

Visitors Sign-in-Sheet - Small Business Regulatory Review Board - May 15, 2013

	Name	Title	Organization	Email	Phone
1	Bill WALSH	Ph.D.	DAR/DNR	darkona@hawaiiintel.net	808 327-6226
2	Glen Wasserman	C. CD PHD/DNR	DOH	glen.wasserman@doh.hawaii.gov	576-4570
3	David Sekanost	Dep Dir Acting Chief Counsel	DOH	David.Sekanost@hawaii.gov	586-4433
4	Livia Wang		HCRC - DNR	Livia.A.Wang@hawaii.gov	586-8642
5	Ed Chubwood	Administrative Div. of Ext Aff	DNR-DNR	Ed.Chubwood@hawaii.gov	587-1985
6	Mark Fox		The Nature Conservancy	mfox@nrc.org	587-6234
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					

MS. JOJO TANIMOTO
P.O. BOX 44337
KAWAIHAE, HI 96743
EMAIL: HOMESTEADLADY001@YAHOO.COM



May 13, 2013

Small Business Regulatory Review Board
Dept. of Business, Economics, Development and Tourism
P.O. Box 2357
Honolulu, Hi 96809
Email: SBRRB@hawaii.gov

Dear Sir:

Re: Title 13, Chapter 230, Part I-Chapter 55 and 56. Kawaihae Harbor
SBRRB Meeting-May 15. 2013. ITEM V. New Business

Thank you for the opportunity to testify on this matter. I am a resident of the Kawaihae Hawaiian Homestead for almost 25 years. Since we do not have a representative on this board, I hope this board can help Kawaihae. I used to be able to enjoy the area as a recreational location. That's the closest I can get to that statement. Times are changing in Kawaihae and I hope this Board will make **the statement true; change the statement; or motivate DOBOR administration to provide clear and transparent statements about Kawaihae.**

KAWAIHAE NORTH-SBH

Kawaihae North-small boat harbor (SBH) used to a place where people gather with their fishing poles and spend the day in the sun, with their families. There were many small boats back then tied to the harbor or buoys. Economics, population and maintenance of the harbor(s) are taking a toll on this portion of recreation.

A couple of years ago, there was a tsunami and the Kawaihae Road is the only two-lane access past the harbor. The traffic moved slower than usual so (4) of us got to see what the bottom of the north harbor looks like without water. It is a mess! The breakwater wall has huge holes, which accounts for the annual sand and silt buildup at the boat launch ramp. Water quality is polluted. Neglect is killing the ocean businesses.

The sump has fallen so that there is a hole in the ground that is fenced off and forgotten these past few years. The boat wash down area is constantly full of water and backs up to the Akoni Pule Highway intersection. The restrooms need some attention. This cannot be helpful to encourage visitors to this harbor. We would like to see them walk through Kawaihae and visit the shops and restaurants instead.

It is interesting to me, that many years ago; the old folks back then asked that the boat launch be moved to the mauka side of the SBH-next to the restrooms. Today we have a new cemented ramp next to the broken breakwater wall so that we anticipate the sand and silt problem to continually be less maintained and maybe the boaters need to go somewhere else. Nobody listened to the community.



KAWAIHAE-SOUTH (SBH)

I was here when the community said the south boat harbor (SBH) was no blessing to Kawaihae. The surf moved, the turtles and the manta ray moved; but the small boats in the commercial harbor did not move from the commercial harbor. They may get to use the small boat harbor someday, but without a road.

I remember when Kevin Costner did his movie "Waterworld" when there were no fences, no homeland security. The people may want go to the south-SBH, but there has been no movement toward acquiring land for a road access, boat ramp and restroom facility to this harbor. This harbor was built in the late 1990's. How business-friendly can this be?

I remember when the plan was to transplant the coral outside this new harbor. DLNR thought it was a genius idea of DLNR. Well, 100% died. Out of sight, out of mind.

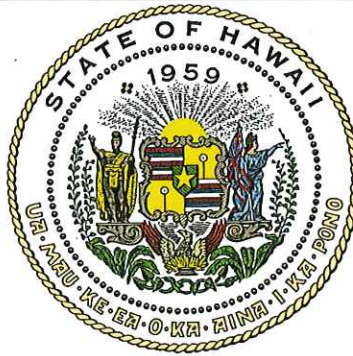
Today we face the updated version of coral transplant, inside the small, small harbor and next to the military unloading ramp where the families set up tents and will probably walk all over the transplanted coral. Still, no mention of signage or education on preserving and protecting the coral. My complaint is DLNR is not clear and transparent on how they plan to maintain the coral. Not clear on anything, actually.

Shoreline fishing is systemically being hampered by gated-communities and security monitoring from the Hotel King Kamehameha in Kailua-Kona, north to the Kawaihae Harbors. The problem is the shoreline fishermen are scrutinized by gated communities along the shoreline. Most of the high end properties are five diamond hotels, expensive golf communities and they favor day-time access for swimming and surfing. At this rate, you can only fish from small boats.

Kawaihae is historically significant. Kawaihae is a fish spawning location. All the marine life needs to return is some attention. The Kawaihae community is waiting for this place to get back to its rightful glory and can invite businesses to prosper.

Thank you for reviewing Chapter 55 and 56. Without review, this community has been stagnant for a long time.

Aloha
Ms. Jojo Tanimoto



Draft 2

Evaluation Survey

Small Business Regulatory Review Board (SBRRB)

Department of Business, Economic Development and Tourism (DBEDT)

Capitol District Building, 250 South Hotel Street

Honolulu, Hawaii 96813

Website Address: <http://dbedt.hawaii.gov/sbrrb>

Thank you for presenting to the SBRRB on _____. Please take a moment to reply to the following questions. Mahalo and Aloha.

1. Name of your Organization or Agency: _____

2. Contact Name of Organization and Telephone # or Email for personal interview, if needed: _____

3. Please rate your experience with the SBRRB from 1 thru 10, with 10 being exceptional: _____

4. Were communication and responses prompt and efficient? Yes _____ No _____

Explain _____

5. Please explain why presenting to the SBRRB was an important process of completing your initiative: _____

If yes, why; if no, why. *valued part of*
reduced
Burden to many
small
business

6. Other comments that you would like to share with the SBRRB: _____

Part of
Opinion

Please return to: Dori Palcovich, Economic Development Specialist, DBEDT, c/o Small Business Regulatory Review Board, Room 501, 250 South Hotel Street, Honolulu, HI 96813; or Email sbrrb@dbedt.hawaii.gov.

DRAFT 3



Small Business Regulatory Review Board

This is how you can help us:

Contact us if you would like to share a concern that you have. Let us know the issue, rule, or law that you would like us to review by the title, chapter, and section.

This is how you can contact us:

Email: sbrrb@dbedt.hawaii.gov

Phone: (808) 586-2594

Mail: Small Business Regulatory Review Board (SBRRB)
c/o DBEDT
P. O. Box 2359
Honolulu, HI 96804

Visit: Monthly meetings in Honolulu

Website: <https://dbedt.hawaii.gov/sbrrb>

How can we reach you?

Please provide us with the following information:

- Name
- Address
- Daytime Phone
- Best time to call
- e-mail address
- Issue, Administrative Rule, or Law: Title, Chapter, Rule Section

Small Business Regulatory Review Board

DBEDT
P. O. Box 2359
Honolulu, HI 96804

Purpose:

- The purpose of the Small Business Regulatory Review Board (SBRRB) is to review any proposed new or amended rule or to consider any request from small business owners for review of any rule adopted by a State agency.
- Small business, under Chapter 201M, Hawaii Revised Statutes, is defined as a for-profit enterprise consisting of fewer than one hundred full-time or part-time employees.
- The SBRRB makes recommendations to Agencies or the Legislature regarding the need for a rule change or legislation.
- For requests regarding County ordinances, the SBRRB may make recommendations to the County Council or the Mayor for appropriate action.

Who we are:

- **Volunteers, appointed by the Governor and ratified by the Senate**
- **Small business owners/officers from across the State**
 - Barbara Bennett
Kaua'i – *For Kaua'i Magazine*
 - Anthony Borge
Oahu – RMA Sales, *ABA*
 - Kyoko Kimura
Maui – Hotel Wailea
 - Howard Lum
Oahu – Aloha Gourmet Products, Inc.
 - Leslie Mullens
Maui – Playbook Consulting Group
 - Chu Lan Shubert-Kwock
Oahu – ABC Mortgage / Chu Lan Properties
 - Richard C. Lim
Director, DBEDT
Volunteering Ex-Officio

This is how we can help you!

- We make recommendations to the State legislature to change laws
- We make recommendations for City & County ordinances to the County Councils and Mayors
- We review new and existing rules and regulations in conjunction with an impact statement on small business
- We review all rules and regulations that affect small businesses before and after public hearings, followed by our recommendations to the Governor
- We can also organize and hold conferences on problems affecting small business
- These are the Agencies that the SBRRB works with:
 - State Departments

- Accounting & General Services
- Agriculture
- Budget & Finance
- Business, Economic Development & Tourism
- Commerce & Consumer Affairs
- Defense
- Education
- Hawaiian Home Lands
- Health
- Human Services
- Labor and Industrial Relations / HIOSH
- Land and Natural Resources
- Public Safety
- Taxation
- Transportation
- Office of the Attorney General
- Office of the Lieutenant Governor
- Public Utilities Commission
- University of Hawaii



“The SBRRB volunteer members have a vital

role to perform. Board members join in

servicing the people of Hawaii and most

importantly represent their islands to support

small business challenges and their successes.

I represent the Island of Kaua'i, and with the

by the President of the Senate

nomination from my island's Senator

Ron Kouehi and the approval of Governor

Abercrombie, I am looking forward to

working with the Agencies and helping to

make positive and lasting changes to the

small business community of Kaua'i.”

Mahalo and Aloha ~ Barbara Bennett

Kaua'i SBRRB Member

MS. JOJO TANIMOTO
P.O. BOX 44337
KAWAIHAE, HI 96743
EMAIL: HOMESTEADLADY001@YAHOO.COM



May 13, 2013

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May 15, 2013 ~ SBRRB Meeting Checklist

Member Attendance				
	Airline Preference	From	Details	Attend
Chu Lan Shubert-Kwock	NA	Oahu	Parking Pass	✓
Howard Lum	NA	Oahu	Parking Pass	✓
Leslie Mullens	HA	Maui	Parking Pass	NO
Barbara Bennett	HA	Kauai	Parking Pass	NO
Kyoko Kimura	HA	Maui	Parking Pass	✓
Mary Alice Evans	NA	Oahu	NA	✓
Anthony Borge	NA	Oahu	NA	✓
Craig Takamine	HA	BI	Parking Pass	✓

Pre Meeting Checklist	
Conference Room #436 (Confirm each month)	X
Make 12+ copies of rule packages for board packets - continuous	✓
Poll board attendance	✓
Prepare TAF for Director's approval - ASAP	✓
Airline booking ASAP - Linda G. (ASO)	✓
Draft Agenda to Chair	✓
Post approved agenda on SBRRB website & State Calendar & Lte. Governor's Office	✓✓✓
Send Agendas to those people who requested it <i>Shirema ✓ (mailed)</i>	✓
Mail approved agenda to board members, M. Ahn	✓
Mail board packets Tues or Wed. May 8th or 9th <i>Thurs.</i>	
3-4 Days prior to meeting, send DAGS an email (or fax) re: Board members parking and attending SBRRB meeting - IMPORTANT	

STAFF				
Margaret Ahn				X
Dori Palcovich				X

Post Meeting Checklist	



Re: May 15, 2013 Board Meeting
Leslie Mullens | The PlayBook Group
04/18/2013 10:56 AM

To:
Dori Palcovich
Hide Details
From: Leslie Mullens | The PlayBook Group <Leslie@theplaybookgroup.com>
To: Dori Palcovich <DPalcovi@dbedt.hawaii.gov>,

Hi Dori,

I am unable to attend in May. I'll be on the mainland on vacation. I'll be back for the June meeting.

Mahalo,
Leslie

Please Note: I check and respond to email twice each day, at 10am and 4pm HT, adjusting for my out-of-office meeting schedule as needed.

Leslie Mullens | President | PlayBook Consulting Group | 808.875.0500 |
www.ThePlayBookGroup.com

FOLLOW US:

[facebook.com/playbookgroup](https://www.facebook.com/playbookgroup) | twitter: @playbookgroup

"Follow your bliss. Find where it is and do not be afraid to follow it."
~ Joseph Campbell

On Apr 18, 2013, at 7:43 AM, Dori Palcovich wrote:

Good morning:

Based on the feedback I received from everyone, I was unable to schedule a meeting within the next couple of weeks. The next meeting will therefore, be as scheduled, May 15th, at the usual time and the usual place.

Can you please let me know if you will be unable to attend the May 15th meeting.

Thank you.

Dori



Re: May 15, 2013 Board Meeting

clskwock

to:

Dori Palcovich

04/18/2013 12:27 PM

Hide Details

From: clskwock@aol.com

To: "Dori Palcovich" <DPalcovi@dbedt.hawaii.gov>,

Please respond to clskwock@aol.com

Yes

Sent via BlackBerry from T-Mobile

From: Dori Palcovich <DPalcovi@dbedt.hawaii.gov>

Date: Thu, 18 Apr 2013 07:43:57 -1000

To: <clskwock@gmail.com>; <chinatownco58@yahoo.com>; Barbara Bennett<bbennett@hawaii.rr.com>; <tony@rmasalesco.com>; <Leslie@theplaybookgroup.com>; Kyoko Kimura<kkimura@hotelwailea.com>; Mary Alice Evans<MAEvans@dbedt.hawaii.gov>

Cc: Craig Takamine<craig@takamineconstruction.com>; Margaret S Ahn<Margaret.S.Ahn@hawaii.gov>

Subject: May 15, 2013 Board Meeting

Good morning:

Based on the feedback I received from everyone, I was unable to schedule a meeting within the next couple of weeks. The next meeting will therefore, be as scheduled, May 15th, at the usual time and the usual place.

Can you please let me know if you will be unable to attend the May 15th meeting.

Thank you.

Dori



Reservation Confirmation

Confirmation Code

OCMQIO

Note: Print resolution should be 300 dpi and above.



Your payment has been processed and e-tickets have been issued.

Flight Information

Boarding begins 50 min prior to departure. Gates close 15 min prior to departure.

For tickets issued on/after September 1, 2011: The first checked bag fee will be \$17.

For tickets issued on/before August 31, 2011: The first checked bag fee will be \$10.

There is a \$17 fee each way for a second checked bag.

Seat Assignments

NAME	OGG-HNL	HNL-OGG
Kyoko Y Kimura	11A	20A

Itinerary

Wednesday, May 15, 2013

From:	Oahu - Kahului, HI (OGG)	To:	Oahu - Honolulu, HI (HNL)
Depart:	08:15 AM	Arrive:	08:49 AM
Terminal:		Terminal:	INTER-ISLAND
Flight:	HA 155	Duration:	34 minutes
Cabin:	Coach	Meals:	NO MEAL SERVICE
Aircraft:	BOEING 717 JET	Carrier:	HA

Wednesday, May 15, 2013

From:	Oahu - Honolulu, HI (HNL)	To:	Maui - Kahului, HI (OGG)
Depart:	04:20 PM	Arrive:	04:57 PM
Terminal:	INTER-ISLAND	Terminal:	
Flight:	HA 326	Duration:	37 minutes
Cabin:	Coach	Meals:	NO MEAL SERVICE
Aircraft:	BOEING 717 JET	Carrier:	HA

Passengers

NAME	FF #	TICKET #
Kyoko Y Kimura	HA 106740340	1732141914028

Additional Passenger Information

NAME	GENDER	BIRTH DATE (MM/DD/YYYY)	REDRESS / KNOWN TRAVELER #
Kyoko Y Kimura	Female	02/18/XXXX	NA / NA

Your reservation has the security information required by the U.S. government.

For Complete details review FARE RULES

§92-5 Exceptions. (a) A board may hold a meeting closed to the public pursuant to section 92-4 for one or more of the following purposes:

- (1) To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;
- (2) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held;
- (3) To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations;
- (4) To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities;
- (5) To investigate proceedings regarding criminal misconduct;
- (6) To consider sensitive matters related to public safety or security;
- (7) To consider matters relating to the solicitation and acceptance of private donations; and
- (8) To deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law, or a court order.

(b) In no instance shall the board make a decision or deliberate toward a decision in an executive meeting on matters not directly related to the purposes specified in subsection (a). No chance meeting, permitted interaction, or electronic communication shall be used to circumvent the spirit or requirements of this part to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. [L 1975, c 166, pt of §1; am L 1985, c 278, §3; gen ch 1985; am L 1996, c 267, §3; am L 1998, c 48, §1; am L 1999, c 49, §1]

Attorney General Opinions

Subsection (a)(1) is applicable only when a specific individual is involved. Att. Gen. Op. 75-11.

Even if there is no quorum, meeting to discuss official business may be prohibited unless sunshine law followed. Att. Gen. Op. 85-27.

Subsection (a)(2) and §92-9 read together permit board and commission members to disclose some matters deliberated or decided in executive session, but they cannot disclose matters which would be inconsistent with subsection (a)(2), i.e., matters affecting privacy of individuals under consideration for hire, and they must maintain this confidentiality for as long as disclosure would defeat purpose of

convening the executive meeting. Att. Gen. Op. 94-1.

Case Notes

Although §92-2.5(a) does not expressly preclude city council members from engaging in serial one-on-one conversations, when council members engaged in a series of one-on-one conversations relating to a particular item of council business, under subsection (b), the spirit of the open meeting requirement was circumvented and the strong policy of having public bodies deliberate and decide its business in view of the public was thwarted and frustrated. 117 H. 1 (App.), 175 P.3d 111.

In a suit deciding whether disclosure of county council executive session minutes was required, circuit court properly found that both chapter 92F and this chapter applied; if the meeting met an exception to the open meeting requirements put forth in this chapter, such as an exception enumerated in this section, the council was not required to disclose the minutes of that meeting to the public; if the meeting did not fall under such an exception, the council was required to disclose the minutes pursuant to §92-9 and §92F-12. 120 H. 34 (App.), 200 P.3d 403.

Where it was clear from the county council executive session minutes that the county attorney consulted with the council consistently and at length throughout the executive session regarding the procedure to follow in conducting an investigation of the county police department and that the council's consultation with the attorney largely concerned the ramifications of the sunshine law on the council's investigation -- a legal question, the council was justified in closing the meeting to the public in executive session. 120 H. 34 (App.), 200 P.3d 403.


Where the county council executive session conversation consisted of either direct communication between the council members and the county attorney or communication among council members that flowed from consultation with the county attorney, the attorney-client portions of the executive session were so intertwined with other portions of the executive session that redacting the privileged portions and disclosing the remainder of the minutes was impractical. 120 H. 34 (App.), 200 P.3d 403.

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[Vol02_Ch0046-0115](#)

[Next](#)



Re: Draft SBRRB Agenda for May 
Margaret S Ahn to: Dori Palcovich

05/06/2013 07:59 AM

Dori,

For item V.B. (DOH), could you identify the title, chapter, and sections (if applicable), of the rules that will be a part of the power point presentation? If other rules in addition to what you have listed (Title 11, Chapter 164.1) will be in the presentation, I think this item description may be too limited. Also, I'd suggest deleting the word "review" and just say something like "~~Presentation on HAR Title~~ ____, Chapter ____, " etc., because I assume DOH is not asking for any action from the board (public hearing and small business impact statement are not required for emergency rules).

✓ For item VII.C. (executive session), I'd delete "Support and Personnel Matters" because §92-5(a)(2) only allows an executive session to consider the hire, evaluation, dismissal, or discipline of a particular employee. So you could say, "Evaluation of DBEDT's staff person assigned to the SBRRB," or something like that.

Margaret

Margaret S. Ahn, Deputy Attorney General
Commerce and Economic Development Division
425 Queen Street, Honolulu, HI 96813
Telephone: (808) 586-1180; Fax: (808) 586-1205
Margaret.S.Ahn@hawaii.gov

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Dori Palcovich	Oops. Forgot to attach the agenda. From: Dori...	05/02/2013 02:14:31 PM
----------------	--	------------------------

From: Dori Palcovich/DBEDT@DBEDT
To: Margaret S Ahn/AG/StateHiUS@StateHiUS
Date: 05/02/2013 02:14 PM
Subject: Re: Draft SBRRB Agenda for May

Oops. Forgot to attach the agenda.

[attachment "SBRRBAGendaMay2013DraftwExhibits.doc" deleted by Margaret S Ahn/AG/StateHiUS]

Dori Palcovich	Hi Margaret: Can you please take a look at the a...	05/02/2013 02:12:27 PM
----------------	---	------------------------

From: Dori Palcovich/DBEDT
To: Margaret S Ahn/AG/StateHiUS@StateHiUS,
Date: 05/02/2013 02:12 PM
Subject: Draft SBRRB Agenda for May

Hi Margaret:

Can you please take a look at the attached agenda?

Specifically, look at the following:

- Section V. New Business - C. Review of temporary HAR Title 11 Chapter 164.1 Emergency Rules Relating to Examinations for Tuberculosis

On this one, DOH wants to do a power point presentation about proposed TB rules, not necessarily these emergency rules, but they will touch on these rules as well.

- Section VII. Administrative Matters - C. Discussion of DBEDT's Staff Support and Personnel Matters (An executive session may be called for this purpose pursuant to Section 92-5(a)(2))

Please advise.

Dori



Fw: Enterprise Car Rental Reservation Confirmation 249690571 for Honolulu Intl Arpt

Linda Garrett to: bbennett
Cc: Dori Palcovich

05/06/2013 09:44 AM

Barbara,

See below for your car confirmation for SBRRB meeting in May.

Linda Garrett

Secretary
Administrative Service Office
(808) 586-2442



----- Forwarded by Linda Garrett/DBEDT on 05/06/2013 09:43 AM -----

From: reservations@enterprise.com
To: linda.garrett@dbedt.hawaii.gov
Date: 05/03/2013 04:18 PM
Subject: Enterprise Car Rental Reservation Confirmation 249690571 for Honolulu Intl Arpt

Dear Barbara,

Thank you for using Enterprise to make your reservation.
Your confirmation number is: **249690571**

Reserved rate reflects the pick up date and time, return date and time, and car class quoted at time of reservation. Any changes to the reservation may affect the rates quoted herein.

If you need to make a change to this reservation, please use your reservation number as a reference.

Confirmation # 249690571
Status: Booked

Rental Information

Name: Barbara Bennett
E-mail: linda.garrett@dbedt.hawaii.gov

Vehicle Type: Compact - 2 or 4-Door/Automatic/Air - Nissan Versa Or Similar

Pickup Information

Location: Honolulu Intl Arpt (HNLT61)
Date & Time: Wednesday, May 15, 2013 @ 08:30 AM
Address: 3255 Aolele St
Honolulu, HI 96819
Phone: 8362213
Fax: 8367866
Hours: SUNDAY: 06:00 AM - 11:00 PM
MONDAY: 06:00 AM - 11:00 PM

TUESDAY: 06:00 AM - 11:00 PM
 WEDNESDAY: 06:00 AM - 11:00 PM
 THURSDAY: 06:00 AM - 11:00 PM
 FRIDAY: 06:00 AM - 11:00 PM
 SATURDAY: 06:00 AM - 11:00 PM

Dropoff Information

Location: Honolulu Intl Arpt (HNL61)
Date & Time: Thursday, May 16, 2013 @ 08:30 AM

Rate Information

Item: Prices
(USD)

Car Class: Compact 2 or 4-Door/Automatic/Air

Rates:					
Time & distance	1	DAY	@	\$41.40	\$41.40
Time & distance	0	HOUR	@	\$10.00	\$0.00
Time & distance	0	WEEK	@	\$215.00	\$0.00
Time & distance	0	MONTH	@	\$860.00	\$0.00
No charge distance	0	DISTANCE	@	\$0.00	\$0.00

Contract I.D. State Of Hawaii (official Bus)

Inclusive Rate Items

Upfront fuel	Included
Customer facility charge 4.50/day	Included
Concession recovery fee 11.11 pct	Included
Rent tax surcharge \$3.00/day	Included
Veh.registration fee / weight tax	Included
State tax (4.7120%) \$1.60	Included
Guaranteed Base Rate	Included
(9) Additional Driver	Included
Unlimited Miles	Included

Sub total.....\$43.00

Total Estimate.....\$43.00

(Country of Residence: US) (USD)

Approximate Estimated Conversion: \$43.00

Total may vary at time of rental based on the election of prepaid gas, optional coverage items or changes in taxes, surcharges and fees.

Thank you again for using Enterprise to make your reservation.

Please visit <http://www.enterprise.com> to View, Modify or Cancel your Reservation or you can call 1-800-261-7331 .

© Enterprise Rent-A-Car, 600 Corporate Park Drive, St. Louis, MO 63105



Fw: National Car Rental Reservation Confirmation 879758696 for Honolulu Intl Arpt

Linda Garrett to: kkimura
Cc: Dori Palcovich

05/06/2013 09:43 AM

Linda Garrett

Secretary
Administrative Service Office
(808) 586-2442



----- Forwarded by Linda Garrett/DBEDT on 05/06/2013 09:42 AM -----

From: reservations@nationalcar.com
To: linda.garrett@dbedt.hawaii.gov
Date: 05/03/2013 04:16 PM
Subject: National Car Rental Reservation Confirmation 879758696 for Honolulu Intl Arpt

Dear Kyoko,

Thank you for choosing National to make your reservation.

Your confirmation number is: **879758696**

Reserved rate reflects the pick up date and time, return date and time, and car class quoted at time of reservation. Any changes to the reservation may affect the rates quoted herein.

Your level of service is Counter. Please proceed to the rental counter.

If you need to make a change to this reservation, please use your reservation number as a reference.

Confirmation # 879758696

Status: Booked

Here's what you do to pick up your car:

Follow terminal signs to baggage claim area.

Emerald Club Members:

- Follow terminal signs to the baggage claim area. Exit the terminal and proceed to the shuttle bus pick up area and take the National shuttle bus. The Emerald Club area will be the first stop, proceed to the Emerald Club Booth, located in the lot, to obtain your rental agreement and vehicle keys.

United arrivals: Follow terminal signs to the baggage claim area. Exit the terminal and proceed directly across the street to the Emerald Club booth, located in the lot, to obtain your rental agreement and vehicle keys.

All other National customers:

- Please proceed to the counter inside to obtain your rental agreement.

Directions to our location:

- East on H-1 to airport
- National counter is located across from baggage claim area.

Rental Information

Name: Kyoko Kimura
E-mail: linda.garrett@dbedt.hawaii.gov

Vehicle Type: Compact - 2 or 4-Door/Automatic/Air - Nissan Versa Or Similar

Pickup Information

Location: Honolulu Intl Arpt (HNL01)
Date & Time: Wednesday, May 15, 2013 @ 09:00 AM
Address: 2912 Aolele St
 Honolulu, HI 96819
Phone: (888)826-6890 ext:MAIN
Fax: (808)831-3849
Hours: Sun-Sat: 05:30 am - 11:59 pm

Dropoff Information

Location: Honolulu Intl Arpt (HNL01)
Date & Time: Wednesday, May 15, 2013 @ 05:00 PM

Rate Information

Item: Prices
(USD)

Car Class: Compact 2 or 4-Door/Automatic/Air

Rates:					
Time & distance	1	DAY	@	\$44.27	\$44.27
Time & distance	0	HOUR	@	\$10.00	\$0.00
Time & distance	0	WEEK	@	\$230.00	\$0.00
Time & distance	0	MONTH	@	\$920.00	\$0.00
No charge distance	0	DISTANCE	@	\$0.00	\$0.00

Contract I.D. Panda Travel (soh)	
Inclusive Rate Items	
Upfront fuel	Included
Customer facility charge 4.50/day	Included
Concession recovery fee 11.11 pct	Included
Rent tax surcharge \$3.00/day	Included
Veh.registration fee / weight tax	Included
State tax (4.7120%) \$1.73	Included
(3) Additional Driver	Included
Unlimited Miles	Included
Sub total.....	\$46.00
Total Estimate.....	\$46.00
(Country of Residence: US)	(USD)
Approximate Estimated Conversion:	\$46.00

Total may vary at time of rental based on the election of prepaid gas, optional coverage items or changes in taxes, surcharges and fees.

Thank you again for choosing National to make your reservation.

Click below to View, Modify or Cancel your Reservation using the Web site.
<http://www.nationalcar.com/index.do?action=/resFetch.do&resNumber=879758696&lastName=Kimura&trckUpMonthYr=MAY-2013&trckUpDay=15>

Please note that if you experience any problems with the link, you can visit <http://www.nationalcar.com> and click on 'Existing reservations' right from the home page, or yc

Important Policy Information: All renters and additional drivers must meet the minimum age requirements for the renting location. A major credit card or debit card and a valid driver's license both Debit and check cards, considered to be any non-credit card bearing the VISA, MasterCard, American Express, Discover or JCB logo (except for gift/prepaid cards) may only be used in conjunct the like) and a cash deposit may be required in addition to the cost of rental. Without proof of roundtrip ticket, debit or check cards are only accepted on return. Any other non-credit card without logo is not accepted. Some locations may accept cash at the time of rental in lieu of a major credit card or debit card subject to other restrictions and requirements. City Exception: Renting with C must be made on a credit card. Renters may use cash as form of final payment upon return of the vehicle.

Dr. Keptani - Fu Nmeu



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism
No. 1 Capitol District Bldg., 250 South Hotel St. 5th Fl., Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Tel 808 586-2594
Fax 808586-2572

AGENDA

Wednesday, May 15, 2013 ★ 9:30 a.m.

No. 1 Capitol District Building

250 South Hotel Street - Conference Room 436

Neil Abercrombie
Governor

Richard C. Lim
Director, DBEDT

Mary Alice Evans
Deputy Director, DBEDT

Members

Chu Lan Shubert-Kwock
Oahu

Howard Lum
Oahu

Anthony Borge
Oahu

Barbara Bennett
Kauai

Leslie Mullens
Maui

Kyoko Y. Kimura
Maui

Craig Takamine
Hawaii

Richard C. Lim
Director, DBEDT
Voting Ex Officio

I. Call to Order

II. Election of a Temporary Chair for May's Board Meeting ✓

III. Approval of March 20, 2013 Meeting Minutes ✓

IV. Old Business

A. **Small Business Statement After Public Hearing for Hawaii Administrative Rules (HAR) Title 17 Chapter 1445, Recertification of Nurse Aides in State-Licensed or State-Certified Health Care Settings (Department of Human Resources) – Chu Lan – I haven't gotten the rules yet, but I have a call into DHS to make sure we get them in time – if not, I will put them on the June agenda**

Wants to see into town

MAG

Lou Tsuihaua
DHS

B. **Small Business Statement After Public Hearing for HAR Title 13 Chapter 54, Puako Bay and Puako Reef, Hawaii; Section 1 Definitions; Section 2 Prohibited activities; Section 3 Permitted activities; HAR Title 13 Chapter 57, Keauhou Bay, Hawaii, Section 1 Definitions; Section 2 Prohibited activities; Section 3 Permitted activities; and Map of Keauhou Bay Fisheries Management Area, Hawaii; the Repeal of HAR Title 13 Chapter 60.3, West Hawaii Regional Fisheries Management Area; Adoption of Title 13 Chapter 60.4, West Hawaii Regional Fishery Management Area, Hawaii; and Amendments to HAR Title 13 Chapter 75 Section 12.4 Lay nets (Department of Land and Natural Resources) – Chu Lan – these are "after" public hearing. Because Leslie (discussion leader for DLNR) is not attending the meeting, which member would you like to review them?**

Tony*

V. New Business

A. **HAR Title 12 Chapter 46 Hawaii Civil Rights Commission (Department of Labor and Industrial Relations) – Chu Lan – Because Leslie (discussion leader for DLIR) is not attending the meeting, which member would you like to review them?**

Wants to know back from Commission

Barbara

Need Rules

B. **HAR Title 11 Chapter 164.1 Rules Regulating to Examinations for Tuberculosis (Department of Health) - Chu Lan – No one is assigned as the Discussion leader for DLIR rules – who would you like to assign?**

Chalam?
Craig

Need Rules
May 15

C. **HAR Title 12 Chapter 15 Worker's Compensation, Exhibit A Medical Fee Schedule (Department of Labor and Industrial Relations – (Dianne Lam – 687-8794) Chu Lan – rules – Because Leslie (discussion leader for DLIR) is not attending the meeting, which member would you like to review them?**

JUN

D. **HAR Title 13 Chapter 230 Part 1, Small Boat Harbors and Other Boating Facilities, Chapter 230 General Provisions (Department of Land and Natural Resources) – Ed Underwood, Administrator for DOBOR to attend meeting / Kyoko is the discussion leader**

Kyoko

Wants to see into town

VI. Legislative Matters

- A. Governor's Message No. 792, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Craig Takamine, for a term to expire 6-30-2016

VII. Administrative Matters

- A. Review of Board's proposed Brochure and Testimonial form – **Barbara to discuss**

- B. Discussion of HAR Title 3 Chapter 10, Travel Rules, as applied to Board members (Department of Accounting and General Services)? – **Chu Lan - Do you still want this on the agenda even though Leslie is not attending meeting? Or, do you want to wait until June?**

- C. Discussion of DBEDT staff's position description, responsibilities, and hours needed to accomplish tasks – **Chu Lan - do you still want the questions included in the agenda packet / Barbara mentioned to me that another tactic might be used.**

- D. Election of a Board Chair, pursuant to Section 201M-5(d), and Election of Vice Chair and Second Vice Chair

VIII. Next Meeting: Scheduled for Wednesday, June 19, 2013, at 9:30 a.m., Conference Room 436, Capitol District Building, Honolulu, Hawaii

IX. Adjournment

If you require special assistance or auxiliary aid and/or services to participate in the public hearing process (i.e., sign language, interpreter, wheelchair accessibility, or parking designated for the disabled), please call (808) 586-2594 at least three (3) business days prior to the meeting so arrangements can be made.

Chair's Board

Personnel Exam

Personnel Rules

Summary of Complaints

VIII

June

Tracy



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism
No. 1 Capitol District Bldg., 250 South Hotel St. 5th Fl., Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

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Members

Chu Lan Shubert-Kwock
Oahu

Howard Lum
Oahu

Anthony Borge
Oahu

Barbara Bennett
Kauai

Leslie Mullens
Maui

Kyoko Y. Kimura
Maui

Craig Takamine
Hawaii

Richard C. Lim
Director, DBEDT
Voting Ex Officio

AGENDA

Wednesday, May 15, 2013 ★ 9:30 a.m.
No. 1 Capitol District Building
250 South Hotel Street - Conference Room 436

- I. Call to Order
- II. Election of a Temporary Chair for May's Board Meeting
- III. Approval of March 20, 2013 Meeting Minutes
- IV. Old Business
 - A. Small Business Statement After Public Hearing for Hawaii Administrative Rules (HAR) Title 17 Chapter 1445, Recertification of Nurse Aides in State-Licensed or State-Certified Health Care Settings (Department of Human Resources) – *See Exhibit X*
 - B. Small Business Statement After Public Hearing for HAR Title 13 Chapter 54, Puako Bay and Puako Reef, Hawaii; Section 1 Definitions; Section 2 Prohibited activities; Section 3 Permitted activities; HAR Title 13 Chapter 57, Keauhou Bay, Hawaii, Section 1 Definitions; Section 2 Prohibited activities; Section 3 Permitted activities; and Map of Keauhou Bay Fisheries Management Area, Hawaii; the Repeal of HAR Title 13 Chapter 60.3, West Hawaii Regional Fisheries Management Area; Adoption of Title 13 Chapter 60.4, West Hawaii Regional Fishery Management Area, Hawaii; and Amendments to HAR Title 13 Chapter 75 Section 12.4 Lay nets (Department of Land and Natural Resources) – *See Exhibit X*
- V. New Business
 - A. HAR Title 12 Chapter 46 Hawaii Civil Rights Commission (Department of Labor and Industrial Relations) – *See Exhibit X*
 - B. HAR Title 11 Chapter 164.1 Rules Regulating to Examinations for Tuberculosis (Department of Health) – *See Exhibit X – check exact title name*
 - C. HAR Title 12 Chapter 15 Worker's Compensation, Exhibit A Medical Fee Schedule (Department of Labor and Industrial Relations – *See Exhibit X* (Dianne Lam – 687-8794) – *See Exhibit X*
 - D. HAR Title 13 Chapter 230 Part 1, Small Boat Harbors and Other Boating Facilities, Chapter 230 General Provisions (Department of Land and Natural Resources) – *See Exhibit X*
- VI. Legislative Matters
 - A. Governor's Message No. 792, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Craig Takamine, for a term to expire 6-30-2016

VII. Administrative Matters

- A. Review of Board's proposed Brochure and Testimonial form
- B. Discussion of HAR Title 3 Chapter 10, Travel Rules, as applied to Board members (Department of Accounting and General Services)? – *ask Chu Lan if she still wants this on as L.M. will not be attending meeting*
- C. Discussion of DBEDT staff's position description, responsibilities, and hours needed to accomplish tasks

- D. Election of a Board Chair, pursuant to Section 201M-5(d), and Election of Vice Chair and Second Vice Chair

VIII. Next Meeting: Scheduled for Wednesday, June 19, 2013, at 9:30 a.m., Conference Room 436, Capitol District Building, Honolulu, Hawaii

IX. Adjournment

If you require special assistance or auxiliary aid and/or services to participate in the public hearing process (i.e., sign language, interpreter, wheelchair accessibility, or parking designated for the disabled), please call (808) 586-2594 at least three (3) business days prior to the meeting so arrangements can be made.

United States Postal Service

Postage Price Calculator Domestic Services

*Shirana's
Agenda
Packet*

Large Envelope, weight 1 lbs 8 oz, mailed on May 8 after 8:00 AM
from HONOLULU HI 96804 to HILO HI 96720

Products	Expected Delivery	Post Office Price	Online Price
Express Mail®	Thu, May 9 by 3 PM	\$18.10	\$15.58
Express Mail® Hold For Pickup	Thu, May 9 by 3 PM	\$18.10	\$15.58
Express Mail® Flat Rate Envelope USPS-Produced Envelope: 12-1/2" x 9-1/2"	Thu, May 9 by 3 PM	\$19.95	\$18.11
Express Mail® Flat Rate Envelope Hold For Pickup USPS-Produced Envelope: 12-1/2" x 9-1/2"	Thu, May 9 by 3 PM	\$19.95	\$18.11
Express Mail® Legal Flat Rate Envelope USPS-Produced Envelope: 15" x 9-1/2"	Thu, May 9 by 3 PM	\$19.95	\$18.11
Express Mail® Legal Flat Rate Envelope Hold For Pickup USPS-Produced Envelope: 15" x 9-1/2"	Thu, May 9 by 3 PM	\$19.95	\$18.11
Express Mail® Padded Flat Rate Envelope USPS-Produced Envelope: 12-1/2" x 9-1/2"	Thu, May 9 by 3 PM	\$19.95	\$18.11
Express Mail® Padded Flat Rate Envelope Hold For Pickup USPS-Produced Envelope: 12-1/2" x 9-1/2"	Thu, May 9 by 3 PM	\$19.95	\$18.11
Priority Mail®	Thu, May 9	\$5.80	\$5.32
Priority Mail® Hold For Pickup	Thu, May 9	Not available	\$5.32
Priority Mail® Flat Rate Envelope USPS-Produced Envelope: 12-1/2" x 9-1/2"	Thu, May 9	\$5.60	\$5.05
Priority Mail® Flat Rate Envelope Hold For Pickup USPS-Produced Envelope: 12-1/2" x 9-1/2"	Thu, May 9	Not available	\$5.05
Priority Mail® Legal Flat Rate Envelope USPS-Produced Envelope: 15" x 9-1/2"	Thu, May 9	\$5.75	\$5.25
Priority Mail® Legal Flat Rate Envelope Hold For Pickup USPS-Produced Envelope: 15" x 9-1/2"	Thu, May 9	Not available	\$5.25
Priority Mail® Padded Flat Rate Envelope USPS-Produced Envelope: 12-1/2" x 9-1/2"	Thu, May 9	\$5.95	\$5.70
Priority Mail® Padded Flat Rate Envelope Hold For Pickup USPS-Produced Envelope: 12-1/2" x 9-1/2"	Thu, May 9	Not available	\$5.70
Priority Mail® Gift Card Flat Rate Envelope USPS-Produced Envelope: 10" x 7"	Thu, May 9	\$5.60	\$5.05
Priority Mail® Gift Card Flat Rate Envelope Hold For Pickup USPS-Produced Envelope: 10" x 7"	Thu, May 9	Not available	\$5.05
Priority Mail® Small Flat Rate Envelope USPS-Produced Envelope: 10" x 6"	Thu, May 9	\$5.60	\$5.05
Priority Mail® Small Flat Rate Envelope Hold For Pickup USPS-Produced Envelope: 10" x 6"	Thu, May 9	Not available	\$5.05
Priority Mail® Window Flat Rate Envelope USPS-Produced Envelope: 10" x 5"	Thu, May 9	\$5.60	\$5.05

Priority Mail® Window Flat Rate Envelope Hold For Pickup USPS-Produced Envelope: 10" x 5"	Thu, May 9	Not available	\$5.05
Standard Post®	Fri, May 10	\$5.80	Not available
Media Mail® <u>Restrictions Apply</u>	Fri, May 10	\$2.98	Not available

Express Mail Service Commitments

Product	Drop-Off By	Facility Type	Address
Express Mail®	Wed, May 8 by 4:30 PM	POST OFFICE	335 MERCHANT ST FL GROUND HONOLULU HI 96813
Express Mail® Hold For Pickup	Wed, May 8 by 4:30 PM	POST OFFICE	335 MERCHANT ST FL GROUND HONOLULU HI 96813

* The timeliness of service to or from destinations outside the contiguous US may be affected by the limited availability of transportation.

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Use the [Service Commitment Lookup Tool](#) for service commitments and for Express Mail drop-off times and locations.

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Don's

Small Business Regulatory Review Board Meeting

Wednesday, May 15, 2013

9:30 a.m.

No. 1 Capitol District Building

250 South Hotel Street, Honolulu, HI

Conference Room 436



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism
No. 1 Capitol District Bldg., 250 South Hotel St. 5th Fl., Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Tel 808 586-2594
Fax 808586-2572

AGENDA

Wednesday, May 15, 2013 ★ 9:30 a.m.

No. 1 Capitol District Building

250 South Hotel Street - Conference Room 436

Neil Abercrombie
Governor

Richard C. Lim
Director, DBEDT

Mary Alice Evans
Deputy Director, DBEDT

Members

Chu Lan Shubert-Kwock
Oahu

Howard Lum
Oahu

Anthony Borge
Oahu

Barbara Bennett
Kauai

Leslie Mullens
Maui

Kyoko Y. Kimura
Maui

Richard C. Lim
Director, DBEDT
Voting Ex Officio

- I. Call to Order
- II. Election of a Temporary Chair for May's Board Meeting
- III. Approval of March 20, 2013 Meeting Minutes
- IV. Old Business
 - A. Small Business Statement After Public Hearing for Hawaii Administrative Rules (HAR) Title 17 Chapter 1443 Feeding Assistant Training Program, Title 17 Chapter 1444 Nurse Aide Training and Competency Evaluation Program, and Title 17 Chapter 1445, Recertification of Nurse Aides in State-Licensed or State-Certified Health Care Settings, and Repeal of HAR Chapter 1420 Homemaker Services for Community Long-Term Care Programs, HAR Title 17 Chapter 1438 Nursing Home without Walls, HAR Title 17 Chapter 1440 Home and Community-Based Services for Elderly Foster Family Community Care Program, HAR Title 17 Chapter 1441 Personal Care Services, HAR Title 17 Chapter 1442 HIV Community Care Program. (Department of Human Services)
 - B. Small Business Statement After Public Hearing for HAR Title 13 Chapter 54, Puako Bay and Puako Reef, Hawaii; Section 1 Definitions; Section 2 Prohibited activities; Section 3 Permitted activities; HAR Title 13 Chapter 57, Keauhou Bay, Hawaii, Section 1 Definitions; Section 2 Prohibited activities; Section 3 Permitted activities; and Map of Keauhou Bay Fisheries Management Area, Hawaii; the Repeal of HAR Title 13 Chapter 60.3, West Hawaii Regional Fisheries Management Area; Adoption of Title 13 Chapter 60.4, West Hawaii Regional Fishery Management Area, Hawaii; and Amendments to HAR Title 13 Chapter 75 Section 12.4 Lay nets (Department of Land and Natural Resources - (DLNR))
- V. New Business
 - A. Proposed amendments to HAR Title 12 Chapter 46 Hawaii Civil Rights Commission (Department of Labor and Industrial Relations)
 - B. Proposed amendments to HAR Title 13 Chapter 230 Part 1, Small Boat Harbors and Other Boating Facilities, Chapter 230 General Provisions (DLNR)
 - C. Presentation on HAR Title 11 Chapter 164.1 Emergency Rules Relating to Examinations for Tuberculosis (Department of Health)
- VI. Legislative Matters
 - A. Governor's Message No. 792, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Craig Takamine, for a term to expire 6-30-2016
- VII. Administrative Matters
 - A. Review of Board's proposed Brochure and Testimonial form

- B. Discussion of Department of Business, Economic Development & Tourism's (DBEDT's) Staff's position description, responsibilities, and hours needed to accomplish tasks
 - C. Evaluation of DBEDT's Staff member assigned to the Small Business Regulatory Review Board (An executive session may be called, pursuant to Section 92-5(a)(2)), HRS)
- VIII. Election of a Board Chair, pursuant to Section 201M-5(d), HRS, and Election of Vice Chair and Second Vice Chair
- IX. Next Meeting: Scheduled for Wednesday, June 19, 2013, at 9:30 a.m., Conference Room 436, Capitol District Building, Honolulu, Hawaii
- X. Adjournment

If you require special assistance or auxiliary aid and/or services to participate in the public hearing process (i.e., sign language, interpreter, wheelchair accessibility, or parking designated for the disabled), please call (808) 586-2594 at least three (3) business days prior to the meeting so arrangements can be made.

III. Approval of March 20, 2013 Meeting Minutes

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING - DRAFT

March 20, 2013

Conference Room 436 - No. 1 Capitol District Building, Honolulu, Hawaii

I. **CALL TO ORDER:** Mr. Borg called the meeting to order at 9:35 a.m., with a quorum present.

MEMBERS PRESENT:

- Chu Lan Shubert-Kwock
- Leslie Mullens
- Howard Lum
- Barbara Bennett
- Kyoko Kimura
- Anthony Borge
- Mary Alice Evans

ABSENT MEMBERS:

- None

STAFF: DBEDT

Dori Palcovich

Office of the Attorney General

Margaret Ahn

II. ELECTION OF A TEMPORARY CHAIR

Mr. Lum made a motion for Ms. Shubert-Kwock to be the Temporary Chair for today's board meeting. Mr. Borge seconded the motion, and the Board members unanimously agreed.

III. APPROVAL OF FEBRUARY 20, 2013 MEETING MINUTES

Ms. Evans made a motion to accept the February 20, 2013 minutes, as amended. Ms. Mullens seconded, and the Board members unanimously agreed.

IV. OLD BUSINESS

- A. Small Business Statement After Public Hearing for Hawaii Administrative Rules (HAR) Title 17 Chapter 1722.3 Basic Health Hawaii; Chapter 1725 Assets; Chapter 1727 QUEST; Chapter 1739.1 Authorization, Payment, and Claims in the Fee-for-Service Medical Assistance Program for Non-institutional Services (Department of Human Services (DHS))

Ms. Aileen Befitel, Program Specialist at DHS's Med-QUEST Division, stated that three people attended the public hearing with no written or oral testimonies. Ms. Evans indicated that since DHS did not receive any requests to change the proposed rules, it is recommended this board accept the after public hearing report.

Ms. Evans made a motion that the rules proceed to the Governor for adoption. Mr. Borge seconded the motion, and the Board members unanimously agreed.

V. NEW BUSINESS

A. Proposed Amendments for Kauai County Code Chapter 10 Section A, Lihue Town Core Urban Design District (County of Kauai – Planning Department)

Ms. Marie Williams, representing Kauai County Long-range Planning Division, stated that the Planning Department's Director apologizes for being unable to attend this meeting. In his absence, she reviewed with the members a power point presentation that outlined the proposed rule amendments of the Lihue Town Core Urban Design District; this is a landmark plan that was passed approximately three years ago. The presentation described the Lihue town core boundaries; rationale of the plan, which is to revitalize Lihue in order to attract visitors and other sources of business; and the plan's vision, which is intended to be a welcoming destination that is "green" and "beautifully landscaped" to exemplify a pedestrian-friendly environment that embraces business and community development.

It was explained that the goals of this plan are expected to foster civic pride, develop Lihue as Kauai's main urban center, improve public facilities, and support multi-modal transportation. The design requirements encompass building materials and building colors. Specifically, light earth tones and colors commonly found in the Lihue town core will be used for new and existing development; brighter and darker and colors will be used for accents, trim and other architectural features; the project is being funded by the State. Mr. Lum requested a copy of the power-point presentation; it will be forwarded to DBEDT staff for distribution. Ms. Bennett noted that the proposed rules have been heard by several local business organizations such as the Lihue Business Association, and that it was a very good presentation of Kauai.

Ms. Bennett made a motion to send the proposed rules to public hearing. Ms. Kimura seconded the motion, and the Board members unanimously agreed.

B. Proposed HAR Title 18 Chapter 231 Administration of Taxes (Department of Taxation (DoTax))

Mr. Borge explained that these rules are "temporary" rules, which have lapsed; therefore, this proposal is to request that the rules become permanent. There are two additional amendments being proposed to clarify the processes of issuing a "cease and desist" citation 1) for failure to keep and produce adequate books and records, and 2) for failure to record transactions. The amendments also remove the abatement section of the law and will clarify when a fine is commensurate with a violation.

Ms. Alicia Burnham, Supervisor of DoTax's Special Enforcement division, stated that it is important that everyone is on the "same playing field" in regards to knowing what processes are required in order to pay business taxes. She distributed a "special enforcement" summary relating to paying one's fair share of taxes. Also distributed was a document entitled, "*Does your Business Involve "Cash" Transactions,*" which is translated into several different languages. It was noted that this is DoTax's attempt at helping the small business owner to be in compliance with the State tax laws.

Temporary Chair Shubert-Kwock stated that although the rules are fair, due to cultural barriers, the processing of the forms should be more user-friendly to assist the vendors. Mr.

Lum concurred, and noted that if DoTax was more proactive and accessible to provide informal instructions, it might help to avoid misunderstandings, and in return, generate more income for the State. Ms. Burnham stated that tax information packets are no longer available or provided, and although there is an online website, many of the vendors do not have internet accessibility. However, when a business owner goes into the tax office, a DoTax representative will sit down with them and instruct them on how to sign up online.

Ms. Mullens noted that the fines appear quite large, questioned whether DoTax offered a repayment plan and, if not, what would be the consequences to the vendors. In response, Ms. Burnham stated that the first time someone is not in compliance they are given a warning in order to allow them the opportunity to comply. The second time they are fined \$500, and the third time they are cited, the fine is \$1,000.

Mr. Borge made a motion to proceed to public hearing. Temporary Chair Shubert-Kwock seconded the motion, and the Board members unanimously agreed.

VI. LEGISLATIVE MATTERS - UPDATE

1. Governor's Message No. 526, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Anthony Borge, for a term to expire June 30, 2015

Temporary Chair Shubert-Kwock explained that all of the Governor's Messages for this board were approved. Specifically, she stated that this measure was recommended by the Committee on Economic Development, Government Operations and Housing "to advise and consent to the nomination." Mr. Borge reminded the members that they are not fully approved until their nominations are ratified by the Senate.

In regards to funding this Board, Mr. Lum noted for the record that while the legislators receive a salary, some acknowledgement should be made to provide board members with bottles of water, coffee, or items of that nature. Ms. Evans explained that even if this Board had a budget, it would be subject to the Department of Accounting and General Services' rules of procurement and expenditures.

2. Governor's Message No. 527, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Barbara Bennett, for a term to expire June 30, 2014

This measure was recommended by the Committee on Economic Development, Government Operations and Housing to advise and consent to the nomination.

3. Governor's Message No. 528, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Chu Lan Shubert-Kwock, for a term to expire June 30, 2016

This measure was recommended by the Committee on Economic Development, Government Operations and Housing to advise and consent to the nomination.

4. Governor's Message No. 529, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Howard Lum, for a term to expire June 30, 2014

This measure was recommended by the Committee on Economic Development, Government Operations and Housing to advise and consent to the nomination.

5. Governor's Message No. 530, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Kyoko Kimura, for a term to expire June 30, 2016

This measure was recommended by the Committee on Economic Development, Government Operations and Housing to advise and consent to the nomination.

6. Governor's Message No. 531, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Leslie Mullens, for a term to expire June 30, 2015

This measure was recommended by the Committee on Economic Development, Government Operations and Housing to advise and consent to the nomination.

VII. Administrative Matters

- A. Election of a Board Chair; pursuant to Section 201M-5(d), and Election of Vice Chair and Second Vice Chair

Ms. Kimura recommended that the election of a board chair be deferred until there is a full board; the board members agreed.

In addition to the statutory requirement for two more members, it was noted that one of the members is to come from the Big Island. Mr. Borge offered to contact the Big Island Chamber of Commerce and some of his Big Island customers for potential board members. Temporary Chair Shubert-Kwock noted that having a member to represent the agricultural industry is very important. Ms. Bennett will contact past board member, Mr. David De Luz, Jr., for assistance in any recommendations from the Big Island.

- B. Leslie Mullens to facilitate discussions on: 1) Meeting etiquette; 2) Guiding principles and values as an advisory; and 3) Questions to consider in decision-making

Ms. Mullens apologized and stated that she has to defer this agenda item until the next meeting because she had a "last minute" that she has to do by 11:30 a.m. today. Therefore, this agenda item is deferred until the next board meeting.

- VIII. ADJOURNMENT** – Ms. Bennett made a motion to adjourn the meeting at 10:40 a.m. Mr. Borge seconded the motion, and the Board members unanimously agreed.
- IX. NEXT MEETING** – Scheduled for 9:30 a.m., Wednesday, April 17, 2013, Conference Room 436, 250 South Hotel Street, Honolulu, HI.

IV. Old Business

- A. Small Business Statement After Public Hearing
for HAR Title 17 Chapter 1443 Feeding
Assistant Training Program, etc. (DHS)

NEIL ABERCROMBIE
GOVERNOR



PATRICIA McMANAMAN
DIRECTOR


BARBARA A. YAMASHITA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809

April 18, 2013

MEMORANDUM

TO: Dori Palcovich
Small Business Regulatory Review Board
Department of Business, Economic Development & Tourism

FROM: Patricia McManaman, Director 
Department of Human Services

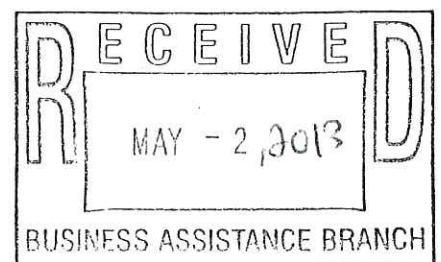
SUBJECT: Small Business Impact Review of the Proposed Repeal of Chapters 17-1420, 17-1438, 17-1440, 17-1441, and 17-1442, and Adoption of Chapters 17-1443, 17-1444, and 17-1445, Hawaii Administrative Rules

A public hearing was held on June 21, 2012, at 8:30 a.m. in the Liliuokalani Building, second floor Conference Rooms, 1390 Miller Street, Honolulu, Hawaii to hear the proposed repeal and adoption of administrative rules.

Enclosed is a copy of our "Small Business Statement after Public Hearing" checklist summarizing the comments received and the Department's responses to the comments.

The Department of the Attorney General has approved the proposed rules as to form. We are attaching a copy of the proposed rules in Ramseyer format for your information.

Enclosures



RULE MAKING CHECKLIST FOR "SMALL BUSINESS STATEMENT" AFTER PUBLIC HEARING

DEPARTMENT OR AGENCY:	DHS/SSD/ACCSB/PD
Chapter(s) and Title:	Chapters 17-1420, 17-1438, 17-1440, 17-1441, 17-1442, 17-1443, 17-1444, and 17-1445
Name and Phone Number of Contact Person:	Lori Tsuruda Phone Number: 586-7752

1. Summarize how the comments or testimonies from small business were solicited.

A public hearing was conducted on June 21, 2012 to gather comments and testimonies. The public hearing notice was published on May 20, 2012 in the Honolulu Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Isle.

Informal notice of the public hearing was e-mailed on May 24 and May 25, 2012 to state certified nurse aide training and competency evaluation programs, approved registered nurse evaluators, the Department of Health, the Department of Commerce and Consumer Affairs, Representative John Mizuno, Senator Suzanne Chun-Oakland, and interested community stakeholders who had contacted the department on this topic.

2. Summarize the written and oral comments or testimonies received from the public and small business regarding any proposed rule that affects small business.

There were twenty oral comments and eight written testimonies received from the public pertaining to the proposed rules above. The comments ranged from support of the recertification options, opposition against the competency review already established by state statutes, requests for further definition clarification, and clarification of rules pertaining to other recertification instruction methods. Several comments addressed issues beyond the scope of the rule amendments, such as recertification not based on employment, recertification of all CNAs in all health care or employment settings, and requiring recertification hours in a nursing facility for community CNA recertification. These provisions are not included in HRS Chapter 457A Nurses Aides or HRS §346-46. DHS has no statutory authority to include these provisions in our proposed administrative rules.

3. Summarize the department's or agency's response to the comments or testimonies received in item 2.

DHS acknowledged the contributions and cooperative effort of testifiers who supported the development of the proposed administrative rules. DHS disagreed with the two testifiers, who stated that the competency review component of the recertification process is not required since it is not included in HRS §346-46, "Certified nurse aides; training programs and recertification". In DHS' review of all state statutes applicable to certified nurse aides,

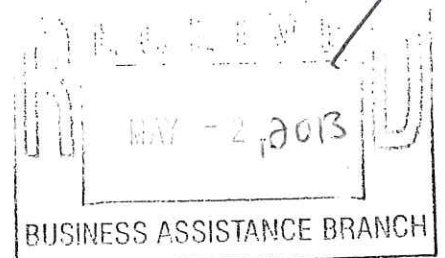
HRS Chapter 457A, "Nurses Aides", HRS §457A-8 (3) states:

"Maintenance requirements for the recertification process shall be required on a biennial basis and shall include a competency evaluation approved by the department of human services, and employment in a state-licensed or state-certified health care setting."

One testifier requested clarification regarding definitions for "direct supervision" and "indirect supervision" of supplemental (subordinate) nurse aide instructors. DHS consulted with the federal Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), Region IX representatives who determined that DHS' proposed rules were adequate to meet Federal requirements. Therefore, no changes were made.

Two testifiers requested further information regarding alternative recertification instruction methods. DHS provided oral and written suggestions which did not require any rule changes.

- | | |
|---|----|
| 4. How many persons attended the public hearing (excluding Social Services staff)? | 30 |
| 5. How many persons orally testified at the public hearing (including before the public hearing on the neighbor islands)? | 20 |
| 6. How many persons submitted written comments or testimonies in response to the proposed rule (including before the public hearing on the neighbor islands)? | 8 |
7. If there was a request to change the proposed rule at the public hearing in a way that affects small business and no change was made, explain why the request was not accepted.
- a. DHS does not have the statutory authority to delete the requirement of a competency evaluation from the recertification process. See explanation in #3 above.
 - b. DHS provided oral and written suggestions to two testifiers who requested information regarding alternative recertification instruction methods. No rule changes were required.
 - c. One testifier requested a rule change to clarify the definitions for "direct supervision" and "indirect supervision". DHS consulted with the federal CMS representatives in Region IX who determined that the proposed administrative rules were adequate to meet Federal requirements. Therefore, no rule changes were made.

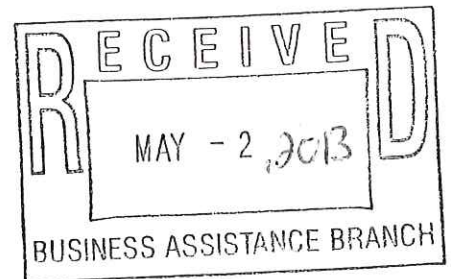


DEPARTMENT OF HUMAN SERVICES

Repeal of Chapters 17-1420, 17-1438, 17-1440, 17-1441,
and 17-1442; and Adoption of Chapters 17-1443,
17-1444, and 17-1445
Hawaii Administrative Rules

October 8, 2012

1. Chapter 17-1420, Hawaii Administrative Rules, is repealed.
2. Chapter 17-1438, Hawaii Administrative Rules, is repealed.
3. Chapter 17-1440, Hawaii Administrative Rules, is repealed.
4. Chapter 17-1441, Hawaii Administrative Rules, is repealed.
5. Chapter 17-1442, Hawaii Administrative Rules, is repealed.
6. Chapter 17-1443, Hawaii Administrative Rules, entitled "State Approved Feeding Assistant Training" Program is adopted to be read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 9 ADULT AND COMMUNITY CARE PROGRAMS

CHAPTER 1443

STATE-APPROVED FEEDING ASSISTANT TRAINING PROGRAM

- §17-1443-1 Purpose
- §17-1443-2 Definitions
- §17-1443-3 Application for a state-approved feeding assistant training program
- §17-1443-4 Requirements for a state-approved feeding assistance training program
- §17-1443-5 Appeal

§17-1443-1 Purpose. The purpose of this chapter is to establish administrative provisions for state-approved feeding assistant training programs. [Eff] (Auth: HRS §346-14; 42 C.F.R. §§430.10, 431.10, 483.1) (Imp: 42 C.F.R. §§440.40, 483.1, 483.35, 483.160)

§17-1443-2 Definitions. As used in this chapter:

"Department" means the department of human services.

"Feeding assistant" means an individual who has successfully completed a state-approved feeding assistant training program approved by the department and who is paid by a nursing facility or is used under an arrangement with another agency or organization to feed nursing facility residents who have no complicated feeding problems. Complicated feeding problems include difficulty swallowing, recurrent lung

training program shall continue unless there are changes in registered nurse supervision or changes in curriculum as specified in section 17-1443-4. Such changes shall require the program to obtain departmental approval through another approval process as specified in this section. [Eff]

(Auth: HRS §346-14; 42 C.F.R. §431.10) (Imp: HRS §346-46; 42 C.F.R. §§440.40, 483.1, 483.151)

§17-1443-4 Requirements for a feeding assistant training program. (a) A feeding assistant training program approved by the department shall include a minimum of ten hours of training, and shall include a combination of classroom training and a minimum of four hours of practical training. Practical training means training in which the individual learns and demonstrates knowledge and proficiency while performing tasks on another individual under the direct supervision of a registered nurse.

(b) The feeding assistant training program shall include the following:

- (1) Feeding techniques;
- (2) Assistance with feeding and hydration;
- (3) Communication and interpersonal skills;
- (4) Appropriate responses to resident behavior;
- (5) Safety and emergency procedures, including the Heimlich maneuver;
- (6) Infection control;
- (7) Resident rights; and
- (8) Recognizing changes in residents that are inconsistent with their normal behavior and the importance of reporting those changes to the supervisory nurse.

(c) Individuals being trained shall be at least eighteen years of age at the commencement of the feeding assistant training program.

(d) A nursing facility shall maintain a record of all feeding assistants who have successfully completed the feeding assistant training program.

