mr. Zager works relentlessly to provide for his family. Contrary to common assumptions, this type of commercial fishery is physically demanding, grueling, and labor-intensive, requiring long hours, sustained physical exertion, and constant vigilance. He undertakes this work out of necessity and responsibility, driven by his obligation to support his household—not for convenience or ease, but out of commitment to his family's well-being.



The live bait collected during that period was critical to his operations, and its loss would have resulted in significant and immediate financial harm to his household.

Mr. Zager has fished Hawai'i waters his entire life. He is one of the only operating commercial fishermen in this fishery, and has operated professionally for years with a demonstrated record of compliance. He understands the distinction between lawful shortline fishing and prohibited longline activity, and he has consistently structured his operations to remain within legal limits. The circumstances of May 7, 2025 therefore did not arise from deliberate noncompliance or willful disregard of regulatory requirements, but from an unexpected equipment failure occurring against a backdrop of prior gear theft, exhaustion, and the absence of meaningful protection despite repeated reports.

Due to years of documented gear sabotage and DLNR's repeated failure to provide meaningful protection against theft, vandalism, and destruction of fishing equipment, GPS tracking had become essential to safeguarding Mr. Zager's livelihood.

## **VII.B. Threshold Jurisdictional Defect**

As a threshold matter, the May 7 enforcement action occurred approximately seven (7) nautical miles offshore—well beyond the State of Hawai'i's lawful jurisdiction.

Under controlling federal law, including the Submerged Lands Act (43 U.S.C. §§ 1301–1315) and the Hawai'i Admission Act (Pub. L. 86-3, § 5(i)), the State of Hawai'i's territorial sea extends only three (3) nautical miles from shore. DLNR possesses no independent authority to enforce state fishing laws beyond that boundary absent an express delegation from Congress, which has never been identified or produced.

Rather than grounding its authority in statute, DLNR has attempted—both publicly and implicitly in this proceeding—to justify offshore enforcement by invoking international-law concepts derived from the United Nations Convention on the Law of the Sea (UNCLOS), including a purported “12-nautical-mile territorial sea.” This reliance is legally defective. UNCLOS governs federal and international maritime relations; it does not confer enforcement authority upon individual states. Hawai'i is not a signatory to UNCLOS, and even if it were, international treaties cannot expand state jurisdiction absent explicit congressional delegation.

DLNR's substitution of international-law principles for statutory authority renders the enforcement action *ultra vires* and void *ab initio*. This jurisdictional defect alone precludes the imposition of any administrative penalties arising from Incident #3.

Notwithstanding this jurisdictional defect, and without waiving any objection to DLNR's authority, the surrounding circumstances independently warrant substantial mitigation.

## **VII.C. Protective Measure Taken in the Absence of GPS**

In the absence of his critical GPS tracking capability, and under conditions of extreme exhaustion and acute financial pressure, Mr. Zager took a protective measure he believed was reasonable at the time by temporarily tying his shortline gear together so it could be more effectively monitored and safeguarded against loss, theft, or vandalism.

**This action was not taken to evade enforcement, but to prevent further destruction or disappearance of legally owned gear in an environment where DLNR had repeatedly failed to provide protection despite years of documented reports.**

With the benefit of hindsight and a clearer understanding of the regulatory uncertainty presented by the GPS malfunction, Mr. Zager acknowledges that this is not a measure he would take again. If a GPS malfunction were to occur today, he would immediately limit himself to a single one-mile set that he could directly monitor, return to port, and prioritize repair of the GPS before resuming any fishing activity—even if doing so resulted in short-term financial loss—because he understands that strict compliance is essential to protecting his long-term ability to support his family.

#### **VII.D. Unlawful “Seizure” of the Vessel**

When DOCARE officers demanded that Mr. Zager unbolt the spool from his vessel—a demand that would have caused structural damage—Mr. Zager complied only to the limited extent necessary to prevent physical harm to his boat. **This did not constitute a lawful seizure.**

There was no warrant, no statutory seizure authority under HRS Chapters 187A or 199, no forfeiture documentation, no notice of seizure, no inventory, and no documented procedure authorizing DLNR to take custody of the vessel.

At no time was Mr. Zager informed that DLNR intended to treat the vessel as seized, to retain it for an extended period, or to publicly represent it as forfeited or lawfully taken into custody. Officers stated that the vessel was being taken for “further investigation,” despite the fact that all investigative activity had already been completed on the water that day. No additional inspection, analysis, or evidentiary processing occurred thereafter. Instead, the vessel was transported to a storage yard, where it remained for months without any investigative purpose.