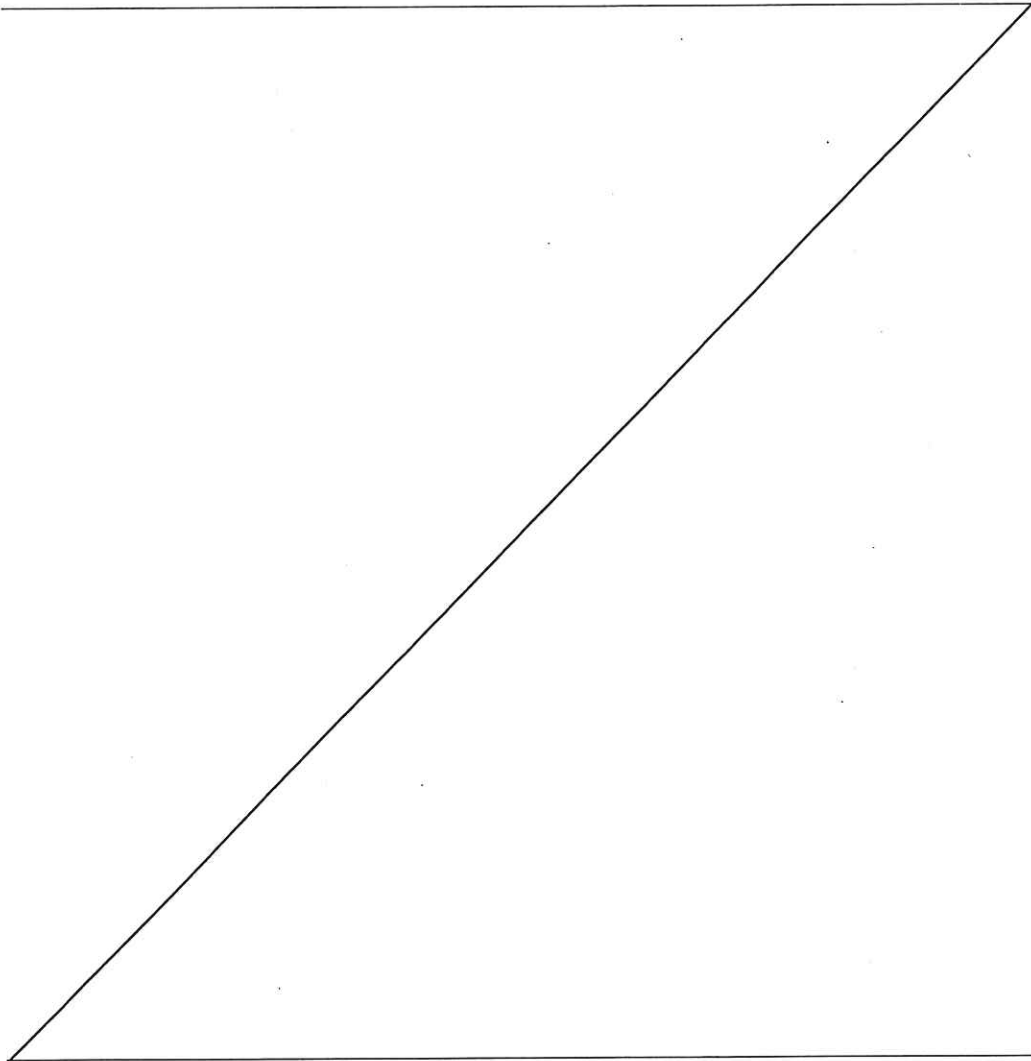
(e) The department of health, office of health care assurance, as part of the federally mandated

under court procedures.

(d) The hearing officer's decision shall be in writing, shall contain findings of fact and rulings of law, and shall be mailed to the nursing facility by certified or registered mail." [Eff]

(Auth: HRS §§346-14, 346-46) (Imp: 42 C.F.R. §483.151)

7. Chapter 17-1444, Hawaii Administrative Rules, entitled "Nurse Aide Training and Competency Evaluation Programs" is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 9 ADULT AND COMMUNITY CARE PROGRAMS

CHAPTER 1444

NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAMS

- §17-1444-1 Purpose
- §17-1444-2 Definitions
- §17-1444-3 Application for an initial certification of a nurse aide training and competency evaluation program
- §17-1444-4 Curriculum requirements for a nurse aide training and competency evaluation program
- §17-1444-5 Instructor requirements for a nurse aide training and competency evaluation program
- §17-1444-6 Disposition of an application for a nurse aide training and competency evaluation program certification
- §17-1444-7 On-going certification of a nurse aide training and competency evaluation program
- §17-1444-8 Appeal

§17-1444-1 Purpose. The purpose of this chapter is to establish the standards that shall be applied by the department in granting certification of the nurse aide training and competency evaluation programs.

[Eff] (Auth: HRS §346-14; 42 C.F.R. §431.10) (Imp: HRS §§346-46; 457A-2, 457A-7, 457A-8)

skill requirements mandated by federal and state law.

"Registered nurse" means an individual who is licensed as a registered nurse in the State, pursuant to chapter 457, HRS.

"Resident" means an individual who resides in a nursing facility and receives needed professional services directed by a physician toward the maintenance, improvement, or protection of health, or lessening of illness, disability, or pain.

"State-licensed or state-certified health care settings" shall be as defined in section 457A-1.5, HRS.

"Supervised practical training" means training in a laboratory setting designed to simulate the nursing facility environment in which the trainee learns and demonstrates knowledge and proficiency while performing tasks on an individual under the direct supervision of a registered nurse.

"Trainee" means an individual enrolled as a student in a nurse aide training and competency evaluation program to be trained as a nurse aide. [Eff] (Auth: HRS §346-14; 42 C.F.R. §430.10) (Imp: HRS §346-46; 42 C.F.R. §§483.10, 483.75, 483.151, 483.152, 483.154)

§17-1444-3 Application for initial certification of a nurse aide training and competency evaluation program.

(a) Requests for certification from a facility-based or a non-facility based nurse aide training and competency evaluation program shall be submitted to the department on a departmental application form.

(b) The date of application shall be the date a complete application is received by the department. The application shall be considered complete when it includes all of the requirements as specified in sections 17-1444-4 and 17-1444-5.

(c) The submission of additional information shall be in the format as prescribed by the department.

(d) An incomplete application may be returned to

- (1) Introduction to the health care delivery system in Hawaii with special emphasis on agencies and facilities that care for the aged;
- (2) Appropriate professional conduct as a nurse aide;
- (3) General preventive health care with emphasis on controlling the spread of infections;
- (4) Basic information about human bodily functions;
- (5) Interpersonal skills including time and stress management, teamwork, developing relationships with residents, and coping with death and dying; and
- (6) Basic medical terminology.

(d) Seventy hours of the one hundred hours of training specified in subsection (b) (1) shall consist of supervised practical training. Supervised practical training shall include at a minimum, the following:

- (1) Basic nursing skills that must be taught and directly supervised by a registered nurse for a minimum of thirty hours;
- (2) Basic personal care skills that must be taught and directly supervised by a licensed practical nurse working under the supervision of a registered nurse for a minimum of thirty hours; and
- (3) Basic restorative services that must be taught by a licensed or certified therapist working under the supervision of a registered nurse for a minimum of ten hours.

(e) In a non-facility based nurse aide training and competency evaluation program, the supervised practical training shall be conducted in a laboratory setting designed to simulate the nursing facility environment.

(f) Trainee activities in a nurse aide training and competency evaluation program are restricted as follows:

- (1) Trainees shall not perform any services to residents for which the trainee has not been

experience in teaching adults or in supervising nurse aides.

(c) In a facility-based nurse aide training and competency evaluation program, the training of nurse aides may be performed under the general supervision of the director of nursing for the facility. The director of nursing shall be prohibited from performing the actual training.

(d) The registered nurse instructor shall ensure that the contents of courses taught by registered nurses, licensed practical nurses, or supplemental personnel other than the registered nurse instructor meet the curriculum requirements as specified in section 17-1444-4.

(e) Supplemental personnel from other health professions may be utilized by the registered nurse instructor to instruct trainees on relevant topics. Supplemental personnel shall have at least one year of experience in their respective fields, including:

- (1) Activities specialists;
 - (2) Dieticians;
 - (3) Fire safety experts;
 - (4) Gerontologists;
 - (5) Licensed practical nurses;
 - (6) Nursing home administrators;
 - (7) Pharmacists;
 - (8) Psychologists;
 - (9) Physical and occupational therapists;
 - (10) Physicians;
 - (11) Registered nurses;
 - (12) Resident rights experts;
 - (13) Sanitarians;
 - (14) Social workers; and
 - (15) Speech, language, and hearing therapists.
- [Eff _____] (Auth: HRS §§346-14, 346-46) (Imp: 42 C.F.R. §483.152)

§17-1444-6 Disposition of an application for a nurse aide training and competency evaluation program certification. (a) Within ninety days of the date of application, the department shall provide the nurse

(4) Required hours of training.

(e) The department may revoke certification of a nurse aide training and competency evaluation program when the department determines that the nurse aide training and competency evaluation program:

- (1) Does not meet curriculum requirements as specified in section 17-1444-4;
- (2) Does not meet instructor requirements as specified in section 17-1444-5; or
- (3) Has not permitted the department to conduct unannounced on-site visits to review the nurse aide training and competency evaluation program.

(f) The department shall provide written notification to the nurse aide training and competency evaluation program specifying the reason(s) for the revocation of a certification. Upon the effective date of revocation, the nurse aide training and competency evaluation program shall not enroll new trainees. A trainee who has already started a training program with a nurse aide training and competency evaluation program that has had its certification revoked shall be permitted to complete the training program.

(g) A facility-based nurse aide training and competency evaluation program shall not be certified when the facility-based nurse aide training and competency evaluation program in the previous two years:

- (1) Has operated under a waiver issued by the department of health;
- (2) Has been subject to an extended or partial extended survey conducted by the department of health;
- (3) Has been assessed a civil money penalty by the department of health of not less than \$5,000; or
- (4) Has been subject to a remedy to ensure the health and safety of its residents.

(h) The department shall not, until two years has elapsed since the assessment of the penalty or penalties by the department of health, certify a

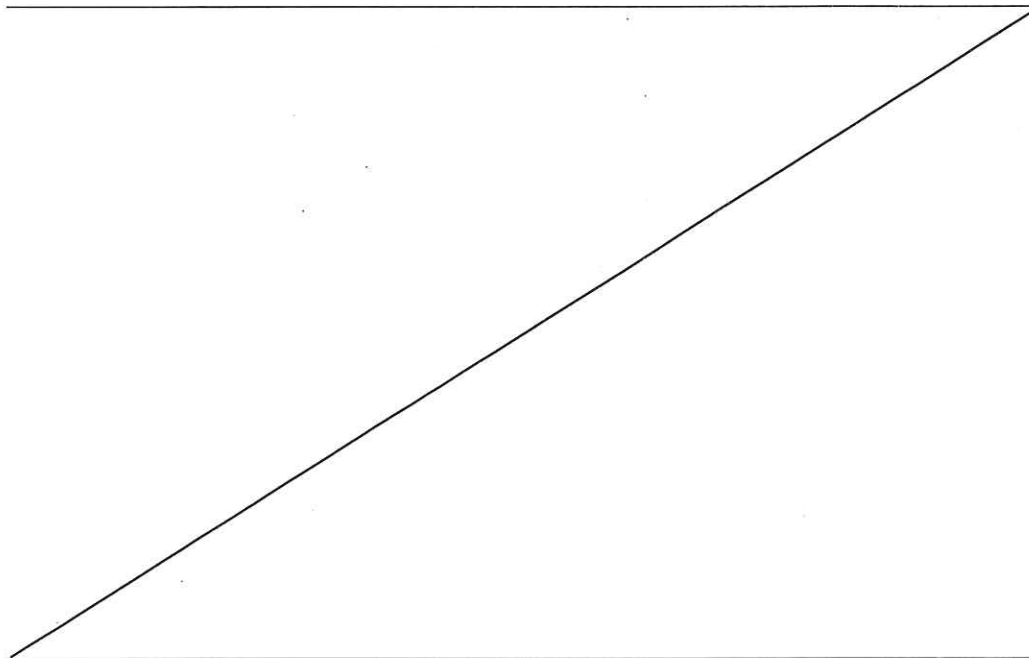
revoked.

(c) At any hearing provided for by this section, the nurse aide training and competency evaluation program may be represented by counsel and shall have the right to call, examine, and cross-examine witnesses. Evidence may be received even though inadmissible under rules of evidence applicable under court procedures.

(d) The hearing officer's decision shall be in writing, shall contain findings of fact and rulings of law, and shall be mailed to the parties to the proceedings by certified or registered mail to the last known address as shown on the certification.

(e) Filing an appeal shall not stay the department's revocation of a certification." [Eff] (Auth: HRS §§346-14, 346-46) (Imp: 42 C.F.R. §483.151)

8. Chapter 17-1445, Hawaii Administrative Rules, entitled "Recertification of Nurse Aides in State-Licensed or State-Certified Health Care Settings" is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 9 ADULT AND COMMUNITY CARE PROGRAMS

CHAPTER 1445

RECERTIFICATION OF NURSE AIDES IN STATE-LICENSED OR
STATE-CERTIFIED HEALTH CARE SETTINGS

§17-1445-1	Purpose
§17-1445-2	Definitions
§17-1445-3	Recertification requirements
§17-1445-4	Option A nurse aide recertification
§17-1445-5	Option B nurse aide recertification
§17-1445-6	Notification

§17-1445-1 Purpose. (a) The purpose of this chapter is to establish the standards that shall be applied by the department for the recertification of nurse aides employed in state-licensed or state-certified health care settings.

(b) State-licensed or state-certified health care settings may or may not require recertification of nurse aides in their employ. When recertification is required, the standards as specified in this chapter shall apply. [Eff _____] (Auth: HRS §346-14; 42 C.F.R. §431.10) (Imp: HRS §§346-46, 457A-2)

§17-1445-2 Definitions. As used in this chapter:

"Certified nurse aide" shall be as defined in section 457A-1.5, HRS.

"Competency evaluation" means an assessment,

§17-1445-3 Recertification requirements. (a) Nurse aides who are certified, employed in state-licensed or state-certified health care settings, and who choose to be recertified as a nurse aide are required to be recertified not less than every two years.

(b) The recertification process is a combination of requirements specified by the department of commerce and consumer affairs and the department of human services.

(c) Recertification requirements of a nurse aide specified by the department of commerce and consumer affairs are as described in section 16-89A-4(c).

(d) Recertification requirements of a nurse aide specified by the department of human services are as follows:

- (1) The nurse aide shall complete twenty-four hours of continuing education in the two-year period prior to the expiration of the current nurse aide certification.
- (2) Continuing education subject areas shall consist of topics relevant to the employment of a nurse aide in a state-licensed or state-certified health care setting and may include:
 - (A) Communication and interpersonal skills;
 - (B) Universal precautions (infection control);
 - (C) Safety and emergency procedures, including Heimlich maneuver;
 - (D) Understanding and promoting client independence;
 - (E) Respecting client rights;
 - (F) Basic nursing skills, including recognizing abnormal changes in body functioning and the importance of reporting changes to a supervisor;
 - (G) Personal care skills to maintain elderly, disabled, and cognitively impaired clients in home-like settings;
 - (H) Mental health and social service needs and resources;

(d) The state-certified nurse aide training and competency evaluation program shall objectively measure the nurse aide's performance in the course of study that shall include, but not limited to, the following:

- (1) Attendance records; and
- (2) Evidence that the nurse aide has achieved competency and proficiency in basic nurse aide skills.

(e) At completion of the twenty-four hour course of study, the state-certified nurse aide training and competency evaluation program shall provide the nurse aide with a certificate as proof of course completion. [Eff] (Auth: HRS §§346-14, 346-46) (Imp: HRS §457A-8; 42 C.F.R. §§483.75, 483.152, 483.154)

§17-1445-5 Option B nurse aide recertification.

(a) Option B is the completion of a total of twenty-four hours of continuing education class instructions, offered by entities such as, but not limited to, community colleges, health-related agencies or organizations, or registered nurses who are independent contractors, on subject areas relevant to nurse aides employed in state-licensed or state-certified health care settings.

(b) At the completion of each continuing education class, the class instructor shall provide the nurse aide with a certificate identifying the title of the class, the class instructors, and certifying the number of instructional class hours provided.

(c) The nurse aide shall be responsible for arranging for a registered nurse evaluator to complete the following:

- (1) Certify that the nurse aide completed, at a minimum, twenty-four continuing education class instruction hours within the two-year period prior to the expiration of the current nurse aide certification, and that the subject areas in each course of study

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 October 8, 2012 and filed with the Office of the Lieutenant Governor.

Dir: **COPY** ces

DO NOT SIGN

APPROVED AS TO FORM:



Deputy Attorney General

IV. Old Business

- B. Small Business Statement After Public Hearing for HAR Title 13 Chapter 54, Puako Bay and Puako Reef, Hawaii, etc. (DLNR)

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
INTERIM FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

DIVISION OF AQUATIC RESOURCES
74-380B Kealahou Pkwy.
Kailua-Kona, HI 96740
April 2013

Small Business Statement After Public Hearing

The Department of Land and Natural Resources (DLNR) is proposing a number of rule changes affecting the West Hawai'i Regional Fishery Management Area (WHRFMA). These changes include:

Repeal of existing chapter 13-60.3 and concurrent adoption of a new chapter (13-60.4) incorporating the following new provisions for the WHRFMA:

1. Establishment of a list of 40 fish species permitted for aquarium take. Only those fish on this "White List" could be collected live for aquarium use. Size and bag limits are proposed for three species on the White List. *Approve*
2. Prohibition of SCUBA/Rebreather spearfishing and/or possession of such gear with a spear or speared aquatic life. *Opp ~~to~~ economic impact*
3. Prohibition of take or possession of nine species of inshore sharks and rays and two invertebrate crown-of-thorns predators. *Approve*
4. Establishment of a 1,500 foot section of Ka'ohu Bay (Pebble Beach), South Kona, as a Fish Replenishment Area (FRA) where aquarium collecting and/or recreational fish feeding is prohibited. *Approve*

Several other WHRFMA rule changes are also proposed to enhance enforcement of aquarium collecting regulations and to clarify existing rule provisions. These include the following:

- a. Establishment of a West Hawai'i Aquarium Permit for collectors to take aquarium fish in the WHRFMA. The terms and conditions of this permit are the provisions included in the rule.
- b. Possession of aquarium collecting gear or aquarium fish on a vessel after sunset or before sunrise is permissible only when prior notification is made to the DAR-Kona office.
- c. Nets or containers used to capture or hold aquarium fish must be labeled with the commercial marine license (CML) number(s) of the persons who own or are using such equipment.



In addition to the above provisions there are also proposed rule changes involving updates to two Fisheries Management Areas (FMA) within the WHRFMA and an update to DLNR's lay net rule.

5. Clarification of the boundaries of the Puakō Bay and Puakō Reef FMA (chapter 13-54) and the types of nets prohibited (all except thrownets).
6. Clarification of the no-netting boundaries of the Keauhou Bay FMA (chapter 13-57) to be consistent with the no-netting boundaries established under the WHRFMA rule.
7. Technical amendments to the department's statewide lay net rule (chapter 13-75-12.4) for consistency with the proposed WHRFMA rule (chapter 13-60.4) and to reflect differences between the rules.

The recommended rule changes are the result of over ten years of committee meetings, research and community discussions involving over 550 community members, facilitated by the West Hawai'i Fisheries Council (WHFC). These changes will ensure continued resource sustainability, enhance nearshore resources, and minimize user conflicts in the WHRFMA. See [WHRFMA Rules - WHFC Background.pdf](#) for further details on the process and [WHRFMA Rules Summary.pdf](#) for additional information on the rules including species lists.

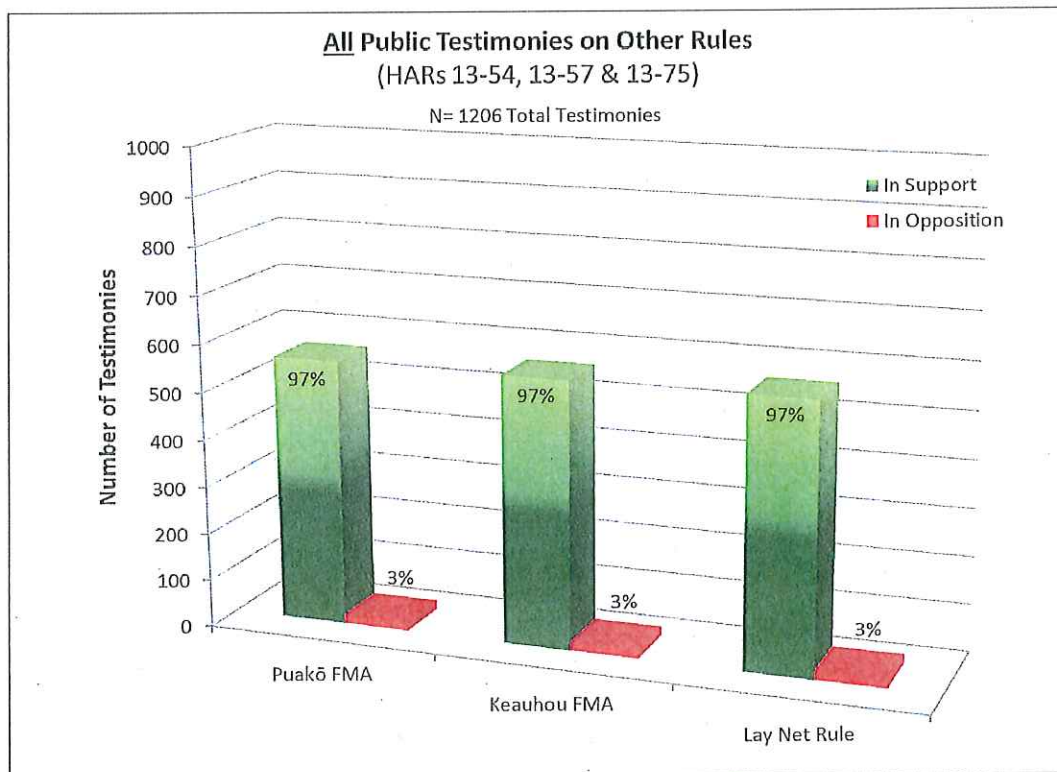
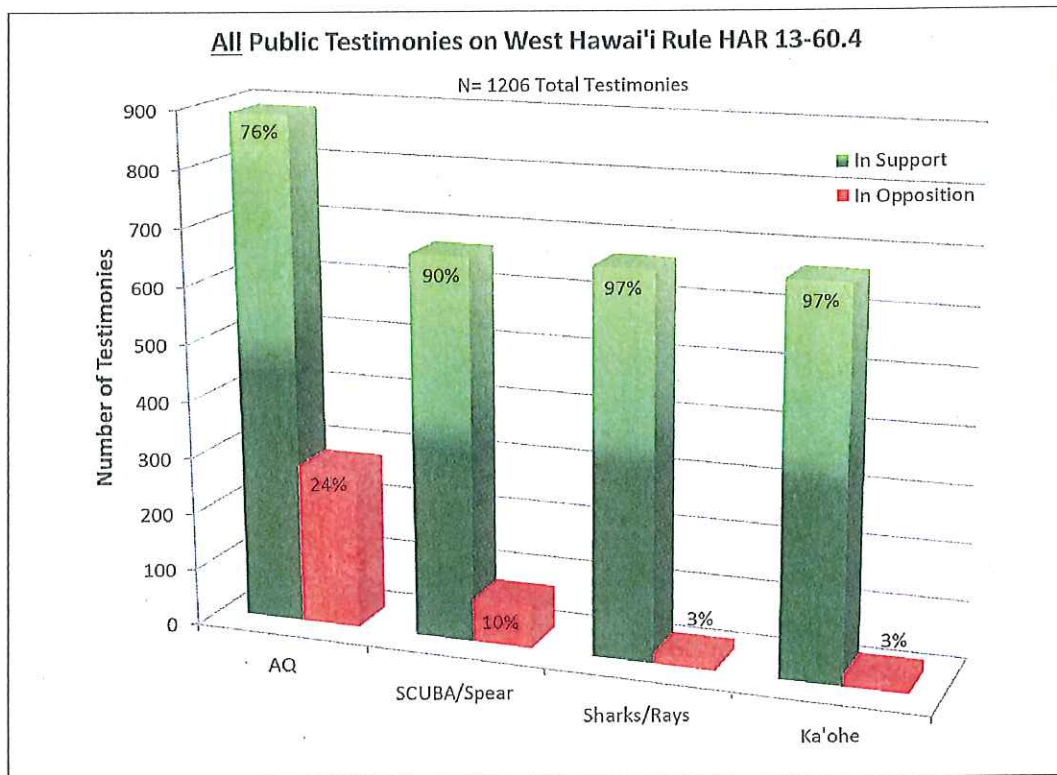
Public Testimony

An October 17, 2012 DLNR press release began the public notification process to solicit relevant information, opinion and testimonies on the proposed rule and amendments. A Notice of Public Hearing was published on October 28, 2012 in the West Hawaii Today, Hilo Tribune-Herald and Honolulu Star Advertiser newspapers. Testimony was to be accepted until December 19, 2012. Additional testimonies and comments received after that date were accepted by directive of the acting DAR Administrator.

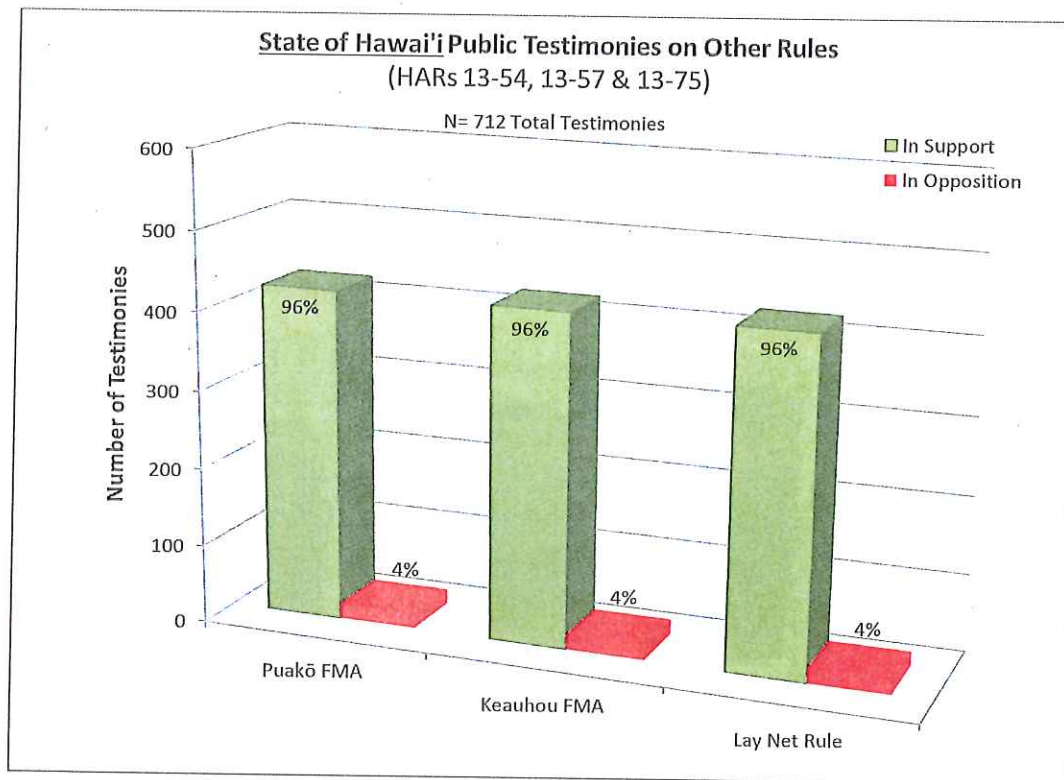
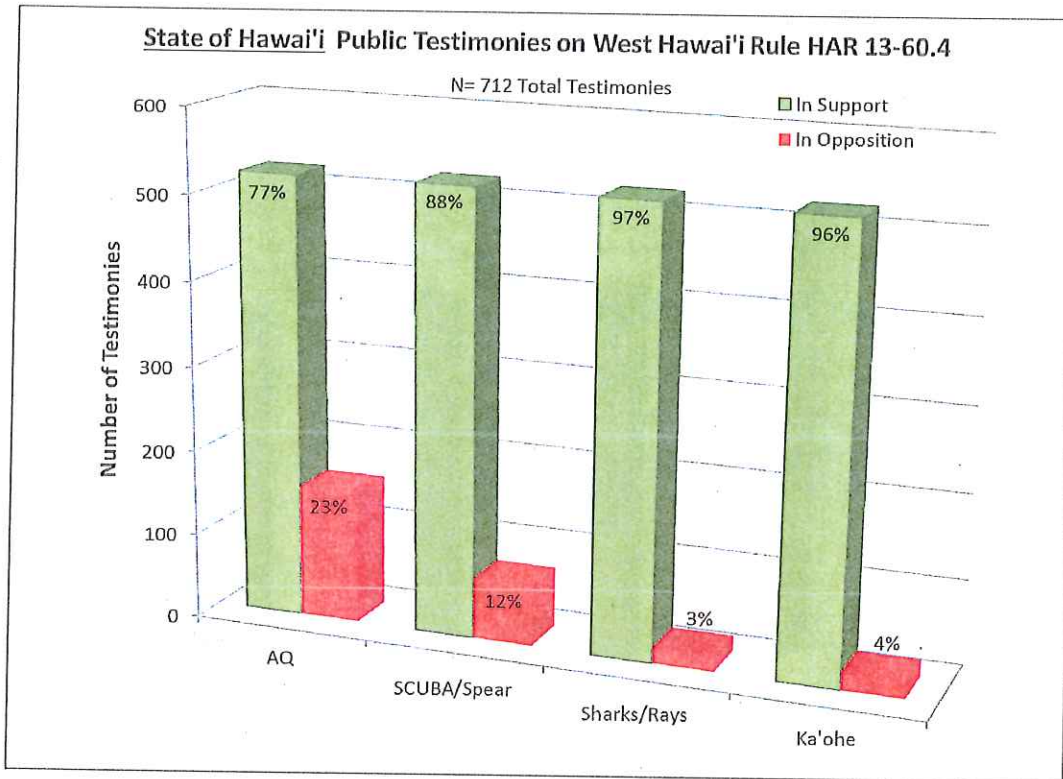
A total of 1206 testimonies (written and oral) were received by DLNR. Approximately 250 people attended the December 05, 2012 Public Hearing in West Hawai'i and the 52 oral testimonies presented at the Hearing were transcribed by Ralph Rosenberg Court Reporters, Inc. Oral testimonies are included with written testimonies in this summary document. Testimonies were grouped as In Support, Partial Support and In Opposition. Within each section individual testimonies were generally organized by testimony length (word count) from longest to shortest.

For summary analyses, testimonies were categorized with regard to the individual rules and rule amendments. The four major components of the WHRFMA rule (chapter 13-60.4) were addressed separately. They were noted as AQ (refers to 1. and a., b., and c. above), Scuba/Spear (2.), Sharks/Rays (3.) and Ka'ohē (4.). Summary figures for testimonies are presented separately for the WHRFMA rule (and its four components) and the other three rule amendments. Testimonies were grouped into four classes: All testimony, State of Hawai'i testimony, Big Island testimony and West Hawai'i testimony.

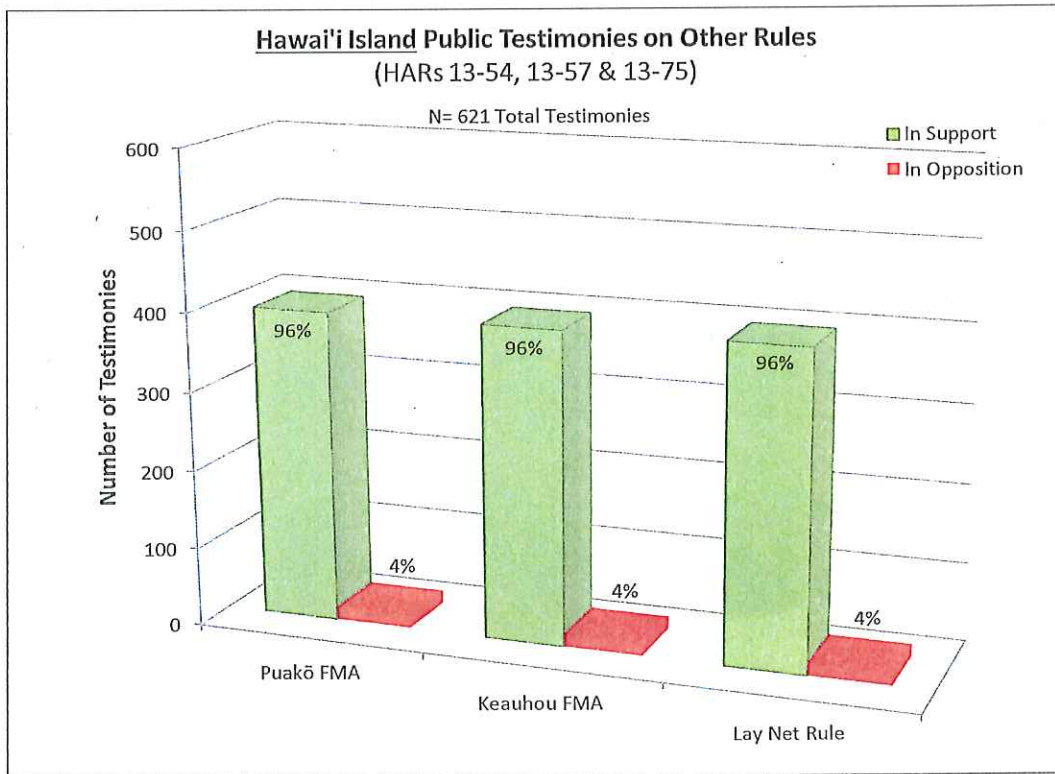
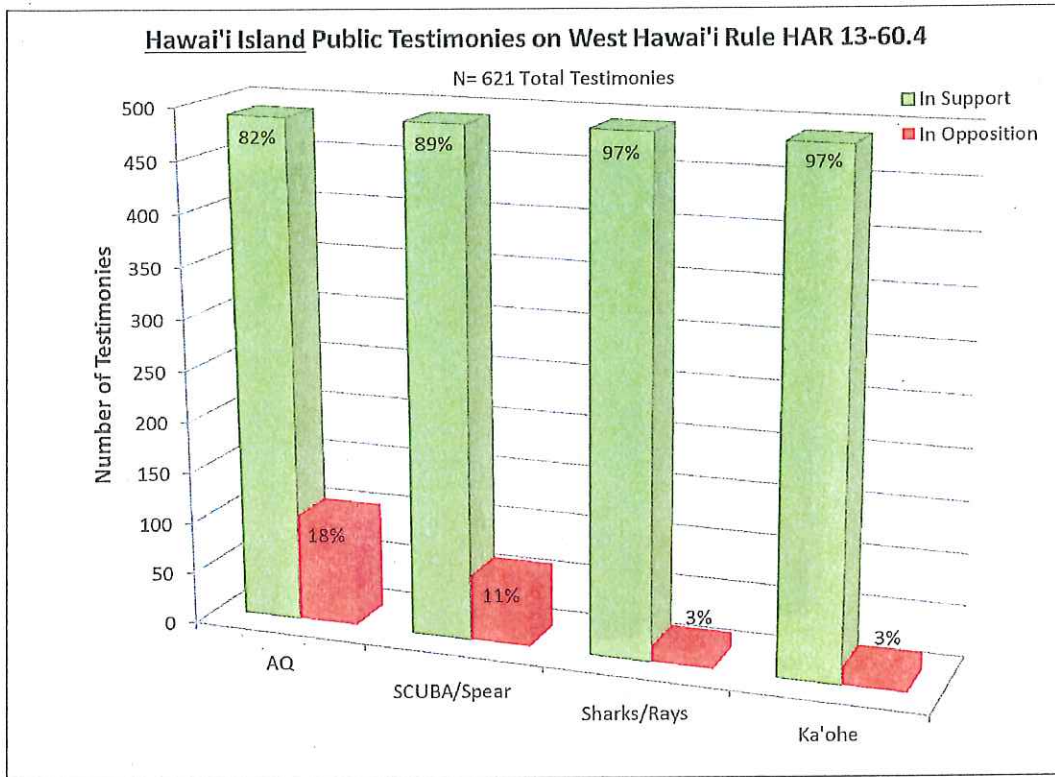
All testimony considered together (N = 1206) showed overwhelming support for all of the rule provisions.



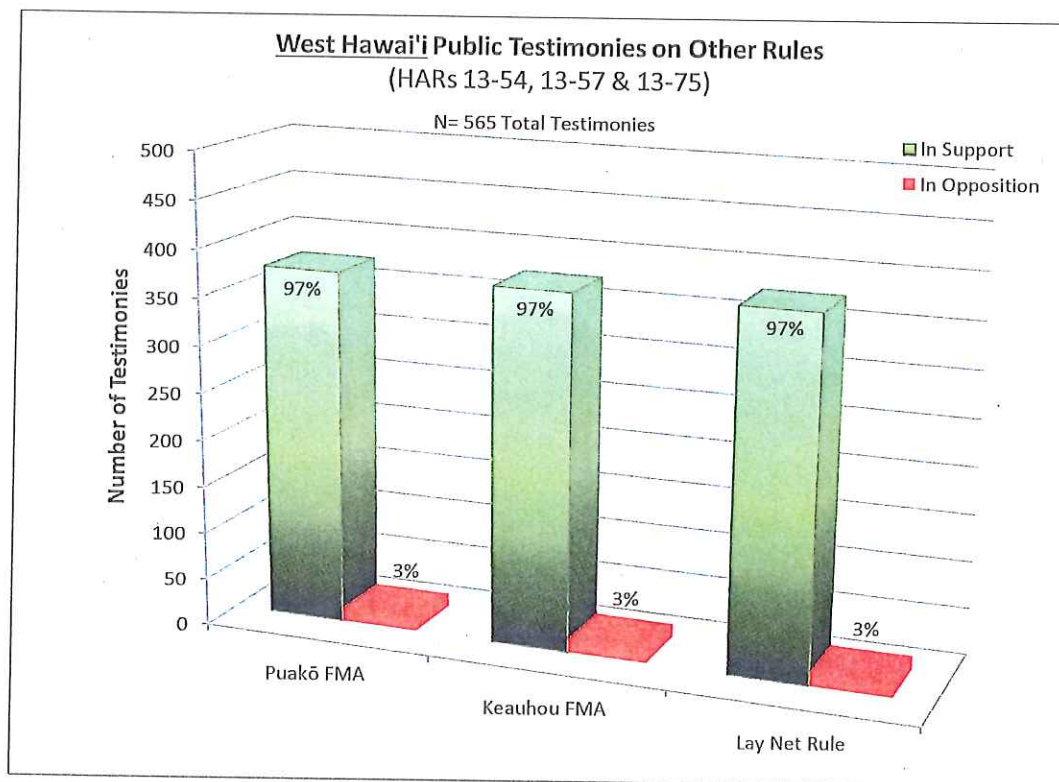
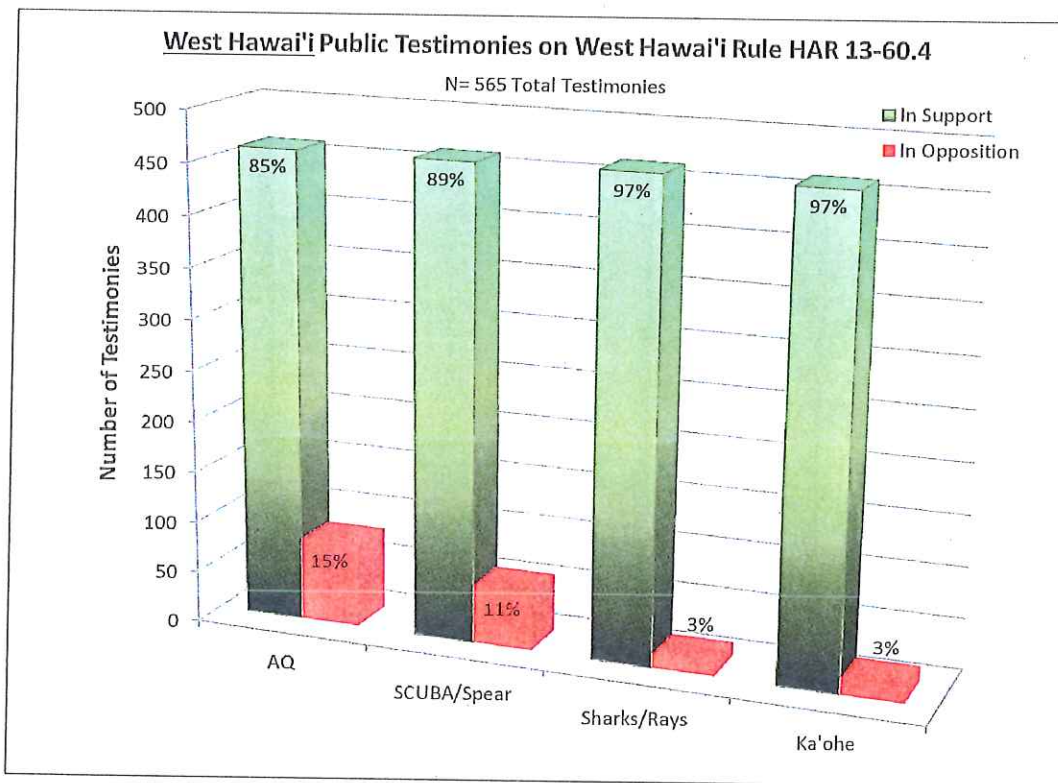
State of Hawai'i testimony (N = 712) showed overwhelming support for all of the rule provisions.



Island of Hawai'i testimony (N = 621) showed overwhelming support for all of the rule provisions.



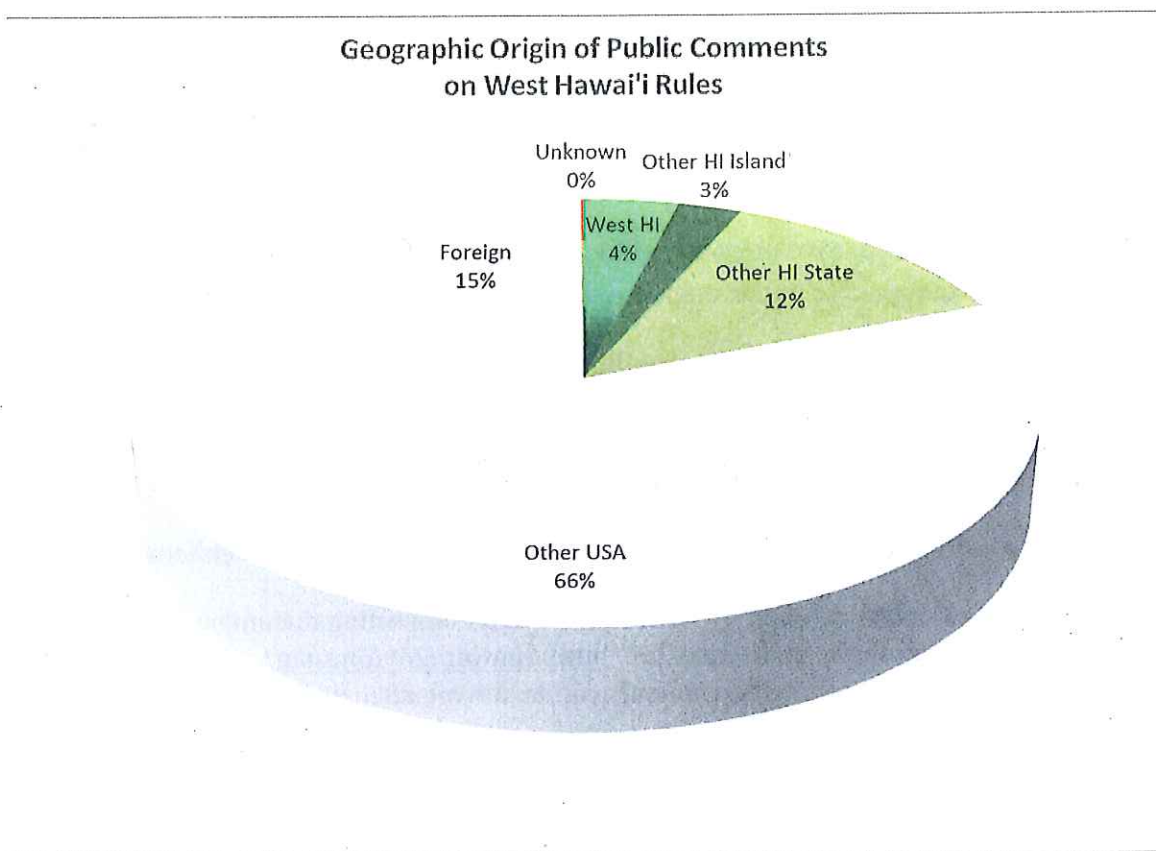
West Hawai'i testimonies (N = 565) showed overwhelming support for all of the rule provisions.



In the breakdown of testimony for the aquarium related provisions of the WHRFMA rule, it is noteworthy that the rule received the strongest support in West Hawai'i.

Public Comments

In addition to testimony on the rules, a large number of general comments (N = 2390) were received, primarily in response to Email-Blasts, from Earthjustice, The Center for Biological Diversity and the Conservation Council for Hawai'i. 81% of all comments received were from outside of Hawai'i including comments from people in 42 countries and every state of the union except New Mexico. Geographic origins of comments are shown in the following figure.



The largest group of comments (N = 1923 - all with essentially the same verbiage) was in response to The Center for Biological Diversity's Email-Blast. 98% of these comments were from outside of Hawai'i. The comments focused solely on aquarium collecting with the main points urging the Department of Land and Natural Resources (DLNR) to:

- strengthen the proposed rules for aquarium collection of Hawaii's reef fish
- adopt much stronger protections for coral reef ecosystems

- reduce the bag limits for reef fish
- include limits on collection of many other reef fish and animals
- limit aquarium collection permits
- conduct a review of the environmental impacts of aquarium collection

Earthjustice solicited comments (N=379) were much more localized with all but one coming from within the state of Hawai'i. 16% were from West Hawai'i. Similarly these comments urged DLNR to:

- comply with the environmental review procedures mandated by the Hawai'i Environmental Policy Act before issuing administrative rules regarding marine aquarium collection and;
- rules that DLNR enacts should be based on sound science and allow for meaningful public input
- DLNR should have as much scientific information as possible about aquarium collection before finalizing any administrative rules
- DLNR should only approve rules that value the health of our reefs and that are based on good, scientific information after a thorough environmental review
- The proposed West Hawai'i rules do not limit the number of aquarium collection permits
- There are species on the proposed "White List" that DLNR would continue to allow to be collected in unlimited numbers under these rules
- The rules would also still allow unlimited collection of species that are endemic to Hawai'i

All testimonies and comments received by DLNR as well as supporting documentation are available on the 'WHAT'S NEW' page on the DAR website: <http://hawaii.gov/dlnr/dar/>
The following WHRFMA rule-related documents can be downloaded at the website:

Draft Rules
Background on Proposed Rules
Small Business Impact Statement
Rules Summary
Rules Comments
Summary of Testimony and Comments
Testimony in Support
Testimony in Opposition

After an assessment of the necessity and utility of the rules and in response to overwhelming supportive public testimony, DLNR's Division of Aquatic Resources (DAR) will recommend to the Board of Land and Natural Resources (BLNR) that the West Hawaii rules be approved in their entirety.

Following is the Small Business Impact Statement that was presented to the Board on June 26, 2012.

Small Business Impact Statement

Department of Land & Natural Resources Proposed Amendments to Chapters 13-54 and 13-57, Repeal of Chapter 13-60.3, Adoption of Chapter 13-60.4, and Amendments to Chapter 13-75, Hawai'i Administrative Rules

1. List of affected small businesses (fewer than 100 full- or part-time employees)

Affected businesses may include those small businesses engaged in the collection of aquatic life from West Hawai'i waters (from Ka Lae, Ka'ū to 'Upolu Point, North Kohala) for sale as aquarium pets, or for consumptive or other purposes. These businesses may face certain restrictions on their commercial activity, as described below.

However, the greater assurance of resource sustainability provided by the proposed rules should also foster long-term benefits to these businesses and industries. Additionally, commercial ocean recreation tour operators, dive gear rental operations, and similar businesses that engage in non-extractive activities based upon the aquatic resources of West Hawai'i will also benefit from these resource protection measures.

Currently, there are approximately 70 individual aquarium collectors operating in the West Hawai'i area, and 16 commercial fishermen who engage in SCUBA spearfishing (the primary commercial harvesting activities affected by the proposed rules). There are approximately 70 small businesses engaged in ocean recreation tour operations or similar non-extractive activities in West Hawai'i.

2. Description of affected businesses

The potentially adversely affected businesses listed in section 1 above are engaged in the collection and sale of aquatic life from the marine waters of West Hawai'i, for either aquarium or consumptive purposes.

Businesses engaged in the collection of aquatic life for aquarium purposes may be adversely impacted in the following ways:

-The collection of aquatic life for aquarium purposes will be prohibited in a 1,500 foot section of Ka'ohe Bay, otherwise known as Pebble Beach. The Big Island Association of Aquarium Fishermen (BIAAF) agreed to support this proposal in order to resolve long-standing user conflicts in the area.

-Aquatic life that may be collected for aquarium purposes would be restricted to a "white list" of 40 species, with additional bag and size limits for three highly targeted species: yellow tang, kole, and Achilles tang. Adverse revenue impacts should be minimal, given that these "white list" species comprised 99% of the total fish catch and monetary value of the West Hawai'i aquarium fishery (FY 2007-2011). The size limits for the highly targeted species have been tailored to prevent the taking of fish that are already considered less suitable for the aquarium trade (due to higher mortality rates or lower retail prices); the bag and size limits will also support the commercial sustainability of the fishery by ensuring

greater breeding opportunities for existing fish stocks. The BIAFF supports the "white list" and bag and size limits.

-Aquarium collecting gear must now be labeled with the commercial marine license of the person owning or possessing such equipment, and the letters "AQ" must now be permanently affixed to both sides of an aquarium-collecting vessel. Any adverse impact from this proposal would be limited to the time and cost of affixing the required markings on any aquarium collecting equipment and vessel.

-Aquarium collectors who wish to possess aquarium collecting gear or aquatic life collected for aquarium purposes after sunset and before sunrise must provide phone notification to the Kona Division of Aquatic Resources Office. The adverse impact from this proposal would be limited to the cost of making a phone call and leaving a message prior to or during multi-day fishing trips or vessel emergencies.

-Individuals engaged in the collection of aquatic life for aquarium purposes must now obtain an additional West Hawai'i Aquarium Permit, which will include information on the new rules for aquarium collecting in West Hawai'i. The adverse impact of this proposal would be limited to the filling out of an additional, free application, which can be concurrently applied for when renewing or applying for the presently-required statewide aquarium permit with their commercial marine license. With a West Hawai'i Aquarium Permit, AQ businesses will also be allowed to use small-mesh lay nets without complying with lay net registration or marking requirements, further mitigating any adverse administrative impact.

-Amendments to chapter 13-54 would clarify the no-netting boundaries of the Puakō Bay and Puakō Reef Fisheries Management Area with an updated map, which previously led to confusion regarding the outer boundaries of this area. Aquarium collectors who have reportedly used nets to collect aquatic life in the currently ambiguous outer boundary area will now have a more clearly delineated no-collection area, reducing their chances of being subject to false or erroneous poaching allegations.

Commercial harvesters of marine life from the West Hawai'i region may also be adversely affected, depending on their fishing method and location of harvest.

-Commercial SCUBA spearfishers will no longer be able to concurrently use SCUBA gear and spears to take aquatic life from WHRFMA. The *total* value of the spear fishery in West Hawai'i (including SCUBA and non-SCUBA) averages approximately \$25,600 annually (FY 2007-2011). However, commercial spearfishers may continue to take aquatic life using spears and snorkeling gear (among other lawful fishing methods, including traps and certain nets). Any adverse commercial impact will also be mitigated by the potential long-term benefit to all small businesses that generate revenue from healthy fishery stocks in West Hawai'i including the 70 ocean recreation businesses which generate an estimated \$35 million dollars yearly in gross revenue (Teri Leicher, Ocean Tourism Coalition). The protection of targeted and vulnerable species, particularly in depths accessible only to SCUBA spearfishers, will ensure greater breeding opportunities for existing fish stocks.

-The take of certain aquatic life is prohibited under a “no-take” list of 11 species, comprised of sharks, rays, and two species of marine mollusks. Many of these species are of limited commercial value and/or are already protected from commercial harvesting practices under state law. In addition, any marginal impact on commercial harvesting businesses will be offset by benefits to other small businesses that may generate revenue from healthy populations of these iconic marine species.

3. Dollar value of direct and indirect costs for affected small businesses

No direct costs to small businesses in the form of additional fees or fines are contemplated in this rule proposal. Indirect costs to aquarium collectors should be marginal and limited to the costs of permanently affixing the already-required “AQ” insignia to aquarium-collecting vessels, of marking aquarium-collecting equipment with the CML number of the owner or possessor of such equipment, and of making phone calls prior to remaining on the water after sunset and before sunrise. The additional administrative burden of obtaining and maintaining an annual West Hawai'i Aquarium Permit should also be marginal to nonexistent, as statewide aquarium collecting permits and commercial marine licenses are already required for the collection of aquatic life for aquarium purposes, and the new permit may be obtained or renewed at the same time as the currently required permits. Any lost revenue to aquarium collectors should also be minimized due to the inclusion in the “white list” of species that comprise 99% of the catch value according to five years of recent data.

As discussed above, the current economic value of the SCUBA-spear fishery has been estimated at approximately \$35,000. However, the dollar value of lost fishing opportunities to these commercial harvesters would be offset by the utilization of other fishing methods, as well as the indeterminate long-term benefit to targeted fisheries by the SCUBA-spear prohibition's inherent protection of important breeding stocks in deeper waters.

4. Monetary costs and benefits to the directly affected agency

The Department of Land & Natural Resources, Division of Aquatic Resources (DAR) Kona branch office, is the primary agency directly affected by these proposed rules. Costs to the agency associated with these rules will primarily consist of developing and issuing the West Hawai'i Aquarium Permit, for which no fee will be collected. This includes the initial investment of staff time in drafting the permit terms and conditions, and the administrative costs of administering these permits to the approximate 70 aquarium collectors operating in West Hawai'i. The monetary benefits would include cost savings for outreach, education, and compliance enforcement related to the new provisions affecting aquarium collectors, as permit terms and conditions will provide accessible, West Hawai'i-specific information on aquarium collecting regulations.

5. Methods considered or used to reduce the impact on small businesses

In the development of the proposed rule recommendations the Division of Aquatic Resources worked closely with the community-based West Hawai'i Fisheries Council

(WHFC). The WHFC was formed via legislative mandate in 1998, and empowered by DLNR to serve as an advisory body for the management of the WHRFMA. The WHFC consists of stakeholders, community groups, business and community representatives, as well as non-voting, ex-officio members from such programs as the Division of Aquatic Resources, the Division of Conservation and Resources Enforcement, UH Sea Grant, and others. The WHFC has met monthly since July 1998 and has had over 50 different members contributing more than 3000 volunteer hours. At least 1800 community members have attended one or more WHFC meetings.

Beginning in 2002, the WHFC has engaged in community discussions regarding SCUBA spearfishing and has hosted research presentations, held committee and subcommittee meetings, and gathered public input, including that of commercial spearfishers, regarding the practice. Various management options were extensively discussed and a consensus on a proposed rule was reached by the WHFC and its Scuba Spearfishing Management Subcommittee in 2004. A draft rule was developed and submitted to DAR in 2007.

In order to equitably resolve the conflict between recreational user groups and commercial aquarium fish collectors in Ka'ohē Bay the WHFC established the User Conflict Subcommittee in 2004 which held public meetings with groups of stakeholders over the next 20 months. An "FRA exchange" of 2000' feet of reef habitat was subsequently agreed upon as the most equitable means of reducing the conflict, and the WHFC, in conjunction with DAR, adopted and drafted a rule proposal effectuating this agreement. Considerable effort was made to find a suitable presently closed reef area to open which would have community support. However, after further deliberation and consultation Big Island aquarium collectors recommended and resolved that no closed areas be opened and the closure area at Pebble Beach be reduced to 1500'. Division of Aquatic Resources staff agree with this proposal, finding that a standalone closure of the

1,500 foot section of Ka'ohē Bay would substantially mitigate user conflicts between aquarium collectors and other nearshore resource users. This agreement was subsequently approved by the Friends of Pebble Beach, the WHFC and the BIAAF.

The third major substantive rule proposal would establish a list of protected species and a list of species permitted for aquarium take purposes (i.e. a "white list") within the WHRFMA. The WHFC Species of Special Concern Subcommittee was established in 2005 to study the issue, and after several years of consultation with DAR biologists, aquarium fishers, wholesalers, and other community and ocean user groups, a West Hawai'i-specific list of species to be protected and a list of permitted species for aquarium take were compiled. There was considerable negotiation between involved parties on the final species listing in the "white list" and the specifics of the size and bag limits. The number of species on the "white list" was ultimately increased from 25 to 40 in response to input from Big Island aquarium collectors.

6. How the agency involved small business in the development of the rules

As noted above the WHFC played a substantial role in the deliberation, development and content of these rules, and has continued to serve its role in providing community involvement

in the management of West Hawai'i's coral reefs. The WHFC strives to fairly represent the stake holder community and membership is open to all interested community members with knowledge and experience in the marine environment or issues concerning fishery management. Small business interests have been strongly represented over the years by commercial food fishers, aquarium fishers, ocean recreation operators, hoteliers and other business members. Over the years a substantial effort was continually made to let people know what issues the WHFC was dealing with and encouraging their participation and input.

WHFC meetings are also advertised in West Hawaii Today and oftentimes on the radio. There has been very substantial press coverage, 18 separate West Hawai'i newspaper articles since 2004, specific to issues that the WHFC was deliberating – again providing more than ample opportunity for businesses and the general public to know what was going on in terms of nearshore resource management in West Hawai'i.

7. Provisions more stringent than federal, state, or county mandates, with cost comparisons and justification

The only statutory mandate relating to these rule changes that imposes a lesser minimum standard is HRS § 188F-4(1), which requires the Department to designate “a minimum of thirty per cent of coastal waters in the WHRFMA as fish replenishment areas in which aquarium collection is prohibited.” This mandate appears related to several purposes of the West Hawai'i regional fishery management area, such as ensuring “the sustainability of the State's nearshore ocean resources; . . . minimizing user conflicts and resource depletion[] through designation of sections of coastal waters . . . as fish replenishment areas where certain specified fish harvesting activities are prohibited[;] . . . identify[ing] areas and resources of statewide significance for protection; . . . and [p]rovid[ing] for substantive involvement of the community in resource management decisions for this area through facilitated dialogues with community residents and resource users.” HRS § 188F-3.

Currently, approximately 35.2% of the West Hawai'i coastline has been established as fish replenishment areas where aquarium collecting is prohibited. The proposed inclusion of the 1,500 foot section of coastline in Ka'ohē Bay would only marginally increase this percentage to 35.4%. The protection of the fisheries in the difficult-to access Ka'ohē Bay area should help to ensure even greater breeding opportunities for targeted reef fish and their prey, thereby benefiting aquarium collectors, other marine resource-related businesses, and the general public. These benefits would directly further the aforementioned purposes behind the statutory mandate of a minimum 30% closure of the West Hawai'i coastline.

Compared to the status quo costs of administering the already-closed fish replenishment areas in West Hawai'i, the additional cost of administering the proposed closed area in Ka'ohē Bay should be marginal and related only to the indirect costs of compliance monitoring and enforcement. Although the subject area is relatively isolated and accessible only by sea or a very steep road, monitoring and enforcement costs should be mitigated by the high amount of user activity and concern for the area, as evidenced by the efforts of community groups such as the Friends of Pebble Beach that originally pushed for the closure. There are no fees or revenue generating measures attached to the proposed closed area.

Amendments to Chapters 13-54 and 13-57, Repeal of
Chapter 13-60.3, Adoption of a new Chapter 13-60.4,
and Amendments to Chapter 13-75
Hawaii Administrative Rules

(6/24/2011)

1. The heading to Chapter 13-54, Hawaii
Administrative Rules, is amended to read as follows:

"[PUAKO]PUAKŌ BAY AND [PUAKO]PUAKŌ REEF,
[HAWAII]HAWAI'I"

2. Section 13-54-1, Hawaii Administrative Rules,
is amended by amending the definition of "Puako Bay
and Puako Reef" to read:

"[Puako]Puakō Bay and [Puako]Puakō Reef" or the
"Puakō Bay and [Puako]Puakō Reef fisheries management
area" means that portion of the reef from the
shoreline at the westernmost edge of the boat ramp,
thence along a line drawn parallel with the boat ramp
northwesterly (seaward) out to the edge of the
fringing reef north of [Puako]Puakō Point, thence
following the fringing reef in a southwesterly
direction to a minimum seaward distance of two hundred
fifty yards (228.6[0] meters) or to the seaward edge
of the fringing reef if one occurs beyond two hundred
fifty yards (228.6[0] meters) to a line drawn due west
(seaward) of a small cove at the southern end of the
[Puako]Puakō Beach [Road,]Drive, situated in
[Lalamilo,]Lālāmilo, South Kohala, [Hawaii]island of
Hawai'i, Hawai'i, as further delineated by shoreward
and seaward GPS coordinates on the ["Map of Puako Bay
and Puako Reef, Hawaii 9/4/84"]map entitled "Puakō Bay
and Puakō Reef Fisheries Management Area" dated
09/21/11, located at the end of this chapter. [Eff:
1/28/1985, am] (Auth: HRS §188-
53) (Imp: HRS §188-53)



3. Section 13-54-2, Hawaii Administrative Rules, is amended to read as follows:

"§13-54-2 Prohibited activities[.]. No person shall possess or use any [~~crossnet, gillnet,~~ cross net, gill net, draw[,] net, 'drag[,] net, seine, barrier net, hand net, or any other type of net [~~except thrownet,]~~ within [Puako Bay and Puako Reef.] the Puakō Bay and Puakō Reef fisheries management area, except throw net with a stretched mesh size that is in compliance with section 13-75-10." [Eff 1/28/1985, am] (Auth: HRS §188-53) (Imp: HRS §188-53)

4. Section 13-54-3, Hawaii Administrative Rules, is amended to read as follows:

"§13-54-3 Permitted activities[.]. A person may, while transiting through [~~Puako~~ Puakō Bay and [~~Puako~~ Puakō Reef, possess aboard any boat or watercraft, any legal fishing gear, and any fish or other aquatic organism taken outside of [~~Puako~~ Puakō Bay and [~~Puako~~ Puakō Reef." [Eff 1/28/1985, am] (Auth: HRS §188-53) (Imp: HRS §188-53)

5. The map entitled "Map of Puako Bay and Puako Reef, Hawaii" dated 9/4/84 is changed to read "Map of Puakō Bay and Puakō Reef Fisheries Management Area (09/21/11)" with a slight change in boundaries, as indicated by GPS coordinates.

6. The heading to chapter 13-57, Hawaii Administrative Rules, is amended to read as follows:

"KEAUHOU BAY, [~~HAWAII~~ HAWAI'I]"

7. Section 13-57-1, Hawaii Administrative Rules, is amended to read as follows:

"13-57-1 Definitions[.] As used in this chapter unless otherwise provided: "Keauhou Bay["] fisheries management area" means that portion of the bay situated at Keauhou, North Kona, island of [Hawaii, Hawaii.]Hawai'i, Hawai'i, bounded by an imaginary straight line drawn between Haiku'ua Point and Kaukala'ela'e Point as delineated in the "Map of Keauhou Bay Fisheries Management Area, Hawai'i (09/21/11)" located at the end of this chapter." [Eff 9/18/92, am] (Auth: HRS §188-53) (Imp: HRS §188-53)

8. Section 13-57-2, Hawaii Administrative Rules, is amended to read as follows:

"§13-57-2 Prohibited activities[.] [(a)] No person shall engage in the following activities within [that portion of]the Keauhou Bay fisheries management area[bounded by a line as delineated in the "Map of Keauhou Bay Fisheries Management Area, Hawaii (7/10/92)", located at the end of this chapter]:

- (1) Fish with more than two lines[, or two poles or rods and lines] at the same time;
- (2) Snag or attempt to snag any fish;
- (3) Use or possess any type of net[s], except hand nets not exceeding three feet ([0.92]0.91 meter) in any dimension to take shrimp for bait purposes only, or to land fish already hooked, and except [thrownets] throw nets in the "Thrownetting Zone" [delineated]bounded by the shoreline, and a straight line starting at the north end stairs in the wall fronting the volleyball court [and along the shoreline] drawn to the base of the boundary of the [Fisheries Management Area at "Doc.Hill"; and]fisheries management area at "Doc Hill", as indicated in the "Map of Keauhou Bay Fisheries Management Area, Hawai'i (09/21/11)" located at the end of this chapter; or
- (4) Herd or chase any fish out of the area by

swimming, diving, or using a boat.

[(b) Nothing in this chapter shall be construed as allowing activities within any portion of the Keauhou Bay which may be otherwise prohibited by law or rules adopted by the department of transportation.]" [Eff: 9/18/92; am]
(Auth: HRS §188-53) (Imp: HRS §188-53)

9. Section 13-57-3, Hawaii Administrative Rules, is amended to read as follows:

"§13-57-3 Permitted activities[.]. The department may issue special activity permits to engage in activities otherwise prohibited by law or section 13-57-2, for scientific, propagation, or other purposes as provided by [law]section 187A-6, Hawaii Revised Statutes, provided, however:

- (1) The board may revoke any permit for any infraction of the terms and conditions of the permit; and
- (2) A person whose permit is revoked shall not be eligible to apply for another permit until the expiration of [a specified period]one year from the date of revocation[as provided by law]." [Eff: 9/18/92; am]
(Auth: HRS §188-53) (Imp: HRS §§187A-6, 188-53)

10. The map entitled "Map of Keauhou Bay Fisheries Management Area, Hawaii (7/10/92)", is changed to read: "Map of Keauhou Bay Fisheries Management Area, Hawai'i (09/21/11)", with a slight change in boundaries.

11. Chapter 60.3 of Title 13, Hawaii Administrative Rules, is repealed.

12. Chapter 60.4 of Title 13, Hawaii Administrative Rules, entitled "WEST HAWAI'I REGIONAL FISHERY MANAGEMENT AREA, HAWAI'I" is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4

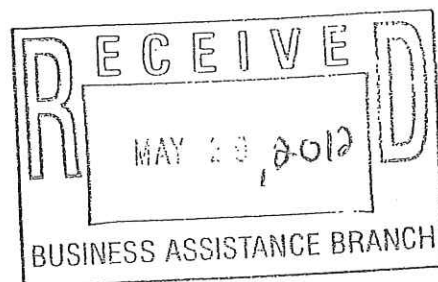
FISHERIES

PART II MARINE FISHERIES MANAGEMENT AREAS

CHAPTER 60.4

WEST HAWAI'I REGIONAL FISHERY MANAGEMENT AREA, HAWAI'I

- \$13-60.4-1 Intent and purpose
- \$13-60.4-2 Geographical jurisdiction of chapter provisions
- \$13-60.4-3 Definitions
- \$13-60.4-4 Activities prohibited within the West Hawai'i regional fishery management area
- \$13-60.4-5 Activities prohibited within selected areas
- \$13-60.4-6 Lay net registration and use requirements
- \$13-60.4-7 Aquarium collecting permit and vessel registration requirements
- \$13-60.4-8 Penalty
- \$13-60.4-9 Severability



Historical note: Chapter 13-60.4 is based substantially upon chapter 13-60.3 and is simultaneously adopted upon repeal of that chapter. All rights, duties, penalties, and responsibilities incurred under chapter 13-60.3 are intended to be transferred to chapter 13-60.4 upon its adoption. [Eff 12/31/99; am, ren and comp 8/1/05; R]

§13-60.4-1 Intent and purpose. (a) The intent and purpose of this chapter regarding the West Hawai'i regional fishery management area shall be to:

- (1) Establish the West Hawai'i regional fishery management area for improved management of consumptive and nonconsumptive uses of aquatic resources;
- (2) Ensure the sustainability of the State's nearshore ocean resources;
- (3) Identify areas with resource and use conflicts;
- (4) Minimize user conflicts and resource depletion in the West Hawai'i regional fishery management area, by designating fish replenishment areas and identifying other regulated areas where aquarium fish collecting is prohibited, areas where the use of gill nets as set nets is prohibited, and establishing a portion of the fish replenishment areas as fish reserves where no fishing of reef-dwelling fish is allowed;
- (5) Establish a system of day-use mooring buoys in high-use coral reef areas and prohibit anchoring in some of these areas to prevent anchor damage to corals;
- (6) Identify areas and resources of statewide significance for protection;
- (7) Facilitate scientific research and monitoring of the nearshore resources and environment; and
- (8) Facilitate the substantive involvement of the community in resource management decisions for the West Hawai'i regional fishery management area through dialogue

with community residents and resource users.

(b) Native Hawaiian traditional and customary rights with regard to marine resources for subsistence, cultural, and religious purposes are recognized. Claims for traditional and customary rights will be decided by appropriate agencies when a claims procedure is established. [Eff]
(Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-2, 188F-3, 188F-4, 188F-6)

§13-60.4-2 Geographical jurisdiction of chapter provisions. (a) The provisions of this chapter shall apply to the West Hawai'i regional fishery management area, bounded by the west coast of Hawai'i Island, from Ka Lae, Ka'ū (South Point) to 'Upolu Point, North Kohala, and extending from the upper reaches of the wash of the waves on shore seaward to the limit of the State's police power and management authority.

(b) The following fish replenishment areas and netting restricted areas shall be established within the boundaries of the West Hawai'i regional fishery management area (as depicted in "Map of Fish Replenishment Area and Netting Restricted Area Boundaries" (09/21/11) located at the end of this chapter):

- (1) North Kohala fish replenishment area, identified on shore to the north by Kamilo Gulch and to the south by the Kawaihae Lighthouse;
- (2) Puakō-'Anaeho'omalu fish replenishment area, identified on shore to the north by the southern end of the Puakō Bay and Puakō Reef fisheries management area and to the south by the southern side of 'Anaeho'omalu Bay (Kapalaoa);
- (3) Ka'ūpūlehu fish replenishment area, identified on shore to the north by the northern boundary of the Ka'ūpūlehu ahupua'a and to the south by the southern side of Kikaua Point (south of Kūki'o Bay);

- (4) Kaloko-Honokōhau fish replenishment area, identified on shore to the north by the southern boundary of Wāwālooli Zone (a Kona Coast fisheries management area defined in section 13-58-2) at Wawahiwa'a Point and to the south by Noio Point;
- (5) Kailua-Keauhou fish replenishment area, identified on shore to the north by the southern boundary of Kailua Bay Zone, Kona Coast fisheries management area defined in section 13-58-2, and to the south by the northern boundary of the Keauhou Bay fisheries management area defined in section 13-57-1;
- (6) Red Hill fish replenishment area, identified on shore to the north at Nenu Point and to the south by Keawakāheka Point;
- (7) Nāpo'opo'o-Hōnaunau fish replenishment area, identified on shore to the north by the southern boundary of Kealakekua Bay marine life conservation district (Manini Beach Point) and to the south by the southern boundary of Pu'uhonua o Hōnaunau (Ki'ilae);
- (8) Ho'okena fish replenishment area, identified on shore to the north by Loa Point and to the south by Ka'ū Loa Point;
- (9) Ka'ohe Beach fish replenishment area (Pebble Beach), identified on shore to the north by signage south of Ka'ū Loa Point, and to the south by signage north of 'Au'au Point;
- (10) Miloli'i fish replenishment area, identified on shore to the north by Makahiki Point and to the south by Kāki'o Point;
- (11) Kikaua Point-Mākole'ā Point netting restricted area, identified on shore to the north by Kikaua Point (Kalae o Kikaua) and to the south by Mākole'ā Point (near Kekaha Kai State Park);
- (12) Nenu Point-Kealakekua Bay netting restricted area, identified on shore to the north by the northern boundary of the Red

Hill fish replenishment area and to the south by the northern boundary of the Kealakekua Bay marine life conservation district;

- (13) Hanamalo Point-Kanewa'a Point netting restricted area, identified on shore to the north by Hanamalo Point, inclusive of Okoe Bay and Kapu'a Bay, and to the south by Kanewa'a Point, South Kona; and
- (14) Kanonone-Kalipoa netting restricted area, identified on shore to the north by Kanonone, inclusive of Pöhue Bay, Kahakahakea, and identified to the south by Kalipoa, Ka'u.

Unless otherwise described, any area described in this chapter shall be described by four reference points identified by their latitude and longitude coordinates, as provided in the tables at the end of this chapter entitled "Table of Reference Coordinates to Fish Replenishment Area Boundaries" (09/21/11) and "Table of Reference Coordinates to Netting Restricted Area Boundaries" (09/21/11), and as may be further indicated by signage on or about the shoreline. The four points shall be identified as the landward northern point, the landward southern point, the seaward northern point, and the seaward southern point. The landward boundary for each of these areas shall be an imaginary line drawn along the highest wash of the waves between the landward northern point and the landward southern point. Should there be a stream or river flowing into the ocean, the landward boundary shall be an imaginary straight line drawn between the shoreline on either side of the stream or river, as if the stream or river was not there. Imaginary straight lines drawn through the landward and seaward northern points, and through the landward and seaward southern points, shall constitute the northern and southern boundary lines of each area. The seaward boundary of each area shall be determined by an imaginary line drawn along the 100 fathom (600 feet) depth contour, between the intersection of the 100 fathom depth contour and the northern and southern

boundary lines. Seaward GPS reference points are for guidelines and the 100 fathom depth contour otherwise controls the seaward boundary. Any area designated in this chapter shall include the submerged lands and overlying waters within these four boundaries.

(c) The following areas, designated and subject to additional regulations in other chapters, shall also be considered and regulated as part of the West Hawai'i regional fishery management area:

- (1) Lapakahi marine life conservation district, as described in chapter 13-33;
- (2) Kawaihae Harbor fisheries management area, as described in chapter 13-55;
- (3) Wailea Bay marine life conservation district, as described in chapter 13-35;
- (4) Old Kona Airport marine life conservation district, as described in chapter 13-37;
- (5) Kealakekua Bay marine life conservation district, as described in chapter 13-29;
- (6) Puakō Bay and Puakō Reef fisheries management area, as described in chapter 13-54;
- (7) Kiholo Bay fisheries management area, as described in chapter 13-60;
- (8) Kailua Bay fisheries management area, as described in chapter 13-52;
- (9) Keauhou Bay fisheries management area, as described in chapter 13-57;
- (10) Kona Coast fisheries management area, as described in chapter 13-58;

Except for the area encompassed by the Kawaihae Harbor fisheries management area, Kawaihae commercial harbor shall not be regulated as part of the West Hawai'i regional fishery management area.

(d) Nothing in this chapter shall be construed as allowing within the West Hawai'i regional fishery management area any activity otherwise prohibited by law or rules adopted by the department of land and natural resource or any other department of the State.

[Eff] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-2, 188F-3, 188F-4, 188F-6)

§13-60.4-3 Definitions. As used in this chapter unless otherwise provided:

"Aquarium collecting gear" means any equipment or gear adapted, designed, or commonly used to collect, capture or maintain aquatic life alive in a state of captivity, including but not limited to hand nets, fence or barrier nets, fiberglass, plastic, wood or metal 'tickle sticks' (including spears or similar implements used to manipulate the movement of aquarium fish or animals), catch buckets, keeps, baskets or venting needles.

"Aquarium purposes" means to hold aquatic life alive in a state of captivity, whether as pets, for scientific study, for public exhibition, for public display, or for sale for these purposes. Aquatic life collected under a valid aquarium permit may not be used for human consumption, for bait, or for other consumptive purposes.

"Aquarium collecting vessel" means any motorized or non-motorized vessel used by any person to collect, ferry, or scout for aquarium fish or animals.

"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.

"Commercial purpose" means the taking of aquatic life for profit, gain, sale, purchase, barter, exchange, to offer for sale, or upon any offer to purchase.

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

"Fish feeding" means deliberately introducing into the water any food material, substance, or device used as an attractant, for any purpose except catching and removing marine life.

"Lay net" means a panel of net mesh that is suspended vertically in the water with the aid of a float line that supports the top edge of the net

upward towards the water surface and a lead line that keeps the bottom edge of the net downward towards the ocean bottom.

"Lay net fishing" or to "lay net fish" means deploying or attempting to deploy a lay net in a set location and in an open configuration, and retrieving the lay net from the same location after a certain time period has passed. This fishing method is also known as set netting, cross netting, pa'ipa'i, and moemoe netting. This term does not apply to the use of a lay net to completely encircle a pre-identified school of fish, where the net is constantly attended at all times while in the water, such as in the practice of surround netting.

"Natural fibers" means fibers derived wholly from plant materials including, olonā, linen, cotton, hemp, and sisal.

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

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

"Set" when used as a noun with respect to the use of lay nets, means a sequential act beginning from when the lay net is fully deployed in the water and ending on the next complete removal of the lay net from the water.

"Spear" means any device or implement which is designed or used for impaling marine life. Spears may include, but are not limited to, spear gun shafts, arbaletes, arrows, bolts, Hawaiian slings, tridents or three-prong spears. A dive knife is not considered to be a spear.

"Speared" means pierced, impaled, penetrated, stuck, or run through by a sharp, pointed implement.

"Take" means to fish for, catch, or harvest, or to attempt to fish for, catch, or harvest, aquatic life. The use of any gear, equipment, tool, or any means to fish for, catch, capture, or harvest, or to

attempt to fish for, catch, capture, or harvest, aquatic life by any person who is in the water, or in a vessel on the water, or in the shoreline area where aquatic life can be fished for, caught, or harvested, shall be construed as taking.

"Total length" means the length of a fish measured from the tip of the snout to the tip of the longer lobe of the caudal (tail) fin. The length measurement shall be a straight-line measure, not measured over the curvature of the body of the fish.

"White list" means a list of species of marine life that may be taken for aquarium purposes.

[Eff] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6)

§13-60.4-4 Activities prohibited within the West Hawai'i regional fishery management area. While within the West Hawai'i regional fishery management area, no person shall:

(1) Take, kill, possess, sell, or offer for sale, any specimen of the following species: *Aetobatus narinari* (spotted eagle ray), *Carcharhinus amblyrhynchos* (gray reef shark), *Carcharhinus melanopterus* (blacktip reef shark), *Cassis cornuta* (horned helmet), *Charonia tritonis* (Triton's trumpet), *Dasyatis hawaiiensis* (Hawaiian stingray), *Dasyatis lata* (broad stingray), *Pteroplatytrygon violacea* (pelagic stingray), *Galeocerdo cuvier* (tiger shark), *Rhincodon typus* (whale shark), or *Triaenodon obesus* (whitetip reef shark);

(2) Possess more than five *Zebrasoma flavescens* (yellow tang) larger than 4.5 inches in total length, or possess more than five *Zebrasoma flavescens* smaller than 2 inches in total length;

(3) Possess aquarium collecting gear, or take or possess any specimen of aquatic life for aquarium purposes:

- (A) Between sunset and sunrise, provided that collecting gear or collected aquatic life may be possessed after sunset or before sunrise if notification by phone is made to the

Division of Aquatic Resources West Hawai'i (DAR-Kona) office prior to sunset. Such notification must include the names of individuals who plan to possess such gear or aquatic life and the location where such possession will take place;

- (B) Without holding a valid West Hawai'i aquarium permit issued pursuant to subsection 13-60.4-7(a) of this chapter;
- (C) In violation of the terms and conditions of a West Hawai'i aquarium permit issued to that person; or
- (D) While occupying any vessel that does not conform to the registration and marking requirements of subsection 13-60.4-7(d) of this chapter;

(4) Possess or use any net or container employed underwater to capture or hold aquatic life alive for aquarium purposes, which is not labeled with the commercial marine license number or numbers of the person or persons owning, possessing or using such equipment;

(5) Possess a lay net or engage in lay net fishing in violation of the requirements of section 13-60.4-6 of this chapter; or

(6) Engage in or attempt to engage in SCUBA spearfishing, possess both SCUBA gear and a spear at the same time, or possess SCUBA gear and any specimen of speared aquatic life at the same time. [Eff] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-3)

§13-60.4-5 Activities prohibited within selected areas. (a) No person may engage in fish feeding while within any of the fish replenishment areas or netting restricted areas described in subsection 13-60.4-2(b) or any of the other areas listed in 13-60.4-2(c) of this chapter.

(b) While within the fish replenishment areas described in paragraphs 13-60.4-2(b)(1)-(10) of this

chapter, or while within any of the areas listed in subsection 13-60.4-2(c) other than the Kīholo Bay fisheries management area, no person may:

- (1) Collect aquatic life for aquarium purposes; or
- (2) Possess any aquarium collecting gear, or take or possess any specimen of aquatic life for aquarium purposes, except that aquarium collecting gear or aquatic life collected for aquarium purposes may be possessed while on-board a vessel in active transit through such areas, provided that no collecting gear is in the water during such transit. Boats which are adrift, anchored, or moored are not considered to be in active transit.

(c) No person may lay net fish while within the following areas, as described in subsection 13-60.4-2(b) and in the tables at the end of this chapter entitled "Table of Reference Coordinates to Fish Replenishment Area Boundaries", (09/21/11) and "Table of Reference Coordinates to Netting Restricted Area Boundaries", (09/21/11):

- (1) Puakō-'Anaeho'omalu fish replenishment area;
- (2) Ka'ūpūlehu fish replenishment area;
- (3) Kikaua Point-Mākole'ā netting restricted area (Kekaha Kai State Park);
- (4) Nenua Point (Red Hill fish replenishment area)-Kealakekua Bay netting restricted area;
- (5) Hanamalo Point-Kanewa'a Point netting restricted area;
- (6) Kanonohe-Kalīpoa netting restricted area; and
- (7) Kaloko-Honokōhau fish replenishment area,

except that a person may lay net fish in the Kaloko-Honokōhau fish replenishment area using only a locally-constructed, handmade lay net of natural fibers, which is registered and used in compliance with section 13-60.4-6 of this chapter.

[Eff _____] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6)

§13-60.4-6 Lay net registration and use requirements. (a) It is unlawful for any person within the West Hawai'i regional fishery management area to:

- (1) Possess or use a lay net that has not been registered with the department;
- (2) Possess or use more than one lay net;
- (3) Possess or use a lay net:
 - (A) Longer than 125 feet in length or more than seven feet in stretched height;
 - (B) With less than two and three-fourths inches stretched mesh; and in Kailua Bay fisheries management area, with less than three inches stretched mesh; or
 - (C) With two or more joined lay nets with a combined total length of more than 250 feet;
- (4) Possess or use a multi-panel lay net; or
- (5) Possess or use a lay net that does not have at least four identification tags as specified or provided by the department. One identification tag must be attached at each end of both the net float line and the net lead line for a total of four attachment points on each lay net.

(b) It is unlawful for any person lay net fishing to:

- (1) Use a lay net that is not marked by buoys as specified or provided by the department. The buoys shall display the lay net registration number, be marked with reflective tape, and be visible above the surface of the water. The buoys shall be attached to each end of the float line for a total of two buoys for each lay net;
- (2) Use a lay net within 1,200 feet of any other lay net; provided that two or more individuals working together and using the lay net fishing method may use a joined net;
- (3) Use a lay net in water that is more than 80 feet in depth;

- (4) Use a lay net for more than four hours during any one set; provided that after one set, the same lay net may not be set again within twenty-four hours after the ending of the set; and provided further that the same person shall not set any other lay net within that twenty-four hour period after the ending of the set;
 - (5) Leave a lay net unattended for more than one-half hour;
 - (6) Retrieve a lay net in such a manner as to cause coral to break from its attachment to the bottom or to break into smaller pieces. Any coral brought to the surface in the net shall be considered prima facie evidence of a violation of this section;
 - (7) Fail to complete inspection of an entire lay net within two hours after the beginning of the set. The person lay net fishing shall inspect the lay net and release any threatened, endangered, prohibited, or unwanted species; or
 - (8) Discard, abandon, or leave, any lay net, or portion thereof, in the water for longer than four hours;
- (c) It is unlawful for any person to falsely identify, with identification tags, any lay net that is not registered with the department as required in paragraphs (a) (1) and (a) (5) of this section, respectively.
- (d) Persons using a vessel or float may use a total maximum of 250 feet of lay net, provided that at least two persons are present and associated with the same vessel or float.
- (e) Should any registered lay net be lost, destroyed, sold, traded, stolen, given away, or otherwise no longer the property of, or no longer in the possession of the registered owner, then the registered owner shall be responsible for the lay net until a report is filed and confirmed by the department.
- (f) Any lay net within the West Hawai'i regional

fishery management area that is not registered or does not have proper identification tags, as required in paragraphs (a)(1) and (a)(5) of this section, shall be subject to immediate seizure according to section 199-7 and subject to forfeiture by the department under procedures similar to chapter 712A, Hawaii Revised Statutes.

(g) This section shall not apply to panel mesh nets with a stretched mesh size of less than two and three-fourths inches that are marked with commercial marine license numbers as required under section 13-60.4-4(4), and permitted for use and possession under an aquarium permit and a West Hawai'i aquarium permit issued under section 13-60.4-7(a). [Eff]
(Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6, 199-7, 712A-6)

§13-60.4-7 Aquarium collecting permit and vessel registration requirements. (a) West Hawai'i aquarium permit. The department may issue West Hawai'i aquarium permits authorizing persons to engage in aquarium collecting activities, for species listed in subsection (b) of this section and to use fine meshed traps and nets (other than throw nets) to collect such species in the West Hawai'i regional fishery management area notwithstanding section 13-75-14, subject to terms and conditions it deems necessary for the management of the area and its resources. No person, unless exempted from provisions of this chapter by issuance and possession of a valid special activity permit under section 187A-6, Hawaii Revised Statutes, shall engage in aquarium collecting activities within the West Hawai'i regional fishery management area without first having been issued and possessing a West Hawai'i aquarium permit in addition to a valid State of Hawai'i aquarium fish permit. Permits shall be valid for one year from the date of issuance unless revoked sooner, and are non-transferable. In addition to applying any other penalties provided by law, the department may revoke any West Hawai'i aquarium permit for any infraction of these rules or the terms and

conditions of the permit, and any person whose permit has been revoked shall not be eligible to apply for another West Hawai'i aquarium permit until the expiration of one year from the date of revocation.

(b) Aquarium species white list. In addition to other regulations deemed necessary for the management of the West Hawai'i regional fishery management area, an aquarium permit holder may only take or possess specimens of the following species of fish for aquarium purposes while within the West Hawai'i regional fishery management area: *Acanthurus achilles* (Achilles tang), *Acanthurus dussumieri* (eyestripe surgeonfish), *Acanthurus nigricans* (goldrim surgeonfish), *Acanthurus nigrofuscus* (brown surgeonfish), *Acanthurus olivaceus* (orangeband surgeonfish), *Acanthurus thompsoni* (Thompson's surgeonfish), *Anampses chrysocephalus* (psychedelic wrasse), *Canthigaster jactator* (whitespotted Toby), *Centropyge fisheri* (Fisher's angelfish), *Centropyge potteri* (Potter's angelfish), *Cephalopholis argus* (peacock grouper), *Chaetodon kleinii* (blacklip butterflyfish), *Chaetodon miliaris* (milletseed butterflyfish), *Chaetodon multicinctus* (multiband butterflyfish), *Chaetodon quadrimaculatus* (fourspot butterflyfish), *Chaetodon tinkeri* (Tinker's butterflyfish), *Cirrhilabrus jordani* (flame wrasse), *Cirrhitops fasciatus* (redbarred hawkfish), *Coris gaimard* (yellowtail Coris), *Ctenochaetus hawaiiensis* (chevron tang), *Ctenochaetus strigosus* (goldring surgeonfish, kole), *Dascyllus albisella* (Hawaiian Dascyllus), *Forcipiger flavissimus* (forcepsfish), *Gomphosus varius* (bird wrasse), *Halichoeres ornatissimus* (ornate wrasse), *Hemitaurichthys polylepis* (pyramid butterflyfish), *Lutjanus kasmira* (bluestripe snapper), *Macropharyngodon geoffroy* (shortnose wrasse), *Melichthys niger* (black Durgon), *Naso lituratus* (orangespine unicornfish), *Ostracion meleagris* (spotted boxfish), *Paracirrhites forsteri* (blackside hawkfish), *Pseudanthias hawaiiensis* (Hawaiian longfin Anthias), *Pseudocheilinus octotaenia* (eightline wrasse), *Pseudocheilinus tetrataenia* (fourline wrasse), *Pseudojuloides cerasinus* (smalltail

wrasse), *Sufflamen bursa* (lei triggerfish), *Thalassoma duperrey* (saddle wrasse), *Xanthichthys auromarginatus* (gilded triggerfish), and *Zebrasoma flavescens* (yellow tang); provided further that:

- (1) No *Zebrasoma flavescens* (yellow tang) may be taken or possessed in violation of subsection 13-60.4-4(2) of this chapter;
- (2) No more than five *Ctenochaetus strigosus* (goldring surgeonfish or kole) larger than four inches in total length may be taken per day or possessed at any time;
- (3) No more than ten *Acanthurus achilles* (Achilles tang) may be taken per day, or possessed at any time.

(c) Aquarium collecting vessel registration and marking requirements. All aquarium collecting vessels shall:

- (1) Be registered every year with the Division of Aquatic Resources West Hawai'i (DAR-Kona) office to take aquatic life for aquarium purposes within the West Hawai'i regional fishery management area. Each registration shall be valid for one year from the date of registration. The current vessel identification number issued by either the department or the United States Coast Guard shall serve as the registration number for such vessels;
- (2) Clearly display the capital letters "AQ" permanently affixed to both sides of the vessel, either near the top of the gunwales or on the superstructure. Unless otherwise specified, the "AQ" letters shall be no less than six (6) inches high and three (3) inches wide in either black or a contrasting color to the background;
- (3) Fly a "stiffened" flag or pennant from the vessel with the letter "A" as specified by the department. The flag or pennant shall be provided at cost to aquarium permittees as specified by the department. The flag or pennant shall be displayed and clearly

visible from both sides of the vessel at all times while aquarium collecting gear or collected aquarium marine life or both are on-board;

- (4) Display a dive flag at all times when divers are in the water; and
- (5) In the event an aquarium collecting vessel becomes inoperable, the operator of the vessel shall immediately notify the department's division of conservation and resources enforcement or United States Coast Guard or both by VHF radio or by cellular phone or both.

(d) Control date. A control date was established in August 1, 2005 to possibly limit participation in the West Hawai'i regional fishery management area commercial aquarium fishery. Persons who begin fishing in the West Hawai'i regional fishery management area commercial aquarium fishery on or after the control date will not be assured continued participation if the department establishes an aquarium limited entry program in the future.

(e) Nothing in this chapter shall prevent the department from establishing another control date.
[Eff _____] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-3)

§13-60.4-8 Penalty. Any person violating any provision of this chapter, or any term or condition of any permit issued as provided by this chapter, shall be subject to the provisions of sections 187A-12.5 and 188-70, Hawaii Revised Statutes, or as may be otherwise provided by law. [Eff _____] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-12.5, 188-53, 188-70)

§13-60.4-9 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 the chapter which can be given effect without the invalid provision or application, and to this end the

provisions of this chapter are severable."

[Eff _____] (Auth: HRS §§1-23, 187A-5, 188-6, 188-53) (Imp: HRS §§1-23, 187A-5, 188-53, 188F-6)

13. Section 13-75-12.4, Hawaii Administrative Rules, is amended to read as follows:

"§13-75-12.4 Lay nets. (a) It is unlawful for any person within the jurisdiction of[in, on, or about State]state waters to:

- (1) Possess or use a lay net that has not been registered with the department;
 - (2) Possess or use a lay net which is, or lay nets which[when set end to end], except as provided in section 13-60.4-6, are:
 - (A) Longer than 125 feet in length when set end to end, and more than seven feet in stretched height[, except as provided in section 13-60.3-5]; and
 - (B) Of less than two and three-fourths inches stretched mesh, except as provided in [subsection]section 13-52-2(2) (A);
 - (3) Possess or use a multi-panel lay net;
 - (4) Possess or use a lay net that does not have at least four identification tags as specified or provided by the department. One identification tag must be attached at each end of both the net float line and the net lead line for a total of four attachment points on each lay net[.]; or
 - (5) Fish with more than one lay net at a time.
- (b) It is unlawful for any person using the lay net fishing method to:
- (1) Use a lay net that is not marked by surface buoys as specified or provided by the department. The buoys shall display the lay net registration number, be marked with reflective tape, and be visible above the surface of the water. The buoys shall be

- attached to each end of the float line for a total of two buoys for each lay net;
- (2) Use a lay net within 250 feet of another lay net, except as provided in section [13-60.3-5;] 13-60.4-6;
 - (3) Use a lay net in water greater than 25 feet in depth; provided that a person with a commercial marine license may use a lay net in water depths up to 80 feet, except as provided in section [13-60.3-5;] 13-60.4-6;
 - (4) Use a lay net for more than four hours during any one set; provided that after one set, the same lay net may not be used again within twenty-four hours after the ending of the set; and provided further that [no] the same person shall not set any other lay net within that twenty-four hour period after the ending of the set;
 - (5) Leave a lay net unattended for more than one-half hour;
 - (6) Retrieve a lay net in such a manner as to cause any stony coral to break [either] from its attachment to the bottom or to break into smaller pieces. Any stony coral brought to the surface in the net shall be considered prima facie evidence of a violation of this section;
 - (7) Fail to complete inspection of an entire lay net within two hours after the beginning of the set. The person lay net fishing shall inspect the lay net and release any threatened, endangered, prohibited, or unwanted species;
 - (8) Discard, abandon, or leave, any lay net, or portion thereof, in the water for longer than four hours;
 - (9) Use a lay net in freshwater streams or stream mouths;
 - (10) Use a lay net during the period from one-half hour after sunset to one-half hour before sunrise.

(c) It is unlawful for any person to falsely identify, with identification tags, any lay net that is not registered with the department as required in subsection (a).

(d) Should any registered net be lost, destroyed, sold, traded, stolen, given away, or otherwise no longer the property of, or no longer in the possession of the registered owner, then the registered owner shall be responsible for the lay net until a report is filed and confirmed by the department.

(e) Any lay net, within the jurisdiction of state waters [in, on, or about the water], that is not registered or that does not have proper identification tags or surface buoys as required in subsections (a) and (b), shall be considered contraband and subject to immediate seizure by the department.

(f) It is unlawful for any person to use a lay net in the following areas as provided in the table describing the boundary coordinates or locations for the prohibited fishing areas, located at the end of this chapter, entitled, "Table of Descriptions of Lay Net Fishing Prohibited Areas" dated April 19, 2006, and in the maps located at the end of this chapter, entitled, "Map of Lay Net Fishing Prohibited Area: Maui" dated April 19, 2006, and "Map of Lay Net Fishing Prohibited Areas: O'ahu" dated April 19, 2006, and "Map of Lay Net Fishing Prohibited Area: Kane'ohe Bay, O'ahu" dated April 19, 2006:

- (1) Island of Maui;
- (2) Kawaihoa Point to Keahi Point, O'ahu;
- (3) Mokapu Point to Wailea Point, O'ahu;
- (4) Kane'ohe Bay, O'ahu.

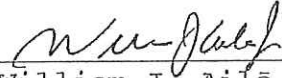
(g) Any person violating any subsection of this provision shall be subject to penalty as provided under chapter 187A, HRS. Each violation may constitute a separate offense." [Eff and comp 3/2/07; am] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

14. Material, except source notes, to be repealed is bracketed. New material is underscored.

15. Additions to update source notes to reflect these amendments are not underscored.

16. These amendments to chapters 13-54, 13-57, the repeal of chapter 13-60.3, and the adoption of the new chapter 13-60.4, and the amendments to chapter 13-75, 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.

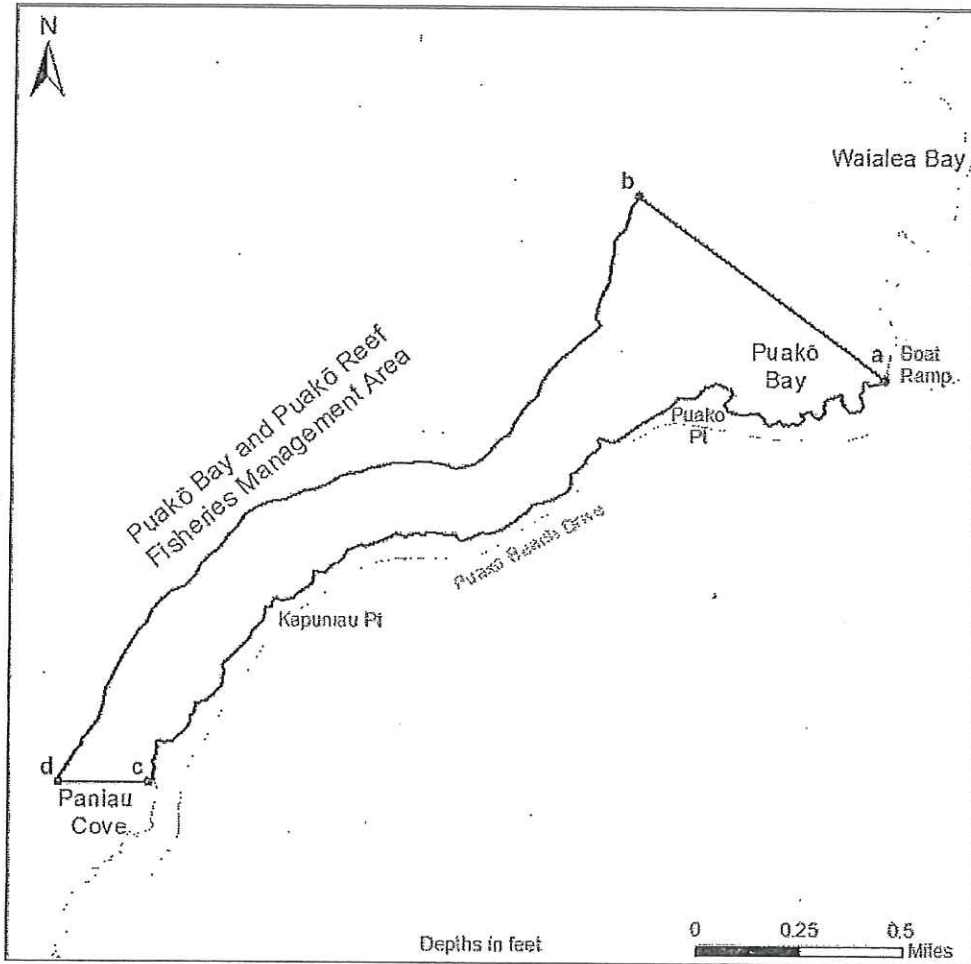


William J. Ailā, Jr., Chairperson
Board of Land and Natural
Resources

APPROVED AS TO FORM:

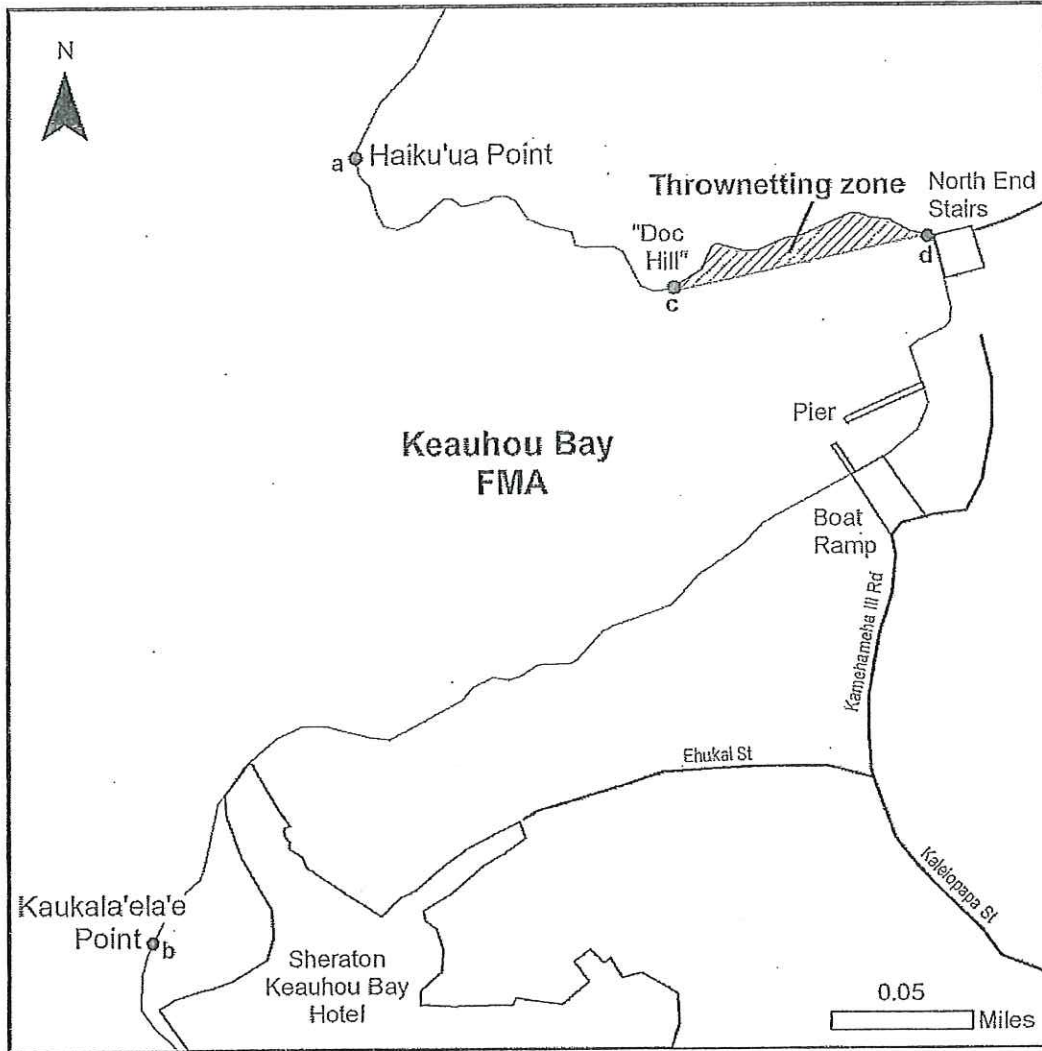
 Colin J. Lau
Deputy Attorney General

Map of Puakō Bay and Puakō Reef Fisheries Management Area (09/21/11)



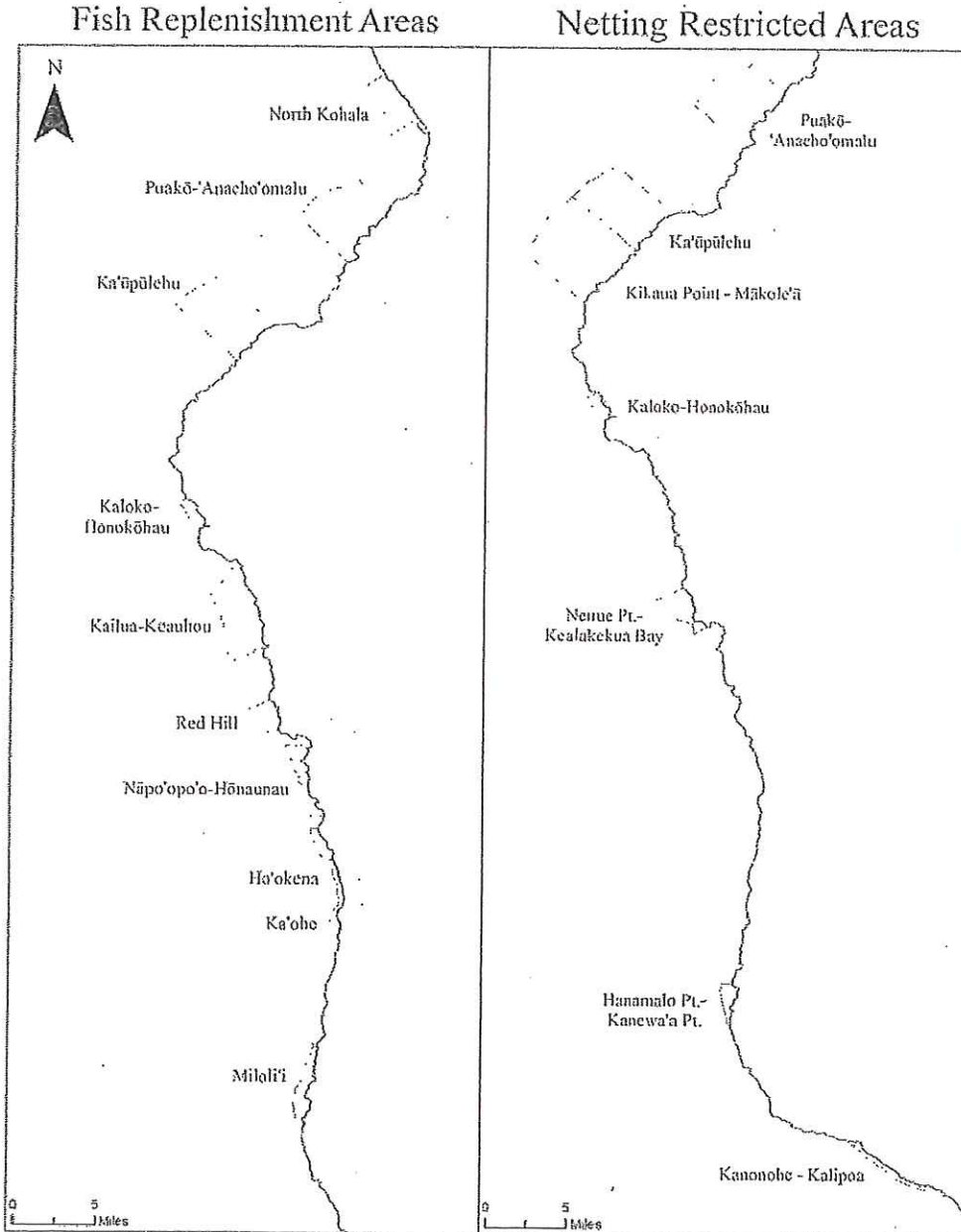
Point	Boundary	Latitude	Longitude
a	N shoreward	19°58.4411'N	155°49.8943'W
b	N seaward	19°58.8208'N	155°50.4560'W
c	S shoreward	19°57.5471'N	155°51.5218'W
d	S seaward	19°57.5462'N	155°51.6534'W

Map of Keauhou Bay Fisheries Management Area,
Hawai'i (09/21/11)



Point	Boundary	Latitude	Longitude
a	Haiku'ua Point	19° 33.773' N	155° 57.914' W
b	Kaukala'ela'e Point	19° 33.528' N	155° 57.989' W
c	"Doc Hill"	19° 33.731' N	155° 57.812' W
d	North End Stairs	19° 33.745' N	155° 57.730' W

Map of Fish Replenishment Area and Netting Restricted Area Boundaries* (09/21/11)



*Maps and tables do not reflect regulated areas and their specific prohibitions (including gear restrictions) that are defined in other chapters, as described in subsection 13-60.4-5(c) of this chapter

Table of Reference Coordinates to Fish Replenishment Area Boundaries
(09/21/11)

Fish Replenishment Area	Landward dGPS Coordinates		Seaward dGPS Coordinates (600 ft.)			
	Northern Point	Southern Point	Northern Point	Southern Point	D (nm)	@
North Kohala	20° 04.826' N 155° 51.934' W	20° 02.471' N 155° 49.988' W	20° 04.378' N 155° 53.344' W	20° 01.654' N 155° 51.875' W	1.40 2.40	225° 225°
Puakō - 'Anaeho'omalu	19° 57.529' N 155° 51.553' W	19° 54.641' N 155° 53.893' W	19° 59.206' N 155° 53.383' W	19° 57.034' N 155° 56.658' W	2.40	300° 300°
Ka'ūpūlehu	19° 51.011' N 155° 58.111' W	19° 49.209' N 156° 00.132' W	19° 53.817' N 156° 00.994' W	19° 51.724' N 156° 03.947' W	3.91	300° 300°
Kaloko - Honokōhau	19° 41.442' N 156° 02.350' W	19° 40.059' N 156° 01.741' W	19° 41.368' N 156° 03.031' W	19° 39.844' N 156° 02.169' W	0.35	240° 240°
Kailua - Keauhou	19° 37.903' N 155° 59.472' W	19° 33.716' N 155° 57.829' W	19° 37.089' N 156° 01.449' W	19° 32.801' N 156° 00.004' W	2.02	245° 245°
Red Hill	19° 30.823' N 155° 57.630' W	19° 29.252' N 155° 57.068' W	19° 30.166' N 155° 58.953' W	19° 28.991' N 155° 57.536' W	1.41	235° 235°
Nāpo'opo'o - Hōnaunau	19° 28.230' N ¹ 155° 55.370' W	19° 24.559' N 155° 54.343' W	19° 28.350' N ² 155° 56.898' W	19° 24.725' N 155° 55.162' W	1.13	270° 270°
Ho'okena	19° 23.796' N 155° 54.685' W	19° 19.458' N 155° 53.426' W	19° 23.690' N 155° 55.095' W	19° 19.403' N 155° 53.688' W	0.40	240° 240°
Ka'ohē	19° 18.954' N 155° 53.362' W	19° 18.714' N 155° 53.296' W	19° 18.947' N 155° 53.824' W	19° 18.706' N 155° 53.806' W	0.44	270° 270°
Miloli'i	19° 12.179' N 155° 54.369' W	19° 08.098' N 155° 55.132' W	19° 12.179' N 155° 54.599' W	19° 08.160' N 155° 55.510' W	0.15	270° 270°

^{1,2} Northern Boundary runs 0.25nm along existing Kealahou Bay MLCB southern boundary to 19° 28.443' N/155° 55.708' W and then 270° to seaward northern point.

D (nm) = distance in nautical miles from the landward points to the seaward points
@ = compass heading from landward coordinates to seaward coordinates

Table of Reference Coordinates to Netting Restricted Area Boundaries
(09/21/11)

Netting Restricted Area**	Landward dGPS Coordinates		Seaward dGPS Coordinates (600 ft.)			
	Northern Point	Southern Point	Northern Point	Southern Point	D (nm)	@
Puakō - 'Anaeho'omalu	19° 57.529' N 155° 51.553' W	19° 54.641' N 155° 53.893' W	19° 59.206' N 155° 53.383' W	19° 57.034' N 155° 56.658' W	2.40 3.54	300° 300°
Ka'ūpūlehu	19° 51.011' N 155° 58.111' W	19° 49.209' N 156° 00.132' W	19° 53.817' N 156° 00.994' W	19° 51.724' N 156° 03.947' W	3.91 4.41	300° 300°
Kikaua Point - Mākole'ā	19° 49.130' N 156° 00.063' W	19° 46.356' N 156° 03.024' W	19° 52.100' N 156° 03.566' W	19° 49.000' N 156° 06.164' W	4.41 0.35	300° 300°
Kaloko - Honokōhau	19° 41.442' N 156° 02.350' W	19° 40.059' N 156° 01.741' W	19° 41.368' N 156° 03.031' W	19° 39.844' N 156° 02.169' W	0.35 1.41	240° 240°
Nenuē Pt. - Kealakekua Bay	19° 30.823' N 155° 57.630' W	19° 28.699' N 155° 56.114' W	19° 30.166' N 155° 58.953' W	19° 28.316' N 155° 56.983' W	1.41 0.55	235° 235°
Hanamao Pt. - Kanewa'a Pt.	19° 09.273' N 155° 54.973' W	19° 07.091' N 155° 55.115' W	19° 09.275' N 155° 55.564' W	19° 07.093' N 155° 55.313' W	0.55 0.25	260° 200°
Kanonone - Kalipoa	19° 00.662' N 155° 48.302' W	18° 58.180' N 155° 44.182' W	19° 00.409' N 155° 48.302' W	18° 57.941' N 155° 44.183' W	0.25 0.24	200° 200°

**Netting restrictions may also apply in fisheries replenishment areas (see map above) and in areas designated under separate chapters, as described in subsection 13-60.4-2(c)

D (nm) = distance in nautical miles from the landward points to the seaward points

@ = compass heading from landward coordinates to seaward coordinates

V. New Business

- A. Proposed amendments to HAR Title 12
Chapter 46, Hawaii Civil Rights Commission
(DLIR)

SMALL BUSINESS IMPACT STATEMENT
(SEC 201M-2, HRS)

DEPARTMENT OR AGENCY: DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS,
HAWAII CIVIL RIGHTS COMMISSION

Relevant HRS Chapter or Section: HRS CHAPTER 515

Administrative Rule Chapter and Title: HAR Chapter 12-46, Subchapters 1 and 20

Name: Livia Wang

Title: Acting Chief Counsel

Phone Number: 586-8642

Email Address: Livia.A.Wang@hawaii.gov

A. Provide the following information described in **Section 201M-2(b), HRS and in Governor's Administrative Directive No. 09-01:**

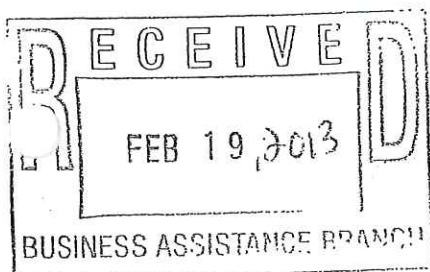
B. RULE DESCRIPTION:

1. New Repeal Amendment Recompilation

2. Nature of Proposed Changes:

- a. Is the proposed rule authorized by a federal or state law or statute that does not require an agency to interpret or describe the requirements of the law or statute? Yes No

Pursuant to Act 85 L. 2012 (attached as Exhibit "1"), the Department of Housing and Urban Development (HUD) directed the HCRC to amend HRS §515-9 and HAR §§ 12-46-11 and 12-46-20 to conform to the federal Fair Housing Act (FHA) provisions which allow an aggrieved person to file a civil action within 2 years of a discriminatory practice, and to allow the HCRC to dismiss administrative complaints that allege similar facts if such civil action is filed. The other amendments implement Act 31, L. 2011 (attached as Exhibit "2") which clarifies the tight living exemptions; Section 8 of Act 175, L. 2011 (attached as Exhibit "3") which conforms to HUD regulations regarding assistance animals as reasonable accommodations in housing; and Act 214, L. 2005 (attached as Exhibit "4"), which clarifies that discrimination based on "sex" includes gender identity and expression.



- b. Is the proposed rule an emergency regulation? ___Yes No
- c. Will the proposed rule affect small business because it:
- 1) Will apply to “**small business**” defined as a for-profit enterprise with fewer than **100** full-time or part-time employees? Yes ___No

The rules will affect small businesses engaging in housing real estate transactions.

- 2) Will cause a direct and significant economic burden upon a small business? ___Yes No
- 3)
- 4) Is directly related to the formation, operation, or expansion of a small business? Yes ___No

3. Summarize the proposed rule(s) and reasons for the proposed rule(s):

The following is a summary of the proposed amendments. The actual draft of the proposed rule amendments in Ramseyer format is attached as Exhibit “5”.

1. Service of complaint.

Section 12-46-7 is amended to add that the executive director shall serve complaints by certified mail on respondents within ten days after the HCRC receives deferral complaints from HUD.

2. Dismissal of a complaint.

Section 12-46-11 is amended to add that the executive director may dismiss a complaint if a civil action alleging similar facts has been filed pursuant to HRS § 515-9(b). This is pursuant to Act 85, L. 2012.

3. Notice of right to sue.

Section 12-46-20 is amended to add that the executive director shall issue a notice of right to sue when a timely receipt of a notice of election to file a civil action or if a civil action alleging similar facts has been filed pursuant to HRS §515-9(b). This is required under Act 85, L. 2012.

4. Definition of “assistance animal”

The definition of “assistance animal” has been added to H.A.R. § 12-46-302 to conform to HUD regulations and to mean an animal that is needed to perform disability related work, services or tasks for the benefit of a person with a disability,

or is needed to provide emotional support that alleviates one or more identified symptoms or effects of a person's disability. The definition includes a non-exhaustive list of the types of animals that may be assistance animals and clarifies that the animals may have formal training or may be untrained, and may include species other than dogs.

5. Definition of "direct threat"

The definition of "direct threat" has been added to H.A.R. §12-46-302, which is similar to the "direct threat" definition contained in the employment disability discrimination rule, HAR §12-46-182.

6. Definition of "protected basis"

The definition of "protected basis" in H.A.R. § 12-46-302 is amended to add gender identity or expression to the meaning of "sex" and to add sexual orientation as a protected basis to conform with amendments to HRS § 515-3 pursuant to Act 214, L. 2005.

7. Definitions of "blind", "deaf", "guide dog", "service animal" and "signal dog".

The definitions of "blind", "deaf", "guide dog", "service animal" and "signal dog" have been deleted to conform with the deletion of these terms in HRS § 515-3 pursuant to Act 175, §8, L. 2011.

8. Discriminatory practices.

The discriminatory practices of publishing or advertising an intent to limit or discriminate because of a protected basis are deleted from HAR § 12-46-305 and added to HAR § 12-46-311 so that such discriminatory practices do not fall under the tight living exemptions contained in HAR § 12-46-313. This is to conform to the Federal Fair Housing Act pursuant to Act 31, L. 2011.

9. Discrimination on the basis of disability.

H.A.R. §12-46-306 is amended to conform to the amendments to HRS § 515-3 made pursuant to Act 175, L. 2011 to clarify that a person with a disability cannot be discriminated against because the person uses an assistance animal. The rule clarifies that if a disability is not readily apparent, an owner or other person engaging in a real estate transaction may request information from the person's treating health care professional or social worker that verifies that the person has a disability and that the assistance animal is needed to alleviate one or more identified symptoms of that disability. The rule also states that reasonable restrictions may be imposed on the use of such assistance animals. Finally, the rule clarifies that reasonable accommodations are not required to be made for persons who only have a record of impairment or are only regarded as having an impairment.

10. Tight living exemption

H.A.R. §12-46-313 is amended to conform with amendments to HRS § 515-4(a) made pursuant to Act 31, L. 2011 that clarify that the prohibitions against discrimination contained in HAR §§ 12-46-105, -306 and -307 do not apply to a duplex if the owner or lessor lives in one of the units, or to the rental of a room or up to four rooms in a house or unit if the owner or lessor lives in that house or unit.

11. Defenses.

H.A.R. § 12-46-318 is amended to add the defense that an owner or any other person engaging in a real estate transaction may refuse to permit a person with a disability from using a particular assistance animal if: a) the animal poses a direct threat to the health and safety of others and the person with a disability does not take effective action to control the animal; b) the animal causes substantial physical damage to the property of others that cannot be reduced or eliminated by a reasonable accommodation; c) the presence of the animal would post an undue financial and administrative burden; or d) the presence of the animal would fundamentally alter the nature of the operations.

C. Small Business Impact Statement pursuant to 201M-2(b):

The proposal will affect small businesses that engage in housing real estate transactions. The main burden will be on small businesses to engage in an interactive process to determine whether they can make the assistance animal accommodations requested by a person with a disability, or whether the assistance animal poses a direct threat or undue burden on the operation of the housing facility. In addition, individuals who fall under the "tight living exemption" from the fair housing laws (i.e., an owner or lessor of a duplex who resides in one of the units, or an owner or lessor of a house or unit who rents up to four rooms in that house or unit) is now prohibited from printing, circulating, posting, mailing or publishing any statement, advertisement or sign indicating an intent to make a limitation based on a person's protected basis, though they may make such limitation in the actual selection of a tenant.

Because rule amendments are needed to conform with amendments to HRS Chapter 515, which were amended to conform with the FHA and HUD regulations, the HCRC did not consider any methods to reduce the impact on small business and did not involve small business in the development of the proposed rule amendments. In addition, the DLIR does not have a departmental small business advisory committee and small businesses will have an opportunity to comment during the public hearing on the proposed rule amendments.

The proposed rule amendments are not more stringent than those mandated by the Federal Fair Housing Act and HUD regulations interpreting the FHA.

D. Are there new or increased fees or fines? ___ Yes x No

E. Did the agency consult small businesses, departmental advisory committees, or were other small businesses organizations consulted during the drafting of the proposed rule? ___ Yes x No
If no, why not?

Because the DLIR does not have a departmental small business advisory committee and because the HCRC must amend the rules to conform with amendments to HRS Chapter 515. In addition, small businesses will have an opportunity to comment during the public hearing on the proposed rule amendments.

F. Other alternatives or less stringent measures proposed by affected businesses to reduce direct or indirect costs and, if proposed, why those proposals were not adopted.

n/a

G. Departmental Impact (i.e. fiscal, personnel, program)?
 x Yes ___ No

If yes, describe long and short-range impacts, estimated in dollar amounts or personnel, due to enforcement, administration, execution, or implementation of the proposed rule that may result in a savings or shortfall under the current program budget.

H. Impact on General Public (i.e. individuals, consumers, and large businesses)?
 x Yes ___ No

If yes, describe long- and short-range impacts due to the enforcement, implementation, or execution of the proposed rule.

Since state law will be more consistent with federal law, there will be less confusion and more compliance with the law.

I. Impact on state economy?
 x Yes ___ No

J. Final result anticipated from the proposed rule change.

The final result will be clarification for people with disabilities and owners and other engaging in housing real estate transactions that state disability discrimination law is consistent with federal law.

K. Alternatives explored to carry out the statutory purpose other than rulemaking.

None. See above.

A Bill for an Act Relating to Civil Actions for Discriminatory Practices in Real Property Transactions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 515-9, Hawaii Revised Statutes, is amended to read as follows:

“§515-9 Enforcement. (a) The civil rights commission has jurisdiction over the subject of real property transaction practices and discrimination made unlawful by this chapter. The commission has the following powers:

- (1) To receive, initiate, investigate, seek to conciliate, hold hearings on, and pass upon complaints alleging violations of this chapter in accordance with the procedure established in chapter 368, except that investigations shall be completed within one hundred days and a final administrative disposition shall be made within one year of the date of the receipt of the complaint, unless impracticable to do so;
- (2) At any time after a complaint is filed, to require answers to interrogatories, compel the attendance of witnesses, examine witnesses under oath or affirmation, and require the production of documents relevant to the complaint. Before a finding of reasonable cause, chapter 368 to the contrary notwithstanding, the commission may issue a notice of right to sue upon written request of the complainant which must be exercised within ninety days of receipt of the notice or one year after the filing of the complaint, whichever is later. The commission may make rules authorizing any individual designated to exercise these powers in the performance of official duties;
- (3) Chapter 368 to the contrary notwithstanding, after a finding of reasonable cause, to notify the complainant, respondent, or an aggrieved person on whose behalf the complaint was filed, that an election may be made to file a civil action in lieu of an administrative hearing. The election must be made not later than twenty days after receipt by the electing party of the notice. The electing party shall be provided with a notice of right to sue which must be exercised within ninety days of receipt of that notice or one year after the filing of the complaint, whichever is later. The commission will provide legal representation to the complainant in the event of an election by any party. After the filing of a civil action, the parties may stipulate to have the matter remanded for an administrative hearing;
- (4) To furnish technical assistance requested by persons subject to this chapter to further compliance with the chapter or an order issued thereunder;
- (5) To make studies appropriate to effectuate the purposes and policies of this chapter and to make the results thereof available to the public;
- (6) To render at least annually a comprehensive written report to the governor and to the legislature. The report may contain recommendations of the commission for legislative or other action to effectuate the purposes and policies of this chapter; and
- (7) In accordance with chapter 91, to adopt rules to effectuate the purposes and policies of this chapter, including rules requiring the inclusion in advertising material of notices prepared or approved by the commission.

(b) Nothing in chapter 368 or this section shall be deemed to preclude an aggrieved person from filing a civil action for discriminatory practices made unlawful by this chapter no later than two years after the occurrence or the termination of an alleged discriminatory practice; provided that, notwithstanding section 368-12, the commission shall issue a right to sue on a complaint filed with the commission if it determines that a civil action alleging similar facts has been filed.

(c) In a civil action filed under subsection (b), the remedies ordered by the court may include remedies as provided under sections 368-17 and 515-13 such as compensatory and punitive damages, legal and equitable relief, and reasonable attorney's fees and costs."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 26, 2012.)

A Bill for an Act Relating to Fair Housing Exemptions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to make the exemptions from prohibited discriminatory practices in our state fair housing laws consistent with similar exemptions found in the federal Fair Housing Act by clarifying that the exemptions apply to lessors as well as owners, that the exemptions do not apply to advertising, publications, or statements, and by making the groups protected in section 515-16, Hawaii Revised Statutes, consistent with the rest of chapter 515, Hawaii Revised Statutes.

SECTION 2. Section 515-3, Hawaii Revised Statutes, is amended to read as follows:

“§515-3 Discriminatory practices. It is a discriminatory practice for an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesperson, because of race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or human immunodeficiency virus infection:

- (1) To refuse to engage in a real estate transaction with a person;
- (2) To discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection [therewith;] with a real estate transaction:
- (3) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;
- (4) To refuse to negotiate for a real estate transaction with a person;
- (5) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is available, or to fail to bring a property listing to the person's attention, or to refuse to permit the person to inspect real property, or to steer a person seeking to engage in a real estate transaction;
- ~~[(6) To print, circulate, post, or mail, or cause to be published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, that indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;~~
- ~~[(7) (6) To offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection [therewith;] with a real estate transaction:~~
- ~~[(8) (7) To refuse to engage in a real estate transaction with a person or to deny equal opportunity to use and enjoy a housing accommodation due to a disability because the person uses the services of a guide dog, signal dog, or service animal; provided that reasonable restrictions or prohibitions may be imposed regarding excessive noise or other problems caused by those animals. For the purposes of this paragraph:~~

“Blind” shall be as defined in section 235-1;

“Deaf” shall be as defined in section 235-1;

“Guide dog” means any dog individually trained by a licensed guide dog trainer for guiding a blind person by means of a harness attached to the dog and a rigid handle grasped by the person;

“Reasonable restriction” shall not include any restriction that allows any owner or person to refuse to negotiate or refuse to engage in a real estate transaction; provided that as used in this paragraph, the “reasonableness” of a restriction shall be examined by giving due consideration to the needs of a reasonable prudent person in the same or similar circumstances. Depending on the circumstances, a “reasonable restriction” may require the owner of the service animal, guide dog, or signal dog to comply with one or more of the following:

- (A) Observe applicable laws including leash laws and pick-up laws;
- (B) Assume responsibility for damage caused by the dog; or
- (C) Have the housing unit cleaned upon vacating by fumigation, deodorizing, professional carpet cleaning, or other method appropriate under the circumstances.

The foregoing list is illustrative only, and neither exhaustive nor mandatory;

“Service animal” means any animal that is trained to provide those life activities limited by the disability of the person;

“Signal dog” means any dog that is trained to alert a deaf person to intruders or sounds;

- ~~[(9)]~~ (8) To solicit or require as a condition of engaging in a real estate transaction that the buyer, renter, or lessee be tested for human immunodeficiency virus infection, the causative agent of acquired immunodeficiency syndrome;
- ~~[(10)]~~ (9) To refuse to permit, at the expense of a person with a disability, reasonable modifications to existing premises occupied or to be occupied by the person if modifications may be necessary to afford the person full enjoyment of the premises~~[-A]~~; provided that a real estate broker or salesperson, where it is reasonable to do so, may condition permission for a modification on the person agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;
- ~~[(11)]~~ (10) To refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a housing accommodation;
- ~~[(12)]~~ (11) In connection with the design and construction of covered multifamily housing accommodations for first occupancy after March 13, 1991, to fail to design and construct housing accommodations in such a manner that:
 - (A) The housing accommodations have at least one accessible entrance, unless it is impractical to do so because of the terrain or unusual characteristics of the site; and
 - (B) With respect to housing accommodations with an accessible building entrance:
 - (i) The public use and common use portions of the housing accommodations are accessible to and usable by disabled persons;
 - (ii) Doors allow passage by persons in wheelchairs; and
 - (iii) All premises within covered multifamily housing accommodations contain an accessible route into and through the housing accommodations; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; reinforcements in the bathroom walls allow installation of grab bars; and kitchens and bathrooms are accessible by wheelchair; or
- ~~[(13)]~~ (12) To discriminate against or deny a person access to, or membership or participation in any multiple listing service, real estate broker’s organization, or other service, organization, or facility involved either directly or indirectly in real estate transactions, or to discriminate against any person in the terms or conditions of ~~[such]~~ access, membership, or participation.”

SECTION 3. Section 515-4, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Section 515-3 does not apply:

- (1) To the rental of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other if the owner or lessor resides in one of the housing accommodations; or
- (2) To the rental of a room or up to four rooms in a housing accommodation by an [individual] owner or lessor if the [individual] owner or lessor resides [therein.] in the housing accommodation.”

2. By amending subsection (c) to read:

“(c) Nothing in this chapter regarding familial status or age shall apply to housing for older persons as defined by Title 42 United States Code [section] Section 3607(b)(2).”

SECTION 4. Section 515-16, Hawaii Revised Statutes, is amended to read as follows:

“§515-16 Other discriminatory practices. It is a discriminatory practice for a person, or for two or more persons to conspire:

- (1) To retaliate, threaten, or discriminate against a person because of the exercise or enjoyment of any right granted or protected by this chapter, or because the person has opposed a discriminatory practice, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this chapter;
- (2) To aid, abet, incite, or coerce a person to engage in a discriminatory practice;
- (3) To interfere with any person in the exercise or enjoyment of any right granted or protected by this chapter or with the performance of a duty or the exercise of a power by the commission;
- (4) To obstruct or prevent a person from complying with this chapter or an order issued [thereunder:] pursuant to this chapter;
- (5) To intimidate or threaten any person engaging in activities designed to make other persons aware of, or encouraging such other persons to exercise rights granted or protected by this chapter; [or]
- (6) To threaten, intimidate or interfere with persons in their enjoyment of a housing accommodation because of the race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or human immunodeficiency virus infection of [such] the persons, or of visitors or associates of [such] the persons[-]; or
- (7) To print, circulate, post, or mail, or cause to be published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, that indicates, directly or indirectly, an intent to make a limitation or specification, or to discriminate because of race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or human immunodeficiency virus infection.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved April 29, 2011.)

A Bill for an Act Relating to Service Animals.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that certain references to service animals in state law are either obsolete or inconsistent with federal law. Accordingly, the purpose of this Act is to:

- (1) Conform section 142-5.5, Hawaii Revised Statutes, regarding quarantine, to the definition of "service dog" established in chapter 347, Hawaii Revised Statutes;
- (2) Clarify section 143-4, Hawaii Revised Statutes, regarding dog licensing, to appropriately conform provisions applicable to service dogs with the Americans with Disabilities Act, Public Law 101-336;
- (3) Conform section 347-13, Hawaii Revised Statutes, relating to public conveyances, to Titles II and III of the Americans with Disabilities Act, codified as Title 42 United States Code, Sections 12131 through 12165, and Sections 12181 through 12189, respectively;
- (4) Conform section 347-19, Hawaii Revised Statutes, regarding the rights and liability of blind or partially blind, to the definition of "service dog" established in chapter 347, Hawaii Revised Statutes;
- (5) Conform section 515-3, Hawaii Revised Statutes, regarding discriminatory practices in real estate transactions, to the federal Fair Housing Act, Public Law 100-430; and
- (6) Conform sections 711-1109.4 and 711-1009.5, Hawaii Revised Statutes, regarding criminal offenses against service dogs, to the definition of "service dog" established in chapter 347, Hawaii Revised Statutes.