Mr. Zager’s acquiescence was limited and conditional, based solely on the representations made by officers at the scene and his reasonable belief that the vessel would be returned promptly. He was never advised of any seizure authority, never provided notice of seizure, never served with forfeiture paperwork, never given an inventory, and never informed that his vessel would be treated as seized under law. Any purported consent was therefore obtained through misrepresentation and omission and cannot be construed as a knowing or voluntary relinquishment of property.

Because DLNR lacked jurisdiction to act at the location of the boarding, it necessarily lacked authority to seize—or claim to seize—the vessel. Any custody taken under these circumstances was unlawful from its inception.

## **VII.E. False and Defamatory Public Statements**

Notwithstanding the absence of jurisdiction or seizure authority, DLNR publicly announced—across multiple media outlets and on its own social-media platforms—that it had “seized” Mr. Zager’s vessel. These statements were false, materially misleading, and defamatory, as they asserted lawful enforcement authority that did not exist.

In issuing these public statements, DLNR deliberately omitted critical exculpatory facts, including:

- that Mr. Zager’s GPS tracking equipment malfunctioned;
- that the malfunction caused his otherwise lawful shortline sets to be temporarily tied together as a protective measure to prevent theft and loss of gear;
- that Mr. Zager has for years operated as a fully compliant shortline fisherman;
- that he is among the very few fully compliant shortline fishermen currently operating in the region and is routinely invited by both the Western Pacific Fishery Management Council and DLNR to provide expertise and input during shortline fishery meetings;
- that his legally compliant one-mile sets have been repeatedly subjected to harassment, sabotage, and theft; and
- that DLNR has consistently failed to provide protection or meaningful enforcement response despite repeated reports over several years.

Rather than presenting these material facts or offering a balanced explanation, DLNR issued one-sided, incomplete, and misleading public statements portraying Mr. Zager as an intentional longline violator, while concealing the GPS malfunction, the lack of jurisdiction, and the Department’s own history of inaction that directly contributed to the May 7 incident.

## **VII.F. Unlawful Deprivation of Livelihood**

Fishing is not recreational for Mr. Zager—it is his sole occupation and the foundation of his family’s financial stability. The months of May, June, and July constitute the peak ahi season, during which commercial fishermen earn the majority of their annual income.

By unlawfully retaining custody of Mr. Zager’s vessel for more than two months during this critical period, DLNR eliminated his only means of income, deprived him of the ability to work, interfered with his right to earn a living, inflicted substantial economic loss, jeopardized his family’s financial security, and damaged his long-term standing within the fishing community.

This deprivation did not arise from a lawful seizure, conviction, or forfeiture process. It was the direct result of unauthorized government action taken without statutory authority, notice, or due process.

## **VII.G. Violations of Law**

DLNR's conduct arising from Incident #3 violated:

- HRS §§ 92F-11 and 92F-16;
- HRS § 710-1010 (Official Misconduct);
- HRS § 710-1015 (False Reporting);
- Article I, Section 5 of the Hawai'i Constitution (Due Process);
- Article I, Section 7 of the Hawai'i Constitution (Unreasonable Seizures);
- the Submerged Lands Act, 43 U.S.C. §§ 1301–1315;
- the Hawai'i Admission Act, Pub. L. 86-3, § 5(i);
- common-law defamation and false-light doctrines; and
- HAR § 13-1-70.

## **VII.H. Cooperation and Good Faith**

Throughout the May 7 encounter, Mr. Zager was fully honest and cooperative. He admitted ownership of the gear, explained the circumstances candidly, and assisted officers in retrieving the equipment.

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## **VIII. DLNR's Attempts to Impose Additional Penalties and Remove His License**

After unlawfully depriving Mr. Zager of his ability to work through an ultra vires enforcement action and the unlawful withholding of his vessel during the peak fishing season—causing severe and irreparable economic harm—DLNR escalated its conduct despite the fact that Mr. Zager pled and paid the criminal fine in full. Having already inflicted extraordinary harm by unlawfully retaining his vessel during the most financially critical period of the year, DLNR now seeks to compound that harm by proposing additional administrative penalties in Item F-1.

- impose more than \$10,000 in fabricated administrative penalties, and
- revoke or suspend Mr. Zager's commercial fishing license—the sole lawful means by which he is able to work, earn income, support his family, and pay any fines or obligations imposed by the State.

This compounding of penalties is retaliatory, excessive, punitive, and fundamentally unjust.

These actions violate:

- HRS §84-13 & §84-13(2) (misuse of state resources; obtaining unwarranted advantages),
- HRS §710-1010 (official misconduct),
- HRS §710-1021 & §708-830 (theft of services and deception),
- HRS §187A-12.5 (documentation and transparency requirements), and
- Article I, Section 5 of the Hawai'i Constitution (due process).

To destroy a man's ability to work and then threaten to take his license is a violation of constitutional freedoms and basic human fairness.