SECTION 2. Chapter 347, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§347- Service dog, defined. As used in this chapter, "service dog" means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, intellectual, or other mental disability. A companion or comfort animal is not a service dog unless it meets the requirements of this definition and it accompanies a person for the purpose of performing the work or tasks for which it has been trained."

SECTION 3. Section 142-5.5, Hawaii Revised Statutes, is amended to read as follows:

"~~[[§142-5.5] Guide, signal, or service]~~ Service dogs. Any person with a disability who uses the services of a ~~[guide, signal, or]~~ service dog, as defined in section ~~[515-3,] 347-~~, shall be permitted to reside on site for the duration of quarantine, if housing is available."

SECTION 4. Section 143-4, Hawaii Revised Statutes, is amended to read as follows:

"§143-4 Issuance of license and tags. Upon the receipt of the license fee, the director of finance shall issue to the person paying the fee a license stating the following:

- (1) The name and address of the person to whom the license is issued;
- (2) The year for which the license is paid;
- (3) The date of payment;
- (4) A description of the dog for which the license is issued; and
- (5) The number of the metal tag issued for the dog; ~~and~~
- (6) ~~Any dog approved by the director of finance pursuant to rules established by the director to be a guide, signal, or service dog shall be so designated on the license].~~

The director of finance shall, at the same time issue and deliver to the person a metal tag ~~[of such]~~ in the form and design as the director of finance may designate with a serial number and the year for which it is issued plainly inscribed thereon~~, which~~. The tag shall be attached to a collar around the neck of the dog for which the license has been issued. The fee for the tag shall be set by each county council; provided that, until and unless provided by ordinance, the fee shall be 10 cents.

~~[The director of finance, pursuant to chapter 91, shall adopt rules for the licensing of guide, signal, and service dogs.]”~~

SECTION 5. Section¹ 347, Hawaii Revised Statutes, is amended by amending its title to read as follows:

“CHAPTER 347
BLIND ~~[AND]~~, VISUALLY HANDICAPPED, AND OTHER DISABLED
PERSONS”

SECTION 6. Section 347-13, Hawaii Revised Statutes, is amended to read as follows:

“~~§347-13 [Blind, partially blind, physically handicapped;] Persons who are blind, visually handicapped, disabled; public places; public conveyances.~~ (a) ~~[The blind, visually handicapped, and] Persons who are blind, visually handicapped, or otherwise [physically] disabled~~ are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats, or any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable ~~[alike]~~ to all persons.

(b) Every person who is blind, deaf, ~~[or] visually handicapped,~~ or ~~[physically handicapped person]~~ otherwise disabled shall have the right to be accom-

panied by a ~~[guide, signal, or] service dog,~~ especially trained for the purpose~~[,] of assisting the person~~ in any of the places listed in subsection (a) without being required to pay an extra charge for the ~~[guide, signal, or] service dog;~~ provided that the ~~[blind, deaf, or visually or physically handicapped] person~~ shall be liable for any damage done to the premises or facilities by ~~[such] the service dog.~~ No ~~[such] service dog~~ shall be considered dangerous merely because it is unmuzzled.

(c) Every ~~[physically handicapped] disabled~~ person shall have the right to use a life jacket or other flotation device in a public swimming pool; provided that:

- (1) The ~~[handicapped] person~~ suffers from a physical disability or condition ~~[which] that~~ requires the use of a life jacket or other flotation device; and
 - (2) The ~~[handicapped] person~~ obtains a statement signed by a licensed physician or physician assistant attesting to the ~~[handicapped] person's~~ need to use a life jacket or other flotation device.
- (d) The director of human services shall adopt rules pursuant to chapter 91 necessary for the purposes of this section.”

SECTION 7. Section 347-19, Hawaii Revised Statutes, is amended to read as follows:

“~~[§347-19]~~ Rights of blind; partially blind. A blind or visually handicapped person not carrying a cane or using a ~~[guide] service dog~~ in any of the places, accommodations or conveyances listed in section 347-13, shall have all of the rights and privileges conferred by law upon other persons, and the failure of a blind or visually handicapped person to carry a cane or to use a ~~[guide] service dog~~ in any such places, accommodations, or conveyances shall not constitute nor be evidence of negligence.”

SECTION 8. Section 515-3, Hawaii Revised Statutes, is amended to read as follows:

“§515-3 Discriminatory practices. It is a discriminatory practice for an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesperson, because of race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or human immunodeficiency virus infection:

- (1) To refuse to engage in a real estate transaction with a person;
- (2) To discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection [therewith;] with a real estate transaction;
- (3) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;
- (4) To refuse to negotiate for a real estate transaction with a person;
- (5) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is available, or to fail to bring a property listing to the person's attention, or to refuse to permit the person to inspect real property, or to steer a person seeking to engage in a real estate transaction;
- (6) To print, circulate, post, or mail, or cause to be published a statement, advertisement, or sign, [or] to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, that indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect [thereto;] to a real estate transaction;
- (7) To offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection [therewith;] with a real estate transaction;
- [(8) To refuse to engage in a real estate transaction with a person or to deny equal opportunity to use and enjoy a housing accommodation due to a disability because the person uses the services of a guide dog, signal dog, or service animal; provided that reasonable restrictions or prohibitions may be imposed regarding excessive noise or other problems caused by those animals. For the purposes of this paragraph:

“Blind” shall be as defined in section 235-1;

“Deaf” shall be as defined in section 235-1;

“Guide dog” means any dog individually trained by a licensed guide dog trainer for guiding a blind person by means of a harness attached to the dog and a rigid handle grasped by the person;

“Reasonable restriction” shall not include any restriction that allows any owner or person to refuse to negotiate or refuse to engage in a real estate transaction; provided that as used in this paragraph, the “reasonableness” of a restriction shall be examined by giving due consideration to the needs of a reasonable prudent person in the same or similar circumstances. Depending on the circumstances, a “reasonable restriction” may require the owner of the service animal, guide dog, or signal dog to comply with one or more of the following:

- (A) Observe applicable laws including leash laws and pick-up laws;
- (B) Assume responsibility for damage caused by the dog; or
- (C) Have the housing unit cleaned upon vacating by fumigation, deodorizing, professional carpet cleaning, or other method appropriate under the circumstances.

The foregoing list is illustrative only, and neither exhaustive nor mandatory;

“Service animal” means any animal that is trained to provide those life activities limited by the disability of the person;

“Signal dog” means any dog that is trained to alert a deaf person to intruders or sounds;]

- [(9)] (8) To solicit or require as a condition of engaging in a real estate transaction that the buyer, renter, or lessee be tested for human immunodeficiency virus infection, the causative agent of acquired immunodeficiency syndrome;
- [(10)] (9) To refuse to permit, at the expense of a person with a disability, reasonable modifications to existing premises occupied or to be occupied by the person if modifications may be necessary to afford the person full enjoyment of the premises[-A]; provided that a real estate broker or salesperson, where it is reasonable to do so, may condition permission for a modification on the person agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;
- [(11)] (10) To refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations may be necessary and enjoy a housing accommodation; provided that if reasonable accommodations include the use of an animal, reasonable restrictions may be imposed;
- [(12)] (11) In connection with the design and construction of covered multifamily housing accommodations for first occupancy after March 13, 1991, to fail to design and construct housing accommodations in such a manner that:
- (A) The housing accommodations have at least one accessible entrance, unless it is impractical to do so because of the terrain or unusual characteristics of the site; and
 - (B) With respect to housing accommodations with an accessible building entrance:
 - (i) The public use and common use portions of the housing accommodations are accessible to and usable by ~~[disabled] persons[;]~~ with disabilities;
 - (ii) Doors allow passage by persons in wheelchairs; and
 - (iii) All premises within covered multifamily housing accommodations contain an accessible route into and through the housing accommodations; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; reinforcements in the bathroom walls allow installation of grab bars; and kitchens and bathrooms are accessible by wheelchair; or
- [(13)] (12) To discriminate against or deny a person access to, or membership or participation in any multiple listing service, real estate broker's organization, or other service, organization, or facility involved either directly or indirectly in real estate transactions, or to discriminate against any person in the terms or conditions of such access, membership, or participation."

SECTION 9. Section 711-1109.4, Hawaii Revised Statutes, is amended to read as follows:

~~“[§711-1109.4]~~ Causing injury or death to a [guide dog, signal dog, or service animal.] service dog. (1) A person commits the offense of causing injury or death to a ~~[guide dog, signal dog, or service animal.]~~ service dog if:

- (a) The person recklessly causes injury to or the death of any ~~[guide dog, signal dog, or service animal.]~~ service dog while the service dog is in the discharge of its duties; or
- (b) The person is the owner of a dog and recklessly permits that dog to attack a ~~[guide dog, signal dog, or service animal.]~~ service dog while ~~[that]~~ the service dog is in the discharge of its duties, resulting in the injury or death of the ~~[guide dog, signal dog, or service animal.]~~ service dog.

(2) Any person who commits the offense of causing injury or death to a ~~[guide dog, signal dog, or service animal]~~ service dog shall be punished as follows:

- (a) For a first offense by a fine of not more than \$2,000, imprisonment of not more than thirty days, or both; and
 - (b) For a second or subsequent offense by a fine of not more than \$5,000, imprisonment of not more than thirty days, or both.
- (3) Any person who is convicted of a violation of this section shall be ordered to make restitution to:
- (a) The person with a disability who has custody or ownership of the ~~[guide dog, signal dog, or service animal,]~~ service dog, for any veterinary bills and out-of-pocket costs incurred as a result of the injury to the service dog; and
 - (b) The person or organization that incurs the cost of retraining or replacing the ~~[animal,]~~ service dog, for the cost of retraining or replacing the ~~[animal]~~ service dog if it is disabled or killed.
- (4) As used in this section, [~~“guide dog,” “signal dog,” and “service animal”~~] “service dog” shall have the same meaning as in section ~~[515-3(8).] 347-~~ .”

SECTION 10. Section 711-1109.5, Hawaii Revised Statutes, is amended to read as follows:

~~“[§711-1109.5] Intentional interference with the use of a [guide dog, signal dog, or service animal,] service dog.~~ (1) A person commits the offense of intentional interference with the use of a ~~[guide dog, signal dog, or service animal]~~ service dog if the person, with no legal justification, intentionally or knowingly:

- (a) Harms a ~~[guide dog, signal dog, or service animal,]~~ service dog; or
- (b) Strikes or kicks a ~~[guide dog, signal dog, or service animal,]~~ service dog;

while the ~~[guide dog, signal dog, or service animal]~~ service dog is in the discharge of its duties.

(2) Intentional interference with the use of a ~~[guide dog, signal dog, or service animal]~~ service dog is a misdemeanor.

(3) Nothing in this section is intended to affect any civil remedies available for a violation of this section.

(4) As used in this section, [~~“guide dog,” “signal dog,” and “service animal”~~] “service dog” shall have the same meaning as in section ~~[515-3(8).] 347-~~ .”

SECTION 11. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 12. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 14. This Act shall take effect upon its approval.

(Approved July 1, 2011.)

ACT 214

H.B. NO. 1715

A Bill for an Act Relating to Civil Rights.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to prohibit discriminatory practices in real property transactions (housing) on the basis of sexual orientation, gender identity, or expression. Presently, employment is one of the few areas in which discrimination because of sexual orientation is prohibited. Just as a person should not be denied a job because of the person's sexual orientation (heterosexual, homosexual, or bisexual), a person should not be denied a home because of the person's sexual orientation, gender identity, or expression.

Although this Act contains a narrow exception for housing accommodations at religiously affiliated institutions of higher education, this Act should not be interpreted to undermine the State's commitment to civil rights. Housing laws presently permit landlords to follow their individual value systems in selecting tenants to live in the landlords' own homes (or duplexes). But persons engaged in the business of providing rental housing cannot be allowed to ignore civil rights laws that apply to all. The religious accommodation in this Act is intended primarily to grant private homeowners who open their homes to university students a degree of certainty that the religious institution's student housing program criteria will withstand challenges.

SECTION 2. Section 515-2, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"Gender identity or expression" includes a person's actual or perceived gender, as well as a person's gender identity, gender-related self-image, gender-related appearance, or gender-related expression, regardless of whether that gender identity, gender-related self-image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person's sex at birth.

"Sexual orientation" means having a preference for heterosexuality, homosexuality, or bisexuality, having a history of any one or more of these preferences, or being identified with any one or more of these preferences. "Sexual orientation" shall not be construed to protect conduct otherwise proscribed by law."

SECTION 3. Section 515-3, Hawaii Revised Statutes, is amended to read as follows:

"§515-3 Discriminatory practices. It is a discriminatory practice for an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesperson, because of race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or ~~[HIV (human immunodeficiency virus)]~~ infection:

- (1) To refuse to engage in a real estate transaction with a person;
- (2) To discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;
- (3) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;
- (4) To refuse to negotiate for a real estate transaction with a person;
- (5) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is [so] available, or to fail to bring a property listing to the person's attention, or to refuse to permit the person to inspect real property, or to steer a person seeking to engage in a real estate transaction;

EXHIBIT

- (6) To print, circulate, post, or mail, or cause to be [se] published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, [which] that indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;
- (7) To offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith;
- (8) To refuse to engage in a real estate transaction with a person or to deny equal opportunity to use and enjoy a housing accommodation due to a disability because the person uses the services of a guide dog, signal dog, or service animal; provided that reasonable restrictions or prohibitions may be imposed regarding excessive noise or other problems caused by those animals. For the purposes of this paragraph:
 - “Blind” shall be as defined in section 235-1;
 - “Deaf” shall be as defined in section 235-1;
 - “Guide dog” means any dog individually trained by a licensed guide dog trainer for guiding a blind person by means of a harness attached to the dog and a rigid handle grasped by the person;
 - “Reasonable restriction” shall not include any restriction that allows any owner or person to refuse to negotiate or refuse to engage in a real estate transaction; provided that as used in this paragraph, the “reasonableness” of a restriction shall be examined by giving due consideration to the needs of a reasonable prudent person in the same or similar circumstances. Depending on the circumstances, a “reasonable restriction” may require the owner of the service animal, guide dog, or signal dog to comply with one or more of the following:
 - (A) Observe applicable laws including leash laws and pick-up laws;
 - (B) Assume responsibility for damage caused by the dog; or
 - (C) Have the housing unit cleaned upon vacating by fumigation, deodorizing, professional carpet cleaning, or other method appropriate under the circumstances.The foregoing list is illustrative only, and neither exhaustive nor mandatory;
 - “Service animal” means any animal that is trained to provide those life activities limited by the disability of the person;
 - “Signal dog” means any dog that is trained to alert a deaf person to intruders or sounds;
- (9) To solicit or require as a condition of engaging in a real estate transaction that the buyer, renter, or lessee be tested for human immunodeficiency virus infection [(HIV)], the causative agent of acquired immunodeficiency syndrome [(AIDS)];
- (10) To refuse to permit, at the expense of a person with a disability, reasonable modifications to existing premises occupied or to be occupied by the person if modifications may be necessary to afford the person full enjoyment of the premises. A real estate broker or salesperson, where it is reasonable to do so, may condition permission for a modification on the person agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;
- (11) To refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a housing accommodation;
- (12) In connection with the design and construction of covered multifamily housing accommodations for first occupancy after March 13, 1991, to fail to design and construct housing accommodations in such a manner that:
 - (A) The housing accommodations have at least one accessible entrance, unless it is impractical to do so because of the terrain or unusual characteristics of the site; and

- (B) With respect to housing accommodations with an accessible building entrance:
 - (i) The public use and common use portions of the housing accommodations are accessible to and usable by disabled persons;
 - (ii) Doors allow passage by persons in wheelchairs; and
 - (iii) All premises within covered multifamily housing accommodations contain an accessible route into and through the housing accommodations; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; reinforcements in the bathroom walls allow installation of grab bars; and kitchens and bathrooms are accessible by wheelchair; or
- (13) To discriminate against or deny a person access to, or membership or participation in any multiple listing service, real estate broker's organization, or other service, organization, or facility involved either directly or indirectly in real estate transactions, or to discriminate against any person in the terms or conditions of such access, membership, or participation."

SECTION 4. Section 515-4, Hawaii Revised Statutes, is amended to read as follows:

"§515-4 Exemptions. (a) Section 515-3 does not apply:

- (1) To the rental of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other if the lessor resides in one of the housing accommodations; or
- (2) To the rental of a room or up to four rooms in a housing accommodation by an individual if the individual resides therein.

(b) Nothing in section 515-3 shall be deemed to prohibit refusal, because of sex, including gender identity or expression, sexual orientation, or marital status, to rent or lease housing accommodations:

- (1) Owned or operated by a religious institution and used for church purposes as that term is used in applying exemptions for real property taxes; or
- (2) Which are part of a religiously affiliated institution of higher education housing program which is operated on property that the institution owns or controls, or which is operated for its students pursuant to Title IX of the Higher Education Act of 1972.

~~[(b)]~~ (c) Nothing in this chapter regarding familial status or age shall apply to housing for older persons as defined by 42 United States Code section 3607(b)(2)."

SECTION 5. Section 515-5, Hawaii Revised Statutes, is amended to read as follows:

"§515-5 Discriminatory financial practices. It is a discriminatory practice for a person, a representative of such person, or a real estate broker or salesperson, to whom an inquiry or application is made for financial assistance in connection with a real estate transaction or for the construction, rehabilitation, repair, maintenance, or improvement of real property, because of race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or [HIV- (human immunodeficiency virus)] infection:

- (1) To discriminate against the applicant;
- (2) To use a form of application for financial assistance or to make or keep a record or inquiry in connection with applications for financial assistance ~~[which]~~ that indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination unless ~~[such]~~ the records are required by federal law;

- (3) To discriminate in the making or purchasing of loans or the provision of other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling, or the making or purchasing of loans or the provision of other financial assistance secured by residential real estate; or
- (4) To discriminate in the selling, brokering, or appraising of residential real property.”

SECTION 6. Section 515-6, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Every provision in an oral agreement or a written instrument relating to real property [~~which~~] that purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof to individuals because of race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or [HIV] (human immunodeficiency virus) infection, is void.

(b) Every condition, restriction, or prohibition, including a right of entry or possibility of reverter, [~~which~~] that directly or indirectly limits the use or occupancy of real property on the basis of race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or [HIV] human immunodeficiency virus infection is void, except a limitation, on the basis of religion, on the use of real property held by a religious institution or organization or by a religious or charitable organization operated, supervised, or controlled by a religious institution or organization, and used for religious or charitable purposes.”

SECTION 7. Section 515-7, Hawaii Revised Statutes, is amended to read as follows:

“**§515-7 Blockbusting.** It is a discriminatory practice for a person, representative of a person, or a real estate broker or salesperson, for the purpose of inducing a real estate transaction from which the person, representative, or real estate broker or salesperson may benefit financially, because of race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or [HIV] human immunodeficiency virus infection:

- (1) To represent that a change has occurred or will or may occur in the composition of the owners or occupants in the block, neighborhood, or area in which the real property is located[;] or
- (2) To represent that this change will or may result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools in the block, neighborhood, or area in which the real property is located.”

SECTION 8. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect upon its approval.

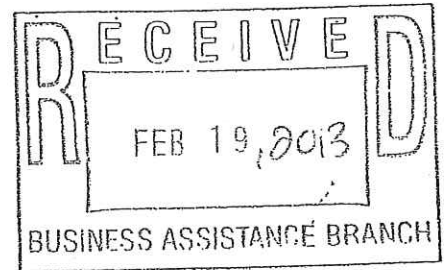
(Approved July 11, 2005.)

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Amendments to Chapter 12-46 Subchapters 1 and 20,
Hawaii Administrative Rules
January 25, 2013

SUMMARY

1. §12-46-7 is amended.
2. §12-46-11 is amended.
3. §12-46-20 is amended.
4. §12-46-302 is amended.
5. §12-46-305 is amended.
6. §12-46-306 is amended.
7. §12-46-311 is amended.
8. §12-46-313 is amended.
9. §12-46-318 is amended.



Amendments to Chapter 12-46,
Hawaii Administrative Rules

1. Section 12-46-7, Hawaii Administrative Rules, is amended to read as follows:

"§12-46-7 **Service of complaint.** (a) Within ten days after a complaint is filed with the commission, or within ten days after the commission receives a complaint on deferral from the EEOC or the United States Department of Housing and Urban Development, the commission's executive director shall serve a copy of the complaint on the respondent by certified mail, return receipt requested, or by personal delivery, except when it is determined by the executive director that providing a copy of the complaint would impede the law enforcement functions of the commission.

(b) Where a copy of the complaint is not provided, the respondent shall be served with a notice of the complaint, including the date, place, and general description of the alleged unlawful discriminatory practice, within ten days after filing of the complaint.

(c) Providing the respondent with a copy of the complaint shall be deemed to impede the law enforcement functions of the commission where:

- (1) The complaint names more than one respondent, unless the respondents are charged jointly; e.g., an employer and a union are charged with having signed a collective bargaining agreement which is discriminatory; or
- (2) The complaint names a person or persons whom the commission believes may suffer retaliation or may be construed as being confidential informers or potential confidential informers;

(d) When a complaint is written and filed in a language other than English the commission shall provide for an English translation of the complaint

which shall be served along with any copy of the original complaint filed with the commission." [Eff 12/31/90; am] (Auth: HRS §368-3) (Imp: HRS §368-11).

2. Section 12-46-11, Hawaii Administrative Rules, is amended to read as follows:

"§12-46-11 Dismissal of complaint. (a) The executive director shall dismiss the complaint:

- (1) If it is determined that the commission does not have jurisdiction over the complaint;
- (2) If it is determined after investigation that reasonable cause does not exist to believe that the alleged unlawful discriminatory practice has been committed;
- (3) If either the complainant or respondent cannot be located; provided that reasonable efforts have been made to locate the complainant or respondent, or the complainant has not responded within thirty days to a notice sent by the commission to the complainant's last known address;
- (4) If the complainant has failed or is unable to cooperate fully in the investigation or conciliation of a complaint by:
 - (A) Failing or refusing to provide the investigating examiner with requested information;
 - (B) Failing or refusing to appear or to be available for interview or conferences as an investigating examiner deems necessary; or
 - (C) Otherwise refusing or failing to cooperate, or not being able to provide information which a person would reasonably be expected to have;to the extent that the commission's executive director or investigating examiner is unable to resolve the complaint; provided that after due notice of the commission's

executive director's intent to dismiss the complaint, the complainant has had thirty days in which to respond;

- (5) If the executive director determines that there are inadequate remedies because:
 - (A) The respondent to the complaint has filed a petition for relief under Chapter VII of the Bankruptcy Code, Title 11 United States Code, and the executive director determines that there are insufficient assets available to provide relief to the complainant and other remedies are inappropriate; or
 - (B) There is no significant monetary, employment, accommodation, service, housing, declaratory, or injunctive relief available to the complainant;
- (6) If the complaint has been investigated by an appropriate local, state, or federal enforcement agency, such as the EEOC, [~~Equal Employment Opportunity Commission,~~ Department of Housing and Urban Development, Office for Civil Rights, or Office of Federal Contract Compliance Programs, and a final determination regarding the complaint has been made by the agency;
- (7) If it is determined at any time that, based upon the executive director's discretion, dismissal is justified for administrative reasons, such as but not limited to:
 - (A) A finding of reasonable cause is no longer appropriate because of a material change in the allegations of the complainant or respondent;
 - (B) A finding of reasonable cause is no longer appropriate because of a material change in the testimony of a key witness for the complainant or respondent; [~~or~~]
 - (C) A finding of reasonable cause is no longer appropriate because of a change

in law or the discovery of new and material evidence; [or]

(D) A civil action alleging similar facts has been filed pursuant to section 515-9(b), HRS; or

(8) If the complaint or relief sought is covered by a court order or consent decree, or the respondent action complained of is required or authorized by a court order or consent decree.

(b) The executive director may dismiss a complaint if the respondent has made a predetermination settlement offer as described in section 12-46-13, which is in writing and specific in its terms, and the complainant refuses to accept the offer; provided that the offer, as determined by the commission's executive director, would afford a just resolution for the harm alleged by the complainant and the complainant fails to accept the offer within thirty days after actual notice of the offer.

(c) In the event of any dismissal of a complaint:

(1) The complainant shall be notified by certified mail, return receipt requested, of:

- (A) The reason or reasons for dismissal;
- (B) The right to sue as provided by section 368-12 or 515-9, HRS; and
- (C) The right to request the commission to reconsider the dismissal.

(2) The respondent and the commission shall be notified in writing of the dismissal and the reasons therefor.

(d) The dismissal of a complaint may be reconsidered on the executive director's own initiative at any time or upon the complainant's written request filed within thirty days after the date of the receipt of the notice of disposition. Written notice of the reconsideration shall be provided by the executive director to the parties." [Eff 12/31/90; am 5/1/92; am 11/4/93; am 5/3/99;

am] (Auth: HRS §368-3) (Imp: HRS §§368-11, 368-12, 368-13, 515-9)

3. Section 12-46-20, Hawaii Administrative Rules, is amended to read as follows:

"§12-46-20 Notice of right to sue. (a) A notice of right to sue shall authorize:

- (1) A complainant alleging violations of chapters 368, 378, or 489, HRS, to bring a civil suit pursuant to section 368-12, HRS, within ninety days after receipt of the notice;
- (2) A complainant alleging violations of chapter 515, HRS, issued such notice before a finding of reasonable cause pursuant to section 515-9(2), HRS, to bring a civil suit within ninety days of receipt of the notice or one year after the filing of the complaint, whichever is later; or
- (3) The executive director to file a civil suit within ninety days of the receipt of the notice of right to sue by a party filing a timely notice of election to file civil action under subsection (b) (3) or one year after the filing of the complaint, whichever is later.

(b) A request, in writing, may be made to the executive director to issue a notice of right to sue:

- (1) At any time after the filing of a complaint with the commission, and no later than three days after the conclusion of the scheduling conference provided for in section 12-46-19, by a complainant alleging violations of chapters 368, 378, or 489, HRS;
- (2) At any time after the filing of a complaint with the commission but before a finding of reasonable cause under section 515-9(2), HRS, by a complainant alleging violations of chapter 515, HRS; or

- (3) Within twenty days after receipt of the notice of election to file a civil action under section 515-9(3), HRS, by any party to a complaint alleging violations of chapter 515, HRS.

(c) The commission's executive director shall issue a notice of right to sue provided that the commission has not:

- (1) Previously issued a notice;
- (2) Entered into a conciliation agreement to which the complainant is a party; or
- (3) Filed a civil action.

(d) The commission's executive director shall issue a notice of right to sue:

- (1) Upon dismissal of the complaint pursuant to section 12-46-11; [~~or~~]
- (2) Where the commission has entered into a conciliation agreement to which the complainant is not a party pursuant to section 12-46-15(d) [~~or~~];
- (3) Upon timely receipt of a notice of election to file a civil action under subsection (b) (3); or
- (4) If a civil action alleging similar facts has been filed pursuant to section 515-9(b), HRS." [Eff 12/31/90; am 11/4/93; am] (Auth: HRS §368-3) (Imp: HRS §§368-12, 515-9)

4. Section 12-46-302, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Assistance animal" means an animal that is needed to perform disability-related work, services or tasks for the benefit of a person with a disability, or is needed to provide emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals may include, but are not limited to, service animals, therapy animals, comfort animals or emotional support

animals. Assistance animals may have formal training or may be untrained, and may include species other than dogs."

5. Section 12-46-302, Hawaii Administrative Rules, is amended by deleting the definition "blind".

~~["Blind" means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees. The impairment of sight shall be certified to on forms prescribed by the department of taxation on the basis of a written report on an examination performed by a qualified ophthalmologist or qualified optometrist."]~~

6. Section 12-46-302, Hawaii Administrative Rules, is amended by deleting the definition "deaf".

~~["Deaf" means a person whose average loss in the speech frequencies (500-2000 Hertz) in the better ear is eighty two decibels, A.S.A., or worse. The impairment of deafness shall be certified to by a qualified otolaryngologist on forms prescribed by the department of taxation."]~~

7. Section 12-46-302, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Direct threat" means a significant risk of substantial harm to the health or safety of the person or others that cannot be eliminated or reduced by reasonable accommodation based upon an individualized assessment. The risk of harm should be identifiable,

substantial, current, or probable and not a remote or speculative risk."

8. Section 12-46-302, Hawaii Administrative Rules, is amended by deleting the definition "guide dog".

~~[""Guide dog" means any dog individually trained by a licensed guide dog trainer for guiding a blind person by means of a harness attached to the dog and a rigid handle grasped by the person."]~~

9. Section 12-46-302, Hawaii Administrative Rules, is amended by amending the definition "protected basis" to read:

"Protected basis" means race, sex^[7] (including gender identity or expression), sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or HIV (human immunodeficiency virus) infection."

10. Section 12-46-302, Hawaii Administrative Rules, is amended by deleting the definition "service animal".

~~[""Service animal" means any animal that is trained to provide those life activities limited by the disability of the person."]~~

11. Section 12-46-302, Hawaii Administrative Rules, is amended by deleting the definition "signal dog".

~~[""Signal dog" means any dog that is trained to alert a deaf person to intruders or sounds."]~~

[Eff 10/15/93; am 5/3/99; am] (Auth:
HRS §§368-3; 515-9(7)) (Imp: HRS §§515-2; 515-3, 515-
8, 515-9)

12. Section 12-46-305, Hawaii Administrative Rules, is amended to read as follows:

"§12-46-305 **Discriminatory practices.** It is a discriminatory practice for an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesperson because of a person's protected basis:

- (1) To refuse to engage in a real estate transaction, evict, or terminate a tenancy;
- (2) To discriminate in the terms, conditions, enjoyment, or privileges of a real estate transaction; or in the furnishing of facilities or services in connection therewith;
- (3) To refuse to receive or fail to transmit a bona fide offer to engage in a real estate transaction from a person;
- (4) To refuse to negotiate for a real estate transaction with a person;
- (5) To represent to a person that real property is not available for inspection, sale, rental, or lease when, in fact, it is available, or to fail to bring a property listing to the person's attention, or to refuse to permit the person to inspect real property, or to steer a person seeking to engage in a real estate transaction;
- ~~[(6) To print, circulate, post, or mail, or cause to be published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent~~

- ~~to make a limitation, specification, or discrimination with respect thereto;~~
- ~~(7) To offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith;~~
- ~~(8)] (6) To discriminate against or deny a person access to, or membership or participation in any multiple listing service, real estate broker's organization, or facility involved either directly or indirectly in real estate transactions, or to discriminate against any person in the terms or conditions of such access, membership, or participation;~~
- ~~[(9)] (7) To engage in harassment; or~~
- ~~[(10)] (8) To institute or apply facially neutral policies or restrictions which result in a disparate adverse impact." [Eff 10/15/93; am] (Auth: HRS §§368-3; 515-9(7)) (Imp: HRS §515-3)~~

13. Section 12-46-306, Hawaii Administrative Rules, is amended to read as follows:

"§12-46-306 Discrimination on the basis of disability. (a) It is a discriminatory practice for an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesperson:

- (1) To refuse to engage in a real estate transaction or to deny equal opportunity to use and enjoy a housing accommodation with a person with a disability because the person uses ~~[the services of a guide dog, or signal dog, or service animal, provided that]~~ an assistance animal. If the disability is not readily apparent, an owner or other person engaging in a real estate transaction may request information that verifies that the person has a disability as defined in section 12-46-302. However, an owner or other person engaging in a real estate transaction may not request medical records and may not inquire as to the diagnosis, nature or severity of the person's disability. If the need for an assistance animal is not readily apparent, an owner or other person engaging in a real estate transaction may request information that verifies that the assistance animal is needed to alleviate one or more identified symptoms of the person's disability. Verifying information may be provided by a letter or other communication from the person's treating health care professional, mental health professional, or social worker. ~~[R]~~ Reasonable restrictions or prohibitions may be imposed upon the person with a disability regarding excessive noise or other problems caused by those animals including, but not limited to:
 - (A) Observing applicable laws, including leash laws and pick-up laws;

- (B) Assuming responsibility for damage caused by the ~~[dog, etc]~~ animal;
- (C) Cleaning the housing unit upon vacating, by fumigation, deodorizing, professional carpet cleaning, or other appropriate methods; ~~[etc]~~
- (D) Cleaning the animal's waste;
- (E) Having the animal licensed with the county, if licensing is required by the county;
- (F) Having the animal vaccinated with documentation of the vaccination;
- (G) Having the animal under the control of the animal's owner or handler by use of harness, leash, tether, cage, carrier, or other physical control in common areas. If the nature of the person's disability makes physical control impracticable, or if physical control would interfere with the assistance that the animal provides, the owner or other person engaging in a real estate transaction may require that the animal be otherwise under the control of the animal's owner or handler by voice control, signals, or other effective means; or
- ~~[(D)]~~ (H) Any other reasonable restriction that would leave the housing accommodation in the condition it was in prior to the occupancy of the tenant with a disability, except for reasonable wear and tear;

Example:

Sarah, a condominium owner with an anxiety disorder, asks for an exception to her condominium association's "no pets" rule in order to keep an emotional support rabbit in her unit. Because Sarah's disability and need for an emotional support animal are not readily apparent, the condominium

association may ask Sarah to provide information verifying her disability and that the rabbit is needed to alleviate at least one of the identified symptoms or effects of Sarah's disability. Sarah provides a letter from her treating psychologist stating that Sarah has a disability as defined in section 12-46-302 and that the rabbit is needed to prevent or reduce her panic attacks. The accommodation is therefore needed to afford Sarah an equal opportunity to use and enjoy her condominium and is reasonable. The association must allow the rabbit as an accommodation but may impose reasonable restrictions on its use.

- (2) To solicit or require as a condition of engaging in a real estate transaction that the buyer, renter, or lessee be tested for human immunodeficiency virus (HIV) infection;
- (3) To refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a housing accommodation, including public and common use areas; or

Example:

Kanoa Gardens is a three hundred unit apartment complex with four hundred fifty parking spaces which are available to tenants and guests on a "first come first served" basis. Paul applies for housing in Kanoa Gardens. Paul has a mobility impairment and is unable to walk more than a short distance and therefore requests that a parking space near his unit be reserved for him so he will not have to walk very far to get to his apartment. It is a violation of

the law for the owner or manager of Kanoa Gardens to refuse to make this requested accommodation. Without a reserved space Paul may not be able to live in Kanoa Gardens at all or, when he has to park in a space far from his unit, might have great difficulty getting from his car to his apartment unit. The accommodation therefore is necessary to afford Paul an equal opportunity to use and enjoy a housing accommodation. The requested accommodation is reasonable because it is feasible and practical because of the number of unassigned parking spaces available.

- (4) To refuse to permit, at the expense of a person with a disability, reasonable modifications of existing premises, occupied or to be occupied by the person, if the proposed modifications may be necessary to afford the person with a disability full enjoyment of the premises.

Example:

A tenant with a disability asks an owner or manager for permission to install grab bars in the bathroom at his or her own expense. It is necessary to reinforce the walls with blocking between studs in order to affix the grab bars. It is unlawful for the owner or manager to refuse to permit the tenant, at the tenant's own expense, from making the modifications necessary to add the grab bars.

An owner, any other person engaging in a real estate transaction, real estate broker, or salesperson may grant permission for a modification on the condition that the person with a disability give:

- (A) A reasonable description of the proposed modifications;

- (B) Reasonable assurances that the modifications will be done in a workmanlike manner and that any required building permits will be obtained; and
- (C) Reasonable assurances that the person with a disability will restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted; however, restoration will not be necessary of those modifications which do not interfere with the owner's or next tenant's use and enjoyment of the premises.

Example:

An owner or manager may require the creation of an escrow fund and the payment of money into the fund to cover the costs of restoring the premises. Any portion of the fund, including interest, that is not required for the restoration of the premises will be reimbursed to the person with a disability, who paid into the fund, within a reasonable time.

Example:

If a person with a disability receives permission to put in grab bars and widen the doorway, it is not necessary to remove the blocking or narrow the doorway to restore the premises because the reinforced walls and wider doorway will not interfere with the owner's or next tenant's use and enjoyment of the premises. However, the tenant can be

required to remove the grab bars and restore the wall to the condition that existed before the modification, reasonable wear and tear excepted.

(b) All covered multifamily housing accommodations, designed and constructed for first occupancy after March 13, 1991, shall:

- (1) Be designed and constructed to have at least one accessible entrance, unless it is impractical to do so because of the terrain or unusual characteristics of the site; and

Example:

A real estate developer plans to construct six covered multifamily housing accommodations on a site with a hilly terrain. Because of the terrain, it will be necessary to climb a long and steep stairway in order to enter the dwellings. Since there is no practical way to provide an accessible route to any of the housing accommodations, one need not be provided.

- (2) If built with an accessible building entrance, be designed and constructed in such a manner that:

- (A) Public use and common use portions of the housing accommodations, including recreation and laundry rooms, are accessible to and usable by persons with disabilities;

- (B) All doors designed to allow passage into and within all premises are sufficiently wide to allow passage by persons who use wheelchairs;

(C) All premises contain an accessible route into and through the housing accommodation;

(D) Light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations;

(E) Reinforcements in the bathroom walls allow later installation of grab bars; and

(F) Kitchens and bathrooms are accessible to persons who use wheelchairs.

Example:

A developer plans to construct a one hundred unit condominium apartment building with one elevator. In accordance with the law, the building has at least one accessible route leading to an accessible entrance. All one hundred units are covered multifamily housing accommodations and they all must be designed and constructed so that they comply with the accessibility requirements of the law.

For purposes of this subsection, a multifamily housing accommodation shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991, if it is occupied by that date or if the last building permit or renewal thereof for the covered multifamily housing accommodation is issued by a state, county or local government agency on or before June 15, 1990. Accessibility will be determined based upon ANSI A117.1-1986 or the Fair Housing Accessibility Guidelines. The burden of establishing impracticality because of terrain or unusual site

characteristics is on the owner, person engaging in a real estate transaction, or real estate broker or salesperson.

(c) An owner or other person engaging in a real estate transaction is not required to make a reasonable accommodation to a person who meets the definition of disability solely under the "record of impairment" or "regarded as" prongs of the definition of disability in section 12-46-302. [Eff 10/15/93; am 5/3/99; am] (Auth: HRS §§368-3; 515-9(7) (Imp: HRS §515-3)

14. Section 12-46-311, Hawaii Administrative Rules, is amended to read as follows:

"§12-46-311 Other discriminatory practices. (a) An attempt to commit, directly or indirectly, a discriminatory practice is a discriminatory practice.

(b) A party to a conciliation agreement made under chapter 515, HRS, or this subchapter, who violates the terms of such agreement, has committed a discriminatory practice.

(c) It is a discriminatory practice for an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesperson to print, circulate, post, or mail, or cause to be published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination because of a person's protected basis.

(d) It is a discriminatory practice for an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesperson to offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against because of a person's protected basis in a real estate transaction or in the furnishing of facilities or services in

connection therewith." [Eff 10/15/93; am]
(Auth: HRS §§368-3; 515-9(7)) (Imp: HRS §§515-16,
515-17, 515-18(b))

15. Section 12-46-313, Hawaii Administrative
Rules, is amended to read as follows:

"§12-46-313 Exemptions. (a) Sections 12-46-305,
-306, and -307 do not apply:

- (1) To the rental of a housing accommodation in
a building which contains housing
accommodations for not more than two
families living independently of each other
if the owner or lessor resides in one of the
two housing accommodations; or
- (2) To the rental of a room or up to four rooms
in a housing accommodation by an
~~[individual]~~ owner or lessor if the
~~[individual]~~ owner or lessor resides
therein.

(b) Nothing in this subchapter regarding
familial status or age shall apply to housing for
older persons as defined by 42 U.S.C. section
3607(b)(2)." [Eff 10/15/93; am]
(Auth: HRS §§368-3; 515-9(7)) (Imp: HRS §515-4)

16. Section 12-46-318, Hawaii Administrative Rules, is amended to read as follows:

"§12-46-318 **Defenses.** (a) **Adverse impact.** It may be a defense to a claim that a facially-neutral practice, policy, or action has the effect of discriminating against a person because of a protected basis for an owner, any other person, real estate broker, or salesperson charged with discrimination to establish that there is a business necessity for the practice, policy, or action.

(b) **Specific activity permitted.** It may be a defense to a claim that a practice, policy, or action discriminates against a person because of a protected basis for an owner, any other person, real estate broker, or salesperson charged with discrimination to establish that the alleged discriminatory practice, policy, or action is specifically permitted under this subchapter or by sections 515-4 or 515-8, HRS.

(c) Refusal to allow the use of a particular assistance animal. An owner or any other person engaging in a real estate transaction may refuse to allow a person with a disability the use of a particular assistance animal if:

- (1) The animal poses a direct threat to the health or safety of others and the animal's owner or handler takes no effective action to control the animal so that the threat is mitigated or eliminated;
- (2) The animal would cause substantial physical damage to the property of others that cannot be reduced or eliminated by a reasonable accommodation;
- (3) The presence of the assistance animal would pose an undue financial and administrative burden to the owner or person engaging in a real estate transaction; or
- (4) The presence of the assistance animal would fundamentally alter the nature of the operations of the owner or person engaging in a real estate transaction.

The determination of whether an assistance animal poses a direct threat and whether the animal's owner or handler has taken effective action to control the animal so that the threat is mitigated or eliminated, must be based on an individualized assessment about the specific animal in question, such as the animal's current conduct or recent history of overt acts. The determination may not be based on the animal's species or breed. Factors to be considered include: the nature, duration and severity of the risk of injury; the probability that the potential injury will actually occur; whether reasonable modifications of rules, policies, practices, procedures, or services will reduce the risk; and whether the animal's owner has taken any action that has reduced or eliminated the risk, such as obtaining specific training, medication, or equipment for the animal. Denial of the use of a particular animal does not preclude a request to use a different animal.

Example:

Michael, who lives in an apartment building that has a "no pets" policy, has a disability and requires the use of Spot, an emotional support dog. One day while Michael and Spot are riding in the elevator, Spot lunges and bites a guide dog owned by Cindy, who is blind and is in the elevator at the time. Spot therefore poses a direct threat to the health and safety of others. If the direct threat can be mitigated, for example by having Michael muzzle and hold Spot by a short leash when Spot is in common areas, and by having Michael and Spot refrain from riding in the same elevator and being in the same common areas as Cindy and her guide dog, Michael may continue to use Spot. However, if the direct threat from Spot cannot be mitigated, the apartment manager may deny Michael's use of Spot, though Michael may then request the use of a different emotional support animal." [Eff 10/15/93; am] (Auth: HRS §§368-3; 515-9(7)) (Imp: HRS §§515-1, 515-2, 515-3, 515-4, 515-5, 515-6, 515-7, 515-9[~~(7)~~], 515-16, 515-17)

17. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

18. Additions to update source notes to reflect these amendments are not underscored.

19. These amendments to chapter 12-46, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

Director of Labor and
Industrial Relations

APPROVED AS TO FORM:



Deputy Attorney General

V. New Business

- B. Proposed amendments to HAR Title 13
Chapter 230, Part 1 Small Boat Harbors and
Other Boating Facilities, Chapter 230 General
Provisions (DLNR)

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

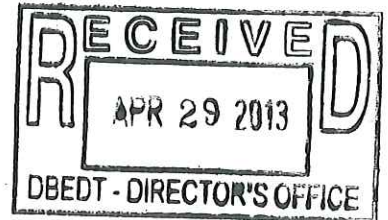
ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

EDWARD R. UNDERWOOD
ADMINISTRATOR
DIVISION OF BOATING AND OCEAN RECREATION

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION
333 QUEEN STREET, SUITE 300
HONOLULU, HAWAII 96813

April 29, 2013



MEMORANDUM

To: Ms. Chu Lan Shubert-Kwock, Acting Chair
Small Business Regulatory Review Board
Department of Business, Economic Development and Tourism

From: Edward R. Underwood, Administrator *ERU*
Division of Boating and Ocean Recreation

Subject: Small Business Impact Statement of the Proposed Amendments and Compilation of
Chapter 13-230, Hawaii Administrative Rules

The Department of Land and Natural Resources, Division of Boating and Ocean Recreation (DOBOR) is submitting a Small Business Impact Statement regarding the proposed amendments to Chapter 13-230, Hawaii Administrative Rules, for your review per Hawaii Revised Statutes, Section 201M-2. The rule clarifies penalties and prosecution for violation of rules and unauthorized dumping; and recognizes civil unions, civil union partner, personal partner, reciprocal beneficiary, and spouse per Hawaii Law.

Small Business Impact Statement

1. The businesses that will be directly affected by, bear the cost of, or directly benefit from the proposed rules.

Response: The businesses that will be directly affected by the proposed rules are those that use State boating facilities and services. The subject rules propose that violation of rules, including parking, and unauthorized dumping shall be fined or deprived of the privilege of operating or mooring any vessel in state waters for not more than 30 days. Administrative penalties authorizes the Board of Land and Natural Resources to set, charge, and collect fines pursuant to section 200-14.5, Hawaii Revised Statutes.

Further, the proposed rules recognizes civil unions, civil union partner, personal partner, reciprocal beneficiary, and spouse per Hawaii Law. Clarifies dormant vessel to include ability to become seaworthy within 30 days' notice; stay aboard provides for prior notice to the Department or a stay aboard permit; Tahiti moor means the mooring of a vessel where one end is

moored by a rope or chain attached to a buoy or similar device; temporary mooring means mooring pursuant to a temporary use permit; temporary permittee adds offshore mooring to a valid permit.

2. Description of the small business that will be required to comply with the proposed rules and how they may be adversely affected.

Response: All commercial vehicles and vessels will be required to comply with the proposed rules if they use State boating facilities as part of their business plan and operate in State waters.

3. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

Response: Fines are set by statute and no changes are proposed. The indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance will not change.

4. The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

Response: The penalty amounts are unknown but will go toward DOBOR's repairs to State boating facilities.

5. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or any other mitigating techniques.

Response: As part of the amendment and compilation process and as a result of numerous comments, DOBOR is simplifying its rules.

6. How the agency involved small business in the development of the proposed rules.

Response: DOBOR has been amending and refining a substantial list of rules for numerous years. Since January 2009, DOBOR began a public outreach campaign regarding the proposed rule amendments as part of the Recreational Renaissance Plan. To ensure statewide public input, DOBOR convened informal review panels made up of community members, business leaders, and members of the legal community. In response to feedback received, DOBOR made revisions to the proposed rule amendments as warranted. Ocean recreation businesses of all sizes, marine operators, regulating agencies, and volunteer organizations made comments.

Ms. Chu Lan Shubert-Kwock, Acting Chair

April 29, 2013

Page 3

7. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

Response: The proposed rules do not include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards.

Attachment

Rules Amending Title 13
Hawaii Administrative Rules

DATE

1. Chapter 13-230, Hawaii Administrative Rules, entitled "General Provisions", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 11

OCEAN RECREATION AND COASTAL AREAS

PART 1

SMALL BOAT HARBORS AND OTHER BOATING FACILITIES

CHAPTER 230

GENERAL PROVISIONS

Subchapter 1 Scope and Definitions

- §13-230-1 Purpose and scope
- §13-230-2 Interpretation
- §13-230-3 Severability
- §13-230-4 Penalties and prosecution
- §13-230-5 Judicial review
- §13-230-6 Notice
- §13-230-7 Tampering with, defacing or removing notices
- §13-230-8 Definitions
- §§13-230-9 to 13-230-19 (Reserved)

Subchapter 2 Determination of Residency

- §13-230-20 Purpose
- §13-230-21 Definitions
- §13-230-22 Twelve-month rule
- §13-230-23 Indications of residence
- §13-230-24 Rules of construction
- §13-230-25 Particular categories

- §13-230-26 Determination of residence procedure
- §13-230-27 Permittee required to report change of residence
- §13-230-28 Appeals
- §13-230-29 Misrepresentation

SUBCHAPTER 1

SCOPE AND DEFINITIONS

Historical note. This chapter is based on general provisions, definitions, and determination of residency of the small boat harbors rules, effective November 5, 1981, and as amended thereafter, under the jurisdiction of the Department of Transportation, Harbors Division. The administrative jurisdiction for recreational boating and related vessel activities was transferred to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, SLH 1991. [Eff 2/24/94; comp]

§13-230-1 Purpose and scope. The purpose of these rules is to secure the most effective control and management of the small boat harbors and facilities of the State in order that the general public may enjoy safe, orderly, and convenient water recreation. These rules are intended to harmonize and coordinate the department's powers and duties with all applicable public laws, and are also intended to govern the use or operation of vessels and the activities of persons in the small boat harbors, shores, ocean waters, and navigable streams of the State. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-230-2 Interpretation. If any section of these rules is inconsistent with any laws of the

United States or any rule, or standard established pursuant thereto, such section shall be construed, superseded, or governed thereby. Nothing contained in these rules shall be construed to limit the powers of any state department or agency. Each provision of these rules is also intended to be construed most liberally in light of the purpose stated in section 13-230-1. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-230-3 Severability. The provisions of these rules are declared to be severable and if any portion or the application thereof to any person or property is held invalid for any reason, the validity of the remainder of these rules or the application of such remainder to other persons or property shall not be affected. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-230-4 Penalties and prosecution. ~~[Any person who violates any of these rules or who violates any lawful command issued pursuant to these rules by any small boat harbor master, harbor agent or any boating district manager, while in the discharge of that person's duty, shall be guilty of a misdemeanor. Recommended fines for each violation are as set forth in the bail schedule for boating, small boat harbors, ocean waters, navigable streams and beaches, provided that nothing in these rules shall prohibit a court from imposing the maximum fine of not more than \$10,000 for each violation as provided in section 200-14, Hawaii Revised Statutes. In addition to or as a condition to the suspension of any fines, the offender may be deprived of the privilege of operating or mooring any vessel in state waters for a period of not more than two years as prescribed in section 200-14, Hawaii Revised Statutes. Prosecution of offenders shall be as provided by law.] (a) Violation of rules, penalty. Any vessel, its agent, owner, or crew that violates the rules of the department, including~~

vehicular parking or traffic movement and unauthorized discharge, dumping, or abandoning of any petroleum product, hazardous material, or sewage in violation of the state water quality standards established by the department of health, shall be fined or deprived of the privilege of operating or mooring any vessel in state waters for a period of not more than thirty days, in accordance with section 200-14, Hawaii Revised Statutes.

(b) General administrative penalties. Except as otherwise provided by law, the board is authorized to set, charge, and collect administrative fines and to recover administrative fees and costs, including attorney's fees and costs, or bring legal action to recover administrative fines and fees and costs, including attorney's fees and costs, or payment for damages or for the cost to correct damages resulting from a violation of subtitle 8 of title 12 or any rule adopted thereunder in accordance with section 200-14.5, Hawaii Revised Statutes. Each day or instance of violation shall constitute a separate offense.

[Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-14, 200-14.5) (Imp: HRS §§200-2, 200-3, 200-4, 200-14, 200-14.5)

§13-230-5 Judicial review. Nothing contained in these rules shall be construed to preclude appropriate resort to judicial remedy or review. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-230-6 Notice. Where notice to a permittee, co-owner, lien holder, owner or any other party is required by this chapter the department shall effect service by one of the following:

- (1) Posting the notice in a conspicuous place aboard the permittee's vessel or at the assigned berth;
- (2) Mailing the notice to the person by certified mail, return receipt requested, at

the person's last known address, provided that service by mail is deemed received and completed five days after the date of mailing; or

(3) Personal service;

provided that in an emergency, where life or property is endangered or if a vessel may interfere with other vessels, construction or maintenance of berthing facilities, or with the free and proper navigation of a waterway unless immediate action is taken, remedial action may be taken by the department without prior notice. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-230-7 Tampering with, defacing or removing notices. No person shall tamper with, deface, or remove any notice posted by the department pursuant to section 13-230-6 except the owner of the vessel or the permittee assigned to the berth. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-230-8 Definitions. When used in [this part] these rules promulgated pursuant to chapter 200, Hawaii Revised Statutes, unless otherwise specifically provided or the context clearly indicates otherwise:

"Agreement" means the agreement between the boat owner and the State as required by section 13-231-2.

"Anchoring device" means a device made of metal or similar material, attached by rope or chain to a vessel, which can be deployed to submerged land to secure the vessel in a particular place.

"Assigned berth" means a berth that is assigned to a permittee by a valid regular mooring permit.

"Berth" means any place where a vessel is anchored, moored, or made fast or laid alongside a dock, quay, catwalk or pier.

"Boat owner" means the legal owner of a vessel where there is no security interest held by anyone on

the vessel, a buyer under a purchase money security interest, a debtor under any security interest, a demise charterer of a vessel, or a lessee or charterer of a vessel under lease or charter which provides the lessee or charterer with exclusive right to possession of the vessel to the exclusion of the lessor or the person from whom the vessel is chartered. The documentation of ownership must meet the requirements of section 13-241-5(c).

"Bona fide fishing tournament" means a fishing tournament sponsored by a boat club, fishing club or yacht club, or a business or non-profit organization formed for the primary purpose of sponsoring a fishing tournament where participation is invited from the general public.

"Business" includes all professions, trades, occupations, and callings carried on for a profit or livelihood, every kind of commercial enterprise, and the operation of games, machines, or mechanical devices.

"Chairperson" means the chairperson of the board of land and natural resources of the State of Hawaii or the chairperson's duly authorized representative or subordinate.

"Civil union" means a union between two individuals established pursuant to chapter 572B, Hawaii Revised Statutes.

"Civil union partner" means an individual who is a party to a civil union established pursuant to chapter 572B, Hawaii Revised Statutes.

"Coast Guard" means the United States Coast Guard.

"Commercial activity" means the use of or activity for which compensation is received by any person for goods or services or both rendered to customers or participants in that use or activity. Display of merchandise or demanding or requesting gifts, money, or services, shall be considered a commercial activity.

"Contrivance" means any man-made object or artificial arrangement not used or intended to be used

for transportation which may be floated upon or suspended with in or on the water.

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

"Dinghy" means a small open boat under thirteen feet in length, carried on or towed by a larger boat or yacht; it may be propelled by oars, sails or an outboard motor.

"Dormant vessel" means a vessel or contrivance, other than a houseboat, that has ~~[been determined by the department not to exhibit any activity on board or movement from its assigned berth or mooring]~~ not been navigated from or has not vacated an assigned mooring or facility within or offshore of a state small boat harbor at least once within a ninety-day period, or cannot be made ~~[ready for sea]~~ seaworthy upon thirty ~~[days]~~ days' notice to the owner.

"Firm" includes a business organization such as a sole proprietorship, partnership or corporation which is licensed to engage in or conduct business in the State.

"Harbor resident" means the owner, co-owner, spouse of each, and their legal dependents authorized by the department to reside on board a vessel used as the principal habitation of the owner.

"Highway" means "street" as defined in this section.

"Houseboat" means any vessel which is fitted for use as a permanent or temporary place of habitation, and is either stationary or to be moved by oars, sweeps, or towing.

"Immediate family" means any person and his or her spouse and dependent children under twenty-one years of age.

"Launch" means a small motorboat that is open or that has the forepart of the hull covered.

"Legal dependent" means any of the following persons who are dependent upon a permittee for all or a substantial portion of the person's living expenses:

- (1) Spouse;
- (2) A son or daughter who is
 - (A) Unmarried and under eighteen years;

- (B) Unmarried and under twenty years if a full-time student at a high school, business school, or technical school, or unmarried and under twenty-two years if a full-time undergraduate student at a college; or
- (C) Unmarried and physically handicapped so as to be incapable of self-support;
- (3) A parent or grandparent if physically handicapped so as to be incapable of self-support; or
- (4) A grandchild, brother, or sister under eighteen years of age.

"Legal owner" includes a person who holds unencumbered title to a vessel or is a secured party under a security interest for the vessel.

"Length" means "vessel length" as defined in this section.

"Living aboard" means the substantial use of a vessel as a place of abode, dwelling, living quarters, or residence, including, but not limited to, the regular use for such purposes during weekends.

"Moor" means to secure a boat by making it fast with cables, lines or anchors.

"Mooring" means a device for holding a vessel in place, when an anchor, concrete block or similar device is placed or dropped on submerged land with a rope or chain attached to a buoy to which the vessel is attached.

"Mooring device" means the use of a buoy attached by rope or chain to a permanently placed weight or structure situated within a submerged land area and to which a vessel can be made permanently or temporarily secured.

"Owner" shall be synonymous with the word "boat owner" as defined in this section.

"Park" or "parking" means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers.

"Passenger" means every person carried on board a vessel other than:

- (1) The owner or the owner's representative;
- (2) The operator;
- (3) Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and are paid for their services; or
- (4) Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for the guest's carriage.

"Person" means any individual, firm, partnership, corporation, trust, association, joint venture, organization, institution, or any other legal entity.

"Personal partner" is an individual considered to be a "personal partner" of the principal habitation permittee who is not a relative by biology or adoption to the principal habitation permittee. While living together on the vessel, the principal habitation permittee and personal partner shall not have a landlord-tenant relationship.

"Pram" means a small lightweight nearly flat-bottomed boat with a broad transom and usually square-bow often used as a dinghy.

"Principal owner" means a person whose name appears on a certificate of number or who is named as managing owner of a Coast Guard documented vessel.

"Reciprocal beneficiary" means two adults who are parties to a valid reciprocal beneficiary relationship and meet the requisites for a valid reciprocal beneficiary relationship as set forth in chapter 572C, Hawaii Revised Statutes.

"Regular permittee" means a person holding a valid regular mooring permit.

"Roadway" means that portion of a street or highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term "roadway" shall refer to each

roadway separately but not to all such roadways collectively.

"Rules" means the rules governing small boat harbors as set forth in this part.

"SCUBA" means self-contained underwater breathing apparatus.

"Small boat harbor" means those harbors or portions of harbors, and any interest in property, whether real, personal, or mixed connected therewith under the care and control of the department, which are, as described in section 200-9, Hawaii Revised Statutes, as constructed, maintained, and operated for the primary purpose of promoting recreational boating activities and the landing of fish.

"Spouse" means a marriage partner, reciprocal beneficiary, or civil union partner of an individual.

"Stand" or "standing" means the halting of a vehicle whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

"State" means the State of Hawaii.

"Stay aboard" or "staying aboard" means a person or persons aboard any vessel ~~[for a period of two hours or more]~~ with prior notice to the department or a stay aboard permit between the hours of 12:00 ~~[midnite]~~ midnight and 6:00 A.M., while the vessel is moored in a state small boat harbor or offshore mooring area.

"Stop" or "stopping", when prohibited, means any halting, even momentarily, of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control sign or signal.

"Street" means the entire width between boundary lines of every way publicly maintained in any small boat harbor when any part thereof is open to the public for purposes of vehicular traffic.

"Tahiti moor" means the mooring of a vessel where one end of the vessel is moored by a rope or chain attached to a buoy that is attached to a pile or device that includes, but is not limited to, an

anchor, concrete block or similar device placed or dropped on submerged land. The other end of the vessel is moored to the facility that includes, but is not limited to, breakwaters, catwalk, piers, and docks where direct access can be made from the facility to the vessel either by gangway, plank, or stepping onto the vessel.

"Temporarily assigned berth" means a berth that is allocated to a permittee by a valid temporary mooring permit for interim use of the facility.

"Temporary mooring" means mooring pursuant to a temporary use permit. Calculation of the allowable period for temporary mooring shall include cumulative days moored with and without a permit.

"Temporary permittee" means a person holding a valid temporary mooring permit for the interim use of a berth or offshore mooring.

"Tender" means a dinghy or a larger launch used to carry persons and supplies to and from large vessels.

"Transient vessel" means any vessel visiting the State for a period of less than ninety days.

"Unassigned berth" means a berth that is not assigned to a permittee by a regular mooring permit.

"Use permit" means the authorization by the department to utilize state boating facilities, offshore mooring areas, offshore mooring and state ocean waters.

"Vacation" means a period spent away from home or business in travel or recreation.

"Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, but excludes mopeds, devices moved by human power, or devices used exclusively upon stationary rails or tracks.

"Vessel" means all description of watercraft, used or capable of being used as a means of transportation on or in the water.

"Vessel carrying passengers for hire" means any vessel which is used for the carriage of any person or persons for a valuable consideration whether directly or indirectly flowing to the owner, charterer,

operator, agent, or any person who has a lien on the vessel.

"Vessel length" means the end-to-end measurement of a vessel, taken over the deck, parallel to the waterline from the foremost part of the bow to the aftermost part of the stern; provided that hull platings, plankings, and extensions aside from the hull proper, such as bowsprit, are not to be included in the measurement; provided further that an open-type vessel or one with a cockpit shall be measured as if a complete deck existed at the upper level of the hull.

"Vessel length overall" means the distance between the fore-and-aft extremities of a vessel including hull platings, plankings and any extensions beyond the hull proper, such as bowsprit, bumpkin, steering device, or other extensions.

"Vessel used as a place of principal habitation" means a vessel on which any person remains overnight ninety times or more in a calendar year while the vessel is moored in a state small boat harbor.

"Visiting vessel" means a vessel having a mooring within the State and temporarily moored in another state small boat harbor. [Eff 2/24/94; am 4/27/02; am 6/16/03; am and comp] (Auth: HRS §§200-2, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§§13-230-9 to 13-230-19 (Reserved)

SUBCHAPTER 2

DETERMINATION OF RESIDENCY

§13-230-20 Purpose. The purpose of this subchapter is to provide a procedure whereby a determination of residence status shall be made for all persons who own a vessel moored in a state small boat harbor or who apply for such moorage to assure that they are assessed the proper fees and charges as

established by these rules; to provide appeals mechanism for those persons who believe their residency classification is in error; and to provide sanctions for misrepresentation by a petitioner. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-230-21 Definitions. For the purpose of this subchapter:

"Adult" means a person who has reached majority.

"Dependent" means those persons who are defined as dependents by law, e.g., a spouse or minor child, or who are defined as dependents under Internal Revenue Service regulations or by the Armed Forces of the United States.

"Guardian" means a person invested by a court of law with the power, and charged with the duty, of taking care of the person and of managing the property of that person.

"Hanai" means a child who is taken permanently to be reared, educated, and loved by someone other than natural parents - traditionally a grandparent or other relative. The child is given outright; natural parents renounce all claims to the child. Usually the child is given at infancy.

"Hearing officer" means a person appointed by the chairperson to hear appeals concerning the determination of residency status.

"Majority" means the age specified under section 577-1, Hawaii Revised Statutes.

"Minor" means a person who has not reached majority.

"Nonresident" means a person who is not a resident of the State of Hawaii.

"Parent" includes legal guardian and legal adoptive parent, except where the guardianship or adoption was acquired primarily to obtain resident status for the ward or adopted child. It shall also include a person who can legally claim an unmarried minor as a dependent for federal income tax purposes, but only when such person has been in loco parentis to

the minor for the twelve-month period immediately preceding the residence determination date.

~~["Personal partner" is an individual considered to be a "personal partner" of the principal habitation permittee who is not a relative by biology or adoption to the principal habitation permittee. While living together on the vessel, the principal habitation permittee and personal partner shall not have a landlord-tenant relationship.]~~

"Residence" or "residence status" is a combination of physical presence in a place and the intent to make such place one's permanent home.

"Residency determination date" means:

- (1) The date a person applies for a use permit or for application renewal;
- (2) The date of issuance or renewal of a use permit;
- (3) The date the department makes a residency status determination following the receipt of a completed questionnaire submitted by a person classified as a nonresident pursuant to the provisions of ~~[under]~~ section 13-230-27; or
- (4) The date of a hearing officer's decision on a petition submitted to the department as prescribed in section 13-230-28.

[Eff 2/24/94; am 8/8/11; am and comp]
(Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-230-22 Twelve-month rule. (a) Status as a Hawaii resident must be acquired, and not subsequently lost at least twelve months prior to the residence determination date to avoid payment of the nonresidence fee differential prescribed in ~~[chapter 234]~~ section 200-34 Hawaii Revised Statutes. This twelve-month rule also applies to the person whose residency is determined by the fact of residency of another.

(b) While residency shall be lost if it is interrupted during the twelve months immediately

preceding the residence determination date, resident status derived from two or more successive periods of domicile in Hawaii may be joined together to compute the twelve-month period. [Eff 2/24/94; comp
] (Auth: HRS §§200-2, 200-4, 200-10)
(Imp: HRS §§200-2, 200-4, 200-10)

§13-230-23 Indications of residence. Because determination of residence in Hawaii requires a finding of subjective fact (intent to make a permanent home) as well as of objective fact (and physical presence), the following objective indications of a person's intent will be considered when determining the person's status. No single index is decisive.

- (1) Primary indications.
 - (A) Voter registration in Hawaii.
 - (B) Voting in Hawaii.
 - (C) Possession and use of Hawaii motor vehicle license plates.
 - (D) Payment of Hawaii personal income tax.
 - (E) Presence of spouse, children, and other close relatives in Hawaii.
- (2) Secondary indications.
 - (A) Membership in voluntary organizations in Hawaii.
 - (B) Licensing from the State for professional practice.
 - (C) Carrying on of a business or the holding of a position in Hawaii.
 - (D) Ownership of residential property or continuous letting of an apartment on a lease basis in Hawaii. [Eff 2/24/94; comp
] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-230-24 Rules of construction. The following rules of construction shall be applied in all cases:

- (1) Residence in Hawaii and residence in another place cannot be held simultaneously.

- (2) Presence in Hawaii primarily to attend an institution of higher learning does not create resident status.
- (3) Resident status, once acquired, will be lost by future voluntary actions of the resident inconsistent with such status. However, Hawaii residence will not be lost solely because of absence from the State while employed in the service of the United States, while engaged in navigation, or while a student at any institution of learning. [Eff 2/24/94; comp]
(Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-230-25 Particular categories. (a) Adults.
The resident status of every adult shall be established by the adult's own acts and intentions and shall not be derived from any other person, except as specifically provided otherwise in these rules.

- (b) Minors.
 - (1) Unemancipated minor. The residence of an unemancipated minor is the residence of the minor's father, if living, or the residence of the minor's mother, if the father is deceased.
 - (2) Divorced parents. If the parents of an unemancipated minor are divorced, the minor's residence is that of the person to whom the minor's custody has been awarded by the court. If no award of custody has been made, the minor's residence is that of the father. However, if the minor maintains the minor's primary abode with the parent not having legal custody, residence of the minor is determined by that parent with whom the minor's primary abode is maintained.
 - (3) Separated parents. If the parents of an unemancipated minor are separated, without a divorce having been granted or custody award having been made, the minor's residence is

that of the father if the minor is not living with either parent. If the minor maintains primary abode with a parent, the minor's residence is the residence of that parent.

- (4) Death of a parent who had custody. The residence of an unemancipated minor becomes that of the surviving parent upon the death of the parent who had the minor's custody.
- (5) Both parents deceased. If both parents are deceased, the residence of the unemancipated minor remains that of the last parent to die until changed by court order. Upon court appointment of a guardian for the minor, the residence of the minor becomes that of the guardian.
- (6) A nonresident unemancipated minor attending an institution of higher learning outside of Hawaii or on active duty with the United States Armed Forces, whose parents become residents of Hawaii, and who would reach majority before deriving Hawaiian residence from the minor's parents' new status, may be classified as a resident for fee purposes when the minor's parents have completed twelve consecutive months of residence; provided that such classification will be lost if actions inconsistent with resident status are taken after leaving such institution or discharge from the military (e.g., failure to promptly make a home in Hawaii).
- (7) If an unemancipated minor's parents lose their Hawaii residence, the minor will be classified as a nonresident at the next residence determination date. However, if the parents' change of residence is due to obedience to active-duty military orders, the minor shall continue to pay only resident fees and charges as long as one of the minor's parents remain on active duty and in a Hawaii resident status.

- (8) Emancipated minors. An emancipated minor shall be considered an adult for purposes of residence hereunder. The following shall constitute indications of emancipation, no one of which is controlling:
- (A) Financially independent or self-supporting.
 - (B) Subsistence not provided by parent or legal guardian.
 - (C) Prior military service.
 - (D) Other primary and secondary indications of residence enumerated under section 13-230-24.
 - (E) Any other conduct inconsistent with parental control and custody.
- (9) Hanai. A person may base the person's residency on that of other than the parent or legal guardian, provided that the relationship between the person and the person or persons other than the parent or legal guardian is that of "hanai".

(c) Aliens. In addition to all other requirements herein, an alien shall be classified as a resident only upon the alien's admission to the United States for permanent residence (immigration visa). Residence of a minor alien can only be derived from another person (e.g., a parent) when both that person and the minor achieve resident status.

(d) Military personnel. Service in the armed forces of the United States shall not of itself negate establishment of residence in Hawaii. For instance, a nonresident member of the United States Armed Forces whose last duty station is in Hawaii and who does all other things necessary to establish a bona fide Hawaiian domicile, including discharge from the military in Hawaii, may be classified as a resident. In addition, a person who establishes a Hawaiian domicile but who enters the military service prior to the expiration of twelve months from the date of such establishment may add the period of the ~~[persons's]~~ person's military service on to the former period to satisfy the twelve-month rule.

(e) Married persons and persons in other legal relationships. A married person or reciprocal beneficiary or civil union partner may establish resident status, either on the basis of indications of residence, or on the basis of the indications of residence of the [married] person's spouse. However, the [married] person must clearly state intent to make Hawaii the [married] person's permanent residence. For purposes of the liveaboard fee, the person holding a principal habitation permit may rely on the residency indications of a personal partner who lives on board the vessel. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-230-26 Determination of residence procedure.

(a) These rules establish a fee structure in which nonstate residents in specified instances shall pay an application and permit fee differential. Therefore, any person seeking to be classified as a Hawaii resident for fee purposes shall, at the time of application for or prior to being issued a permit, complete and submit to the department a questionnaire provided by the department designed to elicit facts which will aid the department in determining the applicant's resident, nonresident, or Armed Forces status. The applicant shall answer all pertinent questions and shall attest to the truth of the answers with the applicant's signature. The department may also require the applicant to produce certified copies of documents or other relevant proof as may be necessary for the determination of residency status.

(b) A nonresident who believes that the nonresident's residency status has changed so that the nonresident has achieved Hawaii residency status may seek reclassification as a resident by submitting a completed questionnaire as prescribed in subsection (a) on or following the date the nonresident believes that the change in residency status occurred. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-230-27 Permittee required to report change of residence. A resident permittee who subsequently takes up residence outside of the State and continues to moor the permittee's vessel in a state small boat harbor shall advise the department in writing within seven days of the permittee's change of residence. In such a case, nonresident fees and charges shall be payable [~~commencing at the first residencee determination date~~] following the change of residence. A permittee who intends to assume residence outside of the state or relocate to another island yet retain a permitted vessel and assigned mooring shall cause all applicable harbor use permits to be revised to identify the individual that agrees to assume the vessel owner's obligations under the use permit and these rules during the period of the permittee's absence. This individual shall reside on the same island that the vessel is moored. [u] [Eff 2/24/1994; am and comp] (Auth: HRS §§200-2, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-10, 200-22, 200-24)

§13-230-28 Appeals. (a) Classification as a nonresident by the department may be appealed by the aggrieved person by filing a petition for a declaratory ruling in accordance with section [~~13-230-27~~] 13-1-27.

(b) No petition for appeal shall be accepted by the department unless:

- (1) The petitioner has paid the nonresident fees and fees and charges and filing fee for residency status appeal.
- (2) The petitioner has submitted with the petition documentary evidence tending to establish that the petitioner has, for a period of twelve months prior to the residency determination date, been physically present in the State of Hawaii with the intent to make Hawaii the

petitioner's home. The documentary evidence to be furnished shall support the claim of residency by establishing acceptable indicia of residency as provided under section 13-230-23.

- (3) The petition is filed with the department within thirty days following receipt by certified mail, return receipt requested, or personal delivery, as the case may be, of the department's determination of the petitioner's nonresident status.

(c) The petition shall be signed by the petitioner [~~and submitted upon a form provided by the department~~]. The petition shall be filed at any division of boating and ocean recreation district office on or before the thirtieth day following receipt by certified mail, return receipt requested or personal delivery, of the department's determination of the petitioner's nonresident status. The district manager receiving the appeal shall promptly forward it to the ~~chief~~ administrator of the division of boating and ocean recreation.

(d) The ~~chief~~ administrator of the division of boating and ocean recreation shall promptly review any petition filed with the department and take appropriate action as follows within fifteen days after the filing of the petition:

- (1) Return the petition to the concerned district manager if the ~~chief~~ administrator of the division of boating and ocean recreation determines the petition should not have been accepted under ~~subsection [13-230-28]~~ (b) with an explanation of the basis for rejection, a copy of which shall be forwarded to the petitioner; ~~ex~~
- (2) Reverse the department's prior determination that the petitioner is a nonresident if the ~~chief~~ administrator of the division of boating and ocean recreation determines that the petitioner has submitted adequate proof

that the petitioner is a resident of the State of Hawaii; or

- (3) Forward the petition to the chairperson for a declaratory ruling in accordance with section ~~[13-230-27]~~ 13-1-27.

(e) The nonstate resident fee differential and filing fee for residency status appeal shall be promptly refunded if the ~~[hearing officer]~~ department reverses the determination of nonresident status, as ~~[prescribed]~~ provided in section 13-234-24. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)


§13-230-29 Misrepresentation~~[, penalty for violation]~~. It is a violation of these rules for any person to misrepresent any fact upon any form or document intended for or used in determination of resident status for fees and charges purposes or for any person to misrepresent any fact at an appellant hearing hereunder." [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

2. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes to reflect these amendments are not underscored.

4. These amendments to Title 13, Chapter 230, 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 _____ by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.



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

APPROVED FOR PUBLIC HEARING:



Deputy Attorney General

V. New Business

- C. Presentation on HAR Title 11 Chapter 164.1
Emergency Rules Relating to Examinations
for Tuberculosis (Department of Health)



DEPARTMENT OF HEALTH

News Release

NEIL ABERCROMBIE
GOVERNOR

LORETTA J. FUDDY, A.C.S.W., M.P.H.
DIRECTOR OF HEALTH
Phone: (808) 586-4412
Fax: (808) 586-4444

For Immediate Release: April 11, 2013

13-019

**STATE TEMPORARILY SUSPENDS TUBERCULOSIS
CLEARANCE REQUIREMENTS**
*Nationwide shortage of testing solution spurs changes to
routine tests at state TB clinics*

HONOLULU – The Hawaii State Department of Health (DOH) is announcing the state's temporary suspension of tuberculosis (TB) clearance requirements that are mandated in Hawaii Administrative Rules, Title 11, Chapter 164, for school personnel, students, food handlers, and workers in health care, domiciliary care, daycare, and residential care facilities. Beginning today, the state will not restrict attendance at work or school due to the absence of a TB clearance. The suspension is in response to a nationwide shortage of testing solution required for tuberculin skin testing.

"With limited supplies of testing solution available due to nationwide production delays that began late last year, we anticipate people may have some difficulty getting tested for TB at this time," said Dr. Richard Brostrom, TB Control Branch Chief. "TB clearance requirements will be suspended until further notice, and our state TB clinics will be limiting testing to specific high-risk groups to prioritize and extend current supplies."

Because of the shortage of Tubersol® and Aplisol® purified protein derivative (PPD) solution, DOH is limiting TB testing available at state clinics to specific high-risk groups until further notice.

These groups include:

- Persons with signs and symptoms of active TB disease
 - Contacts exposed to an infectious case of TB
- (more)

DOH Temporarily Suspends TB Clearance Requirements
Page 2

- High-risk immigrants referred from the Honolulu Quarantine Station
- Persons with immunodeficiencies
- Persons who require TB screening due to medical treatment

All other individuals seeking a TB clearance are advised to contact their private health care provider or health center.

DOH services related to the evaluation and treatment of persons suspected or confirmed to have active TB disease are not affected by the PPD shortage; these services will continue without change.

Manufacturers of the PPD have been experiencing delays in production since November 2012. It is estimated that adequate supplies of PPD solution will be available several months from now. DOH anticipates the temporary suspension of state TB clearance requirements may be in effect for up to 120 days or until the PPD shortage has ended. Public notice will be issued when the suspension is lifted and a grace period or catch-up date will be announced for individuals whose TB clearance was postponed to meet their requirement.

Hospitals and medical providers in Hawaii have received detailed recommendations from DOH on steps to take during the PPD shortage. For more information on tuberculosis or TB testing, the public may call the Hawaii **TB Control Program at (808) 832-5731** or go to www.hawaii.gov/health/tb.

The DOH TB Control Branch provides effective prevention, detection, treatment, and educational services to reduce the incidence of TB in Hawaii. Program activities include diagnosis, treatment, case investigation, preventive therapy for persons at high risk, and direct testing services. Each year, DOH conducts roughly 50,000 tuberculosis skin tests, and provides treatment to approximately 120 individuals identified with TB.

###



Temporary Suspension of Tuberculosis Clearance Requirements

Hawaii State Department of Health
Tuberculosis Control Program

The state has temporarily suspended all tuberculosis (TB) clearance requirements that are mandated in Hawaii Administrative Rules, Title 11, Chapter 164, for school personnel, students, food handlers, and workers in health care, domiciliary care, daycare, and residential care facilities until further notice. The state will not restrict attendance at work or school due to the absence of a TB clearance. The suspension is in response to a nationwide shortage of testing solution required for tuberculin skin testing. This suspension includes, but is not limited to:

- **Foodhandlers**
- **Students** (includes persons seeking first time attendance in daycare, preschool, K-12, and persons over compulsory school attendance age who enrolls in a post-secondary school)
- **School personnel** (includes teachers, substitute teachers, bus drivers, and volunteers)
- **Child foster families**
- **Licensed childcare providers**
- **Employees, volunteers, & residents of:**
 - Adult day care facilities
 - Adult residential care homes
 - Assisted living facilities
 - Domiciliary care facilities
 - Health care facilities (e.g., hospitals and medical clinics)
 - Home health agencies
 - Hospice
 - Intermediate care facilities
 - Long term care facilities
 - Nursing facilities
 - Skilled nursing facilities
 - Special treatment facilities
 - Therapeutic living programs

In summary, at this time you DO NOT need TB clearance for the reasons listed above and attendance at work or school should not be restricted at this time due to the absence of a TB clearance.

The DOH will continue to conduct TB screening for the following high-risk groups:

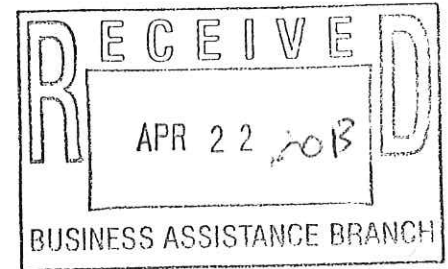
- Persons with signs and symptoms of active TB disease
- Contacts exposed to an infectious case of TB
- High-risk immigrants referred from the Honolulu Quarantine Station
- Persons with immunodeficiencies
- Persons who require TB screening due to medical treatment

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 164.1



EMERGENCY RULES RELATING TO EXAMINATIONS FOR TUBERCULOSIS

- §11-164.1-1 Scope
- §11-164.1-2 Purpose
- §11-164.1-3 Definitions
- §11-164.1-4 Temporary suspension of skin tests
- §11-164.1-5 Preservation and use of limited supplies of purified protein derivative
- §11-164.1-6 Exception
- §11-164.1-7 Effective period of these rules

§11-164.1-1 Scope. These rules shall apply to all skin test examinations for tuberculosis required or recommended by the department of health. They are designed to address a current nationwide shortage of Tubersol® and Aplisol® purified protein derivative solution (PPD) which is used in skin test examinations. Manufacturers of PPD used in the tuberculin skin test are experiencing production delays, and while the department of health anticipates that adequate PPD will be available in several months, the shortage of PPD will affect the ability of the department of health and private providers to conduct routine tuberculosis screening for at least 90 days. Nothing in these emergency rules is intended to modify any of the tests used for tuberculosis control purposes, except for the skin test. [Eff: **APR 11 2013**] (Auth: HRS §91-3, §91-4) (Imp: HRS §325-76)

§11-164.1-2 Purpose. The purpose of these rules is to provide temporary and emergency relief to persons who are required to obtain a certificate of TB examination as defined in chapter 11-164, but who, due to the current nationwide shortage of PPD solution, are unable to obtain the required certificate. [Eff: **APR 11 2013**] (Auth: HRS §91-3, §91-4) (Imp: HRS §325-76)

§11-164.1-3 Definitions. All terms defined in chapter 11-164, shall have the same meaning when used in these rules. Additionally, as used in these rules:

"Highest risk categories" means individuals who (1) have had contact with another individual with infectious TB, or (2) have symptoms suggestive of TB disease, or (3) are newly arriving immigrants referred automatically through the federal immigration system, or (4) are infected with HIV, or (5) are immune-compromised due to disease or medical treatment.

"Priority tuberculosis screening" means restricting the placement of tuberculin skin test to individuals who are determined to have the highest risk of active tuberculosis disease.

"Purified protein derivative solution (PPD)" means a solution such as Tubersol® or Aplisol® used in a skin test examination for tuberculosis.

"Routine tuberculosis screening" means placement of tuberculin skin test in compliance with all State of Hawaii Administrative Rules requirements regardless of the individual risk for latent tuberculosis.

"Skin test examination for tuberculosis" means a test for tuberculosis in which a hypersensitive reaction to an intradermal injection of PPD indicates a previous or current infection. The two-part test requires recording the result 48 to 72 hours after placement.

"TB" means tuberculosis.

"TB Program" means the Hawaii State Department of Health Tuberculosis Control Program.


"Tuberculin skin test" means the same as "skin test examination for tuberculosis."
[Eff: **APR 11 2013**] (Auth: HRS §91-3, §91-4) (Imp: HRS §325-76)

§11-164.1-4 Temporary suspension of skin tests. Any law or administrative rule that requires a skin test examination for tuberculosis is temporarily suspended pursuant to these rules for one hundred twenty days. This suspension includes, but is not limited to school personnel, students, food handlers, care home providers, school volunteers, and persons working or residing in health care facilities. [Eff: **APR 11 2013**] (Auth: HRS §91-3, §91-4) (Imp: HRS §325-76)

§11-164.1-5 Preservation and use of limited supplies of purified protein derivative. The TB Program, subject to the availability of PPD, shall prioritize its use of existing supplies of PPD for testing of persons in the highest risk categories.
[Eff: **APR 11 2013**] (Auth: HRS §91-3, §91-4) (Imp: HRS §325-76)

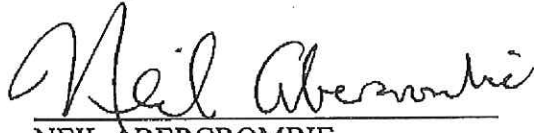
§11-164.1-6 Exception. Notwithstanding these rules, the State TB Program will continue to evaluate any person who demonstrates symptoms suggestive of TB disease. This includes individuals with symptoms who are referred to the TB Program from schools, food service establishments, or health care facilities as referenced in chapter 11-164, Exhibit A.
[Eff: **APR 11 2013**] (Auth: HRS §91-3, §91-4) (Imp: HRS §325-76)

§11-164.1-7 Effective period of these rules. These emergency rules shall take effect upon filing with the Lieutenant Governor's office and shall be effective for no longer than one hundred twenty days. [Eff: **APR 11 2013**] (Auth: HRS §91-3, §91-4) (Imp: HRS §325-76)



LORETTA J. FUDDY
Director
Department of Health

APPROVED:



NEIL ABERCROMBIE
Governor
State of Hawaii

Dated: 4.11.13

APPROVED AS TO FORM:



Jill I. Nagamine
Deputy Attorney General

Filed

Department of Health

APR 11 2013

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| [Data & Statistics](#) | [Research](#) | [Patient Education](#) | [Links](#) | [Contact Us](#) |

NEW! -- State Temporarily Suspends Tuberculosis Clearance Requirements

April 11, 2013: The state has temporarily suspended all tuberculosis (TB) clearance requirements that are mandated in Hawaii Administrative Rules, Title 11, Chapter 164, for school personnel, students, food handlers, and workers in health care, domiciliary care, daycare, and residential care facilities. The state will not restrict attendance at work or school due to the absence of a TB clearance.

The suspension is in response to a nationwide shortage of testing solution required for tuberculin skin testing. DOH anticipates the temporary suspension of state TB clearance requirements may be in effect for up to 120 days or until the PPD shortage has ended. Public notice will be issued when the suspension is lifted and a grace period or catch-up date will be announced for individuals whose TB clearance was postponed to meet their requirement.

- [Press Release](#) (click to open and read)
- [TB Screening Categories Affected by Suspension of TB Clearance Requirements](#) (click to open and read)
- [Hawaii TB Alert and Guidance for Medical Providers](#) (click to open and read)
- [CDC Health Alert](#) (click to open and read)

NEW! -- National Shortage of Isoniazid (INH)

February 6, 2013: [DOH Guidance to Providers in Response to Critical National Isoniazid \(INH\) Shortage](#) (click to open and read guidance)

This memo serves to guide all medical providers who are treating latent or active tuberculosis in the State of Hawaii, including providers at all state, federal, and private clinics who depend upon the Hawaii TB Control Program for medications.

February 5, 2013: [DOH Medical Advisory - Isoniazid \(INH\) Shortage](#) (click to open and read advisory)

There is a nationwide shortage of isoniazid (INH), as reported in the December 21, 2012 Morbidity and Mortality Weekly Report. INH is a potent and highly effective drug for treatment of latent tuberculosis infection (LTBI) and TB disease. This alert describes what is known about the INH shortage, provides steps to follow if your supply is limited, describes LTBI treatment options, and includes resources for questions or updates.

Providers, if you need isoniazid (INH) for a high-risk patient, please call (808) 832-3539.

ATTENTION! -- The Hawaii TB Control Program has temporarily moved and will be operating from a temporary location from October 29, 2012 until further notice. Check back in the future for the exact date we will be moving back to the Lanakila Health Center.

New Hours for Skin Testing, Chest X-Ray, and Chest Clinic

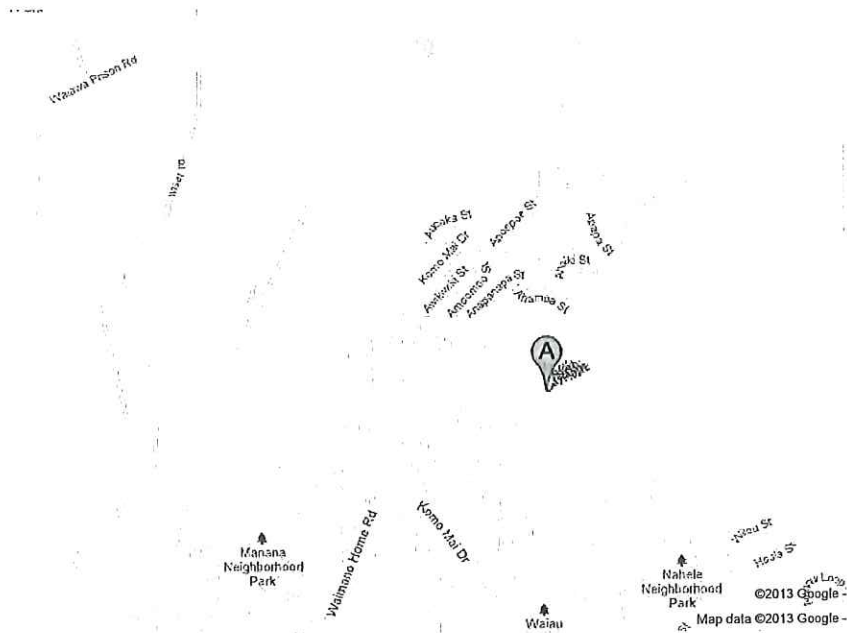
Monday through Friday
9:00am-2:00pm

Address of Temporary Location

2385 Waimano Home Road, Building 4
Pearl City, HI 96782
Phone: (808) 832-5731

Directions [\(click here for printable directions & bus information\)](#)

Drive to the end of Waimano Home Road and check-in at the security guard station on the left side of the road. The security guard station is across the street from the Pearl City Cultural Center.



Tuberculosis (TB) in Hawaii

The State of Hawaii aims to make effective testing and treatment accessible for everyone. See [locations](#) for a list of free TB testing and treatment sites throughout the state. See [State TB Requirements](#) for a list of who needs TB Clearance.

Mission

The purpose of the TB Control Program is to reduce the incidence of tuberculosis in the state by providing effective prevention, detection, treatment, and educational services.

Program Activities

- Offer diagnosis and treatment of TB.
- Ensure that all cases and suspected cases of TB are identified and that appropriate therapy is provided.
- Provide preventive therapy for patients at high risk of developing TB disease including contacts of active cases, persons who are HIV positive, and those with evidence of untreated TB.
- Conduct direct TB services including chest X-ray, sputum smear and culture for mycobacteria, tuberculin skin testing, treatment with anti-tuberculosis therapy, and directly observed therapy (DOT) through TB clinics on the four most heavily populated islands.

[Return to top of page](#)

This page last updated: April 11, 2013

Hawaii Tuberculosis Control Program
(Temporarily Moved to Pearl City until further notice)
2385 Waimano Home Road, Building 4
Pearl City, HI 96782
Phone: (808) 832-5731 Fax: (808) 832-5846
TB Info Line: (808) 832-5738

[Disclaimer and Terms of Use](#)

Hawaii State Department of Health • 1250 Punchbowl Street • Honolulu, HI 96813



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

In reply, please refer to:
File: CDD/TBB

April 11, 2013

Hawaii TB ALERT: Nationwide Shortages of PPD and INH

Nationwide shortages of both tuberculin and INH are currently affecting Hawaii.

For questions with this alert, contact the Hawaii TB Control Program (808-832-5731).

Nationwide Tuberculin Shortage: There is a nationwide shortage of Tubersol® and Aplisol® purified protein derivative (PPD) solution. Manufacturers of PPD used in the tuberculin skin test (TST) are continuing to experience production delays. At this time we anticipate that adequate PPD solution may be available in several months, but this is only an estimate. The shortage will affect our ability to conduct routine TB screening for at least 90 days.

Response to Tuberculin Shortage in Hawaii: In order to preserve limited supplies of PPD solution, the Hawaii State Department of Health (DOH) is temporarily suspending TB clearance requirements that are mandated in the Hawaii Administrative Rules, Title 11, Chapter 164. Specific guidance is listed in Attachment 1 and can also be found on the Hawaii TB Control Program website at www.hawaii.gov/health/tb.

Hawaii TB Control Program Services: In order to preserve limited PPD supplies, the State of Hawaii TB Program will temporarily suspend routine TB screening services for low-risk individuals.

During the shortage, the TB Program will continue to provide community TB screening services only for the following highest risk categories:

- Evaluating contacts to a person with pulmonary or laryngeal TB
- Evaluation persons with symptoms suggestive of TB disease
- Evaluating high-risk immigrants referred from the Honolulu Quarantine Station
- Evaluating persons infected with HIV
- Evaluating persons who are immune-compromised due to medical treatment, especially prolonged corticosteroid treatment or treatment with TNF-alpha antagonists.

Individuals who are seeking TB Clearance for employment or school should delay until further notice. Because state-mandated TB Clearance requirements are temporarily suspended, attendance to work or schools should not be restricted due to a lack of TB Clearance.

Individuals seeking TB screening at DOH clinics who do not meet the above criteria will be asked to return at a later date for processing. The list of clinics includes Public Health Nursing Clinics on all islands and the Lanakila TB Center on Oahu.

Hospitals and Clinics with PPD Solution: Some medical providers and medical institutions still have a limited amount of PPD solution available. Medical providers and medical institutions with PPD solution are encouraged to suspend routine testing for latent TB infection and preserve PPD solution for those at highest risk for developing active tuberculosis.

- Prioritize TST for persons of highest public health priority:
 - Contacts to a person with pulmonary or laryngeal TB
 - As part of an evaluation of persons with symptoms suggestive of TB disease
 - Persons infected with HIV
 - Persons who are immune-compromised due to medical treatment, especially prolonged corticosteroid treatment or treatment with TNF-alpha antagonists.
- Programs should suspend routine annual tuberculin skin testing performed as part of an infection control program (i.e. employee screening). A TB symptom screen (Attachment 2) may be used to determine who would benefit from CXR or referral to the DOH.
- Programs may consider alternative screening tests such as an Interferon Gamma Release Assay (IGRA) blood test for TB infection.
- High-risk individuals identified with a positive test for latent TB infection (TST or IGRA) may still be referred for evaluation and treatment at DOH clinics.

Hospitals and Clinics without PPD Solution: Medical providers and medical institutions that have exhausted their supply of PPD solution should suspend annual screening of employees until sufficient PPD solution becomes available. A TB symptom screen (Attachment 2) may be used to determine who would benefit from CXR or referral to the DOH. If necessary, consider screening for LTBI with IGRA instead of TST.

Referral to DOH for TB Work-up: All current DOH TB Program services related to the treatment of active TB disease are not affected by the nationwide PPD shortage.

For clinic and hospital referral of individuals with symptoms suggestive of tuberculosis, the Hawaii State TB Control Program will continue to provide CXR services and evaluation for active tuberculosis.

Hawaii TB ALERT: Nationwide Shortages of PPD and INH

Page 3 of 3

April 11, 2013

For individuals seeking TB Clearance that do not need TST-testing (ex. people with known prior positive TST, emergent homeless shelter clearance), the Hawaii State TB Control Program will continue to accept referrals and provide CXR services and evaluation for active tuberculosis.

Resuming TB Skin Testing in Hawaii: The TB Control Program will provide public notice when sufficient PPD solution is available to resume normal operations. For your information, the FDA drug and PPD shortage website link can be found here:
(<http://www.fda.gov/Drugs/DrugSafety/DrugShortages/default.htm>)

Isoniazid Shortage in Hawaii: The nationwide shortage of Isoniazid (INH) is still ongoing. The Hawaii State TB Control Program continues to maintain a nominal supply of INH to insure treatment of active TB cases only. All previous recommendations regarding INH restrictions are still in effect. The shortage of INH is expected to continue for the next 60 days, at least.

Feel free to contact us with any questions or concerns.



Temporary Suspension of Tuberculosis Clearance Requirements

Hawaii State Department of Health
Tuberculosis Control Program

The state has temporarily suspended all tuberculosis (TB) clearance requirements that are mandated in Hawaii Administrative Rules, Title 11, Chapter 164, for school personnel, students, food handlers, and workers in health care, domiciliary care, daycare, and residential care facilities until further notice. The state will not restrict attendance at work or school due to the absence of a TB clearance. The suspension is in response to a nationwide shortage of testing solution required for tuberculin skin testing. This suspension includes, but is not limited to:

- **Foodhandlers**
- **Students** (includes persons seeking first time attendance in daycare, preschool, K-12, and persons over compulsory school attendance age who enrolls in a post-secondary school)
- **School personnel** (includes teachers, substitute teachers, bus drivers, and volunteers)
- **Child foster families**
- **Licensed childcare providers**
- **Employees, volunteers, & residents of:**
 - Adult day care facilities
 - Adult residential care homes
 - Assisted living facilities
 - Domiciliary care facilities
 - Health care facilities (e.g., hospitals and medical clinics)
 - Home health agencies
 - Hospice
 - Intermediate care facilities
 - Long term care facilities
 - Nursing facilities
 - Skilled nursing facilities
 - Special treatment facilities
 - Therapeutic living programs

In summary, at this time you DO NOT need TB clearance for the reasons listed above and attendance at work or school should not be restricted at this time due to the absence of a TB clearance.

The DOH will continue to conduct TB screening for the following high-risk groups:

- Persons with signs and symptoms of active TB disease
- Contacts exposed to an infectious case of TB
- High-risk immigrants referred from the Honolulu Quarantine Station
- Persons with immunodeficiencies
- Persons who require TB screening due to medical treatment



Tuberculosis Symptom Screening Questionnaire

Hawaii State Department of Health

Tuberculosis Control Program

Hawaii TB Control Program Symptom Screen	
TB Symptom Screening	Onset and Duration of Symptoms
1. Cough for ≥ 3 weeks duration <input type="checkbox"/> No <input type="checkbox"/> Yes	
2. Coughing up blood <input type="checkbox"/> No <input type="checkbox"/> Yes	
3. Fever <input type="checkbox"/> No <input type="checkbox"/> Yes	
4. Night sweats <input type="checkbox"/> No <input type="checkbox"/> Yes	
5. Unexplained weight loss <input type="checkbox"/> No <input type="checkbox"/> Yes	Amount:
6. Unusual weakness or fatigue <input type="checkbox"/> No <input type="checkbox"/> Yes	
Refer the client for chest X-ray to rule out TB if he/she reports having a cough for ≥ 3 weeks, plus at least one of the other symptoms (#2 - #6).	



Centers for Disease Control and Prevention
 CDC 24/7: Saving lives, protecting people, reducing health costs

Emergency
Preparedness and
Response



HEALTH ALERT NETWORK

Distributed via the CDC Health Alert Network
 April 12, 2013, 11:00 a.m. EDT
 CDCHAN-00345

(/HAN) This is an official
CDC INFO SERVICE

Nationwide Shortage of Tuberculin Skin Test Antigens: CDC Recommendations for Patient Care and Public Health Practice

Summary

TUBERSOL®, a product of Sanofi Pasteur Limited, is in shortage nationwide until at least the end of May 2013. TUBERSOL® is one of two purified-protein derivative (PPD) tuberculin products that are licensed by the United States Food and Drug Administration (FDA). The manufacturer notified CDC that 50-dose vials of TUBERSOL® are unavailable and that the supplies of 10-dose vials will be limited. This notice advises public health officials, clinicians, and workers in occupational health and infection control about how to adapt to the shortage.

JHP Pharmaceuticals, LLC, the manufacturer of APLISOL®, the other PPD tuberculin product that is licensed by FDA, has notified FDA that the product is on allocation and is available in restricted quantity. Acute local shortages of APLISOL® are being reported to CDC by healthcare providers who switch from TUBERSOL® to APLISOL®.

Background

Two kinds of immunological methods are used for detecting *Mycobacterium tuberculosis* infection: tuberculin skin tests (TSTs) and interferon- γ release assay (IGRA) blood tests. The indications for using these tests are the same for the two methods, although one or the other method is preferred for certain populations (1), and this could play a factor in setting priorities when one of the methods is unavailable. Together, these tests are the only means for detecting latent *M. tuberculosis* infection, and they contribute to diagnosing tuberculosis (TB) disease. When findings such as chest radiography and mycobacterial cultures are sufficient for confirming or excluding the TB diagnosis, the results from a TST or an IGRA blood test might not be needed (2). However, most TB cases in the United States are diagnosed with a set of findings including results from one of these tests. When TB disease is strongly suspected, specific treatment should be started regardless of results from tuberculin skin test or an IGRA blood test (1,3).

In controlled studies, the concordance between TST results from TUBERSOL® and APLISOL® is high. The concordance between results from a TST and an IGRA blood test or between results from the two commercial IGRA blood tests is lower (1).

Recommendations

CDC recommends any of three general approaches for addressing the shortages of tuberculin skin test antigens:

1. Substitute IGRA blood tests for TSTs. The costs associated with using the blood tests can be greater than the cost of TSTs. The blood tests require phlebotomy, preparation of blood specimens, and specific laboratory services for analysis. Thus, these tests are not available in all practice settings. Clinicians who use the IGRA blood tests should be aware that the criteria for test interpretation are different than the criteria for interpreting TSTs (1).
2. Allocate TSTs to priority indications, such as TB contact investigations, as determined by public health authorities. This might require deferment of testing some persons. CDC does not recommend testing persons who are not at risk of TB (4).
3. Substitute APLISOL® for TUBERSOL® for skin testing. In cross-sectional studies, the two products give similar results for most patients. Shortages of APLISOL® are expected to become more widespread, thus limiting the feasibility of this approach.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



LORETTA J. FUDDY, A.C.S.W., M.P.H.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

In reply, please refer to:
File:

February 6, 2013

TO: Hawaii Medical Providers
Hawaii Medical Clinics

FROM: Richard J. Brostrom, MD-MSPH
Chief, Tuberculosis Control Branch 

SUBJECT: DOH asking Hawaii Medical Providers' Assistance in Response to Critical National Isoniazid (INH) Shortage

This memo serves to guide all medical providers who are treating latent or active tuberculosis in the State of Hawaii, including providers at all state, federal, and private clinics who depend upon the Hawaii TB Control program for medications.

Summary:

- At present there is a nation-wide shortage of INH.
- State of Hawaii TB Program pharmacy stock of INH is critically low, presently only 6 to 8 weeks supply under normal usage conditions.
- Prioritizing INH use for Hawaii's active TB cases will extend critical supplies beyond the next four months.
- The use of INH for preventive tuberculosis treatment (IPT), particularly for low risk individuals, must be immediately curtailed.
- This memo includes specific recommendations for all providers caring for patients with latent TB and active TB.
- The recommendations also apply to all DOH TB Branch clinics.

Adequate treatment with isoniazid (INH) is essential for curing most patients with tuberculosis (TB). Preventive treatment with INH remains the most common approach for latent TB infection. At present there is a nation-wide shortage of INH. While we are confident that INH tablets will be available soon, there is no reliable time-table for new orders of this important TB medication.

The Hawaii TB Control program pharmacy stock is critically low, presently only 6 to 8 weeks supply under normal usage conditions. The State is currently requesting inventory among private pharmacies across the state, but at present there is no FDA-approved manufacturing of this medication. Prioritizing INH use for Hawaii's active TB cases will extend critical supplies beyond the next four months.

The Hawaii TB Control program recognizes our valuable partners in the medical community who test and treat latent TB patients across the state. This memorandum is prepared to guide all Hawaii clinicians to preserve the remaining stocks of INH while continuing effective treatment of infectious TB cases in our state. In order to prioritize the use of INH for Hawaii's TB cases, the use of INH for preventive tuberculosis treatment (IPT) must be immediately curtailed.

There are many appropriate options available to treat latent TB for most patients. Immediate treatment of longstanding or newly diagnosed latent TB infection is rarely necessary. For most patients, it is appropriate to delay initiation of preventive treatment until INH production and distribution is normalized. For high-risk patients, and patients already undergoing IPT, use the guidelines below to assist you with LTBI management decisions.

For clinicians, keep in mind that this plan is not based upon the risk for a patient to have a positive TST or IGRA. Instead, this plan is based upon the estimated patient risk for progressing from latent TB to active TB.

1. Treatment of LTBI in Low Risk Groups

- a. Ex: > 5 years old, healthy adults, healthcare workers
- b. Delay INH prophylaxis
 - i. If necessary, consider preventive treatment with an alternative regimen
 1. Consider treating for four months of rifampin¹
- c. Discontinue current INH treatment if less than 60 days
 - i. Restart when INH supply is assured, or consider preventive treatment an alternative regimen
 1. Consider treating for four months of rifampin¹
- d. For low-risk adults who have completed 6 months of INH, discontinue IPT. A nine month course is not required for most adult patients, only those with HIV and severe immune compromise.²
- e. For all patients with delayed treatment of latent TB, utilize a recall system to re-initiate treatment after INH supplies have been assured.

2. Treatment of LTBI in Moderate Risk Groups

- a. Ex: incarcerated, care home operators and residents, adults with diabetes
- b. Delay INH prophylaxis
 - i. If necessary, consider preventive treatment with an alternative regimen
 1. Consider treating with four months of rifampin¹

2. Consider treating with four months of weekly INH/Rifapentine³
(Weekly dosing uses rifapentine 900 mg and INH 900 mg for 12 weeks – just 1/5th of the INH required for 6 months of IPT.)
- c. Discontinue current INH treatment if less than 60 days
 - i. Restart when INH supply is assured, or consider preventive treatment an alternative regimen
 1. Consider treating with four months of rifampin¹
 2. Consider treating with four months of weekly INH/Rifapentine³
- d. If an adult has completed 6 months of INH, discontinue IPT (the 9 month course is not required for most adult patients)
- e. For all patients with delayed treatment of latent TB, utilize a recall system to re-initiate treatment after INH supplies have been assured.

3. Treatment of LTBI in High Risk Groups

- a. Ex: all TST positive individuals < 5 yrs old, recent contacts to infectious TB cases, PLWHIV, individuals requiring TNF-alpha medications, organ transplant recipients on immune-suppressive medications
- b. Do not delay initiation of preventive TB treatment.
 - i. Consider treating with four months of rifampin¹
 - ii. Consider treating with four months of weekly INH/Rifapentine³
 - iii. It is appropriate to choose 6 months of INH for high risk prevention.
- c. For all TB preventive therapy, do not extend preventive treatment beyond CDC-ATS guidelines

4. Treatment of Active Tuberculosis

- a. For all clinicians who are treating active TB in the community, please call TB Control Branch (808-832-5731) to review individualized treatment options for all new and on-going active TB cases.
- b. For most TB cases, we do not anticipate the need to alter the current INH-containing treatment regimen. Contact the TB Branch to discuss the potential for effective INH-sparing TB regimens.
 - i. Patients may be appropriate for intermittent continuation-phase therapy. As always, we very strongly encourage the use of directly observed therapy (DOT) for successful treatment of all TB cases. Please allow the State TB Control Branch to assist you with medication supply and DOT distribution for your on-going cases.

Response to Critical National Isoniazid (INH) Shortage

Page 4

February 6, 2013

- ii. Active TB patients on DOT may receive INH on weekdays only.
- iii. Several cured TB cases are currently undergoing TB treatment that extends well beyond CDC-ATS guidelines. Some of these cases may be appropriate for treatment discontinuation.

References:

1. <http://www.cdc.gov/tb/topic/treatment/ltbi.htm>
2. <http://www.cdc.gov/tb/publications/ltbi/treatment.htm>
3. http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6048a3.htm?s_cid=mm6048a3_w



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

February 5, 2013

MEDICAL ADVISORY: ISONIAZID (INH) SHORTAGE

Dear Hawaii Healthcare Provider,

There is a nationwide shortage of isoniazid (INH), as reported in the December 21, 2012 Morbidity and Mortality Weekly Report.¹ INH is a potent and highly effective drug for treatment of latent tuberculosis infection (LTBI) and TB disease. This alert describes what is known about the INH shortage, provides steps to follow if your supply is limited, describes LTBI treatment options, and includes resources for questions or updates.

What is known about the INH shortage?

Since December 2012, reports of difficulty obtaining INH across the United States have increased and are believed to be caused by a shortage of the active ingredient in INH as well as shipping delays. According to sources at the U.S. Food and Drug Administration and suppliers of INH, there is uncertainty about whether the supply over the next several months will meet the demand needed to treat patients.

Steps to follow now:

Work with your pharmacy partners to quantify and track your INH inventory as well as forecast short and long term needs.

Steps to follow if your INH supply is limited:

- Prioritize INH for LTBI treatment to patient groups that have higher risk for progression of TB disease (e.g. HIV-infected, TB case contacts, young children, immune-compromised).
- Select LTBI regimens that do not use INH (e.g. rifampin x 4 months) or use regimens with lower quantities of INH (e.g. 12-dose INH/rifapentine by directly observed therapy, INH x 6 months). Refer to CDC LTBI Treatment Guidelines and LTBI treatment options at these websites: <http://www.cdc.gov/mmwr/pdf/rr/rr4906.pdf> and http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6048a3.htm?s_cid=mm6048a3_w.

If your INH supply is severely restricted or depleted:

- Prioritize INH use for treatment of active or suspected TB disease over LTBI treatment.
- Select alternative, effective treatment regimens that do not utilize INH for suspected or active TB disease. Alternative regimens should be selected in accordance with national treatment guidelines and in consultation with the Hawaii TB Control Program. See CDC Treatment

¹ <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6150a4.htm>

Guidelines at: <http://www.cdc.gov/mmwr/pdf/rr/rr5211.pdf>.

- Please note that specific medications are recommended under special circumstances (e.g. HIV infection, suspected drug resistance, pregnancy, or treatment of children). See CDC LTBI Treatment Guidelines referenced above.
- With rifampin-based regimens, consideration of drug interactions and side effects are important factors in treatment decisions and for patient education.
- If INH is not available for a patient who is currently on LTBI treatment with INH, you may contact the Hawaii TB Control Program (information below) for information on changing the patient to another regimen.

LTBI Treatment options (See CDC LTBI Treatment Guidelines referenced above)

DRUGS	DURATION	INTERVAL	MINIMUM DOSES
Isoniazid	6 months	Daily	180
Isoniazid	6 months	Twice weekly by DOT	52
Isoniazid & Rifapentine	3 months	Once weekly by DOT	12
Rifampin	4 months	Daily	120

DOT: directly observed therapy.

Additional Resources:

- Hawaii Department of Health, TB Control Branch, Nurse Consultant or Medical Officer:
(808) 832-5731
- FDA Drug Shortage Website:
<http://www.fda.gov/Drugs/DrugSafety/DrugShortages/ucm050792.htm>

Thank you very much for your assistance and support for TB prevention and control in Hawaii.

Sincerely,



Richard J. Brostrom, MD, MSPH
Hawaii TB Control Branch Chief



Sarah Y. Park, MD, FAAP
State Epidemiologist
Chief, Disease Outbreak Control Division



Glenn M. Wasserman, MD, MPH
Chief, Communicable Disease Division

VI. Legislative Matters

- A. Governor's Message No. 792, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Craig Takamine, for a term to expire 6-30-2016

GM792

Measure Title: Submitting for consideration and confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, CRAIG TAKAMINE, for a term to expire 6-30-2016.
 Report Title: Small Business Regulatory Review Board
 Description:
 Companion:
 Package:
 Current Referral: EGH
 Introducer(s):

<u>Sort by</u> <u>Date</u>	<u>Status</u>	<u>Text</u>
4/2/2013	S	Received.
4/2/2013	S	Referred to EGH.
4/3/2013	S	The committee(s) on EGH added the measure to the public hearing scheduled on 04-08-13 2:45PM in conference room 016.
4/8/2013	S	The recommendation of the committee(s) on EGH is to ADVISE AND CONSENT to the nomination(s). The votes in EGH were as follows: 5 Aye(s): Senator(s) Dela Cruz, Slom, Chun Oakland, L. Thielen, Wakai; Aye(s) with reservations: none ; 0 No(es): none; and 2 Excused: Senator(s) Baker, English.
4/19/2013	S	Reported from EGH (Stand. Com. Rep. No. 1585) with recommendation to Advise and Consent.
4/19/2013	S	One Day Notice 04-22-13.
4/22/2013	S	Confirmed. Ayes, 25. Aye(s) with reservations: none. Noes, 0 (none). Excused, 0 (none).

S = Senate | H = House | D = Data Systems | \$ = Appropriation measure | ConAm = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

GM792

Craig Sadayoshi Takamine

Biography

Building long term relationships, that philosophy remains the core of Takamine Construction. When the company was founded by Craig Takamine in 2003, it was the vision to create a quality construction business that helped strengthen the Big Island community.

Born and raised in Hilo, Hawaii and the eldest of five children, Craig learned early on the importance of family and community connections. After receiving his high school diploma from Waiakea High School, Craig enrolled in the Hawaii Community College Carpentry Program, through which he was awarded the Golden Hammer from HPM and graduated top of his class in 1995. From 1995 to 2003, Craig gained experience in all areas of residential construction through working with various contractors, and in 2003, he obtained his own Contractors license.

Building his business from scratch – with no office space and just two employees – was going to be a challenge. However, that year Takamine Construction managed to pick up contracts for 4 new homes.

Today, Takamine Construction employs 14 and has built over 70 homes. Projects also include single-family custom residential homes; home renovations and repairs; single-wall repair and renovation; commercial alterations; commercial repair; and maintenance and demolition.

Takamine Construction's continued growth in a down construction cycle is affirmation that relationships built on consistency and reputation are a sturdy foundation.

Recently, Takamine Construction has partnered with the University of Hawaii Foundation to provide an annual scholarship of \$1,000 to a qualified student in the carpentry program at Hawaii Community College.

Professional Experience

2005 – Present	President, Takamine Construction, Inc.	Hilo, Hawaii
2003 – 2005	President, Takamine Construction, LLC	Hilo, Hawaii
1998 – 2003	Foreman, R. Kan Contracting, LLC	Hilo, Hawaii
1997 – 1998	Foreman, G. Kobayashi Builders	Hilo, Hawaii

Education

1989 – 1992	Waiakea High School	Hilo, Hawaii
-------------	---------------------	--------------

1992 - 1993	<i>University of Hawaii, Pre-Business</i>	<i>Hilo, Hawaii</i>
1993 - 1995	<i>Hawaii Community College, Carpentry School</i>	<i>Hilo, Hawaii</i>

Awards

1993 - 1995	<i>Deans List, Hawaii Community College</i>
1995	<i>HPM Golden Hammer Award</i>
2010 & 2012	<i>Patriotic Employer Award- National Committee for Employer Support of the Guard and Reserve</i>
2011	<i>County of Hawaii- Certificate of Appreciation for in-kind donation to complete the new Panaewa Zoo Playground</i>

Professional and Community Memberships

Hawaii Island Contractors Association, President 2011-2013

Kanoiehua Industrial Area Association, Director/Government Affairs Chair

Easter Seals Hawaii, Hawaii Island Advisory Board Member

Hawaii Island Chamber of Commerce, Director 2013-2014

Filipino Chamber of Commerce of Hawaii, Member

Japanese Chamber of Commerce and Industry of Hawaii, Member

Hawaii Community College, Advisory Board Member for the Career & Technical Education Program

Pacific Century Fellows Program, Class of 2012

VII. Administrative Matters

- A. Review of Board's proposed Brochure and Testimonial form

Purpose:

- The purpose of the Small Business Regulatory Review Board (SBRRB) is to review any proposed new or amended rule or to consider any request from small business owners for review of any rule adopted by a State agency.
- Small business, under Chapter 201M, Hawaii Revised Statutes, is defined as a for-profit enterprise consisting of fewer than one hundred full-time or part-time employees.
- The SBRRB makes recommendations to ~~Agencies~~ ^{State Departments} or the Legislature regarding the need for a rule change or legislation.
- For requests regarding County ordinances, the SBRRB may make recommendations to the County Council or the Mayor for appropriate action.

Who we are:

- Volunteers, appointed by the Governor and ratified by the Senate
- Small business owners/officers from across the State

Barbara Bennett
Kaua'i – *For Kaua'i Magazine*

Anthony Borge
Oahu – RMA Sales, Inc.

Kyoko Kimura
Maui – Hotel Wailea

Howard Lum
Oahu – Aloha Gourmet Products, Inc.

Leslie Mullens
Maui – Playbook Consulting Group

Chu Ian Shubert-Kwock
Oahu – ABC Mortgage / Chu Ian Properties

Richard C. Lim
~~Director, DBEDT~~
Votino Ex-Officio

This is how we can help you!

- We make recommendations to the State legislature to change laws
- We make recommendations for City & County ordinances to the County Councils and Mayors
- We review new and existing rules ~~and regulations~~ ^{in conjunction with an impact statement on small business}
- We review all rules ~~and regulations~~ ^{that affect small businesses before and after public hearings, followed by our recommendations to the Governor}
- We can also organize and hold conferences on problems affecting small business
- These are the ~~Agencies~~ ^{State Departments} that the SBRRB works with:

- Accounting & General Services
- Agriculture
- Budget & Finance
- Business, Economic Development & Tourism
- Commerce & Consumer Affairs
- Defense
- Education
- Hawaiian Home Lands
- Health
- Human Services
- Labor and Industrial Relations / HIOSH
- Land and Natural Resources
- Public Safety
- Taxation
- Transportation
- Office of the Attorney General
- Office of the Lieutenant Governor
- Public Utilities Commission
- University of Hawaii



“The SBRRB volunteer members have a vital role to perform. Board members join in serving the people of Hawaii and most importantly represent their islands to support small business challenges and their successes.

I represent the Island of Kaua'i, and with the nomination from my island's Senator ~~Robert~~ ^{the} ~~Wright~~ ^{Wright} ~~and the approval of Governor Ron Kawachi~~ ^{Wright} Abercrombie, I am looking forward to working with the Agencies and helping to make positive and lasting changes to the small business community of Kaua'i.”

*Mahalo and Aloha ~ Barbara Bennett
Kaua'i SBRRB Member*

This is how you can help us:

Contact us if you would like to share a concern that you have. Let us know the issue, rule, or law that you would like us to review by the title, chapter, and section.

This is how you can contact us:

Email: sbrrb@dbedt.hawaii.gov

Phone: (808) 586-2594

Mail: Small Business Regulatory
Review Board
c/o DBEDT
P. O. Box 2359
Honolulu, HI 96804

Visit: Monthly meetings in Honolulu

Website: <https://dbedtbeta.hawaii.gov/sbrrb>

How can we reach you?

Please provide us with the following information:

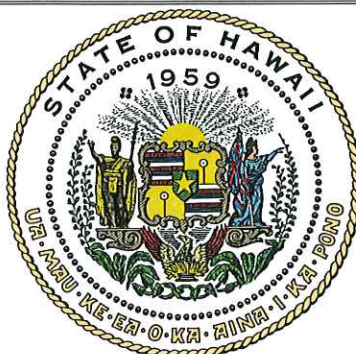
- Name
- Address
- Daytime Phone
- Best time to call
- e-mail address
- Issue, Administrative Rule, or Law: Title, Chapter, Rule Section

Small Business Regulatory Review Board

DBEDT
P. O. Box 2359
Honolulu, HI 96804



Small Business Regulatory Review Board **DRAFT 1**



Small Business Regulatory Review Board (SBRRB)
Department of Business, Economic Development and Tourism (DBEDT)
Capitol District Building, 250 South Hotel Street
Honolulu, Hawaii 96813
Website Address: xxxxxxxx

First Draft

Thank you for presenting to the SBRRB on _____. Please take a moment to reply to the following questions. Mahalo and Aloha.

1. Name of your Organization or Agency: _____

2. Contact Name of Organization and Telephone # or Email for personal interview, if needed: _____

3. Please rate your experience with the SBRRB from 1 thru 10, with 10 being exceptional: _____

4. Were communication and responses prompt and efficient? Yes _____ No _____

Explain _____

5. Please explain why presenting to the SBRRB was an important process of completing your initiative: _____

6. Rate the professionalism of the members on the SBRRB (1 thru 10): _____

7. Other comments that you would like to share with the SBRRB: _____

Please return to: Dori Palcovich, Economic Development Specialist, DBEDT, c/o Small Business Regulatory Review Board, Room 501, 250 South Hotel Street, Honolulu, HI 96813; or Email sbrrb@dbedt.hawaii.gov.

VII. Administrative Matters

- B. Discussion of DBEDT Staff's position description, responsibilities, and hours needed to accomplish tasks



JOB RESPONSIBILITIES AND TIME NEEDED TO COMPLETE SBRRB
MINIMUM NEEDS

Clskwock

to:

dpalcovi

04/01/2013 12:53 PM

Cc:

tony

Hide Details

From: Clskwock@aol.com

To: dpalcovi@dbedt.hawaii.gov,

Cc: tony@rmasalesco.com

Aloha Dori - thank you for sending us your job description and responsibilities so we can understand your function and areas of work.

SBRRB will discuss this at our next Agenda meeting on April 17, 2013. Please place this on the agenda.

We need to discuss the number of hours you need to accomplish the following minimum tasks for SBRRB.

1. Hours needed to arrange SBRRB Board meeting with all members and what would help you speed things up? Describe your normal routine of going about this.
2. Hours needed from receipt of Agency rule changes, review and response to agencies - if met with Statutes, hours needed to direct information to Chair for response and arrange for SBRRB hearing and placement on the agenda.
3. Hours needed to prepare mail out of agenda packages to members.
4. Copying time needed to accomplish work per week, per month. On average how much time is needed per week, per month?
5. As we know SBRRB is charged with "doing any and all things necessary to effectuate the purposes of this Chapter" (201M)

Your assistance is needed so we can accomplish the requirements of 201M.

Mahalo!

Chu Lan

VII. Administrative Matters

- C. Evaluation of DBEDT's Staff member assigned to the Small Business Regulatory Review Board (An executive session may be called, pursuant to Section 92-5(a)(2), HRS)

B. Skills/Abilities:

Plan, organize, and conduct internet, library, and field research on complex business issues involving the legal environment of business enterprise; apply working knowledge of business functions and operations, such as marketing, investment, finance, legal requirements and government related programs; analyze problems in the legal environment affecting business, and devise workable solutions; establish and maintain effective working relationships with a broad array of persons in business and government and with the general public; and speak and write clearly and concisely so as to inform and persuade.

C. Education:

Graduation from an accredited college or university with a Bachelor's degree and major in business administration, business, commercial law, economics, finance, marketing, foreign trade, or a related field and courses in entrepreneurship, research, statistics, and/or public administration.

D. Experience:

Four and one-half (4 ½) years of responsible work experience in business development, marketing, business management, commerce or trade, marketing, and/or the practice of law in a business-related field.

VII. TOOL, EQUIPMENT & MACHINES

Personal computer and peripheral equipment/software calculator, copying machine, fax machine, and other related office machines, equipment, and tools.

IV. CONTROLS EXERCISED OVER THE WORK

A. Supervisor

Position No.	Class Title
120258	Deputy Director, DBEDT

B. Nature of Supervisor Control Exercised Over the Work

1. Instructions Provided

The incumbent of this position (employee) receives general supervision from the DBEDT Deputy Director and instructions are limited to general guidance, direction, and results expected. The employee strictly works in unison with the SBRRB Chairperson, receiving specific and general instructions and direction. The employee plans and carries out work activities independently.

2. Assistance Provided

Supervision received is nominal, consultative, and limited. Under broad and extensive guidelines, the employee exercises wide discretion and judgment in carrying-out the activities and functions of the SBRRB. The employee takes care of all aspects of the work independently, but informs both the SBRRB Chairperson and the DBEDT Deputy Director when unforeseen events or circumstances require significant changes, such as changing priorities, etc.

3. Review of Work

The employee has authority to make non-financial commitments, limited only by HRS, State administrative and budget policies, and order of the DBEDT Director.

C. Nature of Available Guidelines Controlling the Work

1. Policy and Procedural Guides Available

Guidelines include a broad range of legal standards and requirements, statewide government policies, procedures and objectives. Also included are Chapter 91 and 201M, HRS.

2. Use of Guidelines

Procedural guidelines may cover certain technical aspects of the work. The employee must know and apply such guidelines.

V. REQUIRED LICENSES, CERTIFICATES, ETC.

N/A

VI. RECOMMENDED QUALIFICATIONS

A. Knowledge:

Business needs and practices with regard to basic business functions and activities, such as business start-up processes; marketing and sales; financing and credit; employment practices; business planning and management; product development; legal environment; legislative and administrative rule-making processes; English grammar and usage pertinent to the analysis, interpretation and revision of statutes; and administrative rules and regulations.

- C. Proposed Administrative Rules 50%**
In conjunction with the SBRRB:
1. Analyze and determine the direct impact of proposed rules or their amendments on the business community, such as cost increases including imposition of new or increased charges for facilities or services, license or permit fees, or test or examination fees.
 2. Analyze and determine the indirect impact of proposed rules or amendments that result in businesses having to alter operations and/or structures, purchase or modify equipment, and employ additional and/or re-train staff on new procedures based on regulatory mandates.
 3. Analyze and determine the indirect impact of new or modified rules that restrict or limit the time and/or place of business operations, eligibility of customers for purchase of goods or services, or other workplace elements.
 4. Coordinate the “Administrative Rules” review process for new or modified rules to ensure and prepare agencies for the purpose/effect of the rules that are consistent with underlying statutes and corollary rules relevant to business opportunity, progress, and vitality.
 5. Work with departments and agencies to mitigate the negative impact of existing rules on various types, categories, or business phases.
- D. Administrative Procedures and Practices 15%**
1. Receive and acknowledge inquiries from individuals and organizations regarding current/proposed departmental and agency administrative procedures, and make preliminary determination of the scope and consequences of its impact on businesses, business practices, and economic development.
 2. Discuss issues with agency officials to determine rationale and the necessity or justification for rule changes to implement statutes and administrative rules, and to improve the business environment.
 3. Initiate formal correspondence to regulatory agencies to seek possible mitigation, as warranted. May draft legislation or administrative rule changes to achieve mitigation.
 4. Communicate findings and actions to the parties originating any inquiries.
- E. Other Duties 5%**
Perform related liaison, informational, research, analytical, public contact, and other work requiring recognized competence in business advocacy. Oversee work teams and inter-agency groups to complete business advocacy studies and provide recommendations.

100%

2. Develop and periodically modify the basic outline and program details for addressing major concerns and problems, and achievable goals, relative to the legal and regulatory environment affecting businesses.
3. Develop and recommend policy proposals for consideration by the DBEDT Director and Governor regarding the State's legal environment that affect businesses, and draft responses and recommendations for the DBEDT Director and Governor relative to criticisms of Hawaii's business environment.
4. Establish and maintain effective working relationships with business groups to discuss perceived problems, underlying concerns, potential strategies, and programs' purposes and roles; monitor developments; and design and initiate action plans, etc.
5. Plan, organize, coordinate, and manage conferences, seminars, workshops, and other events to foster an exchange of views between business and governmental agencies, and obtain the views of local and national experts in business, law, and other fields, etc.
6. Develop and conduct detailed assessments of major businesses and economic development conditions/activities pertaining to new business opportunities, business and investment attraction, and business organizations, including cooperatives.

B. Proposed Legislation

10%

In conjunction with the SBRRB:

1. Develop relationships and initiate interactions with other departments and agencies to determine and define the direct and indirect impacts of legislation with reference to costs, marketplace access or openness, work force, and business practices. Obtain input and provide insight on business consequences to proposed modifications.
2. Establish and maintain interactions and feedback with other government and private sector business advocacy organizations to determine the direct and indirect impact of legislation.
3. Prepare testimony or comments, including coordinating with other divisional or departmental staff, concerning specific legislative bills or portions of bills for use by the DBEDT Director, Governor, or the other agency heads regarding the impact of proposed legislation.
4. Review bills passed by the Legislature and draft comments and recommendations for consideration of approval by the DBEDT Director and the Governor.
5. Analyze the cumulative impact of a legislative session pertaining to businesses, and prepare comprehensive summaries of the contents and potential consequences of legislative acts and resolutions.

ECONOMIC DEVELOPMENT SPECIALIST VI
Position Description

I. IDENTIFYING INFORMATION

Position Number: 44791
Department: Business, Economic Development & Tourism
Division: Office of the Director, Small Business Regulatory Review Board
Branch: N/A
Section: N/A
Unit: N/A
Geographic Location: Downtown, Honolulu

II. INTRODUCTION

The Office of the Director, Department of Business, Economic Development & Tourism (DBEDT) plans, organizes, directs, coordinates, and reports on the various activities of the department. This includes statewide economic development; energy development and management; and research, economic analysis, artistic, entertainment and film industry liaison and other support activities.

The Small Business Regulatory Review Board (SBRRB) provides support to businesses in dealing with the regulatory environment and in their interactions with government. The Board reviews and monitors proposed rules, regulations, and legislation for economic impact on the business sector, and it proposes rule or statutory changes that improve the business climate.

This position is the primary support staff for the SBRRB. The position provides leadership and undertakes initiatives to foster a legal environment for success of Hawaii businesses. It analyzes current and proposed administrative rules, statutes, and regulations, with emphasis on those that affect businesses, and provides recommendations to rectify or mitigate the potential adverse impact of regulations on businesses. The position serves as liaison between the SBRRB, businesses, business organizations, and governmental agencies. The position requires knowledge of the structures of business enterprises; must be attuned to current issues affecting businesses, sources of business information, and socio-economic trends; and articulate how various factual situations are affected by issues, information, and trends; and requires familiarity with drafting and submission of legislative proposals.

III. MAJOR DUTIES & RESPONSIBILITIES

A. Program Planning and Development

20%

1. Review and monitor status of the legal and regulatory environment of Hawaii businesses and needed changes, involving such areas as entrepreneurship, expansion of various existing industries, business and investment attraction, and inter-governmental relationships.
 - a. Confer with divisional and departmental personnel and others regarding business constraints and difficulties.
 - b. Review and analyze statutes, ordinances, administrative rules and regulations, studies and reports to maintain a current overview of the legal environment impacting local businesses, etc.

convening the executive meeting. Att. Gen. Op. 94-1.

Case Notes

Although §92-2.5(a) does not expressly preclude city council members from engaging in serial one-on-one conversations, when council members engaged in a series of one-on-one conversations relating to a particular item of council business, under subsection (b), the spirit of the open meeting requirement was circumvented and the strong policy of having public bodies deliberate and decide its business in view of the public was thwarted and frustrated. 117 H. 1 (App.), 175 P.3d 111.

In a suit deciding whether disclosure of county council executive session minutes was required, circuit court properly found that both chapter 92F and this chapter applied; if the meeting met an exception to the open meeting requirements put forth in this chapter, such as an exception enumerated in this section, the council was not required to disclose the minutes of that meeting to the public; if the meeting did not fall under such an exception, the council was required to disclose the minutes pursuant to §92-9 and §92F-12. 120 H. 34 (App.), 200 P.3d 403.

Where it was clear from the county council executive session minutes that the county attorney consulted with the council consistently and at length throughout the executive session regarding the procedure to follow in conducting an investigation of the county police department and that the council's consultation with the attorney largely concerned the ramifications of the sunshine law on the council's investigation -- a legal question, the council was justified in closing the meeting to the public in executive session. 120 H. 34 (App.), 200 P.3d 403.

Where the county council executive session conversation consisted of either direct communication between the council members and the county attorney or communication among council members that flowed from consultation with the county attorney, the attorney-client portions of the executive session were so intertwined with other portions of the executive session that redacting the privileged portions and disclosing the remainder of the minutes was impractical. 120 H. 34 (App.), 200 P.3d 403.