To simultaneously demand substantial monetary penalties while threatening to remove the only license that allows Mr. Zager to generate income is inherently arbitrary and self-contradictory. It eliminates the only lawful means by which he could comply with such financial demands and renders the proposed penalties punitive rather than remedial, in violation of fundamental principles of fairness and proportionality.

This escalation is retaliatory, excessive, punitive, and fundamentally unjust, particularly where the underlying enforcement action was jurisdictionally defective and void ab initio. Because DLNR lacked lawful authority to enforce state law at the location of the May 7, 2025 boarding, it necessarily lacked authority to impose any derivative administrative penalties arising from that incident.

### **VIII.A. Unlawful Double Charging and Demand for Administrative Cost Documentation**

DLNR further seeks to recover alleged "administrative costs," including a claim of 146 staff hours totaling \$6,051.90, despite the fact that DOCARE and DLNR personnel are salaried public employees whose compensation is already funded by taxpayers—including Mr. Zager

himself. Charging a respondent for agency labor already paid for by public funds constitutes impermissible double charging and violates due process and basic fairness.

Critically, DLNR has failed to produce any documentation whatsoever substantiating these claimed costs. This failure violates HRS § 187A-12.5, which requires transparency, documentation, and accountability in the assessment of administrative penalties and costs, as well as HRS §§ 92F-11 and 92F-16, which prohibit the withholding of material information from the public.

DLNR routinely demands strict compliance and transparency from fishermen; fishermen are entitled to the same standards in return—particularly where the Department seeks to impose thousands of dollars in alleged administrative costs without producing contemporaneous documentation.

From an agency that has expended \$9.28 million in taxpayer funds on the failed Pohoiki dredging project despite repeated public warnings that the project would not succeed, it is reasonable and appropriate to require heightened scrutiny, independent verification, and full documentation of any claimed costs before imposing additional financial obligations on a private citizen. It would be improper to accept unverified cost claims at face value.

Accordingly, pursuant to HRS §§ 92F-11 and 92F-16 (Uniform Information Practices Act), HRS § 187A-12.5 (documentation and transparency requirements for administrative penalties and costs), and Article I, Section 5 of the Hawai'i Constitution (due process), it is Mr. Zager's lawful right to formally demand full production and disclosure of all records supporting DLNR's claimed administrative hours and costs, including, but not limited to, the following:

1. The name, title, and employing division of each DLNR or DOCARE employee whose time is claimed;
2. A detailed description of the specific tasks performed by each identified employee in connection with this matter;
3. The exact dates, start times, end times, and total hours attributed to each task performed by each employee;
4. Contemporaneous time sheets, duty logs, payroll records, or equivalent official documentation reflecting the claimed hours;
5. All incident reports, internal memoranda, emails, notes, or other communications generated to justify or document the work performed;
6. Identification of which claimed tasks were extraordinary and incident-specific, as opposed to routine enforcement, patrol, administrative, or salaried duties that would have been performed regardless of this incident; and

7. Proof that the claimed hours and costs would not have been incurred in the ordinary course of agency operations absent this incident, including any internal cost-allocation methodology relied upon.

Absent such documentation, DLNR's claimed administrative hours and costs are unsupported, arbitrary, and unlawful, and must be rejected in their entirety.

### **VIII.B. Legal Violations Arising from Escalation and Cost Demands**

DLNR's actions in escalating penalties and demanding unsupported administrative costs violate, inter alia:

- HRS § 84-13 and § 84-13(2) — misuse of official position and state resources to obtain unwarranted advantages or impose unjustified burdens;
- HRS § 710-1010 (Official Misconduct) — knowingly performing unauthorized acts or misusing official authority;
- HRS §§ 710-1021 and 708-830 — obtaining services or property through deception or unauthorized means;
- HRS § 187A-12.5 — failure to provide required documentation, transparency, and substantiation for penalties and costs; and
- Article I, Section 5 of the Hawai'i Constitution (Due Process) — deprivation of property, livelihood, and license interests without lawful authority or fair process.

**To unlawfully deprive a man of his ability to work, impose extraordinary financial penalties, and then refuse to disclose the basis for those penalties—while threatening to revoke the very license required to earn income and satisfy them—is incompatible with constitutional protections and basic principles of justice.**

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## **IX. REQUEST FOR RELIEF AND RESTITUTION**

### **A. Factual Grounds**

This matter presents extraordinary circumstances warranting dismissal of Item F-1 in its entirety, including:

- the threshold jurisdictional defect rendering the May 7, 2025 enforcement action ultra vires and void ab initio;
- the unlawful seizure and prolonged withholding of Mr. Zager's vessel without statutory authority, notice, or due process;
- the resulting irreparable loss of income during May and June—the most critical and financially significant months of the commercial fishing year;
- the criminal fine already paid in full;
- the absence of any itemized, substantiated, or contemporaneous administrative cost records;
- the impermissible double charging of agency labor already funded by taxpayers;
- the severe disproportionality and punitive nature of the proposed administrative penalties;
- the Department's false, misleading, and materially incomplete public statements, which damaged Mr. Zager's reputation and placed him in a false light;
- the Department's misrepresentations and omissions that affirmatively induced Mr. Zager to sell his catch and then retroactively charged him with violations arising from that same conduct;
- the years-long failure by DLNR to provide lawful protection against theft, sabotage, and harassment of Mr. Zager's legally compliant fishing gear despite repeated reports; and
- the resulting deprivation of Mr. Zager's livelihood, property, reputation, and constitutional rights.

## **B. Laws and Rights Violated**

The Department's conduct violated, inter alia:

- the Submerged Lands Act, 43 U.S.C. §§ 1301–1315, and the Hawai'i Admission Act, Pub. L. No. 86-3, § 5(i), limiting state enforcement jurisdiction to three nautical miles;
- HRS § 189-2.5(e) — prohibiting seizure or retention of a vessel absent conviction;
- HRS §§ 92F-11 and 92F-16 (Uniform Information Practices Act) — requiring accurate and complete disclosure of government records and prohibiting withholding of material



facts;

- HRS § 187A-12.5 — requiring documentation, substantiation, and transparency for administrative penalties and cost assessments;
- HRS § 84-13 and § 84-13(2) — misuse of official position and state resources to impose unwarranted burdens;
- HRS § 710-1010 — official misconduct through unauthorized acts and misuse of authority;
- HRS §§ 710-1021 and 708-830 — obtaining services or property through deception or unauthorized means;
- Article I, Section 2 of the Hawai'i Constitution — the right to pursue a lawful occupation free from arbitrary government interference;
- Article I, Section 5 of the Hawai'i Constitution — deprivation of property, livelihood, and liberty interests without due process of law;
- Article I, Section 7 of the Hawai'i Constitution — protection against unreasonable and unauthorized seizures;
- HAR § 13-1-70 — the Board's duty of fairness, honesty, and full disclosure in administrative proceedings; and
- common-law doctrines, including conversion, interference with prospective economic advantage, defamation, and false-light publication.

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Each of the foregoing grounds independently warrants dismissal of Item F-1. Taken together, they compel it.

Accordingly, Mr. Zager respectfully requests that the Board:

- Reject Item F-1 in its entirety;
- Deny all proposed administrative penalties and cost assessments;
- Decline any suspension or revocation of Mr. Zager's commercial fishing license; and
- Acknowledge Mr. Zager's right to pursue restitution and all lawful remedies for the economic damages and constitutional injuries resulting from DLNR's jurisdictionally

defective and ultra vires conduct, and to seek justice for violations of his rights under state and federal law.

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## CONCLUSION

The enforcement action underlying Item F-1 was undertaken without jurisdiction, executed without lawful authority, and sustained through procedural violations, evidentiary defects, and constitutional infirmities. It therefore cannot be allowed to stand.

Yet the Department now seeks to compound that unlawful conduct by proposing to suspend or revoke Mr. Zager's commercial fishing license—the very license that allows him to work, earn income, and support his family. Having already deprived him of his vessel during the most financially critical months of the year, DLNR now attempts to permanently sever his ability to pursue his lawful occupation.


This escalation is not corrective or regulatory in nature. It is punitive. To take a man's livelihood once through unlawful seizure, and then again through license suspension based on a jurisdictionally void enforcement action, is fundamentally unjust and incompatible with due process, proportionality, and basic fairness.

The Board has both the authority and the obligation to stop this compounding harm. By rejecting Item F-1 in its entirety, the Board will affirm that administrative power cannot be used to destroy a person's ability to work—particularly where the underlying enforcement action lacked jurisdiction from its inception.

Mahalo for your time, careful consideration, and commitment to justice.

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**Respectfully submitted,**

DATED: 01/07/2026  


Konane I. Zager

Respondent, Pro Se

(Prepared with the assistance of counsel)

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VERIFICATION AND SWORN STATEMENT

(Pursuant to HRS § 603-21.5 and applicable rules)

I, Konane I. Zager, declare under penalty of perjury under the laws of the State of Hawai'i that I have read the foregoing written testimony, that the facts stated herein are true and correct to the best of my personal knowledge, information, and belief, and that this testimony is submitted in good faith.

I further declare that this statement is made voluntarily, without coercion, and for the purpose of seeking lawful relief from the Board.

DATED: 01/07/2026  


Konane I. Zager  
Respondent