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VIII. Election of a Board Chair, pursuant to
Section 201M-5(d), and Election of Vice
Chair and Second Vice Chair

§201M-5 Small business regulatory review board; powers. (a)

There shall be established within the department of business, economic development, and tourism, for administrative purposes, a small business regulatory review board to review any proposed new or amended rule or to consider any request from small business owners for review of any rule adopted by a state agency and to make recommendations to the agency or the legislature regarding the need for a rule change or legislation. For requests regarding county ordinances, the board may make recommendations to the county council or the mayor for appropriate action.

(b) The board shall consist of nine members, who shall be appointed by the governor pursuant to section 26-34; provided that:

- (1) Three members shall be appointed from a list of nominees submitted by the president of the senate;
- (2) Three members shall be appointed from a list of nominees submitted by the speaker of the house of representatives;
- (3) Two members shall be appointed by the governor;
- (4) The director of business, economic development, and tourism, or the director's designated representative, shall serve as an ex officio voting member of the board;
- (5) The appointments shall reflect representation of a variety of businesses in the State;
- (6) No more than two members shall be representatives from the same type of business; and
- (7) There shall be at least one representative from each county.

For the purposes of paragraphs (1) and (2), nominations shall be solicited from small business organizations, state and county chambers of commerce, and other interested business organizations.

(c) Except for the ex officio member, all members of the board shall be either a current or former owner or officer of a business and shall not be an officer or employee of the federal, state, or county government. A majority of the board shall elect the chairperson. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled.

(d) A majority of all the members to which the board is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the board is entitled shall be necessary to make any action of the board valid.

(e) In addition to any other powers provided by this chapter, the board may:

- (1) Adopt any rules necessary to implement this chapter;
- (2) Organize and hold conferences on problems affecting small business; and
- (3) Do any and all things necessary to effectuate the purposes of this chapter.

(f) The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule adopted by a state agency, and any recommendations made by the board to an agency or the

legislature regarding the need for a rule change or legislation. The report shall also contain a summary of the comments made by the board to agencies regarding its review of proposed new or amended rules. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §§3, 5; am L 2007, c 217, §4; am L 2012, c 241, §3]

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RULE-MAKING CHECKLIST
FOR
"SMALL BUSINESS IMPACT STATEMENT"
(§201M-2, SLH 1998, am L 2008)

DEPARTMENT OR AGENCY: Land and Natural Resources

Chapter and Title: Chapter 95, Title 13

Name and Phone Number of Contact Person: David Sakoda (587-0104)

A. Description:

New rule(s) Repeal of Rule Amendment to rule(s)

B. Provided are the following information described in Items 1-7 of the Policy Section in the Governor's Administrative Directive No. 09-01

1. Exact Changes and Reasons for Changes.

The following amendments are designed to clarify state regulations protecting corals and live rocks and to enhance their enforceability. See **Exhibit A**.

HAR §13-95-1 currently defines "damage" of coral and live rock using an "extensive injury resulting in irreparable [sic] harm or death" standard. Given the colonial and regenerative nature of coral and live rock, however, "irreparable [sic] harm" does not necessarily address the type of damage sought to be prevented by this rule. Protection is still important for colonial species because re-growth can take decades or longer during which time ecosystem services are lost. "Extensive injury" is also a term which both staff and enforcement feel does not provide sufficient guidance for assessing violations in the field. DLNR therefore proposes to amend the definition of "damage" to reflect the types of harms recognized as specific to coral and live rock.

2) will cause a direct and significant economic burden upon a small business?

Yes No

3) is directly related to the formation, operation, or expansion of a small business?

Yes No

Provide the information requested in only Items 3-7 (Skip Items 8-11)

- If you answered YES to either Item 2. a. or Item 2. b.; or
- If you answered NO to Item 2. c. 1); or
- If you answered YES to Item 2. c. 1), and NO to both Item 2. c. 2) and Item 2. c. 3).

Provide the information requested in Items 3-11:

- If you answered YES to Item 2. c. 1), and YES to either Item 2. c. 2) or 2. c. 3).

3. Departmental Impact (i.e. fiscal, personnel, program)?

Yes No (If yes, describe long and short-range impacts, estimated in dollar amounts or personnel, due to enforcement, administration, execution, or implementation of the proposed rule that may result in a savings or shortfall under the current program budget.)

The Department does not anticipate a long or short range negative impact from enforcement, administration, or implementation of the proposed rule amendments. Existing enforcement costs are not expected to increase due to these proposed amendments.

4. Impact on General Public (i.e. individuals, consumers, and businesses)?

Yes No (If yes, describe long- and short-range impacts due to the enforcement, implementation, or execution of the proposed rule.)

In certain cases, extensive coral or live rock damage occurs where there are multiple specimens. HRS §187A-12.5 provides for violations to be charged on a per-specimen basis. However, the common understanding of “specimen” is ambiguous when used in reference to colonial stony corals and the collective definition of live rock. Therefore, DLNR proposes to amend HAR §13-95-2(b) to clarify how fines per specimen are to be applied.

In addition, DLNR proposes to limit liability for inadvertent taking, breaking, or damaging stony coral that is less than one-half square meter in area or live rock that is less than one square meter in area. Similar standards based on bottom cover are currently used in Florida to assess penalties for damage to coral reefs.

Finally, the current language of HAR §13-95-70 and §13-95-71 makes it unlawful for a person to take, break, or damage stony coral or live rock using an “implement” (i.e., a crowbar, chisel, hammer, or other implement). Although “implement” may be interpreted broadly, prohibiting the use of an “implement” may not provide adequate protection for stony coral and live rock, and has led to confusion for ocean users and enforcement agents. DLNR proposes to eliminate the use of an “implement” as an element of the rule.

2. How would the proposed changes affect Department operations or functions?

The proposed rule amendments would enhance the Department’s ability to enforce regulatory provisions protecting stony coral and live rock by clarifying what activities are prohibited and how damage is assessed.

- a. Is the proposed rule authorized by a federal or state law or statute that does not require an agency to interpret or describe the requirements of the law or statute?

___ Yes X No

- b. Is the proposed rule an emergency regulation?

___ Yes X No

- c. Will the proposed rule affect small business because it:

- 1) will apply to a for-profit enterprise consisting of fewer than 100 full-time or part-time employees?

___ Yes X No

Before you begin: ✓ Be sure you are using the correct worksheet. Use this worksheet only if you answered “No” to Step 5, question 3. Otherwise, use Worksheet B.

Part 1


All Filers Using Worksheet A

1. Enter your earned income from Step 5.

1	
---	--

2. Look up the amount on line 1 above in the EIC Table (right after Worksheet B) to find the credit. Be sure you use the correct column for your filing status and the number of children you have. Enter the credit here.

2	
---	--

If line 2 is zero,  You cannot take the credit. Enter “No” on the dotted line next to line 64a.

3. Enter the amount from Form 1040, line 38.

3	
---	--

4. Are the amounts on lines 3 and 1 the same?
 Yes. Skip line 5; enter the amount from line 2 on line 6.
 No. Go to line 5.

Part 2

Filers Who Answered “No” on Line 4

5. If you have:
 • No qualifying children, is the amount on line 3 less than \$7,600 (\$12,700 if married filing jointly)?
 • 1 or more qualifying children, is the amount on line 3 less than \$16,700 (\$21,800 if married filing jointly)?
 Yes. Leave line 5 blank; enter the amount from line 2 on line 6.

No. Look up the amount on line 3 in the EIC Table to find the credit. Be sure you use the correct column for your filing status and the number of children you have. Enter the credit here.

5	
---	--

 Look at the amounts on lines 5 and 2. Then, enter the **smaller** amount on line 6.

Part 3

Your Earned Income Credit

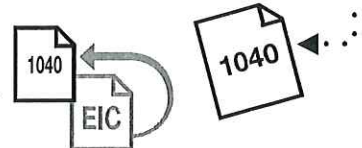
6. This is your earned income credit.

6	
---	--

Enter this amount on Form 1040, line 64a.

Reminder—

✓ If you have a qualifying child, complete and attach Schedule EIC.



If your EIC for a year after 1996 was reduced or disallowed, see Form 8862, who must file, earlier, to find out if you must file Form 8862 to take the credit for 2011.

see if you can take the EIC. Otherwise, stop; you cannot take the EIC.

Form 8862, who must file. You must file Form 8862 if your EIC for a year after 1996 was reduced or disallowed for any reason other than a math or clerical error. But do not file Form 8862 if either of the following applies.

- You filed Form 8862 for another year, the EIC was allowed for that year, and your EIC has not been reduced or disallowed again for any reason other than a math or clerical error.
- You are taking the EIC without a qualifying child and the only reason your EIC was reduced or disallowed in the other year was because it was determined that a child listed on Schedule EIC was not your qualifying child.

Also, do not file Form 8862 or take the credit for the:

- 2 years after the most recent tax year for which there was a final determination that your EIC claim was due to reckless or intentional disregard of the EIC rules, or
- 10 years after the most recent tax year for which there was a final determination that your EIC claim was due to fraud.

Foster child. A foster child is any child placed with you by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction. For more details on authorized placement agencies, see Pub. 596.

Married child. A child who was married at the end of 2011 is a qualifying child only if (a) you can claim him or her as your dependent on Form 1040, line 6c, or (b) you could have claimed him or her as your dependent except for the special rule for *Children of divorced or separated parents* in the instructions for line 6c.

Members of the military. If you were on extended active duty outside the United States, your main home is considered to be in the United States during that duty period. Extended active duty is military duty ordered for an indefinite period or for a period of more than 90 days. Once you begin serving extended active duty, you are considered to be on extended active duty even if you do not serve more than 90 days.

Nonresident aliens. If your filing status is married filing jointly, go to Step 2. Otherwise, stop; you cannot take the EIC. Enter “No” on the dotted line next to line 64a.

Permanently and totally disabled. A person is permanently and totally disabled if, at any time in 2011, the person could not engage in any substantial gainful activity because of a physical or mental condition and a doctor has determined that this condition (a) has lasted or can be expected to last continuously for at least a year, or (b) can be expected to lead to death.

Qualifying child of more than one person. Even if a child meets the conditions to be the qualifying child of more than one person, only one person can claim the child as a qualifying child for all of the following tax benefits, unless the special rule for *Children of divorced or separated parents* in the instructions for line 6c applies.

1. Dependency exemption (line 6c).
2. Child tax credits (lines 51 and 65).
3. Head of household filing status (line 4).
4. Credit for child and dependent care expenses (line 48).
5. Exclusion for dependent care benefits (Form 2441, Part III).
6. Earned income credit (lines 64a and 64b).

No other person can take any of the six tax benefits listed above unless he or she has a different qualifying child. If you and any other person can claim the child as a qualifying child, the following rules apply.

- If only one of the persons is the child’s parent, the child is treated as the qualifying child of the parent.
- If the parents do not file a joint return together but both parents claim the child as a qualifying child, the IRS will treat the child as the qualifying child of the parent with whom the child lived for the longer period of time in 2011. If the child lived with each parent for the same amount of time, the IRS will treat the child as the qualifying child of the parent who had the higher adjusted gross income (AGI) for 2011.
- If no parent can claim the child as a qualifying child, the child is treated as the qualifying child of the person who had the highest AGI for 2011.
- If a parent can claim the child as a qualifying child but no parent does so claim the child, the child is treated as the qualifying child of the person who had the highest AGI for 2011, but only if that person’s AGI is higher than the highest AGI of any parent of the child who can claim the child.

Example. Your daughter meets the conditions to be a qualifying child for both you and your mother. Your daughter does not meet the conditions to be a qualifying child of any other person, including her other parent. Under the rules above, you can claim your daughter as a qualifying child for all of the six tax benefits listed here for which you otherwise qualify. Your mother cannot claim any of the six tax benefits listed here unless she has a different qualifying child. However, if your mother’s AGI is higher than yours and you do not claim your daughter as a qualifying child, your daughter is the qualifying child of your mother.

For more details and examples, see Pub. 596.

If you will not be taking the EIC with a qualifying child, enter “No” on the dotted line next to line 64a. Otherwise, go to Step 3, question 1.

Social security number (SSN). For the EIC, a valid SSN is a number issued by the Social Security Administration unless “Not Valid for Employment” is printed on the social security card and the number was issued solely to apply for or receive a federally funded benefit.

To find out how to get an SSN, see *Social Security Number (SSN)* near the beginning of these instructions. If you will not have an SSN by the date your return is due, see *What if You Cannot File on Time?*

Student. A student is a child who during any part of 5 calendar months of 2011 was enrolled as a full-time student at a school, or took a full-time, on-farm training course given by a school or a state, county, or local government agency. A school includes a technical, trade, or mechanical school. It does not include an on-the-job training course, correspondence school, or school offering courses only through the Internet.

Welfare benefits, effect of credit on. Any refund you receive as a result of taking the EIC cannot be counted as income when determining if you or anyone else is eligible for benefits or assistance, or how much you or anyone else can receive, under any federal program or under any state or local program financed in whole or in part with federal funds. These programs include Temporary Assistance for Needy Families (TANF), Medicaid, Supplemental Security Income (SSI), and Supplemental Nutrition Assistance Program (food stamps). In addition, when determining eligibility, the refund cannot be counted as a resource for at least 12 months after you receive it. Check with your local benefit coordinator to find out if your refund will affect your benefits.

Lines 64a and 64b— Earned Income Credit (EIC)

What Is the EIC?

The EIC is a credit for certain people who work. The credit may give you a refund even if you do not owe any tax.

To Take the EIC:

- Follow the steps below.
- Complete the worksheet that applies to you or let the IRS figure the credit for you.
- If you have a qualifying child, complete and attach Schedule EIC.

For help in determining if you are eligible for the EIC, go to www.irs.gov/eitc and click on "EITC Assistant." This service is available in English and Spanish.



If you take the EIC even though you are not eligible and it is determined that your error is due to reckless or intentional disregard of the EIC rules, you will not be allowed to take the credit for 2 years even if you are otherwise eligible to do so. If you fraudulently take the EIC, you will not be allowed to take the credit for 10 years. See Form 8862, who must file, later. You may also have to pay penalties.

Step 1 All Filers

1. If, in 2011:

- 3 or more children lived with you, is the amount on Form 1040, line 38, less than \$43,998 (\$49,078 if married filing jointly)?
- 2 children lived with you, is the amount on Form 1040, line 38, less than \$40,964 (\$46,044 if married filing jointly)?
- 1 child lived with you, is the amount on Form 1040, line 38, less than \$36,052 (\$41,132 if married filing jointly)?
- No children lived with you, is the amount on Form 1040, line 38, less than \$13,660 (\$18,740 if married filing jointly)?

Yes. Continue

No. You cannot take the credit.

2. Do you, and your spouse if filing a joint return, have a social security number that allows you to work or is valid for EIC purposes (explained later under *Definitions and Special Rules*)?

Yes. Continue

No. You cannot take the credit. Enter "No" on the dotted line next to line 64a.

3. Is your filing status married filing separately?

Yes. You cannot take the credit.

No. Continue

4. Are you filing Form 2555 or 2555-EZ (relating to foreign earned income)?

Yes.

You cannot take the credit.

No. Continue

5. Were you or your spouse a nonresident alien for any part of 2011?

Yes. See *Nonresident aliens, later, under Definitions and Special Rules.* **No.** Go to Step 2.

Step 2 Investment Income

1. Add the amounts from Form 1040:

Line 8a		_____
Line 8b	+	_____
Line 9a	+	_____
Line 13*	+	_____

Investment Income =

*If line 13 is a loss, enter -0-.

2. Is your investment income more than \$3,150?

Yes. Continue

No. Skip question 3; go to question 4.

3. Are you filing Form 4797 (relating to sales of business property)?

Yes. See *Form 4797 filers, later, under Definitions and Special Rules.*

No. You cannot take the credit.

4. Do any of the following apply for 2011?

- You are filing Schedule E.
 - You are reporting income from the rental of personal property not used in a trade or business.
 - You are reporting income on Form 1040, line 21, from Form 8814 (relating to election to report child's interest and dividends).
- Yes.** You must use Worksheet 1 in Pub. 596 to see if you can take the credit. **No.** Go to Step 3.

Step 3 Qualifying Child

A qualifying child for the EIC is a child who is your...

Son, daughter, stepchild, foster child, brother, sister, stepbrother, stepsister, half brother, half sister, or a descendant of any of them (for example, your grandchild, niece, or nephew)



was ...

Under age 19 at the end of 2011 and younger than you (or your spouse, if filing jointly)

or

Under age 24 at the end of 2011, a student (defined later), and younger than you (or your spouse, if filing jointly)

or

Any age and permanently and totally disabled (defined later)



Who is not filing a joint return for 2011 or is filing a joint return for 2011 only as a claim for refund (defined later)



Who lived with you in the United States for more than half of 2011.

If the child did not live with you for the required time, see *Exception to time lived with you*, later.



If the child meets the conditions to be a qualifying child of any other person (other than your spouse if filing a joint return) for 2011, see Qualifying child of more than one person, later. If the child was married, see Married child, later.

1. Do you have at least one child who meets the conditions to be your qualifying child?

- Yes.** The child must have a valid social security number (SSN) as defined later, unless the child was born and died in 2011. If at least one qualifying child has a valid SSN (or was born or died in 2011), go to question 2. Otherwise, you cannot take the credit.
- No.** Skip questions 2 and 3; go to Step 4.

2. Are you filing a joint return for 2011?

- Yes.** Skip question 3 and Step 4; go to Step 5.
- No.** Continue

3. Could you be a qualifying child of another person in 2011? (Check "No" if the other person is not required to file, and is not filing, a 2011 tax return or is filing a 2011 return only as a claim for refund (defined in the instructions for line 6c).)

- Yes.** You cannot take the credit. Enter "No" on the dotted line next to line 64a.
- No.** Skip Step 4; go to Step 5.

Step 4 Filers Without a Qualifying Child

1. Is the amount on Form 1040, line 38, less than \$13,660 (\$18,740 if married filing jointly)?

- Yes.** Continue
- No.** You cannot take the credit.

2. Were you, or your spouse if filing a joint return, at least age 25 but under age 65 at the end of 2011? (Check "Yes" if you were born after December 31, 1946, and before January 2, 1987.) If your spouse died in 2011, see Pub. 596 before you answer.

- Yes.** Continue
- No.** You cannot take the credit.

3. Was your main home, and your spouse's if filing a joint return, in the United States for more than half of 2011? Members of the military stationed outside the United States, see *Members of the military*, later, before you answer.

- Yes.** Continue
- No.** You cannot take the credit. Enter "No" on the dotted line next to line 64a.

4. Are you filing a joint return for 2011?

- Yes.** Skip questions 5 and 6; go to Step 5.
- No.** Continue

5. Could you be a qualifying child of another person in 2011?


- Yes.** You cannot take the credit. Enter "No" on the dotted line next to line 64a.
- No.** Continue

6. Can you be claimed as a dependent on someone else's 2011 tax return?

- Yes.** You cannot take the credit.
- No.** Go to Step 5.

Step 5 Earned Income

1. Are you filing Schedule SE because you were a member of the clergy or you had church employee income of \$108.28 or more?

Yes. See *Clergy or Church employees*, whichever applies. **No.** Continue 

2. Figure earned income:

Form 1040, line 7 _____

Subtract, if included on line 7, any:

- Taxable scholarship or fellowship grant not reported on a Form W-2.
- Amount received for work performed while an inmate in a penal institution (enter "PRI" and the amount subtracted on the dotted line next to Form 1040, line 7).
- Amount received as a pension or annuity from a nonqualified deferred compensation plan or a nongovernmental section 457 plan (enter "DFC" and the amount subtracted on the dotted line next to Form 1040, line 7). This amount may be shown in box 11 of Form W-2. If you received such an amount but box 11 is blank, contact your employer for the amount received as a pension or annuity.

Add all of your nontaxable combat pay if you elect to include it in earned income. Also enter this amount on Form 1040, line 64b. See *Combat pay, nontaxable* later.


+ _____



Electing to include nontaxable combat pay may increase or decrease your EIC. Figure the credit with and without your nontaxable combat pay before making the election.

Earned Income =


3. Were you self-employed at any time in 2011, or are you filing Schedule SE because you were a member of the clergy or you had church employee income, or are you filing Schedule C or C-EZ as a statutory employee?

Yes. Skip question 4 and Step 6; go to Worksheet B. **No.** Continue 

4. If you have:

- 3 or more qualifying children, is your earned income less than \$43,998 (\$49,078 if married filing jointly)?
- 2 qualifying children, is your earned income less than \$40,964 (\$46,044 if married filing jointly)?
- 1 qualifying child, is your earned income less than \$36,052 (\$41,132 if married filing jointly)?

- No qualifying children, is your earned income less than \$13,660 (\$18,740 if married filing jointly)?

Yes. Go to Step 6. **No.** 

You cannot take the credit.

Step 6 How To Figure the Credit

1. Do you want the IRS to figure the credit for you?

Yes. See *Credit figured by the IRS*, later. **No.** Go to Worksheet A.

Definitions and Special Rules

Adopted child. An adopted child is always treated as your own child. An adopted child includes a child lawfully placed with you for legal adoption.

Church employees. Determine how much of the amount on Form 1040, line 7, was also reported on Schedule SE, Section B, line 5a. Subtract that amount from the amount on Form 1040, line 7, and enter the result in the first space of Step 5, line 2. Be sure to answer "Yes" to question 3 in Step 5.

Claim for refund. A claim for refund is a return filed only to get a refund of withheld income tax or estimated tax paid. A return is not a claim for refund if the EIC or any other similar refundable credit is claimed on it.

Clergy. The following instructions apply to ministers, members of religious orders who have not taken a vow of poverty, and Christian Science practitioners. If you are filing Schedule SE and the amount on line 2 of that schedule includes an amount that was also reported on Form 1040, line 7:

1. Enter "Clergy" on the dotted line next to Form 1040, line 64a.
2. Determine how much of the amount on Form 1040, line 7, was also reported on Schedule SE, Section A, line 2, or Section B, line 2.
3. Subtract that amount from the amount on Form 1040, line 7. Enter the result in the first space of Step 5, line 2.
4. Be sure to answer "Yes" to question 3 in Step 5.

Combat pay, nontaxable. If you were a member of the U.S. Armed Forces who served in a combat zone, certain pay is excluded from your income. See *Combat Zone Exclusion* in Pub. 3. You can elect to include this pay in your earned income when figuring the EIC. The amount of your nontaxable combat pay should be shown in box 12 of Form(s) W-2 with code Q. If you are filing a joint return and both you and your spouse received nontaxable combat pay, you can each make your own election.

Credit figured by the IRS. To have the IRS figure your EIC:

1. Enter "EIC" on the dotted line next to Form 1040, line 64a.
2. Be sure you enter the nontaxable combat pay you elect to include in earned income on Form 1040, line 64b. See *Combat pay, nontaxable*, above.
3. If you have a qualifying child, complete and attach Schedule EIC. If your EIC for a year after 1996 was reduced or disallowed, see *Form 8862, who must file*, later.

Exception to time lived with you. Temporary absences by you or the child for special circumstances, such as school, vacation, business, medical care, military service, or detention in a juvenile facility, count as time the child lived with you. Also see *Kidnapped child* in the instructions for line 6c or *Members of the military*, later. A child is considered to have lived with you for all of 2011 if the child was born or died in 2011 and your home was this child's home for the entire time he or she was alive in 2011.

Form 4797 filers. If the amount on Form 1040, line 13, includes an amount from Form 4797, you must use Worksheet 1 in Pub. 596 to

interest amount determined under section 457A(c)(2). See section 457A for details. Identify as “457A.”

Line 61

Total Tax

Add lines 55 through 60 to get your total tax.

If you are reading “Total Tax” because of what you read in the 2011 Form W-2 Instructions for Employee, see the line 60 instructions instead.

Payments

Line 62

Federal Income Tax Withheld

Add the amounts shown as federal income tax withheld on your Forms W-2, W-2G, and 1099-R. Enter the total on line 62. The amount withheld should be shown in box 2 of Form W-2 or W-2G, and in box 4 of Form 1099-R. Attach Forms W-2G and 1099-R to the front of your return if federal income tax was withheld.

If you received a 2011 Form 1099 showing federal income tax withheld on dividends, taxable or tax-exempt interest income, unemployment compensation, social security benefits, or other income you received, include the amount withheld in the total on line 62. This should be shown in box 4 of Form 1099 or box 6 of Form SSA-1099.

Line 63

2011 Estimated Tax Payments

Enter any estimated federal income tax payments you made for 2011. Include any overpayment that you applied to your 2011 estimated tax from:

- Your 2010 return, or
- An amended return (Form 1040X).

If you and your spouse paid joint estimated tax but are now filing separate income tax returns, you can divide the amount paid in any way you choose as long as you both agree. If you cannot agree, you must divide the payments in proportion to each spouse’s individual tax as shown on your separate returns for 2011. For an example of how to do this, see Pub. 505. You may want to attach an explanation of how

you and your spouse divided the payments. Be sure to show both social security numbers (SSNs) in the space provided on the separate returns. If you or your spouse paid separate estimated tax but you are now filing a joint return, add the amounts you each paid. Follow these instructions even if your spouse died in 2011 or in 2012 before filing a 2011 return.

Divorced Taxpayers

If you got divorced in 2011 and you made joint estimated tax payments with your former spouse, enter your former spouse’s SSN in the space provided on the front of Form 1040. If you were divorced and remarried in 2011, enter your present spouse’s SSN in the space provided on the front of Form 1040. Also, under the heading *Payments* to the left of line 63, enter your former spouse’s SSN, followed by “DIV.”

Name Change

If you changed your name because of marriage, divorce, etc., and you made estimated tax payments using your former name, attach a statement to the front of Form 1040. On the statement, explain all the payments you and your spouse made in 2011 and the name(s) and SSN(s) under which you made them.

An attorney's neglect of his client's case was found to be willful after the attorney failed to serve the complaint on a defendant for three years. See **Arden v. State Bar (1987) 43 Cal.3d 713, 239 Cal.Rptr. 68, 739 P.2d 1236**. The state bar found that the act was a conscious disregard of the requirements of professional diligence and good judgment and could not be said to have resulted from mere inadvertence or mistake. **Arden v. State Bar (1987) 43 Cal.3d 713, 239 Cal.Rptr. 68, 739 P.2d 1236**. It is a violation of the ethical duties of attorney to fail to perform a legal service for which attorney has been retained and to willfully fail to communicate with a client. See **Lister v. State Bar (1990) 51 Cal.3d 1117, 275 Cal.Rptr. 802, 800 P.2d 1232**, (failure to communicate with client, to protect client's interests, to return files on demand, to cooperate in disciplinary investigations, to withdraw from matter which attorney knows he is incompetent to handle and to give client notice of withdrawal from employment warrants nine month actual suspension); **Harris v. State Bar (1990) 51 Cal.3d 1082, 275 Cal.Rptr. 428, 800 P.2d 906** (attorney found to have abandoned client who retained her to prosecute wrongful death action, where the attorney did virtually nothing for four years except to file and serve complaint, both on the last possible day).

A showing of willfulness is not always essential when establishing that an attorney has improperly withdrawn from employment or failed to act competently. The case law distinguishes between varying degrees of neglect. For example, gross negligence, while not an intentional act of misconduct, is still so serious as to warrant discipline and may even justify disbarment. **Walker v. State Bar (1989) 49 Cal.3d 1107, 264 Cal.Rptr. 825, 783 P.2d 184** (an attorney suffering from pancreatitis, alcohol and drug addiction, and paranoid delusions may still have the necessary state of mind to justify discipline by the State Bar for abandonment of practice); **Simmons v. State Bar (1970) 2 Cal.3d 719, 87 Cal.Rptr. 368, 470 P.2d 352** (attorney who accepted fees and then failed to communicate with client three times as well as failing to inform clients of his suspension by State Bar shows a common pattern of gross negligence and carelessness).

If an attorney essentially withdraws from representation, he is obligated to give due notice to the client. **Walker v. State Bar (1989) 49 Cal.3d 1107, 264 Cal.Rptr. 825, 783 P.2d 184**. It is serious misconduct to willfully fail to perform services for which the attorney is retained, or to willfully fail to communicate with a client. **Hunnicutt v. State Bar (1988) 44 Cal.3d 362, 243 Cal.Rptr. 699, 748 P.2d 1161**. An example of willfully failing to communicate with a client can be found in **Kapelus v. State Bar (1987) 44 Cal.3d 179, 242 Cal.Rptr. 196, 745 P.2d 917** (the attorney agreed to represent the client in a post administrative appeal suit against the federal government, and subsequently failed to answer the client's calls and registered letters, and failed to send the client the file).

shellfish growing waters, does not encourage harborage of insects, rodents or other possible vectors, does not give rise to nuisances, does not become a hazard to public health, safety and welfare, contributes to the achievement of wastewater management goals contained in approved county water quality management plans, and reinforces state and county planning policies, as stated through HRS §§321-11, 322-8(a), 342D-1, 342D-2, 342D-4, and 342D-5.

Noise, Radiation and Indoor Air Quality Branch

47. HAR Title 11 Chapter 39 – Air Conditioning & Ventilating

Justification – The rule is necessary as it seeks to assure the adequate and healthful design, construction, installation, and operation of comfort air conditioning and ventilating systems as stated through HRS §§321-9 and 321-11.

48. HAR Title 11 Chapter 40 – Community Noise Control

Justification – This rule is necessary as it defines maximum permissible sound levels, and provide for prevention, control, and abatement of noise pollution in the state, to prevent the significant degradation of the environment and quality of life, as stated through HRS §§342F-3, and 342F-31.

49. HAR Title 11 Chapter 44 – Radiologic Technology Board Radiologic Technology Rules

Justification – The rule is necessary as it establishes minimum state standards of education, training and experience for persons who apply x-rays, cobalt 60, or electrons to human beings, as stated through HRS §466J-2.

50. HAR Title 11 Chapter 45 – Radiation Control

Justification – The rule is necessary as it sets minimum standards for all persons and facilities who receive, possess, use, transfer, own, or acquire any source of radiation, all persons who install and service sources of radiation, and all persons who provide radiation services as stated through HRS §§321-10, 321-11, and 321-71.

51. HAR Title 11 Chapter 501 – Asbestos Requirements

Justification – The rule is necessary as it is federally required.

52. HAR Title 11 Chapter 502 – Asbestos Containing Materials in Schools

Justification – The rule is necessary as it is federally required.

53. HAR Title 11 Chapter 503 – Fees for Asbestos Removal

Justification – The rule is necessary as it is federally required.

54. HAR Title 11 Chapter 504 – Asbestos Abatement Certification Program

Justification – The rule is necessary as it is federally required.

ANSWER 1 TO PERFORMANCE TEST B

PART A

MEMORANDUM

To: Larry Craig
From: Applicant
Re: Express Assumption of Risk - Adair v. Oldfield

Whether our defense of express assumption of risk will prevail against Adair's claim of negligence will turn upon the enforceability of the Release of Liability form signed by Adair. If the release is effective, then Adair will have been deemed to assume the risks set forth in the release. In order to be effective, a release must meet several requirements, which I have outlined below. I believe that the release given to Adair by Oldfield satisfies these requirements, and therefore our defense of express assumption of risk will be successful, and Adair will not prevail.

A. THE RELEASE DID NOT INVOLVE THE PUBLIC INTEREST

A release is only effective if it does not involve the public interest. Buchan v. U.S. Cycling Foundation. This assessment turns on two factors. First, whether the activity involves the public interest when the party seeking exculpation is engaged in performing service of great importance and practical necessity to the public. Second, whether the party seeking exculpation has a decisive advantage of bargaining strength against the members.

As to the first factor, Oldfield was not engaged in performing a service of great public importance. He was simply the leader of a loosely organized rock climbing

association. Generally, the sports and recreational events are not matters of great public importance. Buchan. Releases of liability for injury have been upheld in activities such as driving racecars, white water rafting, bicycle racing, and skydiving. Rockclimbing is a recreational activity analogous to these activities, and therefore also would not be considered to be a service of great public importance.

As to the second factor, Oldfield did not have a decisive advantage in bargaining strength over Adair. According to Adair's deposition, Oldfield did not force Adair to sign the release of liability. He admitted that nobody told him that if he did not sign the release, then he would not be allowed to participate in the rock climbing activities of the group. The deposition of Oldfield confirms that he did not force participants in the group to sign the releases, but merely requested that they do so. Therefore, Adair's signing of the release form was totally voluntary. He was not pressured to do so, and his signing the release was not the result of any disparity in bargaining power.

In conclusion, the release signed by Adair did not involve the public interest, and therefore is not unenforceable on this ground.

B. THE TECHNICAL REQUIREMENT FOR A WRITTEN RELEASE WERE MET

To be effective, the release need not be perfect. Instead, it need only clearly express an intent on the part of the releasor not to hold the released party liable for the consequences of his own negligence. Buchan. To allow claims arising from hazardous recreational pursuits when valid releases have been signed would defeat the very purpose of having participants sign the releases, and therefore courts are willing to enforce them, as previously mentioned.

To be effective, the release must meet several technical requirements. The court in Leon v. Family Fitness Center provided a thorough analysis of the requirements

a release must meet. First, a release will not be enforceable unless it is easily readable. The release given to Adair satisfied this requirement. It was written in normal font and contained on a single sheet of paper. It was not excessive in length, and was clearly identified as a release of liability. Adair had ample time to review the release. Although Adair said he did not actually read the release, this should not matter. The release was clear as to its terms, and Adair signed it.

Second, operative language of the release should be prominently distinguished from other language. The release signed by Adair satisfies this requirement. The particularly important provisions of the release are written in bold, capital letters. These provisions include the ones stating that Adair releases Oldfield from liability caused by the negligence of Oldfield or another participant, that the release applies to all risks and causes of injury or death, and that the signer of the release accepts full responsibility for all risks associated with rock climbing.

Third, a release that alleges to release a party from the consequences of his own negligence must clearly express such an intent. Here, the release does allege to release Oldfield from any injuries his own negligence may cause to the participants who sign the release. However, this provision is clearly presented in bold, capital letters. Therefore, this requirements is satisfied.

In Leon, the court found that the release of liability signed by the plaintiff was not valid. However, that release is readily distinguishable from the one signed by Adair. First, the release in Leon was only one part of a larger contract. Here, the release was a free standing document. Second, the release in Leon was written in text undifferentiated as to size, with no paragraphs or highlighting. In contrast, the release signed by Adair contained distinct paragraphs and contained bolded portions.

In conclusion, the release signed by Adair met all of the technical requirements required in order for a release of liability to be considered valid.

C. THE RELEASE WAS EFFECTIVE

To be effective, the release is not required to spell out every possible act of negligence that it purports to cover. Instead, it need only contain a general release from all negligence. The release signed by Adair did that. Finally, the injury caused must be reasonably related to the type of injury the release was intended to guard against. Here, Adair was injured when a clip came undone, likely due to negligence on the part of somebody. This is exactly the type of injury the release was intended to guard against.

D. CONCLUSION

In conclusion, based on the applicable case law and the facts of the present case, the release of liability signed by Adair will be enforceable. It is therefore unlikely that Adair will prevail.

PART B

MEMORANDUM

To Larry Craig

From: Applicant

Re: Implied Assumption of Risk - Adair v. Oldfield

The defense of implied assumption of risk will turn on whether the risks faced by Adair were inherent in the activity of rock climbing, and as a result Oldfield had a duty to protect Adair. For the reasons provided below, I believe Adair will be unlikely to prevail on his claim. Additionally, while our expert, Jed Williams, will be allowed to testify regarding his opinions, his testimony will be limited to certain issues.

A. IMPLIED ASSUMPTION OF RISK

When there is an implied assumption of risk, the defendant owes no duty to protect the plaintiff from a particular risk of harm. Staten v. Superior Court. This lack of a duty of care operates as a complete bar to any recovery by the plaintiff. Recovery is barred regardless of whether the plaintiff was negligent or whether the plaintiff knew or understood the potential risk.

The issue of implied assumption of risk turns on the question of duty, and in particular, whether the defendant had a duty to guard the plaintiff against the type of harm that was suffered by the plaintiff. Generally, participation in an active sport is governed by implied assumption of risk, and a defendant has no duty of care to protect a plaintiff against risks inherent in the sport. Staten. Whether a defendant owes the plaintiff a duty in a sports setting is a question of law, to be decided by the judge. This aspect is discussed in more detail in the following portion of the memo regarding the testimony of Jed Williams. In particular, the question on whether a duty was owed by Oldfield to Adair depends on two factors: 1) the nature of sport in question, and 2) the general relationship of the parties. Handelman v. Mammoth Mountain Ski Area.

1. The Nature of the Activity in Question

As discussed below, Jed Williams will be allowed to testify regarding the nature of rock climbing. Based on this testimony, it will be established that accidents do happen in rock climbing, and when they do, they are often severe. Furthermore, in his deposition, Adair states that he had been rock climbing for a year. Therefore, he was familiar with the aspects of rock climbing, and cannot be said to have been ignorant of the risks involved. The inherent risks of a sports include the negligence of other participants. Therefore, the nature of rock climbing, wherein participants frequently rely upon each other to secure ropes, etc., inherently includes the risk that others may be negligent in performing.

The fact that participants did not anticipate the particular type of injury is not relevant to whether the risk of injury is inherent in the sport. It is sufficient that the risk merely be within the range of possibilities. Handelman. The nature of rock climbing requires that climbers place a certain amount of trust that other climbers have performed their jobs correctly. Adair admitted that he did not check that the rope was secured to the anchor before he began to climb. It was within the range of possibilities that another participant would have been negligent in failing to secure the rope to the anchor. Therefore, the injury suffered by Adair would have been inherent in the risks of rock climbing.

2. The General Relationship of the Parties

Furthermore, consideration of the second factor, the relationship of the parties, also supports a finding of implied assumption of risk. Oldfield was not the formal head of the group, but the group was an informal one that met each week. Oldfield did not expressly agree to care for Adair. Furthermore, the mere fact that Oldfield may have exercised some control over the situation, and therefore may have been in a better position to prohibit Adair's injury that Adair was himself, is not determinative. Handelman.

For instance, in Ford v. Gouin, an accident that occurred while defendant was driving a boat while plaintiff was water-skiing behind it. The Columbia Supreme Court held that simply because defendant was in control of the boat did not mean that the defendant owed a duty to protect the plaintiff from injury. The critical inquiry was whether rigorous participation in the sport might be chilled by the imposition of liability on the defendant. Here, participation in rock climbing would be chilled if group members were held liable for the injuries of other group members.

In summary, based on the applicable law and the facts of this case, Adair is unlikely to prevail in his claim.

B. EXPERT TESTIMONY OF JED WILLIAMS

In Knight v. Jewett the Columbia Supreme Court suggested that the legal question of the duty owed in an implied assumption of risk case is to be resolved by the trial court without factual input by experts. Instead, the judge should only rely on his own common knowledge. However, in cases involving less popular sports, it is unclear whether expert testimony is admissible. In Staten a case subsequent to Knight, the court of appeals suggested that a trial judge should be able to obtain factual information on the nature of an uncommon sporting activity, but not expert opinion on the ultimate legal question of duty or the ultimate legal question of inherent risk. Furthermore, it is permissible for an expert to his opinion on the cause of the accident suffered by the plaintiff. Handelman.

Given that rock climbing is not a common sport, Jed likely will be allowed to testify on the basics of rock climbing. As previously stated, Knight may be read to prohibit any expert testimony regarding the facts of rock climbing. However, a court will probably find the reasoning of Staten persuasive in this case, as a judge probably would

be unable to make any determination in the present case without first learning the basics of rock climbing. Therefore, he will be able to testify regarding the mechanics of rock climbing. He will be able to describe the typical decisions and actions a typical rock climber would undertake and make.

Pursuant to Handelman, Jed would also be allowed to testify regarding his opinion of why the accident happened. He will be able to testify regarding the possibilities of why the rope did not fall when Adair initially began to climb. He will be able to opine that the rope was swung over the bolt, but not attached to it, and came undone when Adair reached the top of the cliff and then started to descend. He will be able to testify about the various simulations he ran, and the results.

However, under Knight, he will not be able to testify about what risks are inherent in rock climbing. The judge will have to decide this based on the general background description of rock climbing provided by Jed or the witnesses. He will also not be allowed to testify as to any duties owed to the climbers by Oldfield. He will not be able to testify about whether Oldfield should have checked the anchor before Adair began to climb, or whether Oldfield had a duty to supervise Adair. The judge will also have to decide these matters.

C. CONCLUSION

In conclusion, based on the facts, the law, and the portions of the testimony of Jed that will be admissible, Adair is unlikely to prevail in his claim.

also B&PC § 6103 (any violation of an attorney's oath or duties is cause for disbarment or suspension).

The State Bar distinguishes between willful and negligent behavior performed by the attorney. See **Lester v. State Bar (1976) 17 Cal.3d 547, 131 Cal.Rptr. 225, 551 P.2d 841** (willful conduct consisted of attorney's repeated failure to perform legal services after being paid and retained); **Hulland v. State Bar (1972) 8 Cal.3d 440, 105 Cal.Rptr. 152, 503 P.2d 608**, (attorney failed to perform services he was paid to perform and made client sign a confession of judgment for fees). Willfulness does not necessarily require knowledge of the provision violated; rather, it requires that the attorney "knew what he was doing or not doing and that he intended either to commit the act or to abstain from committing it." **King v. State Bar (1990) 52 Cal.3d 307, 313-314, 276 Cal.Rptr. 176, 801 P.2d 419** (quoting **Zitny [Zitny] v. State Bar (1966) 64 Cal.2d 787, 792, 51 Cal.Rptr. 825, 415 P.2d 521**).

California imposes discipline where the disregard of the client matter was done willfully. **Davis v. State Bar (1983) 33 Cal.3d 231, 188 Cal.Rptr. 441, 655 P.2d 1276**. For examples where discipline was imposed for willful incompetence, see **King v. State Bar (1990) 52 Cal.3d 307, 314, 276 Cal.Rptr. 176, 801 P.2d 419** (decided under former CRPC 6-101 (1975), which contained the same "substantive" rule as CRPC 3-110) (neglecting to serve a complaint and summons, as well as failing to turn over former client's files, violated this rule); **Drociak v. State Bar (1991) 52 Cal.3d 1085, 278 Cal.Rptr. 86, 804 P.2d 711** (attorney suspended from legal practice for one year (stayed) and placed on probation for two years, including 30 days actual suspension for having clients pre-sign court verifications). See also **Read v. State Bar (1991) 53 Cal.3d 394, 279 Cal.Rptr. 818, 807 P.2d 1047** (decided under former CRPC 6-101 (1975), CRPC 3-110's predecessor) (pattern of misconduct including multiple acts of bad faith, dishonesty, concealment, and overreaching, misappropriation of funds, counseling client to perjure herself, and client abandonment violates rule and warrants disbarment); **In the Matter of Sampson (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127** (failure to supervise practice and fulfill trust fund responsibilities constituted reckless failure to perform competently) (fourteen instances of failing to pay medical liens on clients' recovery constituted repeated failure to perform competently); **In the Matter of Broderick (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138** (failure to communicate with client and keep client funds safe constitutes repeated failure to perform legal services competently). Cf., **In the Matter of Whitehead (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354, 365-366** (decided under former CRPC 6-101 (1975), CRPC 3-110's predecessor) (attorney who obtained reinstatement of appeal after his neglect caused appeal's dismissal did not violate rule).

□ Commentary: ABA/BNA □ 301:1001, ALI-LGL □□ 76, 78,
Wolfram □ 5.6

An attorney will not be held liable for his decision to withdraw from representing a client if he believes the action lacks merit. If an attorney is faced with a conflicting obligation, such as his obligation to respect the legitimate interests of fellow members of the bar, he will not be held liable for malpractice in most circumstances. In order to hold an attorney liable for malpractice, a plaintiff must show that the attorney's choice of honoring the public obligation was manifestly erroneous. See *Kirsch v. Duryea* (1978) 21 Cal.3d 303, 309-310, 146 Cal.Rptr. 218, 578 P.2d 935.

Similarly, an attorney will not be held liable for every mistake he or she makes in her practice. The attorney does not insure the accuracy of his or her opinions or the validity of the document drafted for a client. Nor is the attorney liable for a mistake as to a legal question on which well-informed attorneys may entertain reasonable doubt. See *Smith v. Lewis* (1975) 13 Cal.3d 349, 358-359, 118 Cal.Rptr. 621, 530 P.2d 589. However, before this defense may be asserted successfully, it must be shown that the attorney has met his or her duty to undertake reasonable research in an effort to ascertain relevant legal principles and to make an informed decision as to a course of conduct based on an intelligent undertaking of the problem. See *Aloy v. Mash* (1985) 38 Cal.3d 413, 418, 212 Cal.Rptr. 162, 696 P.2d 656. If such reasonable research is undertaken, the attorney cannot be held liable for negligence simply because the course of conduct selected is shown to be erroneous by subsequent events. See *Davis v. Damrell* (1st Dist. 1981) 119 Cal.App.3d 883, 888-889, 174 Cal.Rptr. 257.

1.1:510 Advocate's Defamation Privilege

This sub-section discusses: (1) the attorney litigation privilege and (2) California's anti-SLAPP legislation.

(1) The Litigation Privilege

For well over a century, communications with □some relation□ to judicial proceedings have been absolutely immune from tort liability by the privilege codified at Civ. Code □ 47(b). An attorney's communications may be absolutely privileged under the litigation privilege of Civ. Code □ 47(b)(2) from all tort liability except the tort of malicious prosecution. *Silberg v. Anderson* (1990) 50 Cal.3d 205, 214-215, 266 Cal.Rptr. 638, 786 P.2d 365 (by lessening exposure to subsequent derivative tort actions, the privilege □promotes the effectiveness of judicial proceedings by encouraging attorneys to zealously protect their clients' interests□);

Background on Proposed Hawai'i Administrative Rule §13-60.4 West Hawai'i Regional Fishery Management Area, Hawai'i

In 1998 the Hawai'i State legislature passed Act 306, which established the West Hawai'i Regional Fishery Management Area (WHRFMA) encompassing the near shore waters from Upolu point (North Kohala) to Ka Lae (Ka'u) a shoreline distance of approximately 147 miles.

The overall purpose of Act 306 was to:

Effectively manage fishery activities to ensure sustainability, enhance near shore resources and minimize conflicts of use in the WHRFMA.

Act 306 also required that management decisions within the WHRFMA be made with substantial community involvement via facilitated dialogs with residents and resource users. To provide community involvement and input, the West Hawai'i Fisheries Council (WHFC) was formed in 1998 drawing on members and work of an antecedent group, the West Hawai'i Reef Fish Working Group. In order to accomplish the goals and tasks of the legislation, DLNR empowered the WHFC to serve as an advisory body and a primary source for formulating and recommending West Hawai'i management actions to DLNR.

The WHFC consists of stakeholders as well as additional non-voting, ex-officio resource people. The voting members represent a broad spectrum of community interest, user groups, and geographic locale. Ex-officio members have included UH Sea Grant, DAR, DOBOR, DOCARE, the Governor's Liaison, Whale Sanctuary Representative, National Park Service and OHA. The WHFC strives to fairly represent the stake holder community and membership is open to all interested community members with knowledge and experience in the marine environment or issues concerning fishery management. As of April 2012 the WHFC has had over 50 different members contributing more than 3000 volunteer hours. At least 1800 community members have attended one or more WHFC meetings.

Some of the accomplishments of the Council to date are:

1. The WHFC established a network of nine Fish Replenishment Areas (FRAs) which prohibit aquarium fishing and fish feeding.
2. The Council recommended amendments to the initial FRA rule to enhance enforcement and initiate the implementation of a sustainable, limited entry commercial aquarium fishery.
3. The Council has worked with DLNR on the day-use mooring buoy program to site these buoys and inform communities of the value of such moorings to preserve our coral reefs.
4. The Council developed rule amendments to provide limited kupuna harvesting of wana within the Old Kona Airport Marine Life Conservation District (MLCD).
5. The Council developed a set of gill net rule recommendations focused on limiting impacts of large-scale commercial netting while providing for subsistence netting. Six no- gill net refuges have been established as well as a Hawaiian cultural netting area (hand constructed, natural fiber nets only). The Council's approach served as a subsequent model for state-wide gill net management.

6. The WHFC Youth Council distributed a petition for no-smoking at Kahalu'u Beach Park, wrote a Resolution (with the help of Councilperson Virginia Isbell) and got it passed by the County Council and then wrote an ordinance that was passed unanimously. Kahalu'u Beach Park is now the second beach in the state that is no-smoking.

Over the past ten years the WHFC has also been working on developing management recommendations for several other issues which have brought to their attention by DAR and the West Hawai'i community. These issues relate directly to the mandates of Act 306 (HAR §13-60.3) to ensure sustainability, enhance near shore resources and minimize conflicts of use on West Hawai'i's coral reefs. Three specific rule amendments are proposed to accomplish these goals. They are:

- 1). Prohibition of SCUBA spearfishing within the WHRFMA
- 2). Closure of an area fronting Ka'ohe (Pebble Beach), South Kona to aquarium collecting to reduce/eliminate longstanding user conflicts and resource concerns.
- 3). Management of species of special concern. This includes eliminating the take of a number of vulnerable but ecologically and culturally important species and restricting aquarium harvesting to a limited number of species (40) which constitutes the vast majority (99%) of all fish species collected. In addition, size and/or bag limits for aquarium collectors are also proposed for three species (yellow tang, kole, and Achilles tang) which have been identified as important components of the aquarium fishery.

As noted, each of these efforts represents the culmination of many, many hours of community meetings and stakeholder input. Following are chronologies of the processes which developed the rule proposals as provided by the various subcommittees of the West Hawai'i Fisheries Council.

Synopsis of WHFC Spearfishing Management Rule Proposal

Commencing September 2001

Glennon Gingo, Subcommittee Chair

- | | |
|-----------------|--|
| 9/19/01 | Presentation by Dr. Charles Birkeland re economics of coral reefs; stressed that the use of new technology (SCUBA, night lights, fishing equipment, etc.), inexpensive commercial production of nets, and loss of traditional stewardship of marine resources all contribute to depletion of fish stocks from intense fishing. |
| 12/19/01 | Background information provided on a number of issues including spearfishing and moorings which the council will work on in 2002. |
| 2/20/02 | Miloli'i Local Resource Council meeting held 2/17/02. Community concerns voiced which included a ban on day and night spearfishing w/SCUBA for commercial purposes. |

Subcommittee formed to create informational network of people involved with, interested in, or impacted by spearfishing w/SCUBA.

- 3/20/02** Spearfishing subcommittee to research and collect information. Focus of subcommittee to organize, obtain information, set parameters to deal w/spearfishing w/SCUBA and present to council.
- 4/17/02** Continuing discussions on night spearfishing w/SCUBA at Miloli'i Local Resource Council (LRC) meeting held 4/7/02 and Kawaihae LRC meeting on 4/14/02. Spearfishing subcommittee: research continuing.
- 5/15/02** Spearfishing subcommittee held meeting on 5/8/02 with 7-10 commercial spearfishers.
- Input from fishers/public included:
- Ban spearfishing w/SCUBA but 'grandfather in' current commercial spearfishers
 - Create commercial closure areas
 - No action
 - Need to discuss SF according to different aspects (eg. Scuba, night, spear, specific species, etc.)
 - Need scientific information to make management decisions
- 6/19/02** Kawaihae LRC meeting held 5/26/02; continuing discussions on Spearfishing. Spearfishing subcommittee presented information from Dr. Richard Brock:
- Roi/taape really only start taking over areas that are heavily altered by fishing pressure; they're here to stay
 - Most closed areas are too small; most targeted fish are highly mobile
 - Reef changes and fish population changes stem from fishing pressures which is very efficient due to new technology; when targeted species are depleted in an area the reefs change over time and other species may replace the more targeted fish
 - Spearfishing w/SCUBA is especially harmful due to efficiency
 - Research data from fish/coral surveys collected for 15 years on and around Keahole Pt. will show Spearfishing has huge impact on the fishery
 - If spearfishing w/SCUBA were to stop there would be a gradual but sure increase in targeted fish, increased habitat health (coral), and a decrease in invasive species
- 8/21/02** Council to develop strategies to foster communication, receive scientific/public input, and disseminate information regarding spearfishing management such as:
- Adhere to 'ACBD' Model of Conflict Resolution (A=air all view; C=clarify problem issues; B=brainstorm solutions; D=determine best solution)
 - Host special informational meetings

- 10/16/02** 1st Special Informational Meeting: Scientific research presentation by Dr. Charles Birkeland and Dr. Alan Friedlander (*see Minutes of 10/16/02*).
- 11/20/02** 2nd Special Informational Meeting: Scientific research presentation by Dr. Bill Walsh (*see Minutes of 11/20/02*).
- 12/18/02** 3rd Special Informational Meeting: Scientific research presentation by Dr. Steven Dollar (*see Minutes of 12/18/02*).

Preparation for January 2003 Meeting

Chair, Rick Gaffney, encouraged the members to review the Spearfishing Subcommittee's Recommendations/Possible Solutions which will be discussed in January. The Council received solid input on this issue and different aspects were discussed over a long period of time.

SPEARFISHING SUBCOMMITTEE'S RECOMMENDATIONS/POSSIBLE SOLUTIONS

Subcommittee was comprised of active West Hawai'i spearfishermen and council members.

<p>1. No Action</p> <p>+ Easy to implement, low cost</p> <p>- Doesn't address decline in fish</p>	<p>2. Make closure Areas</p> <p>+ Many benefits to closed areas</p> <p>- Perceived bias against user group</p> <p>- Many studies indicate that closed areas have to be much larger than public is willing to live with</p> <p>- Moderately difficult to enforce</p>	<p>3. Increase minimum size limits and bag limits</p> <p>+ Does not target particular user group</p> <p>+ Benefits the fishery with blanket law of all user groups</p> <p>+ Easier 'buy-in' of affected groups; everyone compromises</p> <p>+ Data is strong about reproductive sizes</p> <p>+ Easy to educate general public on new rules</p>	<p>4. Ban night spearfishing with SCUBA</p> <p>+ Removes highly efficient fishing method.</p> <p>+ Ruins commercial spearfishing with SCUBA.</p> <p>- Removes user group that likely targets specific fish of larger size</p> <p>- This group most likely to follow management guidelines when not a total ban.</p>
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		<ul style="list-style-type: none"> + Easy to enforce - More people may be against - Possibly more difficult to pass at DAR level 	<ul style="list-style-type: none"> - This group has low fish wounding and is highly skilled - Very difficult to enforce
<p>5. Ban commercial spearfishing with SCUBA</p> <ul style="list-style-type: none"> + Removes resource user group - Removes fishers who likely target specific fish and larger sizes - This group most likely to follow management guidelines when not a total ban. - This group probably has lowest fish wounding; has hi skill level - Difficult to enforce 	<p>6. Ban recreational spearfishing with SCUBA</p> <ul style="list-style-type: none"> + Removes resource user group + Group least likely to follow non ban fishery guidelines + Higher fish wounding rate - Many fish only occasionally - May alienate large number of local subsistence fishers - Difficult to enforce 	<p>7. Ban all spearfishing with SCUBA</p> <ul style="list-style-type: none"> + Removes a highly efficient fishing method. + Any increases or lack of, in the nearshore fish stocks can be easily attributed to this decision + Easy to enforce - Targets one user group while other fishers have the greatest impact on near shore fishery, i.e. shoreline casters, net users, trollers and free dive fishers. 	<p>8. Other:</p>

Dr. Bill Walsh referred to a report obtained from the State Archives regarding spearfishing on the Big Island that stated:

Replications of underwater transects made in 1952-53 off of Keahole Point, Honokohau Bay, and Kealakekua Bay on the island of Hawai'i show that a very sharp decline in fish abundance has occurred. It appears that fishing mortality through greatly increased fishing pressure precipitated the decline. It appears that this fishing pressure, particularly spearing and netting, is gradually being extended in the northeasterly direction beyond Keahole Point as each area becomes depleted of the more desirable species of fish.

Division of Fish and Game Annual Report,
Board of Agriculture and Forestry, 1958-1959.

Spearfishing was unregulated in Hawai'i up until 1971. Following is a brief history from that time:

1971: Act 82 prohibited the selling of speared fish and also prohibited the use of a speargun by anyone less than 14 years of age not accompanied by an adult.

1977: Act 185 modified Act 82 and permitted the selling of speared red u'u, uhu and kumu.

1979: Act 229 removed the ban and permitted the selling of all species of speared fish. It was a kind of trial period for 4 years; to revert back to prohibition after December 31, 1983.

1983: Act 62 removed the time limitation of Act 229 thereby permitting the selling of all species of speared fish.

From the late 1960s, information from commercial catch data indicates that there was a significant increase in diving catch (spearfishing) as compared to other activities such as handline, gillnets, other nets, traps, etc. The targeted species of commercial divers are parrotfish, surgeonfish, and red fish. The major increase of species caught which closely tracks the increase in overall diving catch has been uhu (parrotfish).

For FY 2002 there were twelve commercial spearfishers who filed catch reports. Of the 12 commercial spearfishers, 80.7% of the landings came from the Big Island of which 16.7% came from West Hawai'i and 64% came from other parts of the Big Island; a small amount also came from Oahu.

The Precautionary Approach is a means to manage our resources when there is insufficient scientific data. It basically says the State shall be more cautious when information is uncertain, unreliable or inaccurate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures. Now the data is being collected, scientific studies are being done, and the mining of catch statistics are all painting a clear picture of the decline of

our resources. If the Precautionary Approach had been used back in 1955 when the Division of Aquatic Resources recognized that there were major declines, there would be less need to establish a network of marine protected areas today.

Spearfishing Subcommittee's Recommendations/Possible Solutions

The Spearfishing Subcommittee was comprised of active West Hawai'i spearfishers and council members. The subcommittee recommended seven possible solutions to manage spearfishing in the West Hawai'i Regional Fishery Management Area:

1. No action.
2. Make closure areas.
3. Increase minimum size limits and bag limits.
4. Ban night spearfishing with SCUBA.
5. Ban commercial spearfishing with SCUBA.
6. Ban recreational spearfishing with SCUBA.
7. Ban all spearfishing with SCUBA.

Discussions on the various options ensued. The visitors in attendance were encouraged to offer input. Other recommendations were voiced and added for consideration:

8. No taking by spear in Fish Replenishment Areas (FRAs) and Fishery Management Areas (FMAs).
9. Ban all spearfishing with SCUBA in FRAs.
10. Prohibit the sale of speared fish.

Council members were advised to select and vote for their top three options to manage spearfishing and the results are as follows (in no particular order):

1. Ban night spearfishing with SCUBA.
2. Ban all spearfishing with SCUBA.
3. No taking by spear in FRAs and FMAs.

Council members were urged to seek the opinions of their constituencies regarding the three options for continuing discussions at the February meeting.

SPEARFISHING MANAGEMENT VOTE RESULTS

January 16, 2003

No.	Recommendations	Votes Received	Percentage of Votes
1	No Action.	2	4%
2	Make closure areas.	3	7%
3	Increase minimum size limits and bag limits	0	0%

4	Ban night spearfishing with SCUBA.	13	25%
5	Ban commercial spearfishing with SCUBA	1	2%
6	Ban recreational spearfishing with SCUBA.	1	2%
7	Ban all spearfishing with SCUBA.	13	25%
8	No taking by spear in FRAs and FMAs.	13	25%
9	Ban all spearfishing with SCUBA in FRAs.	4	8%
10	Prohibit the sale of speared fish.	1	2%
	TOTAL	51	100%

2/20/03 Continuing discussions/public input. Synopsis given of previous meetings and scientific presentations relating to spearfishing management. Discussions ensued re consideration of establishing no-take/no-use areas as a management tool instead of restricting certain users which may seem discriminatory in nature and cause conflicts. Everyone shares a responsibility to sustain our resources and complete closure to all users may be an equitable solution. Comments also shared that certain low-impact activities should be allowed in protected areas.

3/20/03 Continuing discussions/public input. Beginning in October 2002 the WHFC held three special informational meetings on spearfishing management. In January 2003 the Council arrived at three recommendations as noted:

- Ban night spearfishing with SCUBA;
- Ban all spearfishing with SCUBA;
- No taking by spear in FRAs and FMAs; and

Dr. Bill offered insight on considering additional aspects of spearfishing, in particular what was decided on in the Miloli'i LRC report and from discussions from the floor at the last meeting. There are a few ways to approach this matter. One is to incorporate the elements of one recommendation with another, such as possibly including suggestions from Miloli'i into the final recommendations. This will allow for further refinement of the above recommendations. Second is whether or not to address issues concerning commercial use, no-entry, etc., which are not related to spearfishing, in the spearfishing recommendations. Spearfishing includes various aspects such as scuba, all take by scuba, and taking by spear (harvesting) at night. The overall tactical approach taken by the WHFC has been to address issues by specific gear and/or type of activity (aquarium collecting, netting, spearfishing). Both no entry and no commercial use are types of activities which deserve examination on its own merit apart from spearfishing.

Discussions ensued regarding various aspects to consider in assessing the issue of spearfishing management. Comments shared:

- There will always be conflict when working with heated issues and it is the Council's responsibility to undertake this task as set forth in Act 306 (to sustain and enhance nearshore marine resources, reduce conflict over competing uses, and community involvement in decision making).
- Reminder made that the entire west coast of the Big Island is legally referred to as the West Hawai'i Regional Fishery Management Area (WHRFMA).
- Address needs of different communities region by region.
- Consider complete no-take of all species by SCUBA.
- The problem of prohibiting the sale of speared fish in West Hawai'i is that most fish are being sold off island.
- Strike a balance between the desire for simple rules with rules that reflect the needs of various communities; necessary to negotiate and compromise with the various communities within the FMA.
- Rules will come under the scrutiny of the public and government. Must be able to address concerns and impact of rules on small business, commercial interests, maintaining livelihoods, especially in light of the new administration. Proposing rules that are specific to closing certain areas can be justified whereas a complete ban on scuba spearfishing may fail.
- Making closed areas more restrictive may cause user conflict though scientific research indicates that fish replenishment is successful when closed areas are established.
- Support given for the Miloli'i LRC spearfishing proposals which offer a good level of protection to the resource, limits commercial interest (supports subsistence fishing), and the area can function as its own replenishment area.
- The need to consider the impact of commercial activities when managing resources (for future discussion).
- Equal access and equal rights issues; scrutiny by attorney general and governor.

Miloli'i Local Resource Council Meeting Notes of 3/9/03:

- No night spearfishing in Miloli'i's FMA/FRA
- No day spearfishing w/SCUBA
- No day spearfishing w/arbalet speargun
- Freedive during day w/spear o.k.

4/17/03

Continuing discussions/public input. Spearfishing management became the focus of the WHFC in the latter part of 2002. Initially broad input was received from spearfishers, council members, and the public. A subcommittee was also formed to gather input. Special meetings were held to present scientific research information. When the WHFC concludes its information gathering, they then craft recommended language that is submitted through the administrative process to the Division of Aquatic Resources and eventually is acted upon by the Board of Land and Natural Resources. The opportunity for public input does not end at the Council meetings but continues on through the process. (See following Group Memory Notes).

Group Memory Notes - Spearfishing Management - April 17, 2003

- Mike Sakamoto - opposes ban on spearfishing of any type; manage (bag/size limits) but not ban it.
- Dan Mersburgh - spearfishing can be regulated; it is selective; penalties should be stronger.
- Larry Keen (YMCA Freediving Club) - spearfishing is selective; take few fish; use alternatives (bag/size/season limits); ban all night spearing period - that's the problem and it's easier to enforce.
- D. Verbeck - used to SCUBA at night for profit; he could take in one night the number the club takes in one year; SCUBA divers can take many (at least as much) fish in the day; night spearing okay but not SCUBA anytime with spear.
- DOCARE - there are sufficient penalties; DLNR has not worked out the protocols; case can be civil/criminal against lawbreaker; needs more work.
- Commercial fishers flood market.
- How effective is enforcement? Most people pay the fine; whatever judge says. Is it working? DOCARE is short on people to cover all the illegal activities.
- Glennon Gingo - clubs were a mechanism for regulation.
- Clarification of spearfishing regulations which was unregulated in Hawai'i up until 1971:

1971: Act 82 prohibited the selling of speared fish and also prohibited the use of a speargun by anyone less than 14 years of age not accompanied by an adult.

1977: Act 185 modified Act 82 and permitted the selling of speared red u'u, uhu and kumu.

1979: Act 229 removed the ban and permitted the selling of all species of speared fish. It was a kind of trial period for 4 years; to revert back to prohibition after December 31, 1983.

1983: Act 62 removed the time limitation of Act 229 thereby permitting the selling of all species of speared fish.

- A large portion of fish are leaving West Hawai'i.
- We can't affect other areas outside West Hawai'i.
- 35% (FRAs, FMAs, etc.) covers a large percentage of accessible areas; use other ways to manage fish.
- Clarify FRA and FMA definition; describe what they are geographically.
- West Hawai'i Regional Fisheries Management Area does include subsets of managed areas (FRAs, FMAs and MLCDs).
- Not everyone is locked into all FRAs.
- Mike Nakachi – commercial fishers originally met to discuss this issue; no sport/freedive spearing was involved.
- Blue Water Hunter (Rob White) – against any type of ban on spearfishing; submitted signed petition opposing HB1407/SB1497 (marine reserves) & 705. Fish depletion is the concern; spearfishing is only one manner of collecting fish. Commercial spearfishing is done most profitably at night on SCUBA (very efficient way to fish); they cause the problem.

- Regulations are needed and money from licensing can be collected to be used to support ocean activities.
- There is not one thing that takes the largest breeders more than SCUBA spearing; must protect the breeding stock; ban any take on SCUBA.
- Past methods of fishing provided for the future availability of fish.
- There's a need to "kapu kapu" some places (no take; no go); easy to enforce.
- Must protect the resources.
- We need the public's help to arrive at decisions.
- People from other places (Hilo, Oahu) come here to take the resource; population is growing – taking more fish; we need to have some control to protect fish for future generations.
- Suggestion for #4 Other: Have "Slot Limits"; DAR is supposed to manage the fisheries; need to come up with the numbers to determine the reproductive breeding sizes.

5/22/03 Continuing discussions/public input. Dickie Nelson clarified that the WHFC did not take any action to remove any recommended options re: spearfishing management, namely *Ban spearfishing in FRAs and FMAs*.

In preparation for the June 19th meeting, the WHFC will be reviewing all scientific research information and public input collected from the October 2002 meeting to present. Initially three categories seemed to stand out from the information gathered early on: 1) Ban night spearfishing with SCUBA, 2) Ban all spearfishing with SCUBA, and 3) No taking by spear in FRAs and FMAs. Clarification made that additional input from subsequent meetings will also be considered as options and will be discussed. No recommendations have been made to DAR at this time. Based upon information gathered, the WHFC will be asked to consider management actions which may or may not apply to the West Hawai'i coastline, then consider what management actions may apply to individual FRAs, and so forth.

6/19/03 Spear fishing summary (Minutes from Oct 2002 – May 2003) distributed for review. Other recommendations added for consideration:

- Establish slot limits for species that are currently regulated
- Prohibit SF at night w/SCUBA in FRAs and FMAs
- Revise 'Ban all SF w/SCUBA in FRAs and FMAs'
- Re-establish the kapu system

7/17/03 Presentation by Dr. Bill Walsh regarding historical perspectives on spearfishing in Hawai'i:

- Commercial catch data from 1949 to 2002 indicates a major decline in the landings of a number of valuable fish and invertebrate species. Information from commercial catch data indicates that there has been a significant increase in recent years in diving catch (spearfishing, scuba diving) as compared to other

gear types. The targeted species of commercial divers are primarily parrotfish, red fish and, to a lesser extent, surgeonfish.

- In Hawai'i only commercial fishers are required to report catch information. There is a danger of managing fisheries based only upon commercial catch data that does not accurately reflect the actual number of commercial and non-commercial (subsistence/recreational) fishers, the quantity of fish landed, gear used, etc.
- One method used both nationally and internationally to manage resources when there is insufficient scientific data is the Precautionary Approach. It basically says the State shall be more cautious when information is uncertain, unreliable or inaccurate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.
- The mission of the Division of the Aquatic Resources with the assistance of the West Hawai'i Fisheries Council is to manage, conserve, and restore the state's unique aquatic resources and ecosystems for present and future generations.

8/21/03 Continuing discussions/public input

Spearfishing Management Options

1	No night spearfishing with SCUBA No commercial spearfishing with SCUBA No recreational spearfishing with SCUBA No spearfishing with SCUBA
2	No night spearfishing with SCUBA in FRAs and FMAs No spearfishing with SCUBA in FRAs and FMAs No spearfishing in FRAs and FMAs
3	Make closure areas (outside of FRAs and FMAs)
4	Establish slot limits for currently regulated species Increase minimum size limits and bag limits Prohibit the sale of speared fish
5	No action
6	Re-establish the kapu system

Local Resource Council Input for Respective Areas

Miloli'i LRC:

- No night spearfishing in Miloli'i's FMA/FRA
- No day spearfishing w/SCUBA
- No day spearfishing w/arpalet speargun
- Freedive during day w/spear o.k.

Kawaihae LRC:

- No regulations for non-commercial spearfishing day or night
- Commercial spearfishing should be regulated

9/18/03 List of options presently under consideration:

- No action
- Make closure areas
- Increase minimum size and bag limits
- Ban night spearfishing with SCUBA
- Ban commercial spearfishing with SCUBA
- Ban recreational spearfishing with SCUBA
- Ban all spearfishing with SCUBA
- No taking by spear in FRAs and FMAs
- Ban all spearfishing with SCUBA in FRAs and FMAs
- Prohibit the sale of speared fish
- Establish slot limits for species that are currently regulated
- Prohibit spearfishing at night with SCUBA in FRAs and FMAs
- Re-establish the kapu system

10/21/04 Four spearfishing committee meetings as well as individual meetings with commercial spearfishers were held. Numerous aspects of spearfishing were discussed and the committee ultimately reached a recommendation.

"It was felt that, after a review of prior meetings and summary of the science presented and regulations existing in other countries and territories, the scuba take method of spearing with SCUBA was detrimental to the population of reef fish and should be banned within the WHFC's geography, i.e. from Ka lae to Upolu Point."

11/18/04 West Hawai'i Fisheries Council approves spearfishing committee's recommendation to prohibit SCUBA spearfishing within the West Hawai'i Regional Fisheries Management Area (Ka Lae to Upolu Point).

2006 *Spearfishing in the Pacific Islands: Current Status and Management Issues* is published by the Fisheries Department of the Food and Agricultural Organization of the United Nations. General management recommendations regarding spearfishing include:

- For several reasons, a complete ban of scuba spearfishing coupled with effective enforcement is the single most important spearfishing management measure.
- Spearfishing effort must be managed along with other forms of inshore fishing, since attempts at restricting spearfishing alone are not likely to be successful as fishing effort may be easily transferred to other small-scale fishing methods.
- One of the most widespread problems associated with spearfishing concerns the use of scuba. The perceived problems associated with using scuba for spearfishing include reducing fish populations to low levels and diminishing or eliminating the positive effects of deep water acting as a sanctuary for fish.
- Most Pacific Island countries ban the use of scuba in spearfishing. Where scuba is not banned, it appears to be because: (a) there is no issue as scuba use is minor or nonexistent; (b) there is lack of knowledge of its harmful effects; or (c) the scuba divers form an interest group with some degree of political influence.
- In all but two countries the present legislation to ban scuba spearfishing appears inadequate. It is extremely difficult or impractical to collect the evidence required to prove conclusively in court that scuba was used to take fish (i.e. fishery officer underwater observing a fish being speared by a diver using scuba). A much better approach is to ban the possession of scuba and fishing gear in the same boat or car.
- Judging from the experience of some of the countries, where scuba spearfishing does not now occur (e.g. Tuvalu), it may be a better, wherever possible, to ban the activity before it has a chance to become well established.

10/06-10/07 West Hawai'i rule amendment (HAR §13-60.3) incorporating WHFC spearfishing recommendations drafted by DAR with special assistance by Blaine Rogers, DAR Legal Fellow.

10/04/07 Draft rule amendment submitted to DAR Honolulu.

03/12 NOAA Technical Memorandum on the *Sociocultural Importance of Spearfishing in Hawai'i* is published. Based on over 100 interviews with local spearfishers it is noted that: "Fishermen feel that scuba diving is a method that allows for inappropriate levels of efficiency. Coupled with its use at night to target various species that sleep in rock/reef cracks or under ledges, scuba spear makes it even more efficient and, in the opinion of many of the fishermen, creates an opportunity for fishermen to take much more than necessary. Many fishermen feel that scuba spearfishing should be outlawed altogether"

Synopsis of WHFC Pebble Beach User Conflict Rule Proposal

Commencing September 2004

George Paleudis, Subcommittee Chair

- 09/22/04** Friends of Pebble Beach (FOPB) submit a letter and petition signed by 1432 people to Peter Young, DLNR Chairperson requesting that the State of Hawai'i ban the commercial collection of aquarium fish off Ka'ohē Bay (aka - Pebble Beach), South Kona, by extending the Ho'okena FRA approximately 2 miles south to 'Au 'Au Point. Justification for their request cites "a dramatic decline in tropical fish", "rampant aquarium fish collection", and a conflict between the use patterns of recreational user groups (diving & snorkeling interests) and commercial aquarium fish collectors in Ka'ohē Bay.
- 10/08/04** Peter Young refers the conflict to the West Hawai'i Fisheries Council (WHFC).
- 11/18/04** Petition to Protect Pebble Beach submitted to WHFC.
- 01/09/05** User Conflict Subcommittee (UCS) is established with the authority of WHFC (December 2004) and commission statement and chart of work is completed.
- 03/19/05** Public meeting held with Friends of Pebble Beach (FOPB) presentation.
- 05/21/05** Public meeting held with Commercial fish collectors presentation.
- 09/06/05** UCS meets with WHFC Executive Committee & DAR personnel to discuss points relevant to history of the Pebble Beach conflict, current aquarium fisheries management practices and possible recommendations.
- 09/15/05** UCS submits findings and recommendations to WHFC. Appendix A provides a fuller discussion on the background and issues involved in this conflict. Key points include:
- UCS finds that there is currently insufficient biological justification for extending FRA boundaries. Several key assertions made by FOPB cannot be supported by the subcommittee's findings.
 - UCS recognizes that a conflict remains between the FOPB and aquarium fish collectors operating in the region.
 - UCS proposes an FRA exchange effectively closing the area directly off Pebble Beach and a short distance to the north and south (approximately 1000 feet) to aquarium fish collecting while opening an area of equal distance and equitable economic significance to aquarium fish collectors that is currently closed. This would serve the purposes of both eliminating collecting and related user conflict at Pebble Beach while maintaining the existing percentages of areas (35.2%) closed to aquarium fish collecting.
 - UCS feels proposal to be the most effective way to, 1) Resolve the current conflict and 2) Evaluate the intended flexibility of the FRA boundaries in conjunction with the results of DAR's 5-year study. This might also provide an opportunity to evaluate the effects of opening previously closed areas and may have significant future management implications of Marine Managed Areas.
- 09/29/05** FOPB accepts the proposal of September 15, 2005 to negotiate an opening of an existing FRA in exchange for closing an equal area around Ka'ohē Bay.

- 10/05** UCS, DAR & FOPB exchange dialog to define a reasonable and more functional closure area at Ka'ohē Bay of 2000'.
- 10/05-2/06** DAR & UCS open dialog with Miloli'i and Ho'okena communities to request that each respective FRA be reduced by 1000' to provide equitable closure at Ka'ohē Bay.
- 03/06** Ho'okena & Miloli'i communities decline participation in the proposed FRA swap.
- 03/16/06** DAR proposes to the WHFC that a 2000' slice of the Kailua-Keauhou FRA be opened in exchange for the 2000' Ka'ohē Bay closure. Specific recommendations include:
- Place 2000' of reef surrounding Ka'ohē Bay in FRA status.
 - Remove 2000' of reef from FRA status in North Keauhou.
 - Aquarium fish collecting in this newly opened area would be by special permit only (special permit renewed annually).
 - Collectors fishing this area are mandated to file special monthly catch reports listing all animals caught within this zone.
- Supporting logic includes:
- This FRA is the largest and most successful in West Hawai'i and could absorb a small reduction in protected area.
 - The proposed open area is directly off a golf course with very little residential housing overlooking the area (low probability of user conflict).
 - The shoreline is very rugged and does not serve as a major access point to the ocean (low probability of user conflict).
 - The proposed area encompasses an already existing DAR study site (and in following, baseline data), which will provide the opportunity to evaluate- the effects of opening the fishery in a previously closed area.
- 04/14/06** FOPB endorse the proposed Kailua-Keauhou swap in letter submitted to Peter Young.
- 04/20/06** WHFC votes on and approves the proposed FRA swap.
- 06/06** In an effort to receive community feedback on the proposed FRA swap, UCS drafts and distributes a document delineating the proposed FRA swap to the Homeowner's Association of Keauhou Surf & Racquet Condominiums (June 06). No public objection from this organization has been voiced to date.
- 10/06-10/07** West Hawai'i rule amendment (HAR §13-60.3) incorporating Pebble Beach conflict resolution recommendations drafted by DAR with special assistance by Blaine Rogers, DAR Legal Fellow.
- 11/29/06** Memorandum on Legal Implications of Establishing a Limited Entry Aquarium Fishery in North Keauhou, West Hawai'i, received from DAR Legal Fellow through

Sonia Faust, Deputy Attorney General. Memorandum indicated that a limited entry aquarium fishery is legally sustainable provided that: (1) the administrative rules creating it are carefully drafted to preemptively address potential constitutional issues; (2) the permits, when distributed, clearly limit the permit holder's rights in the fishery; (3) notice and hearing are provided to current permit holders; and (4) the limited entry participants are chosen via blind lottery.

10/04/07 Draft rule amendment submitted to DAR.

06-09/08 Aquarium collectors request reconsideration of Keauhou open area rules. WHFC works out compromise amendment. Passed by WHFC on 09/18/08.

10/27/08 Draft rule amendment resubmitted to DAR.

08/24/10 Big Island Association of Aquarium fishers (BIAAF) pass the following resolution:

The Big Island Association of Aquarium Fishermen is in favor of the following:

1. That a 1500 foot Fish Replenishment Area (FRA) be established at Pebble Beach, as per the coordinates found with the supplied, Pebble Beach area map, attachment.
2. That the proposed Keauhou aquarium collection area, offered in exchange for the establishment of a Pebble Beach FRA, remain an FRA.
3. That no alternative compensation to aquarium fishermen, for the relinquishing of the Pebble Beach aquarium collection area, is requested.

Appendix A

Topic #1- History of Conflict- Claims and Discussion

(FOPB) "During the deliberations in 1998-1999, Ka'ohē Bay was not included in the areas set aside for the Fish Replenishment Areas (FRAs) along the West Hawai'i coast. We feel that decision was an oversight. While we recognize some responsibility for that oversight by not voicing a strong enough expression of our interest in protecting Pebble Beach at that time, we deny that no one spoke up at that point for the inclusion of Ka'ohē Bay in the new FRAs."

(UCS) The subcommittee found that several factors explain Pebble Beach/ Ka'ohē Bay not having been included in the original FRA designations, 1) Of those who participated in the original planning (see minutes from West Hawai'i Fisheries Council Meetings #1-6, 6/6/98- 10/14/98), only 3 individuals (of roughly 30 participants) requested the area be included. Ka'ohē Bay was simply not an area of consensus for inclusion. Nine areas of general consensus were chosen with a general agreement that there may be some adjustment after the 5-year evaluation. 2) Additionally, Ka'ohē Bay/ Pebble Beach had not been identified as a "hot spot" or area involving user conflict by either the West Hawai'i Fisheries Council or its precursor, the West Hawai'i Reef Fish Working Group. At the time of FRA designations there were no indications of user conflict. The evidence brought forth in our findings

demonstrates that there was no oversight in Ka'ohē Bay not having been included in the original FRA designations. The decisions made were done with focused deliberation in an effort to serve the greatest possible consensus for both biological and political considerations.

(FOPB) “Looking at a map of the Big Island, it is easy to imagine making such an oversight. However, it is nearly impossible to imagine someone traveling in a boat south of Ho'okena, especially during the spawning season, not recognizing Ka'ohē Bay as a focal point of potential “user conflict” in regards to aquarium fish collection.”

(UCS) Once again, at the time the FRA boundaries and study sites were delineated, Pebble Beach had not been identified as an area of user conflict.

Topic #2- Pebble Beach Public Use Patterns- Claims and Discussion

(FOPB) “Most of our petition forms start off with a basic predicate of our position: “Ka'ohē Road is the only public ocean access point open to vehicles between Ho'okena and Miloli'i.”

(FOPB) “Hundreds of people throughout our neighborhood regularly use the beach for recreation and relaxation. It is a particularly convenient shore entry point for divers and snorkelers.”

(FOPB) “People swim in the ocean for exercise in the morning or just to cool off after a hot day. People snorkel over the reef looking at colorful tropical fish. Parents sit for hours in the shallow water with their young children, teaching them to be at home in the water. Fathers take their sons fishing off rocks pounded by surf. Groups of divers haul their scuba gear out from shore to explore the deep waters so close to our shoreline.”

Hawaii- The Big Island Revealed has the following description of Pebble Beach. “Located down a very steep road (you lose 1050 feet of elevation in 6,000 feet of driving- that's almost as steep as the notorious road into Waipi'o Valley). It is at the bottom of Kona Paradise and is one of the most violent beaches we know of. Even when calm it will kick your okole. We've seen fish tossed out of the water on calm days (seriously!). The beach is actually countless water worn pebbles which make a great sound when the surf is up. If you've got the nerve, it is fun to let the surge pull you up and down the steep beach (but away from the shore break)”

(UCS) Our subcommittee's research shows there to be no signage from the highway to indicate beach access. There is limited parking (5 cars maximum) none of which appears to be specifically delineated for beach related use. There are no public restrooms. Photographs (included) showing use patterns of Pebble Beach (numbers of people on the same days at Pebble Beach, Ho'okena and Pu'uhonua o Hōnaunau) demonstrate use to be nominal at most.

(UCS) The Friends of Pebble Beach indicate that “the public” is perhaps the principle stakeholder group involved in this conflict and that hundreds of people regularly use Pebble Beach for recreational purposes. Our subcommittee's findings indicate that the descriptions of Pebble Beach, it's

accessibility, it's recreational significance to the West Hawai'i community and its use patterns are inconsistent with the position furthered by the Friends of Pebble Beach.

Topic # 3- Current Biological Status of Pebble Beach- Claims and Discussion

(FOPB) "There was no baseline established for Ka'ohe Bay by the West Hawai'i Aquarium Project (WHAP) in 1998. The nearest sites surveyed were Kalahiki Beach south of Ho'okena and 'Au'au Point which is well south of Ka'ohe Bay. We feel that decision was also a gross oversight."

(UCS) According to our subcommittee's research Ka'ohe Bay was not included as a study site for several reasons. 1) Pebble Beach is deeper (50'-60') which logistically constrains monitoring possibilities. 'Au'au Point, approximately one mile south of Pebble Beach, was deemed to be a more suitable study site. At the time of WHAP site selection there were no other overriding reasons to specifically work at Pebble Beach. When asked if developing a comprehensive monitoring program was currently warranted, Dr Walsh indicated that DAR currently has considerable information on areas open to aquarium fish collecting. A formal study of this site was not likely to generate information that would not be represented in the current monitoring program. Our findings demonstrate that there was no oversight in Ka'ohe Bay not having been included in the original FRA monitoring program. Study sites were carefully considered in an effort to generate sound scientific information that would aid in the management of the FRA's.

(FOPB) "The decline in tropical fish in our bay is dramatic"

(FOPB) "Today, November 18, 2004, the Friends of Pebble Beach submit to the West Hawai'i Fisheries Council a petition signed by 1432 people urging the state of Hawaii to protect Ka'ohe Bay/Pebble Beach from damage to the reef and depletion of marine organisms due to aquarium collectors."

(FOPB) "Reducing the problem of the continued survival of a healthy coral reef down to whether ruining it makes enough money is absurd to most of us."

(FOPB) "Within the past year commercial tropical fish collectors have been plundering the reef here with alarming regularity."

(UCS) DAR has conducted "reconnaissance" monitoring of Pebble Beach. Pebble Beach is a wave-impacted shoreline and coral is often damaged by storm action. Findings indicate, "It was clear to us and should be apparent on the photos that there has been substantial coral damage even down at least 70'. The extent and uniformity of the damage points directly to strong swells, which we've seen at a number of locations along the coast. There may have been one area in shallower water that was the result of anchoring but other than that, there was nothing that looked clearly like diver damage."

(UCS) Additionally, DAR commented that "We also felt we could detect some impact of collecting, primarily because there was a significantly reduced population of small young of the year yellow tangs. We did see quite a few recruits from last year however, including butterflies and surgeons and there is a nice population of adults (including yellow tangs)."

(UCS) In our subcommittee's Sept 6, 2005 meeting with DAR, Dr. Walsh indicated that the ecosystem at Pebble Beach is consistent with other areas open to aquarium fish collecting. There is a characteristic reduction in the small to intermediate size yellow tang population (which is the most heavily fished species- specifically in this size class), but other than that there appears to be little impact from the aquarium fish fishery.

(UCS) Tropical fish collectors who fish the area have pointed out that if there were no fish at Pebble Beach (as the Friends of Pebble Beach have asserted) there would be no reason for them to fish at that location.

(UCS) Our subcommittee's findings suggest that the impact of aquarium fish collecting at Pebble Beach is consistent with that of other areas open to collecting and that the case for "damage to corals and an alarming decline in aquarium fish populations" at Pebble Beach has been largely overstated by the Friends of Pebble Beach.

(UCS) However, as the Friends of Pebble Beach point out, "**There was no baseline (data) established for Ka'ohē Bay by the West Hawai'i Aquarium Project (WHAP) in 1998**". While the comments of all involved parties have been considered, the most weight must be assigned to the most objective credible, current information and those insights can only come from DAR. It is significant to note that both the Friends of Pebble Beach and Aquarium Fish Collectors endorse continuing research- each for different reasons. Fish Collectors want to insure a sustainable resource for harvest and Friends of Pebble Beach would like to use the same information to limit (or possibly eliminate?) harvest of aquarium fish.

(UCS) The discussion of sustainability is central to the evaluation of the issue of impact and future management. Regular monitoring by DAR (even if informal) in conjunction with organized public participation (Reef Watch) may be warranted in order to establish baseline information relevant to future resource management of the region.

Discussion and Recommendations

(UCS) Our User Conflicts Subcommittee finds there is currently insufficient biological justification for extending existing FRA boundaries. The most recent and credible information available demonstrates that the aquarium fish fishery is currently being managed for a sustainable future. In as much as this is the case, the user conflicts subcommittee cannot endorse the Friends of Pebble Beach's request to extend FRA boundaries to 'Au'au point.

(UCS) Our subcommittee does, however, recognize that a conflict remains between the residents of Pebble Beach and Aquarium Fish Collectors operating in the region. The user conflicts subcommittee would propose an FRA exchange effectively closing the area directly off Pebble Beach and a short distance to the north and south (approximately 1000 feet) to aquarium fish collecting while opening an area of equal distance and equitable economic significance to Aquarium Fish Collectors that is currently closed. This would serve the purposes of both eliminating collecting and related user conflict at Pebble Beach while maintaining the existing percentages of areas closed to aquarium fish collecting.

(UCS) our subcommittee feels this to be the most effective way to, 1) Resolve the current conflict and 2) Evaluate the intended flexibility of the FRA boundaries in conjunction with the results of DAR's 5-year study. This might also provide an opportunity to evaluate the effects of opening previously closed areas and may have significant future management implications of Marine Managed Areas. A swap such as the one suggested may prove to be the cloud's proverbial silver lining in this conflict.

(UCS) The Friends of Pebble Beach have indicated that, "**We do not seek a chunk of an FRA from somewhere else along the Kona Coast.**" The subcommittee suggests that we pursue the FRA "swap" and review available options only after having received confirmation from the Friends of Pebble Beach that these efforts will meet their objectives for resolving their use conflict.

Additionally, our subcommittee would like to endorse the continued involvement of the Pebble Beach community. The Reef Watch program should be continued and structured to provide specific baseline information regarding human use patterns and frequencies. Dr Walsh and Sara Peck are available to mentor the structure of these activities. This information may prove to be beneficial for future management considerations involving the Pebble Beach Community.

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**Synopsis of WHFC Species of Special Concern Rule Proposal**  
**Commencing October 2005**

David Dart, Subcommittee Chair

- Oct. 2005** Based on fishery trends and long term monitoring data, DAR presents two issues for the West Hawaii Fisheries Council (WHFC) Emerging Issues Sub Committee to consider: the potential for the development of a limited entry aquarium fishery in West Hawai'i, and a Species of Special Concern (SSC) List encompassing species which should (or should not) be harvested.
- Nov. 2005** Species of Special Concern subcommittee is formed with Bob Owens, Neil Dart, Doug Herkes, Paul Masterjohn and Donna Goodale volunteering. WHFC administrator, Marni Herkes will facilitate meetings until a chair is chosen. Manta Rays are discussed as an obvious choice for a SSC list.
- Jan. 2006** Tina Owens replaces Bob Owens on the SSC subcommittee and George Paleudis volunteers to be chair. One WHFC member expresses concerns that the aquarium collectors are the only fishermen without minimum size limits while two other members suggest that turtles should be included in the SSC list.
- Mar. 2006** Due to other obligations, George Paleudis steps down as chair of the subcommittee.
- May 2006** Neil Dart agrees to be chair of the subcommittee.

**Aug. 2006** Dr. Ivor Williams of DAR gives a background presentation on SSC to the WHFC

- Reef fish species have multiple values: to AQ trade, but also recreation, biodiversity, ecosystem function, even, in some cases, to other fisheries. Management needs to balance these values & uses.
- A number of fairly conspicuous species have declined in abundance over time – most obviously Bandit Angel. For other species which are naturally rare or very rare, it is very difficult and/or unfeasibly expensive to gather solid information on status/trends, but there is much anecdotal evidence that other species have also declined in recent decades (such as Hawaiian Turkeyfish).

=> There are grounds for at least being CONCERNED about potential impact of collecting on some species

Identifying Candidate 'Species of Concern'

- Selection criteria for considering species to be worthy of such extra protection would be that they:  
have declined OR are vulnerable to decline (by life-history, and/or natural low abundance) & value of aquarium species low relative to other values (so AQ\$ value low or other values high)
- Problem, as identified above, is that it is very difficult to gather sound evidence on status/trends of, and impacts of fishery on, majority of rare species. Those rare species are often the ones with most non-take values (they have biodiversity value, they are charismatic) and by virtue of being rare are potentially vulnerable to over-harvest even at relatively low levels of absolute catch.
- The West Hawaii AQ Fishery is VERY heavily focused on relatively small number of species (6 species make up 96% of value over last 3 years: Yellow tang, Kole, Chevron Tang, Achilles Tang, Clown Tang and Tinker's Butterfly; - 22 species make up 99% of value), so the great majority of species taken (141 species taken in West Hawaii in FY04-06) have very little individual or collective value. An alternative to listing 'species of concern' (those which cannot be taken), would be to limit take to a defined sub-group of taxa where there are not particular grounds for concern (making up e.g. 99% of total reported value).

Dr. Williams provided several possible approaches developing listings of prohibited species (or families) or alternatively listing those species which can be taken.

Up to this point there have been no reports to the WHFC from the SSC subcommittee.

**Jan. 2007** SSC subcommittee finalizes chart of work.

**The West Hawaii Fishery Council  
Species of Special Concern Subcommittee Commission**

## MISSION:

### **The subcommittee**

The subcommittee will develop guidelines for the research and recommendations concerning the species of special concern within the West Hawaii Management Area.

### **Authority and Relationships:**

The Species of Special Concern Subcommittee (SSCS) is a subcommittee of the West Hawaii Fishery Council (WHFC) and meets to perform those functions assigned to it by the WHFC and its actions are subject to review and approval by the WHFC. The SSCS has the authority to establish, from time to time such ad hoc groups, as it may be necessary to carry out its work.

### **Duties of the program committee:**

The SSCS shall meet a minimum of one time per month to review the following:

1. To assess the positions of the Aquarium/commercial/ traditional fishermen and women on limiting certain species of special concern.
2. To research what fisheries make an impact on the species of special concern, and to research which species are of concern and why.
3. To investigate the positions of the DLNR and DAR relevant to limiting species of special concern.
4. To report all outcomes to the WHFC and the WHFC Executive Committee on a scheduled basis.
5. To analyze information and formulate opinions available for submission to the WHFC and its Executive Committee.

## **The West Hawaii Fishery Council Species of Special Concern Subcommittee Chart of work**

Contact all fishermen and women concerned (fishermen/wholesale/retail) by a letter approved by the WHFC to get input on what species in which fishery is of concern and why.

1. Research other fisheries to see if no take/size limiting/or a daily limit of certain species has been successful.
2. Meet with DLNR and DAR about what would work for them.
3. Review all information discuss/brainstorm and come up with recommendations.
4. Present all information along with proposals to the WRFC at general meetings.

- Feb. 2007** SSC subcommittee "will look into commercial industries that require commercial licenses as well as what species they catch and why it may be a concern. The aquarium industry and hook fishing will be included. There are inquiries from Indonesia about the availability of manta rays and from China about a live reef fish fishery for roi which would be a certified product."
- Mar. 2007** Dr. Bill Walsh suggests that the subcommittee ask someone with manta ray expertise to join the committee.

- Apr. 2007** No report. Glennon Gingo reported that Tim Clark wants to be more involved with this subcommittee and he will get him in touch with Neil Dart. UHH graduate student Cody Chapin volunteered to help out also.
- May 2007** David Dart, in Neil Dart's absence, poses questions to the council and DAR regarding Dr. Ivor William's SSC list, such as, how does the committee determine how to set a standard, what is the concern, is there a shipping problem? Why are certain fish on the list? Etc. Dr. Bill Walsh suggests DAR discusses with SSC committee an alternate strategy and how to simplify the process. The council asks to see something from the subcommittee within the next quarter.
- Jun. 2007** David Dart will send the WHFC a draft letter/form or chart to send to aquarium retail stores and public aquariums about what species may be of concern to them. He would like to fast track manta rays.
- Aug. 2007** Letter and questionnaire were distributed and approved by the WHFC. SSC subcommittee will work with DAR to mail out questionnaire. Council thought questions were good, and wants to get their work done ahead of any federal rules coming down the pike.

**West Hawai'i Fisheries Council**  
**Species of Special Concern Subcommittee**  
**PO Box 5065**  
**Kailua-Kona, Hawai'i 96745**  
**Phone: 808-936-5821**  
**E-mail: [dartj001@hawaii.rr.com](mailto:dartj001@hawaii.rr.com)**

Aloha,

The **West Hawai'i Fisheries Council Species of Special Concern Subcommittee (WHFC-SSCS)**, would appreciate you sharing your expertise in identifying 'species of special concern' within the West Hawai'i Regional Fisheries Management Area (WHRFMA) which extends from Upolu Pt. to Ka Lae. Our current mission is to compile a list of special-concern species after close consultation and dialogue with community members and resource users. The list could potentially include, fishes collected for the aquarium industry, invertebrates, mollusks or any other species with intrinsic or economic value that are in need of management consideration. The information that you provide is a critical step to enhancing long-term sustainability for the species in the WHRFMA.

The **SSCS**, chartered in late 2006, is a subcommittee of the West Hawai'i Fisheries Council and is responsible for developing guidelines and recommendations concerning 'species of special concern' within the West Hawai'i Regional Fishery Management Area. The goals of the SSCS are to:

- Assess the positions of the aquarium/commercial/traditional fishers on limiting or eliminating the take of certain species of special concern.
- Investigate what fisheries could make an impact on the species of special concern, and to identify which species are of concern and why.
- Determine the position Division of Aquatic Resources /Department of Land & Natural Resources relevant to species of special concern.
- Analyze information and formulate recommendations for submission to the WHFC and its Executive Committee.
- Report all outcomes to the WHFC and the WHFC Executive Committee on a regular basis.

All functions assigned to and actions by the SSCS are subject to review and approval by the WHFC.

We greatly appreciate your help in this effort. A separate 'species of special concern' inquiry form has been included with this letter. A full listing of Hawaiian aquarium species has also been provided for aquarium industry participants, retailers, and public aquariums/zoos. Please complete the included form and return it in the post-marked envelope provided.

Mahalo,

Neil Dart  
Subcommittee President  
WHFC-SSCS

**West Hawai'i Fisheries Council**  
**Species of Special Concern Subcommittee**  
**PO Box 5065**  
**Kailua-Kona, Hawai'i 96745**  
**Phone: 808-936-5821**  
**E-mail: [dartj001@hawaii.rr.com](mailto:dartj001@hawaii.rr.com)**

***Aloha! Thank you for your contribution to this WHFC Species of Special Concern fact-finding mission. Remember your participation is greatly appreciated!***

Please indicate your answers with a  or  and provide your comments where appropriate.

**Check appropriate box:**  Commercial Fisher  Recreational Fisher  
 Traditional Fisher  Aquarium Collector  Aquarium Wholesaler  
 Aquarium Retailer  Public Aquarium/Zoo  
 Other: \_\_\_\_\_

**Listing of 'special concern species'. Please list the common name and scientific name (if you know) for any marine species you consider a species of special concern in need of additional management action. Also please indicate why you feel it is a species of special concern.**

**Example:**

**Common Name:** *Manta Ray*

**Scientific Name:** *Manta birostris*

**Why is this a 'special concern' species?** *The population is relatively limited along the West Hawai'i coastline and food fisheries exist for it elsewhere.....*

**Sep. 2007** David Dart introduced Wendy Laros of the Manta Pacific organization. The committee is expecting feedback from the questionnaires soon

**Oct. 2007** The subcommittee sent out questionnaires and received some feedback, even from 'Oahu. They have also sent letters to fishing groups and commercial licensees. There may be species of fish – such as roi- that West Hawai'i might want to encourage capture

to reduce the numbers. Alpine Air is donating the postage for these letters. It was noted to the Council that specific species recommendations are probably quite a time away.

- Nov. 2007** Subcommittee has sent out eight letters to aquarium wholesalers. They now will be able to begin a list with the data so far collected.
- Jan. 2008** Chair David Dart informs the WHFC that they are continuing to receive responses to their questionnaires. Dart indicates that "He does not feel the FRAs can replenish the area unless all fishing is banned". The DAR bag and gill net restrictions can benefit from the FRA's. David Dart is going to interview face to face and report. He will interview commercial marine licensees next. This should give him a broad view of opinions. The goal is to interview all permitted AQ fish collectors, including dive boats and day use mooring users.
- Feb. 2008** SSC subcommittee is working on a base list but has little feedback from local collectors. Bob Hajek said he would have his group – the Big Island Association of Aquarium Fishers (BIAAF) fill out the survey soon.
- Mar. 2008** Dr. Ivor Williams gives a presentation to the WHFC on 'DAR Perspective on SSC for West Hawai'i'. He presents relevant data and elaborates on the grounds for concern regarding certain species and reviews various options for action. DAR's preferred option is a list of permitted species (aka a 'white list') and a trial list is proposed. The list consists of 25 species which make up >99% of the value of the West Hawai'i aquarium catch for FY '05-'07. Snorkel Bob has provided the subcommittee with a list with 27 fish named.

An email from the Darts to Marni states that this is a contentious topic and they hope that DAR will "inject the needed urgency to complete a list for the council to view."

- Apr. 2008** Subcommittee reports that they cannot agree on one list. "The committee is not in favor of submitting any list and needs more scientific data to develop criteria for what should and should not be on this list."
- May 2008** David Dart notes that "This has been a long process with many emails, phone calls, and personal visits. The AQ survey brought out the comment that there was a question about whether a species list was needed with 35% of the coastline protected." The subcommittee did present a list however of what they feel is necessary for special care. They used several criteria for listing including population problems. It was noted that these species would not be the appropriate species for anywhere except West Hawai'i.

### **Species of Special Concern**

This species of special concern list is intended for West Hawai'i only extending from the northern boundary at Upolu Point to Ka Lae on the southern boundary, the area encompassing the West Hawai'i Regional Fisheries Management Area. This is not intended as a statewide list, as we recognize the different diversity of fish population throughout the main Hawaiian Islands.



The Species of Special Concern subcommittee recommends that a special provision be placed in effect to allow with a specific DAR permit, the limited harvesting of species from the list for scientific and/or educational purposes.

No animal listed on the SSC list will be allowed to be possessed or landed in the West Hawai'i Regional Fisheries Management area with the exception of a special permitted species for scientific or educational purpose.

No species of special concern will be allowed to be possessed dead or alive or possessed day or night in fish hold, baskets, or any other container.

A conviction for possessing a species of special concern, without a scientific or educational permit, will result in suspension of collecting license for one year.

It is of the opinion of the Species of Special Concern subcommittee that all species that warrant listing on this list are protected from all forms of take/fishing. All fish listed on the subcommittee's list have a population problem and subsequently no user group should be allowed to take for any reason.

Other criteria including population problems:

1. Necessary for the health of the reef.
2. Survivability in captivity.
3. Economic value to tourism.
4. Population problems.

- =====
1. All Rays - population concerns, economic value to tourism
  2. Triton Trumpet - mollusk - population concern, necessary for the health of the reef
  3. Hawaiian Turkeyfish - population concerns, economic value to tourism
  4. Psychedelic Wrasse - *Anampses chrysocephalus* - population concerns, survivability in captivity
  5. Reticulated Butterfly fish - *Chaetodon reticulatus* - population concerns
  6. Trifasciatus Butterfly fish - *Chaetodon trifasciatus* - population concerns
  7. Ornate Butterfly fish - *Chaetodon ornatissimus* - population concerns, survivability in captivity
  8. Saddleback Butterfly fish - *Chaetodon ephippium* - population concerns
  9. Hawaiian Cleaner Wrasse - *Labroides phthirophagus* - health of the reef population, the doctors of the sea
  10. Commerson's Frog Fish - *Antennarius commersonii* - population concerns
  11. Longnose Butterfly fish - *Forcipiger longirostris* - survivability in captivity, population concerns
  12. Blue Strip Butterfly fish - *Chaetodon fremblii* - population concerns
  13. Thornback Cowfish - *L. fornasini* - population concerns
  14. Lined Butterfly fish - *Chaetodon lineolatus* - population concerns
  15. All Sharks - population concerns, health of reef consideration

**Jun. 2008** Continued discussion on DAR's suggestion for a 'white list' of permitted aquarium species. DAR reported that West Hawai'i ocean recreation operators were contacted to solicit their input on which species they considered to be 'species of special concern' in need of additional protections. Nine operators responded.

No report from SSC subcommittee.

**Oct. 2008** Dr Bill Walsh of DAR gave another presentation on the species of special concern initiative. A summary was provided of the various lists that have been compiled of proposed restricted species and those in need of conservation attention. The lists included those from 1) Hawaii Statewide Aquatic Wildlife Conservation Strategy (SAWCS) – 156 marine fishes, 2) DAR (2008) proposed restricted species list (>70 marine fishes), 3) Maui Tropical Fish Association (23 marine fishes), 4) W. HI Ocean Recreation Operators (>24 species), and 5) the WHFC SSC (>20 species).

Based on ecological concerns, population trends and/or catch data DAR recommended that 3 species be removed from the proposed 'white list'. These included Bandit angelfish, Hi Cleaner wrasse and Dragon Moray. Three introduced species (roi, taape & toau) were added. The permitted list represents 98.7 of the total value of the West Hawaii'i aquarium fishery averaged over the past 3 fiscal years. The proposed recommendations also included a number of 'charismatic' and culturally important species as well as a bag limit (5) for large (>5") yellow tang.

| West Hawaii Fisheries Council<br>Species of Special Concern Recommendation<br>Approved 16 October, 2008 |                                  |                                  |
|---------------------------------------------------------------------------------------------------------|----------------------------------|----------------------------------|
| Within the West Hawaii Regional Fisheries Management Area the following shall apply:                    |                                  |                                  |
| A. <u>Only the following species may be collected for Aquarium purposes:</u>                            |                                  |                                  |
| Common Name                                                                                             | Scientific Name                  | Hawaiian (local) Name            |
| Yellow Tang                                                                                             | <i>Zebrasoma flavescens</i>      | <i>lau'ipala</i>                 |
| Chevron Tang                                                                                            | <i>Ctenochaetus hawaiiensis</i>  | black <i>kole</i>                |
| Goldring Surgeonfish                                                                                    | <i>Ctenochaetus strigosus</i>    | <i>kole</i>                      |
| Achilles Tang                                                                                           | <i>Acanthurus achilles</i>       | <i>pāku'iku'i</i>                |
| Tinker's Butterflyfish                                                                                  | <i>Chaetodon tinkeri</i>         |                                  |
| Orangespine Unicornfish                                                                                 | <i>Naso lituratus</i>            | <i>umaumalei</i>                 |
| Forcepsfish                                                                                             | <i>Forcipiger flavissimus</i>    | <i>lauwiliwilinukunuku'oi'oi</i> |
| Goldrim Surgeonfish                                                                                     | <i>Acanthurus nigricans</i>      |                                  |
| Potter's Angelfish                                                                                      | <i>Centropyge potteri</i>        |                                  |
| Fourspot Butterflyfish                                                                                  | <i>Chaetodon quadrimaculatus</i> | <i>lauhau</i>                    |
| Yellowtail Coris                                                                                        | <i>Coris gaimard</i>             | <i>hinālea 'akilolo</i>          |
| Ornate Wrasse                                                                                           | <i>Halichoeres ornatissimus</i>  | <i>ōhua</i>                      |
| Orangeband Surgeonfish                                                                                  | <i>Acanthurus olivaceus</i>      | <i>na'ena'e</i>                  |
| Bird Wrasse                                                                                             | <i>Gomphosus varius</i>          | <i>hinālea 'i'iwi</i>            |
| Unicorn spp.                                                                                            | Other <i>Naso spp.</i>           | <i>kala</i>                      |
| Eyestripe Surgeonfish                                                                                   | <i>Acanthurus dussumieri</i>     | <i>palani</i>                    |
| Multiband Butterflyfish                                                                                 | <i>Chaetodon multicinctus</i>    | <i>kikākapu</i>                  |
| Saddle Wrasse                                                                                           | <i>Thalassoma duperrey</i>       | <i>hinālea lauwili</i>           |
| Brown Surgeonfish                                                                                       | <i>Acanthurus nigrofuscus</i>    | <i>māi'i'i'</i>                  |
| Moorish Idol                                                                                            | <i>Zanclus cornutus</i>          | <i>kihikihi</i>                  |
| Flame Wrasse                                                                                            | <i>Cirrhilabrus jordani</i>      |                                  |
| Thompson's Surgeonfish                                                                                  | <i>Acanthurus thompsoni</i>      |                                  |

|                                                                                                        |                                   |                     |
|--------------------------------------------------------------------------------------------------------|-----------------------------------|---------------------|
| Peacock Grouper                                                                                        | <i>Cephalopholis argus</i>        | <i>roi</i>          |
| Bluestripe Snapper                                                                                     | <i>Lutjanus kasmira</i>           | <i>taape</i>        |
| Blacktail Snapper                                                                                      | <i>Lutjanus fulvus</i>            | <i>toau</i>         |
| B. <u>For all take of yellow tang &gt;5” (Total Length) there is a bag limit of 5 fish/person/day.</u> |                                   |                     |
| C. <u>All take of the following species is prohibited:</u>                                             |                                   |                     |
| Manta Rays                                                                                             | <i>Manta &amp; Mobula spp.</i>    | <i>hahalua</i>      |
| Spotted Eagle ray                                                                                      | <i>Aetobatus narinari</i>         | <i>hīhīmanu</i>     |
| Broad Stingray                                                                                         | <i>Dasyatis lata</i>              |                     |
| Pelagic Stingray                                                                                       | <i>Pteroplatytrygon violacea</i>  |                     |
| Hawaiian Stingray                                                                                      | <i>Dasyatis hawaiiensis</i>       |                     |
| Tiger Shark                                                                                            | <i>Galeocerdo cuvier</i>          | <i>Manō/niuhi</i>   |
| Whale Shark                                                                                            | <i>Rhincodon typus</i>            | <i>lele wa'a</i>    |
| Whitetip Reef Shark                                                                                    | <i>Triaenodon obesus</i>          | <i>manō lālākea</i> |
| Blacktip Reef Shark                                                                                    | <i>Carcharhinus melanopterus</i>  | <i>manō pā'ele</i>  |
| Gray Reef Shark                                                                                        | <i>Carcharhinus amblyrhynchos</i> | <i>manō</i>         |
| Triton's Trumpet*                                                                                      | <i>Charonia tritonis</i>          | <i>'olē</i>         |
| Horned Helmet*                                                                                         | <i>Cassis cornuta</i>             | <i>pū puhi</i>      |
| *Cultural harvesting by permit                                                                         |                                   |                     |

Following discussion a motion was made accept the species of special concern recommendation. The motion was approved 11-1.

The rule recommendation transmitted to DAR Honolulu on 27 October, 2008.

- Mar. 2009** WHFC makes inquiry to DAR Administrator, Dr. Dan Polhemus, regarding status of WHRFA rules. No Response.
- Jul. 2009** DAR Kona makes inquiry to DAR Administrator regarding status of WHRFMA rules. No Response
- Sep. 2009** DAR Kona again makes inquiry to DAR Administrator regarding status of WHRFMA rules. Administrator responds noting the ‘evolving’ nature of the rule package has delayed action. He indicates that rule will be reviewed by DAR Legal Fellow and if approved internally it will then be sent to DLNR Chairperson, Laura Thielen, with a request for authorization for AG review.
- Draft rule package resubmitted to DLNR chairperson. “Species of Special Concern” take prohibition and “White List” of 25 aquarium collectible species now included.
- Oct. 2009** DAR Administrator, Dr. Dan Polhemus, submits draft rule package to DLNR Administrator for approval to bring to BLNR.
- Nov. 2009** DLNR Chair approves DAR AG request and Board submittal for the WHRFMA rules.
- Dec. 2009** WHRFMA draft rule package sent to AG’s office for review.

**Feb. – Jul. 2010** AG review of WHRFMA rule.

**Aug. 2010 – Jan. 2011** DAR negotiations with Big Island Association of Aquarium Fishers (BIAFF) regarding white list, size and bag limits. The BIAFF represents 37 official members (7 pending) as of September 9, 2010.

**Sep. 2010** Expanded white list of 40 species presented to WHFC and unanimously approved. Moorish idol and Naso tangs removed from original list. Kole size/bag limit for aquarium collectors of 5 fish >4.5" TL per person/day introduced. DAR notes that no action on kole bag limit is required or requested of the WHFC. The kole bag limit (AQ fishers only) will be incorporated in draft WHRFMA rule.

**Species of Special Concern ‘White List’ of Species Permitted for Aquarium Collecting  
Approved by the WHFC & BIAFF  
September 2010**

|    | Common Name              | Scientific Name                  |
|----|--------------------------|----------------------------------|
| 1  | Yellow Tang              | <i>Zebrasoma flavescens</i>      |
| 2  | Chevron Tang             | <i>Ctenochaetus hawaiiensis</i>  |
| 3  | Goldring Surgeonfish     | <i>Ctenochaetus strigosus</i>    |
| 4  | Achilles Tang            | <i>Acanthurus achilles</i>       |
| 5  | Tinker’s Butterflyfish   | <i>Chaetodon tinkeri</i>         |
| 6  | Orangespine Unicornfish  | <i>Naso lituratus</i>            |
| 7  | Forcepsfish              | <i>Forcipiger flavissimus</i>    |
| 8  | Goldrim Surgeonfish      | <i>Acanthurus nigricans</i>      |
| 9  | Potter’s Angelfish       | <i>Centropyge potteri</i>        |
| 10 | Fourspot Butterflyfish   | <i>Chaetodon quadrimaculatus</i> |
| 11 | Yellowtail Coris         | <i>Coris gaimard</i>             |
| 12 | Ornate Wrasse            | <i>Halichoeres ornatissimus</i>  |
| 13 | Orangeband Surgeonfish   | <i>Acanthurus olivaceus</i>      |
| 14 | Bird Wrasse              | <i>Gomphosus varius</i>          |
| 15 | Eyestripe Surgeonfish    | <i>Acanthurus dussumieri</i>     |
| 16 | Multiband Butterflyfish  | <i>Chaetodon multicinctus</i>    |
| 17 | Saddle Wrasse            | <i>Thalassoma duperrey</i>       |
| 18 | Brown Surgeonfish        | <i>Acanthurus nigrofuscus</i>    |
| 19 | Flame Wrasse             | <i>Cirrhilabrus jordani</i>      |
| 20 | Thompson’s Surgeonfish   | <i>Acanthurus thompsoni</i>      |
| 21 | Peacock Grouper          | <i>Cephalopholis argus</i>       |
| 22 | Bluestripe Snapper       | <i>Lutjanus kasmira</i>          |
| 23 | Redbarred Hawkfish       | <i>Cirrhitops fasciatus</i>      |
| 24 | Psychedelic Wrasse       | <i>Anampses chrysocephalus</i>   |
| 25 | Hi Whitespotted Toby     | <i>Canthigaster jactator</i>     |
| 26 | Fisher’s Angelfish       | <i>Centropyge fisheri</i>        |
| 27 | Hi Dascyllus             | <i>Dascyllus albisella</i>       |
| 28 | Milletseed Butterflyfish | <i>Chaetodon miliaris</i>        |
| 29 | Blacklip Butterflyfish   | <i>Chaetodon kleinii</i>         |
| 30 | Pyramid Butterflyfish    | <i>Hemitaurichthys polylepis</i> |
| 31 | Shortnose Wrasse         | <i>Macropharyngodon geoffroy</i> |

|    |                    |                                    |
|----|--------------------|------------------------------------|
| 32 | Black Durgon       | <i>Melichthys niger</i>            |
| 33 | Spotted Boxfish    | <i>Ostracion meleagris</i>         |
| 34 | Blackside Hawkfish | <i>Paracirrhites forsteri</i>      |
| 35 | Hi Longfin Anthias | <i>Pseudanthias hawaiiensis</i>    |
| 36 | Eightstripe Wrasse | <i>Pseudocheilimus octotaenia</i>  |
| 37 | Fourstripe Wrasse  | <i>Pseudocheilimus tetrataenia</i> |
| 38 | Smalltail Wrasse   | <i>Pseudojuloides cerasinus</i>    |
| 39 | Lei Triggerfish    | <i>Sufflamen bursa</i>             |
| 40 | Gilded Triggerfish | <i>Xanthichthys auromarginatus</i> |

- Sep. 2010** The Big Island Association of Aquarium Fishermen (BIAAF) passes the following resolution:
1. The 40 species White List, as per the list found with the supplied attachment entitled, "Species of Special Concern 'White List' of Species Permitted for Aquarium Collecting", for Aquarium Fishing within the WHRFMA.
  2. A bag limit of 5 fish, per day, per fisherman, on large ( $\geq 5"$ ) reproductively mature yellow tangs (*Zebrasoma flavescens*).
- Oct. 2010** AG recommends original WHRFMA rule be repealed and new proposed rules be included in a new chapter.
- Dec. 2010** DAR adds Achilles tang bag limit of 10 fish/person/day (aquarium collectors only) to WHRFMA draft rule.
- Jan. 2011** DAR adds Yellow tang slot limit of 5 fish  $<2"$ TL & 5 fish  $>4.5"$  per person/day (all fishers) to WHRFMA draft rule. Approved by BIAAF.
- May 2011** Rewritten WHRFMA rule is sent to DNLR Chairperson for approval to resend to AG.
- Jun. 2011** Restructured rule package (with additional related chapter changes) approved by DLNR Chair and resent to AG's office. Rule package assigned to another Deputy AG for review.
- Mar. 2012** Deputy AG approves WHRFMA Rule package which includes SCUBA spearfishing prohibition, Pebble Beach aquarium closure, Species of Special Concern take prohibition, 40 aquarium collectible species "White List" and three aquarium species size and/or bag limits.
- May 2012** Board of Land & Natural Resources (BLNR) approves request to hold Public Hearing on WHRFMA Rule package.
- Jun. 2012** Small Business Regulatory Review Board (SBRRB) approves request to hold Public Hearing on WHRFMA Rule package.
- Sep. 2012** Governor approves request to hold Public Hearing on WHRFMA Rule package.

The following is a list of people who have directly participated in the discussion and development of the West Hawai'i Regional Fishery Area Rule. Please excuse any omissions or misspellings.

Bold names are those folks who have been members of the West Hawai'i Fisheries Council (WHFC). Special acknowledgement goes to the following WHFC members who passed away before the Rule could be realized: Josephine Kamoku, Ernest Kanehailua Jr., Junior Kanuha, Gerry Lange, Ruby McDonald, Bob Owens, Walter Paulo and Doug Robbins.

|               |                  |              |               |                |                   |
|---------------|------------------|--------------|---------------|----------------|-------------------|
| <b>Edward</b> | <b>Ahuna Jr.</b> | Richard      | Beesow        | Brent          | Carman            |
| Kanoe         | Adlawan          | Andrew       | Behic         | <b>Noa</b>     | Carman            |
| Pua           | Aiu              | Rory         | Belanio Sr.   | Jaylyn         | Casuga            |
| Ayou          | Akau             | Ka'ikapono   | Benson        | Nikko          | Casuga            |
| Alex          | Alcantau         | Clayton      | Benton        | <b>Ben</b>     | <b>Casuga Jr.</b> |
| Al            | Allen            | Mike         | Berman        | David          | Chai              |
| Jerry         | Allen            | Hannah       | Bernard       | Cody           | Chapin            |
| Eric          | Andersen         | Jean         | Bevan-Marquez | Arthur         | Ching             |
| Kristina      | Anderson         | Charles      | Birkeland     | Henry          | Cho III           |
| Todd          | Andrews          | Ralph        | Blancato      | <b>Lisa</b>    | <b>Choquette</b>  |
| Laura         | Aquino           | Stan         | Blankenship   | Kendra         | Choquette         |
| Zachary       | Aragio           | Jim          | Blankenship   | Linda          | Chow              |
| Jim           | Aronsen          | William      | Blok          | Walsh          | Chris             |
| Louis         | Arraujo          | Sandra       | Borek         | Theresa        | Chung             |
| Precious      | Arraujo          | Kater        | Bourdon       | Dennis         | Civtas            |
| Promice       | Arraujo-Medeiros | Donald       | Bowers        | Jeremy         | Claisse           |
| Betsy         | Atkin            | Bob          | Bowman        | Tim            | Clark             |
| Scott         | Atkinson         | <b>Scott</b> | <b>Brien</b>  | Eric           | Co                |
| Leila         | Atkinson         | <b>Jody</b>  | <b>Bright</b> | Theresa        | Coble             |
| Patrick       | Aune             | Richard      | Brock         | Eric           | Cohen             |
| Brandon       | Aurelto          | Natash       | Brooks        | Adams          | Cole              |
| Hannah        | Awa              | Brandy       | Brumbaugh     | Keith          | Colvin            |
| Joshua        | Awa              | Teresa       | Bryant        | Suzanne        | Cooter            |
| Blaisdell     | Ayau             | Leah         | Bunce         | Stefisch       | Cornacchio        |
| Roni          | Ayau             | Sandra       | Burck         | Paulo          | Cosia             |
| Bill          | Ayou             | Alexandra    | Burnett       | Stephen        | Cotton            |
| Sandra        | Barck            | Joe          | Bussing       | Fred           | Cowell            |
| Ed            | Barnett          | Michael      | Buurnham      | Nick           | Craig             |
| Camille       | Barnett          | Robert       | Cabos         | Bruz           | Cramer            |
| <b>Pete</b>   | <b>Basabe</b>    | Alex         | Cadang        | Earl           | Crozier           |
| Bertha        | Basabe           | Healani      | Cahill        | <b>Patrick</b> | <b>Cunningham</b> |
| Stephen       | Bauman           | Zack         | Caldwell      | Lemana         | DaMate            |
| Mark          | Beard            | Wilton       | Camara        | Robert         | DaMate            |
| Jeff          | Bearman          | Claudia      | Capitini      | Roy            | Damron            |
| Sallie        | Beavers          | Eva          | Carillo       | Waren          | D'Aquin           |

|                |                   |                    |                |               |                 |
|----------------|-------------------|--------------------|----------------|---------------|-----------------|
| <b>David</b>   | <b>Dart</b>       | Steven             | Fox            | Roger         | Henderson       |
| Neil           | Dart              | James              | Francomano     | Pete          | Hendricks       |
| Matthew        | D'Avella          | Alan               | Friedlander    | <b>Mike</b>   | <b>Henshaw</b>  |
| Chris          | Davis             | Zara               | Fujiwara       | Mark          | Henshaw         |
| Gary           | Dean              | Sara               | Fuller         | Marni         | Herkes          |
| Chris          | Debina            | Greg               | Furer          | <b>Doug</b>   | <b>Herkes</b>   |
| Palikapu       | Dedman            | <b>Rick</b>        | <b>Gaffney</b> | Jordan        | Hill            |
| Barbara        | DeFranco          | Miko               | Gal            | Hillburn      | Hillestad       |
| Kila           | DeMello           | Tommy              | Gaspar         | Eva           | Hillman         |
| Kimber         | DeVerse           | Chris              | Gaughen        | Kevin         | Hineey          |
| Kawika         | Devine            | Cathleen           | Gehrherdt      | Dave          | Hirt            |
| Kathy          | Devine            | <b>Doug</b>        | <b>Genovia</b> | Mark          | Hixon           |
| Lisa           | Diaz              | Mouna              | Ghonos         | Jim           | Holt            |
| Jan            | Dierking          | Inga               | Gibson         | Peter         | Hoogs           |
| Roger          | Dilts             | Jonatha            | Giddens        | <b>David</b>  | <b>Hoopaugh</b> |
| Steven         | Dollar            | Martin             | Gilbert        | <b>Kai</b>    | <b>Hoover</b>   |
| Jeff           | Donato            | <b>Glennon</b>     | <b>Gingo</b>   | John          | Hoover          |
| Mike           | Donoho            | Jason              | Goeptench      | Jon           | Hopcia          |
| Jim            | Donovan           | Kathy              | Golitzen       | Marileez      | Hopcia          |
| Judy           | Donovan           | Peter              | Golitzen       | Steven        | Howard          |
| Dick           | Dresie            | Nakoa              | Goo            | Lani          | Hua             |
| <b>Fred</b>    | <b>Duerr</b>      | Rick               | Gordon         | Melissa       | Hua             |
| Tom            | Dunstan           | Eric               | Gorloff        | George        | Hua Sr.         |
| Danielle       | Eaton             | Colin              | Gould          | Marc          | Hughes          |
| Kalehua        | Eaton             | Bill               | Graham         | Yeaman        | Imaikalani      |
| Jeff           | Eble              | Josh               | Green          | Virginia      | Isbell          |
| Marsha         | Eckert            | Regina             | Gregory        | Kealani       | Ishi            |
| Hans           | Eckert            | David              | Gulko          | Paul          | Ishikuro        |
| Barbara        | Eldridge          | <b>Robert</b>      | <b>Hajek</b>   | <b>Kahana</b> | <b>Itozaki</b>  |
| Duane          | Erway             | Lisa               | Hallet         | Karen         | Iwamoto         |
| Courtney       | Esprecision       | Conor              | Halligan       | John          | Jacobsen        |
| Alfred         | Estenscion        | Geoff              | Hand           | Jeff          | Jarvis          |
| Cindy          | Evans             | Ann                | Hansen         | Chris         | Jasper          |
| Cora           | Ezel              | Ted                | Hardie         | Danielle      | Jayewardene     |
| Jeffery        | Fear              | Issac              | Harp           | Steven        | Johnson         |
| Glen           | Felton            | Dennis             | Hart           | Christian     | Kahawai         |
| Phil           | Fernandez         | Kaleo              | Hart           | Gilbert       | Kahele          |
| Randy          | Fernley           | <b>Lunakanawai</b> | <b>Huanio</b>  | Kainoa        | Kahele          |
| Robert         | Flaherty          | John               | Haut           | Kapono        | Kahele          |
| Bob            | Flatt             | Lt. Mike           | Heisler        | John          | Kahiapo         |
| <b>Michael</b> | <b>Forcum Sr.</b> | Patrice            | Heller         | Albert        | Kahoopii        |
| Ken            | Fowler            | Rob                | Hemsher        | Malai         | Kahulamu        |

|                  |                       |                 |                |               |                     |
|------------------|-----------------------|-----------------|----------------|---------------|---------------------|
| Colbert          | Kaimiola              | <b>Matthias</b> | <b>Kusch</b>   | Kaleo         | Malina              |
| Georgine         | Kaimiola              | Carrie          | Kuwada         | Mel           | Malinowski          |
| Abe              | Kamakawuwoole         | Calvin          | Lai            | Trish         | Malone              |
| Dusten           | Kameta                | Calvin          | Lai Jr.        | Michael       | Manlapit            |
| <b>Josephine</b> | <b>Kamoku</b>         | <b>Gerry</b>    | <b>Lange</b>   | Mark          | Manuel              |
| Jerry            | Kane                  | Wendy           | Laros          | Tate          | Marks               |
| <b>Ernest</b>    | <b>Kanehailua Jr.</b> | Keller          | Laros          | Jan           | Marsh               |
| <b>Junior</b>    | <b>Kanuha</b>         | Ashley          | Later          | Gerry         | Martin              |
| Clement          | Kanuha Sr.            | Ken             | Later          | Sharona       | Martines            |
| Gina             | Karratti              | Colin           | Lau            | David         | Martinson           |
| Rebekah          | Kaufman               | Joe             | Laughlin       | Steven        | Marylander          |
| <b>Willie</b>    | <b>Kaupiko</b>        | <b>Stan</b>     | <b>Lavine</b>  | <b>Paul</b>   | <b>Masterjohn</b>   |
| Geno             | Kaupiko               | Reggie          | Lee            | Paulo         | Maurin              |
| Lei              | Kaupu                 | Nova            | Lee            | Brian         | McCaul              |
| Andrea           | Kawabata              | <b>Kawika</b>   | <b>Leicher</b> | Violet        | McCormick           |
| Michael          | Kawamoto              | Jeff            | Leicher        | Thomas        | McCormick           |
| Suzanne          | Kawamoto              | David           | Lelm           | Dennis        | McCrea              |
| Karista          | Kaye                  | <b>Gordon</b>   | <b>Leslie</b>  | <b>Ruby</b>   | <b>McDonald</b>     |
| Patty            | Kealoha               | Wayne           | Leslie         | Mark          | McGuffie            |
| Fern             | Kealoha               | Turner          | Lett           | Jan           | McLaughlin          |
| <b>Jacob</b>     | <b>Keanaaina</b>      | Andy            | Levin          | Greg          | McLaughlin          |
| Larry            | Keen                  | Clint           | Lewi           | Jan           | McLaughlin          |
| John             | Kellam                | Teri            | Leicher        | Leslie        | McLees              |
| Sue              | Kellam                | Laura           | Livnat         | Sara          | McTee               |
| <b>Damien</b>    | <b>Kenison</b>        | Ziggy           | Livnat         | Dwayne        | Meadows             |
| Glendora         | Kenison               | Darrell         | Lopez          | John          | Medeiros            |
| John             | Keolanui              | <b>Jeffery</b>  | <b>Lorance</b> | <b>Jim</b>    | <b>Medeiros Sr.</b> |
| Janice           | Kerr                  | Helen           | Lorance        | Dan           | Mederios            |
| John             | Kim                   | Jeffery         | Lornal         | Mike          | Melear              |
| Keith            | Kimi                  | <b>Len</b>      | <b>Losalio</b> | Gena          | Mendez              |
| Jeff             | Kinimaka              | Mary            | Love           | Dan           | Mersburgh           |
| <b>Malia</b>     | <b>Kipapa</b>         | Jack            | Lovell         | Thomas        | Mersburgh           |
| <b>Guy</b>       | <b>Kitaoka</b>        | Hugh            | Lovell         | <b>Steven</b> | <b>Meyer</b>        |
| Eric             | Koch                  | Michael         | Lowenthal      | Eli           | Michael             |
| Jill             | Komoto                | Carolyn         | Lucas          | Michael       | Miereanu            |
| Vicky            | Konetani              | Marissa         | Lucena         | Thomas        | Miguel              |
| <b>Lily</b>      | <b>Kong</b>           | Cal             | Lum            | Nicole        | Milligan            |
| Glenlee          | Kong                  | Steven          | Mahelona       | Mike          | Milligan            |
| Keoni            | Kong                  | Lydia           | Mahi           | Chester       | Mitamura            |
| Russel           | Kong Lee              | Bruce           | Malasky        | Patrick       | Mitchell            |
| Don              | Koshiro               | Kathy           | Malasky        | Kim           | Moffie              |
| Barbara          | Kossow                | Kurt            | Malina         | Byron         | Moku                |



Jan Moon  
Sarah Moon  
Anthony Moreno  
Betsy Morrigan  
Alton Murakame  
Wesley Murakami  
Nancy Murphy  
Bill Murray  
Ann Murray  
Milt Myser  
Tony Nahacky  
**Mike Nakachi**  
**Teresa Nakama**  
Kyle Narimasu  
Goodale Nathaniel  
Danny Navarro  
**Cynthia Nazara**  
Dickie Nelson  
Mike Nelson  
Esther Nelson  
Kim New  
Robin Newbold  
Vicky Newman  
Gerald Newman  
Jason Ng  
Kamaile Nichols  
Casuga Nicko  
Michael Niereanu  
Kihe Sali Nihu  
Garrett Nishihara  
Robert Nishimoto  
Alain O'Connor  
Arvid Ohe  
Rick Oliver  
Delisse Ortiz  
Kara Osada-D'Avella  
Jan Ostman-Lind  
**Frank Ota Jr.**  
**Bob Owens**  
**Tina Owens**  
Sonny Paalua  
Vicki Pacatang

Abel Pacatang Jr.  
Pedro Padillio  
Todd Pakani  
**George Paleudis**  
Kristen Paleudis  
Tom Parker  
Todd Parkinson  
John Parks  
Meg Parrish  
Jim Parrish  
Nathan Pascual  
Jim Passon  
Mike Patterson  
**Walter Paulo**  
Jerome Paulo  
Neil Paulsen  
Pat Pearlman  
Sara Peck  
Colby Pedefferri  
Erica Perez  
Judy Perino  
Doug Perrine  
Patty Peters  
Dan Polhemus  
Amber Pollard  
Gary Post  
Leroy Prange  
Linda Preskitt  
**Richard Prohoroff**  
Ginger Pua  
Shelby Pudwell  
Puaita Pulotu  
Noelani Puniwai  
Chris Ragura  
Jack Randall  
Bolo Ray  
Taran Reese  
Clarence Rengulbai  
Lance Rengulbai  
Shiryl Richards  
**William Rickards**  
Dana Riddle

Hernan Rikkers  
**Doug Robbins**  
Paul Robinson  
Blaine Rogers  
Jeff Rogers  
**JR Rosario**  
Steven Rose  
Matthew Ross  
Shane Rumsey  
Mike Sakamoto  
**Dale Sarver**  
Sandra Scarr  
Jay Scharf  
Brian Schatz  
Christiane Schmidt  
John Scott  
Lydia Sease  
Janna Shackeroff  
Phoebe Shackeroff  
**Robert Shallenberger**  
Linda Shea Flanders  
Scott Shero-Amba  
Ilima Shim  
Tom Shockley  
Dave Shoup  
Sandra Siegel  
Jay Skeldrake  
Andy Smith  
Paulette Smith  
Kim Smith  
Rhine Smith  
Adam Snodgrass  
Dave Sommers  
Richard Spiegel  
Alfred Spinney  
**Hannah Springer**  
Pat Sistolfa  
Kristen St. Pierre  
Kosta Stamoulis  
John Stevens  
Shandon Stevens  
Todd Stevenson

Rom  
**Joseph**  
Tim  
**Bill**  
Bob  
Michael  
Momi  
Joe  
Carmen  
Shawn  
Derrick  
Ronald  
Ret  
**William**  
Wallace  
Sonny  
Wayne  
David  
Tom  
Damien  
Tyron  
Bryson  
Slyvia  
Kim  
John  
Brian  
Alika

Steward  
**Stewart**  
Stewart  
**Stockly**  
Streit  
Stroschein  
Subiono  
Sudol  
Sumida  
Sumida  
Sumida  
Taisare  
Talbot  
**Talley III**  
Tamaye  
Tanabe  
Tanaka  
Tarnas  
Tatum  
Teiran  
Terazono  
Terazono  
Texeira  
Thompson  
Thompson  
Tissot  
Tolzmann

Kala  
Kaleolani  
Terry  
Mike  
Raynard  
**Leonard**  
Ginger  
Katharina  
Sebastian  
Donna  
Ann  
Kanao  
Rene  
Bill  
Stephanie  
Deron  
Justin  
Ginger  
Bill  
Becky  
Bill  
Brian  
Sherman  
**Paul**  
Corinne  
Richard  
Porter

Tolzmann  
Tolzmann  
Tolzmann  
Tomich  
Torres  
**Torriger**  
Towle  
Tritz  
Troeng  
Tucker  
Tunney  
Uchino  
Umberger  
Unruh  
Vancil  
Verbeck  
Viezbicke  
Vogler  
Walsh  
Walton  
Walton  
Wargo  
Warner  
**Warren**  
Watanabe  
Watanabe  
Watson

Lisa  
Ardeth  
**Andrew**  
Paul  
Rob  
Craig  
Nicholas  
Haley  
**Chad**  
Ivor  
Ross  
James  
Andy  
Tommy  
Maxine  
Cody  
Dianne  
**Vern**  
Garth  
Jared  
**Charles**  
Peter  
Leonard  
Jim  
Jill  
Zack  
Nancy

Wedding  
Weed  
**West**  
Whalen  
White  
White  
Whitney  
Whiturg  
**Wiggins**  
Williams  
Wilson  
Wing  
Woener  
Wright  
Wright  
Yagi  
Yamaguchi  
**Yamanaka**  
Yamanaka  
Yamanaka  
**Young**  
Young  
Young  
Zamzon  
Zamzow  
Zorn  
Zorn

| West Hawai'i Fisheries Council                   |                     |     |                |
|--------------------------------------------------|---------------------|-----|----------------|
| Members 1998-2012                                |                     |     |                |
| Self-Identified Fishers/Harvesters in Bold Print |                     |     |                |
| Last Name                                        | First Name          | CML | Current Member |
| <b>Ahuna Jr.</b>                                 | <b>Edward</b>       | X   |                |
| <b>Basabe</b>                                    | <b>Pete</b>         | X   |                |
| Brien                                            | Scott               | X   | x              |
| <b>Bright</b>                                    | <b>Jody</b>         |     |                |
| <b>Casuga Jr.</b>                                | <b>Ben</b>          | X   |                |
| Choquette                                        | Lisa                |     |                |
| <b>Cunningham</b>                                | <b>Patrick</b>      | X   | x              |
| <b>Dart</b>                                      | <b>David</b>        | X   | x              |
| <b>Dart</b>                                      | <b>Neil</b>         | X   |                |
| <b>Duerr</b>                                     | <b>Fred</b>         |     |                |
| <b>Forcum Sr.</b>                                | <b>Michael</b>      | X   |                |
| <b>Gaffney</b>                                   | <b>Rick</b>         | X   |                |
| <b>Genovia</b>                                   | <b>Doug</b>         |     |                |
| <b>Gingo</b>                                     | <b>Glennon</b>      |     | x              |
| Goodale                                          | Donna               |     | x              |
| <b>Hajek</b>                                     | <b>Robert</b>       | X   | x              |
| <b>Hauanio</b>                                   | <b>Luanakanawai</b> |     |                |
| Henshaw                                          | Mike                |     |                |
| <b>Herkes</b>                                    | <b>Doug</b>         |     | x              |
| Hoopagh                                          | David               |     |                |
| <b>Hoover</b>                                    | <b>Kai</b>          | X   |                |
| <b>Itozaki</b>                                   | <b>Kahana</b>       |     |                |
| <b>Kamoku</b>                                    | <b>Josephine</b>    |     |                |
| <b>Kanehailua Jr.</b>                            | <b>Ernest</b>       |     |                |
| <b>Kanuha</b>                                    | <b>Junior</b>       | X   |                |
| <b>Kaupiko</b>                                   | <b>Willie</b>       | X   |                |
| <b>Keanaaina</b>                                 | <b>Jacob</b>        |     |                |
| <b>Kenison</b>                                   | <b>Damien</b>       | X   |                |
| Kipapa                                           | Malia               |     | x              |
| <b>Kitaoka</b>                                   | <b>Guy</b>          | X   |                |
| <b>Kong</b>                                      | <b>Lily</b>         |     |                |
| <b>Kusch</b>                                     | <b>Matthias</b>     | X   |                |
| <b>Lange</b>                                     | <b>Gerald</b>       | X   |                |

|                           |                |   |   |
|---------------------------|----------------|---|---|
| <b>Lavine</b>             | <b>Stan</b>    |   |   |
| Leicher                   | Kawika         |   |   |
| <b>Leslie</b>             | <b>Gordon</b>  | X |   |
| <b>Lorance</b>            | <b>Jeffery</b> |   |   |
| <b>Losalio</b>            | <b>Len</b>     | X |   |
| Masterjohn                | Paul           | X |   |
| <b>McDonald</b>           | <b>Ruby</b>    |   |   |
| <b>Medeiros Sr.</b>       | <b>Jim</b>     |   |   |
| <b>Meyer</b>              | <b>Steven</b>  | X |   |
| Nahacky                   | Tony           | X |   |
| Nakachi                   | Mike           | X |   |
| <b>Nakama</b>             | <b>Teresa</b>  | X |   |
| <b>Nazara</b>             | <b>Cynthia</b> |   |   |
| <b>Oiye</b>               | <b>Tom</b>     | X |   |
| <b>Ota Jr.</b>            | <b>Frank</b>   | X |   |
| Owens                     | Bob            |   |   |
| Owens                     | Tina           |   | x |
| <b>Paleudis</b>           | <b>George</b>  |   |   |
| <b>Paulo</b>              | <b>Walter</b>  |   |   |
| <b>Prohoroff</b>          | <b>Richard</b> | X |   |
| <b>Rickards</b>           | <b>William</b> |   |   |
| <b>Robbins</b>            | <b>Doug</b>    |   |   |
| <b>Rosario</b>            | <b>JR</b>      | X | x |
| <b>Sarver</b>             | <b>Dale</b>    | X | x |
| <b>Shallenberger</b>      | <b>Robert</b>  |   | x |
| <b>Springer</b>           | <b>Hannah</b>  |   |   |
| Stewart                   | Joseph         | X |   |
| Stockly                   | Bill           | X |   |
| <b>Talley III</b>         | <b>William</b> | X |   |
| <b>Torriger</b>           | <b>Leonard</b> |   |   |
| <b>Warren</b>             | <b>Paul</b>    | X |   |
| <b>West</b>               | <b>Andrew</b>  |   |   |
| Wiggins                   | Chad           |   | x |
| <b>Yamanaka</b>           | <b>Vern</b>    |   |   |
| <b>Young</b>              | <b>Charles</b> |   |   |
| 68 WHFC members           |                |   |   |
| 53/68 (78%)= fishers      |                |   |   |
| 33/68 (49%) = CML holders |                |   |   |

**Background Paper on West Hawai'i Aquarium 'White List'**

William j. Walsh Ph.D  
 Hawai'i Division of Aquatic Resources  
 March 2013

An essential component of the proposed West Hawai'i Regional Fishery Management (WHRFMA) Rule (HAR 13-60.4) is the establishment of a list of fish species (aka 'White List') which can be taken by aquarium collectors in the WHRFMA.

Public testimony at all geographic levels was strongly in support of the proposed aquarium provisions which includes the White List. This testimony is summarized below. Noteworthy is the fact that the strongest support (85%) came from West Hawai'i, the area most closely associated with the proposed rule.

**Summary of Public Testimony on HAR 13-60.4 relating to Aquarium Collecting**

|                  | In Support |     | In Oppositon |     |
|------------------|------------|-----|--------------|-----|
|                  | No.        | %   | No.          | %   |
| All Testimony    | 888        | 76% | 281          | 24% |
| State of Hawai'i | 521        | 77% | 156          | 23% |
| Hawai'i Island   | 489        | 82% | 104          | 18% |
| West Hawai'i     | 461        | 85% | 81           | 15% |

Although most of the opposing testimony was broadly against any aquarium collecting and thus any rules relating to its management, substantial testimony was more focused on concerns over the various species included on the White List.

The following Table lists the White List species and provides population estimates and the percentage of the population taken by aquarium collectors in areas open to collecting. "Catch" is the average aquarium catch over FY 2010 - 2012 and "30'-60' Population" is an estimate of the total numbers of fish (excluding recently settled Young of the Year - YOY) in open areas of hard bottom reef habitat in 30'- 60' depths. Population estimates are derived from Division of Aquatic (DAR) survey densities (2010-2012) and area estimates from NOAA habitat maps. "Catch as % of Population" is the % of the species' population in collected open areas taken annually by aquarium collectors. "E" indicates an endemic species. "N/A" indicates a lack of survey data, which for 4 of the 5 species is due to its prime habitat being deeper than DAR survey areas. For those 4 species; Psychedelic Wrasse, Tinker's Butterflyfish, Flame Wrasse and Hawaiian Longfin Anthias we do not know the status of their populations in open or protected areas. The other of these 5 species, the Eyestripe Surgeonfish, is not a deep water species but rather the adults are rarely encountered on our fixed survey transects but are

frequently seen out on the reef. Juveniles of this species are not found on mid depth transects but rather appear to inhabit shallow, often turbid (e.g. embayments/harbors) habitats. Given the low numbers collected and commonly sighted adults, at the present time there is little concern regarding aquarium collecting impacts on this species.

| Scientific Name                    | Common Name                 |   | Catch   | 30'-60'<br>Population | Catch as % of<br>Population |
|------------------------------------|-----------------------------|---|---------|-----------------------|-----------------------------|
|                                    |                             |   |         |                       |                             |
| <i>Acanthurus achilles</i>         | Achilles Tang               |   | 9,801   | 13,666                | 77.38%                      |
| <i>Zebrasoma flavescens</i>        | Yellow Tang                 |   | 295,047 | 848,622               | 34.77%                      |
| <i>Ctenochaetus hawaiiensis</i>    | Chevron Tang                |   | 2,602   | 20,055                | 12.97%                      |
| <i>Acanthurus nigricans</i>        | Goldrim Surgeonfish         |   | 381     | 4,887                 | 7.80%                       |
| <i>Macropharyngodon geoffroy</i>   | Shortnose Wrasse            | E | 252     | 4,398                 | 5.73%                       |
| <i>Coris gaimard</i>               | Yellowtail Coris            |   | 614     | 14,660                | 4.19%                       |
| <i>Naso lituratus</i>              | Orangespine Unicornfish     |   | 4,272   | 113,994               | 3.75%                       |
| <i>Forcipiger flavissimus</i>      | Forcepsfish                 |   | 1,413   | 40,109                | 3.52%                       |
| <i>Chaetodon quadrimaculatus</i>   | Fourspot Butterflyfish      |   | 662     | 21,745                | 3.05%                       |
| <i>Chaetodon miliaris</i>          | Milletseed Butterflyfish    | E | 313     | 10,995                | 2.84%                       |
| <i>Acanthurus olivaceus</i>        | Orangeband Surgeonfish      |   | 786     | 33,776                | 2.33%                       |
| <i>Ostracion meleagris</i>         | Spotted Boxfish             |   | 152     | 7,086                 | 2.15%                       |
| <i>Ctenochaetus strigosus</i>      | Goldring Surgeonfish (kole) |   | 38,431  | 2,570,143             | 1.50%                       |
| <i>Chaetodon kleinii</i>           | Blacklip Butterflyfish      |   | 53      | 3,909                 | 1.36%                       |
| <i>Pseudojuloides cerasinus</i>    | Smalltail Wrasse            |   | 244     | 21,012                | 1.16%                       |
| <i>Lutjanus kasmira</i>            | Bluestripe Snapper          |   | 52      | 6,597                 | 0.78%                       |
| <i>Gomphosus varius</i>            | Bird Wrasse                 |   | 338     | 56,196                | 0.60%                       |
| <i>Centropyge potteri</i>          | Potter's Angelfish          | E | 1,022   | 218,489               | 0.47%                       |
| <i>Hemitaurichthys polylepis</i>   | Pyramid Butterflyfish       |   | 181     | 41,536                | 0.44%                       |
| <i>Halichoeres ornatissimus</i>    | Ornate Wrasse               |   | 926     | 211,100               | 0.44%                       |
| <i>Chaetodon multicinctus</i>      | Multiband Butterflyfish     | E | 1,293   | 339,871               | 0.38%                       |
| <i>Centropyge fisheri</i>          | Fisher's Angelfish          |   | 74      | 22,478                | 0.33%                       |
| <i>Sufflamen bursa</i>             | Lei Triggerfish             |   | 209     | 63,330                | 0.33%                       |
| <i>Xanthichthys auromarginatus</i> | Gilded Triggerfish          |   | 29      | 9,500                 | 0.31%                       |
| <i>Melichthys niger</i>            | Black Durgon                |   | 79      | 26,632                | 0.30%                       |
| <i>Dascyllus albisella</i>         | Hawaiian Dascyllus          | E | 149     | 55,463                | 0.27%                       |
| <i>Paracirrhites forsteri</i>      | Blackside Hawkfish          |   | 45      | 16,888                | 0.26%                       |
| <i>Thalassoma duperrey</i>         | Saddle Wrasse               | E | 656     | 314,539               | 0.21%                       |
| <i>Acanthurus thompsoni</i>        | Thompson's Surgeonfish      |   | 133     | 71,774                | 0.19%                       |
| <i>Cirrhitops fasciatus</i>        | Redbarred Hawkfish          |   | 9       | 7,574                 | 0.12%                       |
| <i>Pseudocheilinus octotaenia</i>  | Eightline Wrasse            |   | 126     | 183,657               | 0.07%                       |
| <i>Acanthurus nigrofuscus</i>      | Brown Surgeonfish           |   | 809     | 1,381,650             | 0.06%                       |
| <i>Canthigaster jactator</i>       | Hawaiian Whitespotted Toby  | E | 97      | 211,100               | 0.05%                       |

|                                                        |                          |   |     |         |       |
|--------------------------------------------------------|--------------------------|---|-----|---------|-------|
| <i>Pseudocheilinus tetrataenia</i>                     | Fourline Wrasse          |   | 81  | 301,873 | 0.03% |
| <i>Cephalopholis argus</i>                             | Peacock Grouper          |   | 1   | 27,609  | 0.00% |
| <i>Acanthurus dussumieri</i>                           | Eyestripe Surgeonfish    |   | 61  | N/A     | N/A   |
| <i>Anampses chrysocephalus</i>                         | Psychedelic Wrasse       | E | 387 | N/A     | N/A   |
| <i>Chaetodon tinkeri</i>                               | Tinker's Butterflyfish   |   | 217 | N/A     | N/A   |
| <i>Cirrhilabrus jordani</i>                            | Flame Wrasse             | E | 96  | N/A     | N/A   |
| <i>Pseudanthias hawaiiensis</i>                        | Hawaiian Longfin Anthias | E | 75  | N/A     | N/A   |
| N/A - Species not adequately surveyed in transects     |                          |   |     |         |       |
| N/A - Species occurs in habitats deeper than transects |                          |   |     |         |       |

Based on the analysis of those species for which we have good data, aquarium collecting is having the largest impact on Achilles Tang (77.38% of 30'-60' open area population collected annually) and yellow tang (34.77% collected). For most of the species on the white list for which we have monitoring data, collecting impact, in terms of the % of the population being removed annually, is relatively low with 12 species having single digit % catch and 20 species having % catch values <1%.

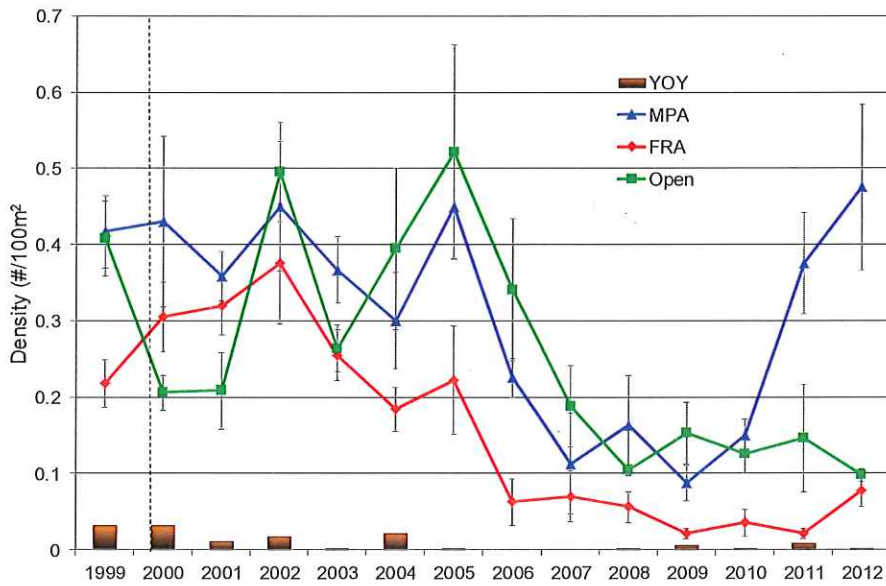
It should be noted that catch as a percentage of the *total* population of a species in these depths is lower than indicated in the above table since total population would include fishes in the protected FRAs and MPAs as well. Examples of total population (and catch %) are shown in the following Table and can be compared with the table above.

| 30'-60' hard bottom habitat |           |           |         |           |                         |
|-----------------------------|-----------|-----------|---------|-----------|-------------------------|
|                             | Open Pop  | FRA Pop   | MPA Pop | Total Pop | Catch as % of Total Pop |
| Achilles Tang               | 12,887    | 2,236     | 3,753   | 18,876    | 51.92%                  |
| Yellow Tang                 | 863,411   | 1,163,537 | 279,426 | 2,306,373 | 12.79%                  |
| Chevron Tang                | 20,404    | 10,623    | 5,231   | 36,259    | 7.18%                   |
| Goldrim Surgeonfish         | 5,369     | 1,677     | 1,478   | 8,525     | 4.47%                   |
| Shortnose Wrasse            | 4,296     | 1,118     | 341     | 5,755     | 4.38%                   |
| Goldring Surgeonfish        | 2,614,933 | 2,007,813 | 438,870 | 5,061,616 | 0.76%                   |

It should further be noted that the % catch does not include targeted fishes which occur in waters shallower than 30' or deeper than 60'. As such the annual catch estimates for many, if not most, species substantially overestimate the % take of the total population in West Hawai'i waters.

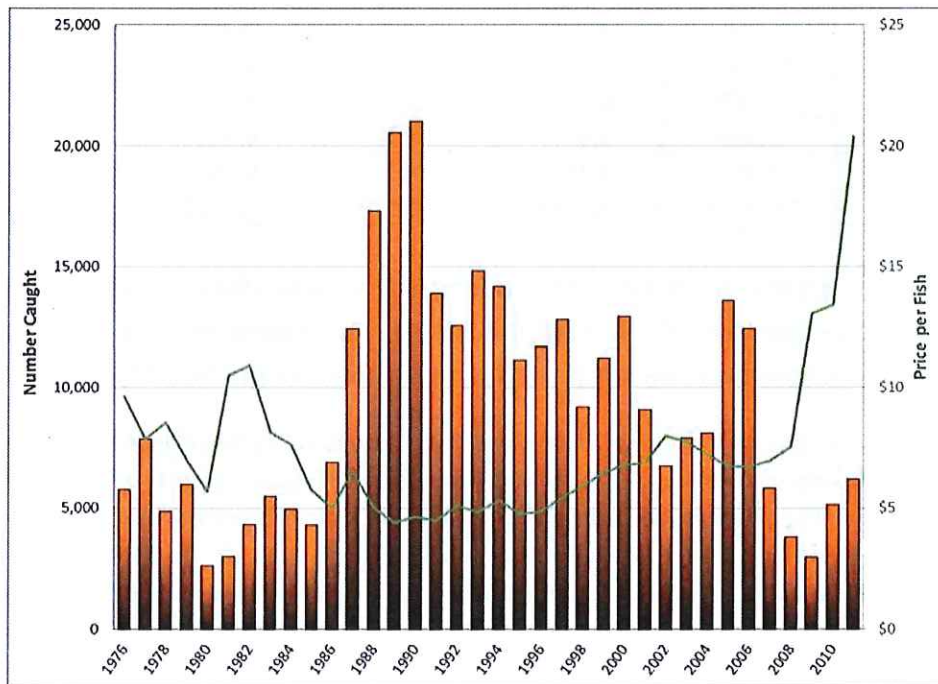
Even with these considerations the catch of Achilles Tang as a % of its West Hawai'i population is high. Achilles has had low levels of recruitment over the past decade (Figure 1) and substantial numbers of larger fish (i.e. 'breeders') are taken for human consumption as it is a prized food fish.

Substantial population decline of Achilles Tang populations in West Hawai'i is evident from several data sources. As can be seen in Figure 1, Achilles Tang have declined in FRA and Open areas over the last decade. A similar trend is apparent within MPAs for Achilles Tang except for the last two years when their numbers have increased albeit overall densities remain low.



**Figure 1. Overall changes in Achilles Tang abundance in FRAs, MPAs and Open areas, 1999-2012. Bars indicate mean density (June-Nov) of Achilles Tang Young-of-Year (YOY). YOY are not included in trend line data.**

Commercial aquarium landings of Achilles Tang have been declining in West Hawai'i over the past two decades. This has occurred in association with a recent dramatic increase in the ex-vessel value of the fish (Figure 2).



**Figure 2. West Hawai'i commercial Achilles Tang aquarium landings and value**

Data from 3 long term studies show a similar pattern of decline over the past 3 decades (Figs. 3, 4 & 5).

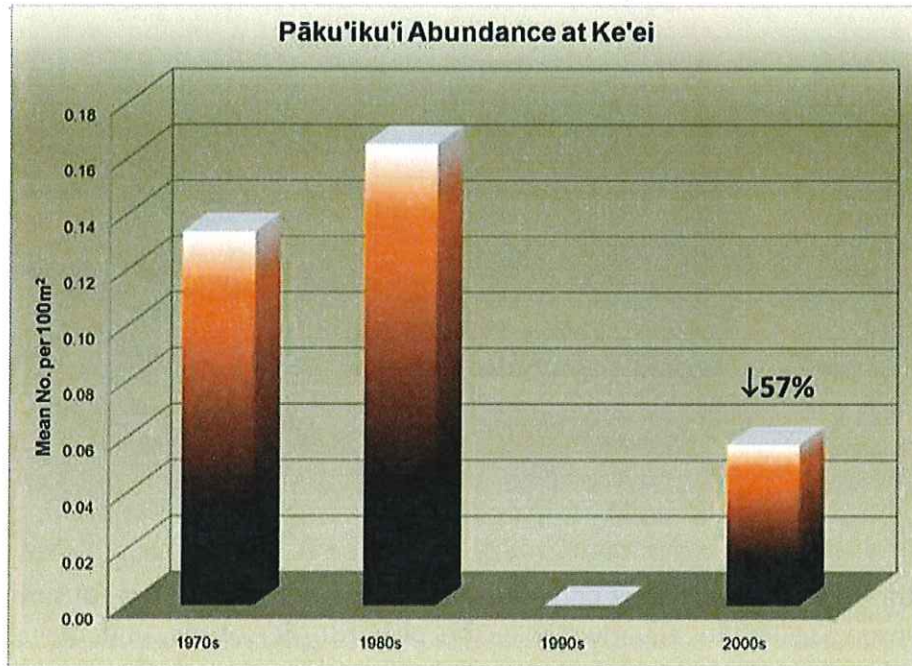


Figure 3.

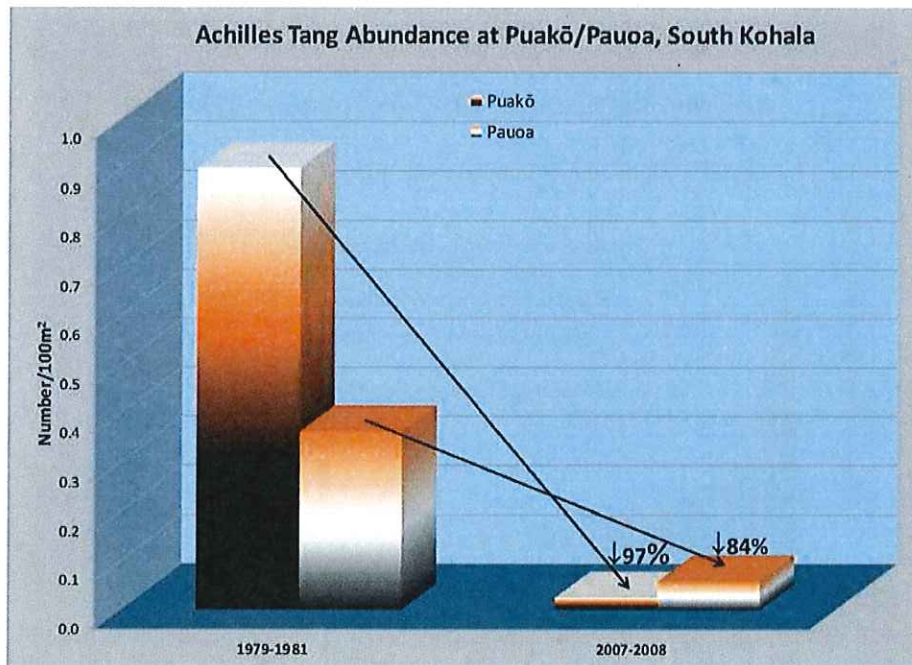


Figure 4.



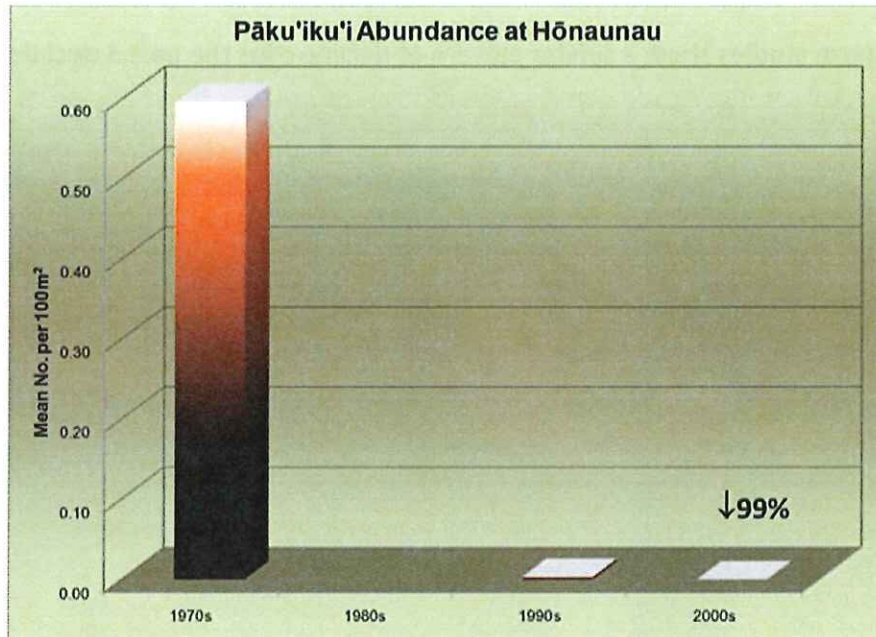


Figure 5.

Given these factors, population declines and a substantial aquarium impact are not surprising. There is currently a proposed bag limit for aquarium collectors of 10 fish/person/day undergoing Hawaii Administrative rulemaking. Unfortunately aquarium catch analysis suggests that this bag limit will largely be ineffective to stem the species' decline since it is currently difficult for collectors to take 10 Achilles Tang per day (Figures 6 & 7).

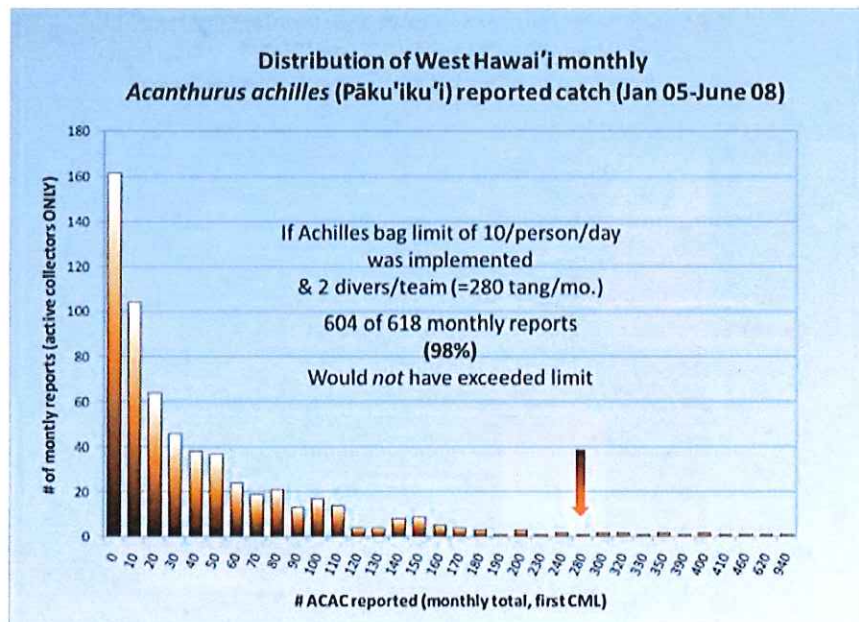


Figure 6.

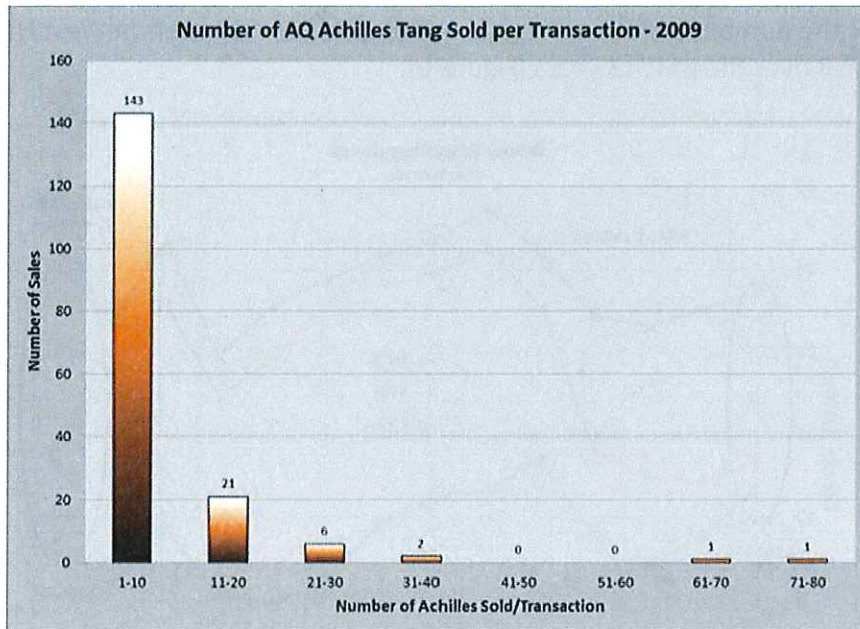


Figure 7.

Lastly Achilles Tang is the only species on the White List which is listed as an “Ecologically Unsustainable Species” by the sustainable Aquarium Industry Association (SAIA).

In contrast to Achilles Tang, yellow tang has generally recruited reliably over the years (Figure 8) and has increased markedly in the Fish Replenishment Areas (up 65% from '99/'01 to '10/'12).

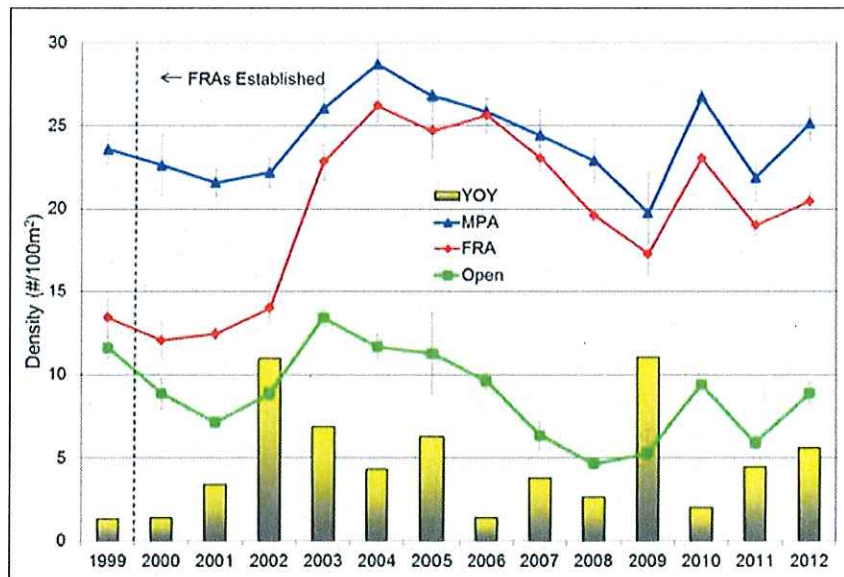


Figure 8. Overall changes in Yellow Tang abundance in FRAs, MPAs and Open areas, 1999-2012. Bars indicate mean density (June-Nov) of Yellow Tang Young-of-Year (YOY). YOY are not included in trend line data.

It is estimated that the number of Yellow Tang on mid-depth (30'-60') reefs in West Hawai'i has increased by 355,758 over the past 13 years (Figure 9).

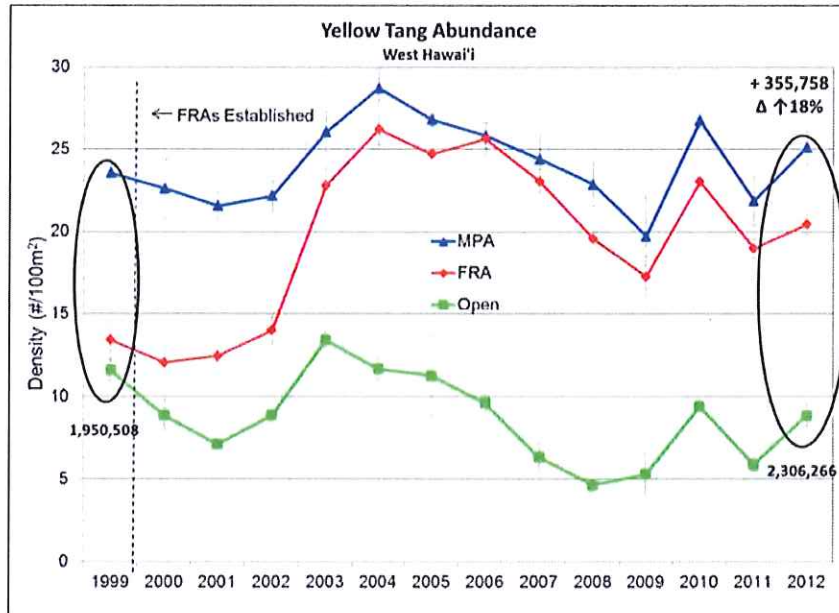


Figure 9.

Declines of Yellow Tang in open areas (down 24% over same period) have ameliorated in recent years as aquarium take has been decreasing from a previous period of continual and likely unsustainable increases (Figure 10). The price per fish paid by dealers to collectors has increased almost 1.8X since 2000 but has declined over the last three years, likely an effect of the U.S. economic recession.

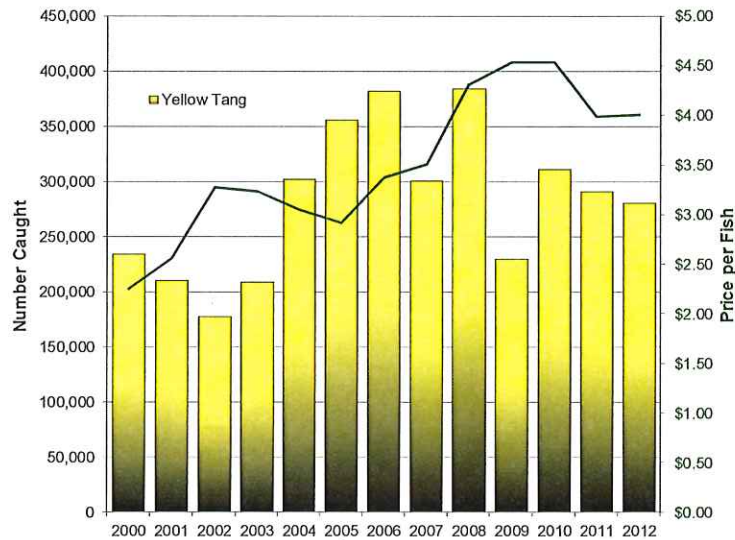


Figure 10. West Hawai'i Yellow Tang catch since FRA establishment and price per fish (adjusted for inflation)

Long term trends for Yellow Tang in West Hawai'i are variable depending on the area. In South Kohala they have declined by 9% at Puakō but have increased by 14% at nearby Pauoa (Figure 11).

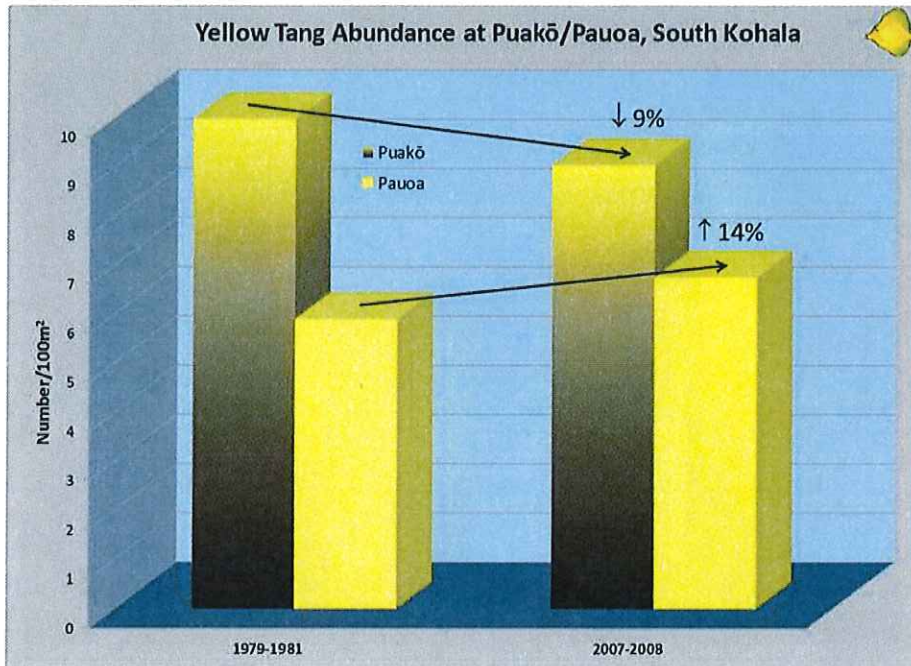


Figure 11.

In South Kona at Hōnaunau Yellow Tang populations are presently 17% of what they were in the 1970's with a distinct increasing trend in recent decades (Figure 12). Hōnaunau became an FRA in 2000.

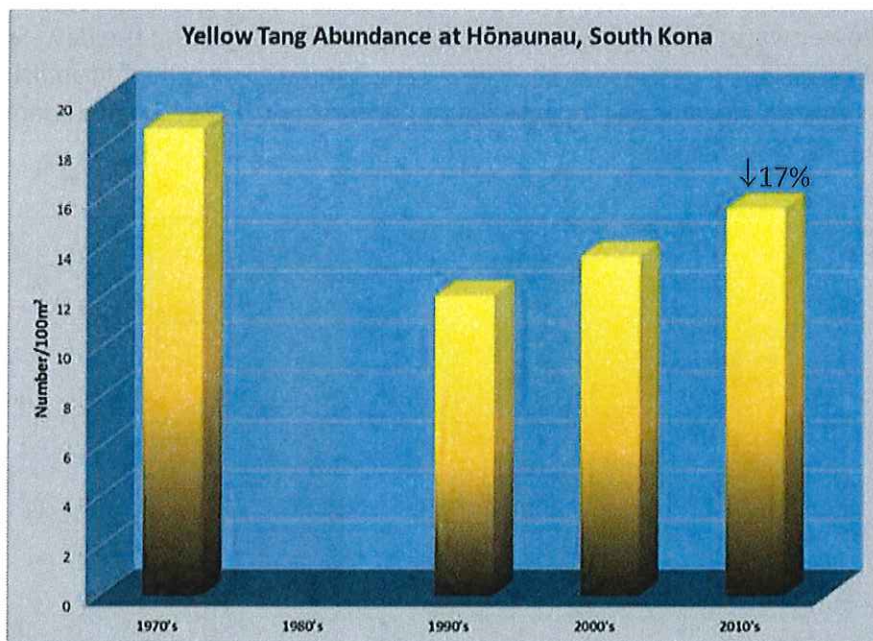


Figure 12.

A similar trend of recent increasing Yellow Tang abundance is evident at Ke’ei in South Kona where present abundance is not significantly different (4% less) than it was 40 years ago (Figure 13).

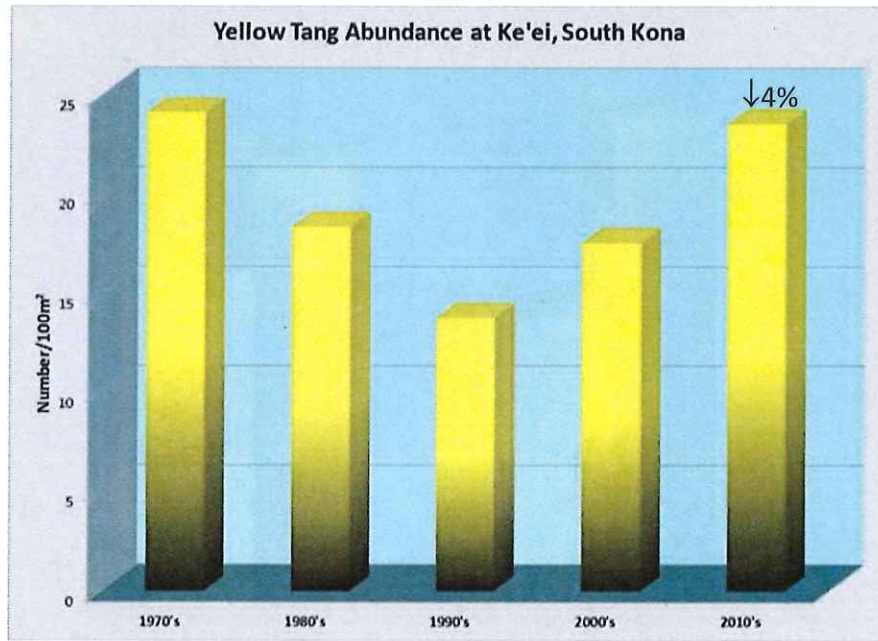


Figure 13. Note: Recruits not included.

As previously noted the percent take of Yellow Tang shown in the opening table represents only a portion of the total population present in open areas in 30’-60’ depths and as such represents an overestimation of collecting impact. There are additional yellow tang in protected areas (FRAs and MPAs) and in shallower water where the breeder population resides during the day. Surveys conducted in 2006-2010 in the daytime adult Yellow Tang habitat (using Diver Propulsion Vehicles) found that there are no significant differences (Figure 14 t-test  $p=0.71$ ) in the abundance of adult Yellow Tang in open vs. closed areas.

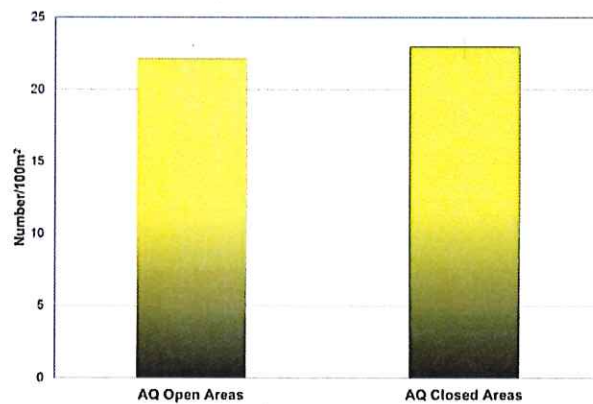
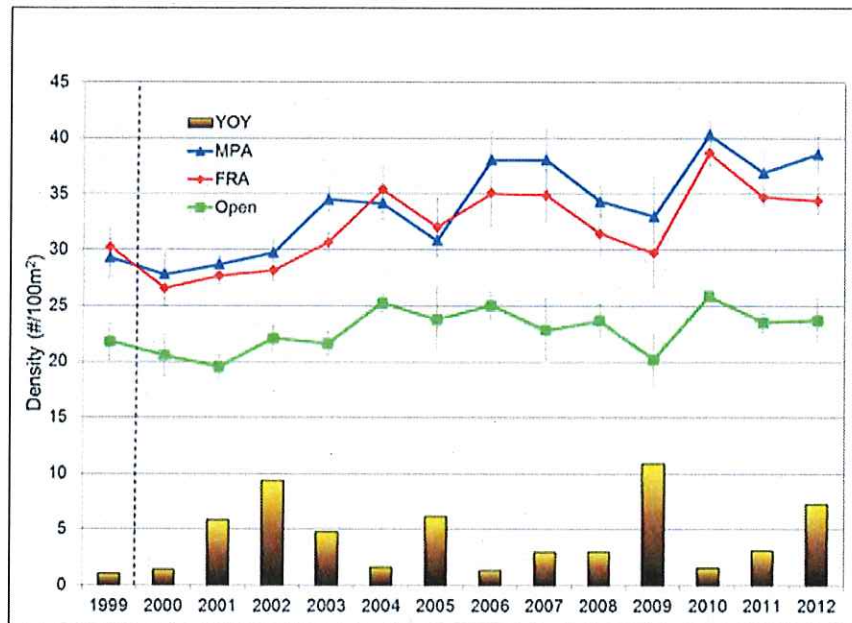


Figure 14. Adult Yellow Tang abundance in areas open and closed to aquarium collecting

The total estimated coastwise population of adult yellow tang in this depth range was estimated to be >2.5 million individuals in 2010.

The Goldring Surgeonfish (kole - *Ctenochaetus strigosus*) is the second most collected species in the West Hawai'i aquarium fishery representing 11% of the catch in recent years (FY '10-'12). As with Yellow Tang, recruitment has been reliable over the past 13 years and increased abundance is evident in both the FRAs and MPAs (Figure 15). Open areas are currently stable although, still lower in abundances than the protected areas (32% less than FRAs)



**Figure 8. Overall changes in kole abundance in FRAs, MPAs and Open areas, 1999-2012. Bars indicate mean density (June-Nov) of kole Young-of-Year (YOY). YOY are not included in trend line data.**

As with Yellow Tang, the overall kole population in the 30'-60' West Hawai'i reef areas has increased (by 23% - 948,662) over the past 13 years (Figure 16). Total kole population in this depth range is currently estimated to be 5,061, 533.

Long term West Hawai'i studies have found kole to have decreased at all 4 study sites with decreases ranging from 17% to 71% (Figures 17, 18, & 19). The most pronounced decreases occurred at the two South Kohala sites one of which (Pauoa) is totally open to harvesting while the other (Puakō) is an FMA that has been closed to aquarium collecting (i.e. no nets other than thrownets permitted) for 23 years. Given the length of protection from netting at the Puakō FMA it seems unlikely that the decline of its kole population is due to aquarium collecting activities. As with Achilles Tang, kole is regarded as a highly desired food fish by some fishers and targeted accordingly. Given the relatively low aquarium catch of this species relative to its West Hawai'i population (<0.76%) it seems inescapable that non-

aquarium harvesting activities are an important contributor to observed population declines in West Hawai'i.

Supporting this contention is a recent analysis utilizing DAR Commercial Marine License catch data and NOAA Marine Recreational Fishing Survey data (MRFS) which indicates that substantially more reef fish (excluding Yellow Tang), are taken by non-aquarium fishers in West Hawai'i in terms of numbers (3X) and biomass (8.6X) (Figures 20 & 21).

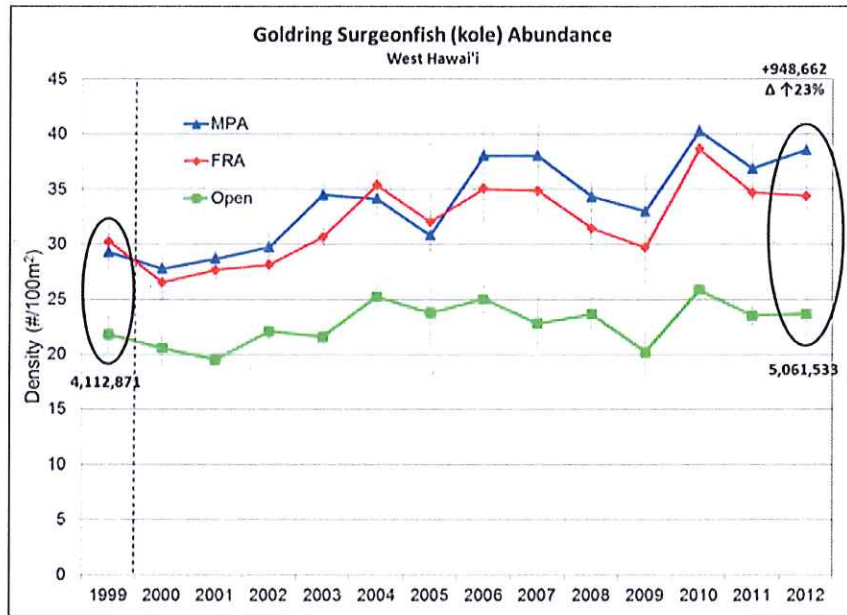


Figure 16.

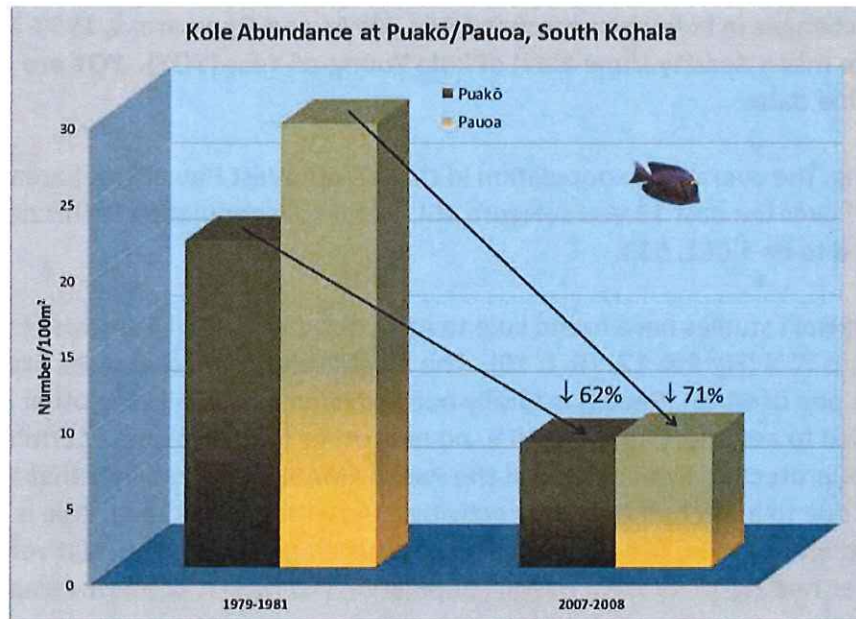


Figure 17.

Both Hōnaunau and Ke'ei (FRAs) have been closed to aquarium collecting for 13 years. As with Yellow Tang there has been an increasing trend in kole abundance since 2000 likely indicating the influence of protection from aquarium collecting.

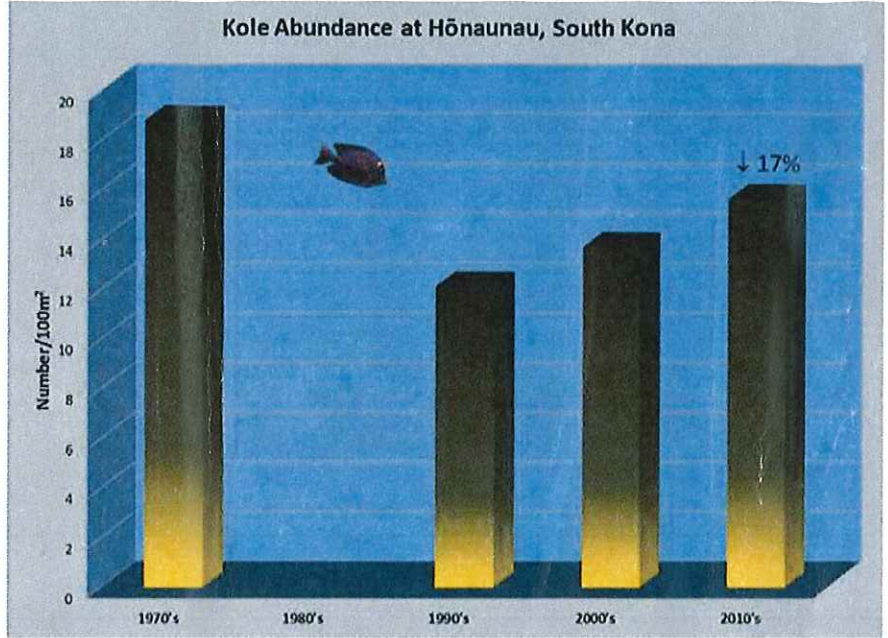


Figure 18.

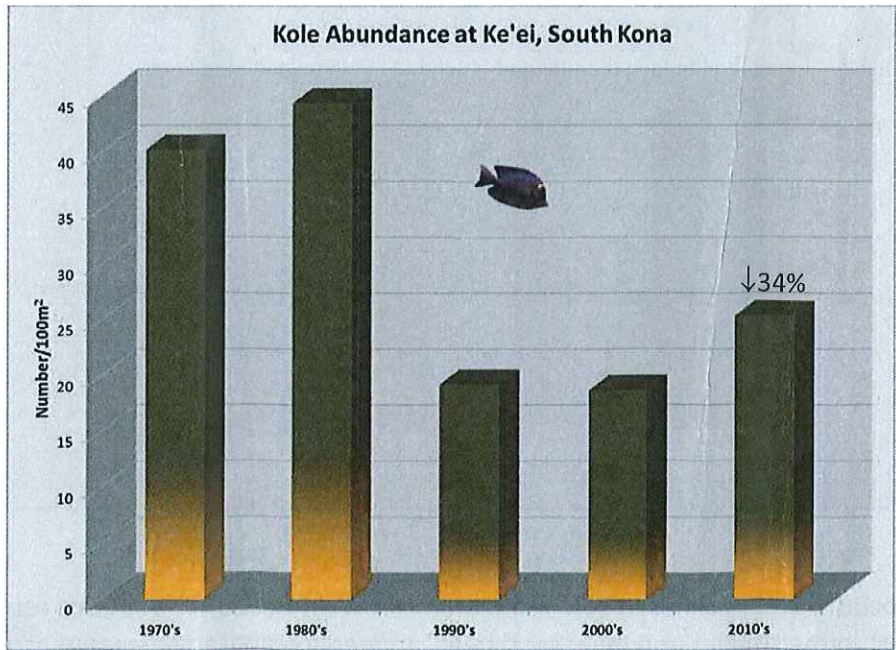


Figure 19. Note: Recruits not included.



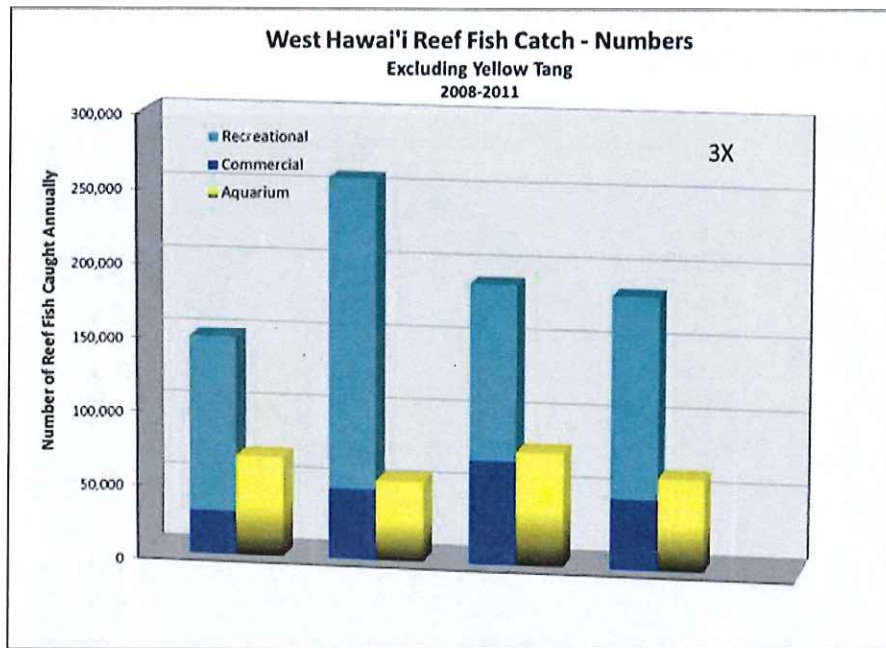


Figure 20.

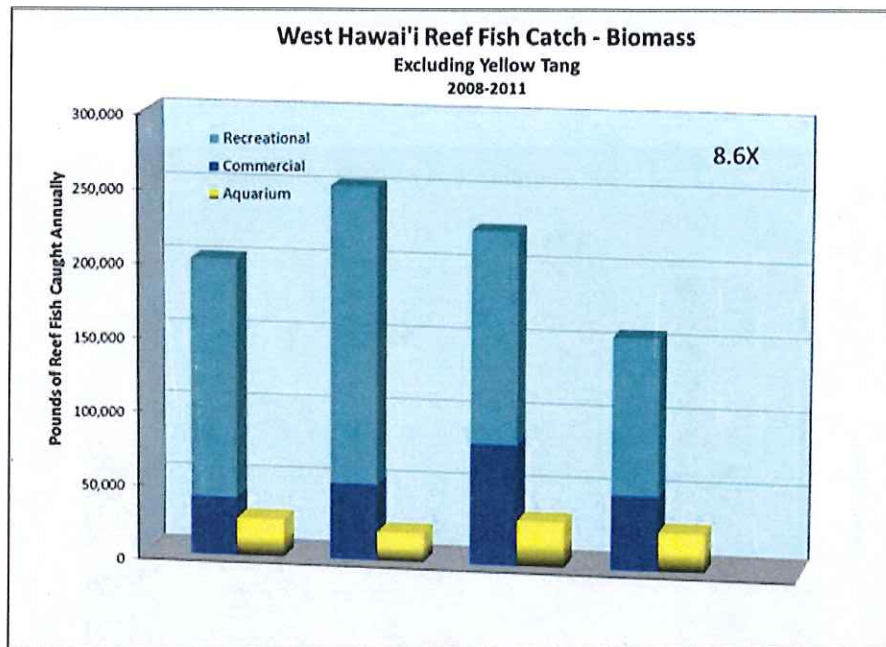


Figure 21.

Even with the documented declines in kole populations in West Hawai'i the species remains very abundant, at least in the smaller and mid-size ranges. Indeed, comparative surveys around the Main Hawaiian Island utilizing DAR and NOAA Coral reef Ecosystem Division (CRED) data (2006/2008)

indicates kole are substantially more abundant over most size ranges in West Hawai'i (excepting the largest size) than any of the other Main Hawaiian Islands (Figure 22).

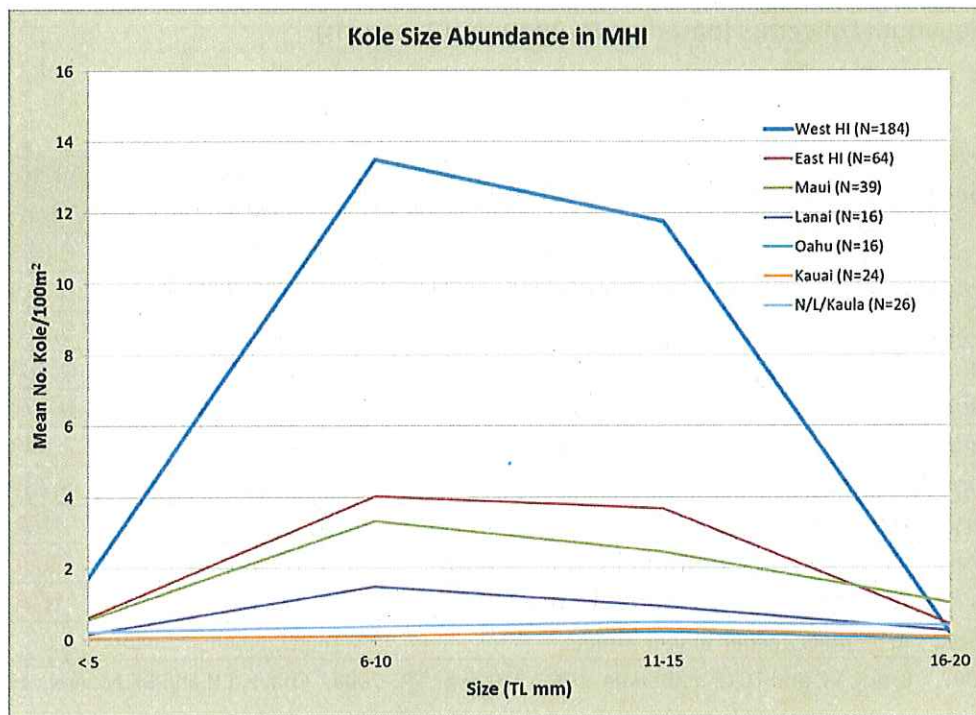


Figure 22.

### Endemic Species on the WHFC White List

A very common concern expressed regarding the white list is that it has a number of endemic species on it. An endemic species is a one whose presence is restricted to a defined geographic area. Of the 662 species of reef and shore fishes in the Hawaiian Islands it is currently estimated that 25% of them are endemic (Randall 2007). Many species endemic to the Hawaiian Islands also occur at Johnston Atoll. A number of Hawaiian endemics are important food species and are locally harvested both commercially and non-commercially. These include manini, āholehole, ‘alalī’ihi ‘āweoweo, hāpu’u, kūmū, mamo, nabeta, nohu, uhu, ‘upāpalu, a spiny lobster and all opihi.

Several researchers have commented on the relative abundance of endemic fishes. Gosline and Brock (1960) noted “that many of the endemic fish of the Hawaiian Islands are the most abundant of their genera” and similarly Hourigan & Reese (1987) state that “many endemic species are the most abundant Hawaiian fishes in their families”. Randall (2007) commented that “native species have evolved in isolated outposts such as Hawaii for long periods of time and therefore have had ample opportunity to become fully adapted to their environment”.

Of the 40 species on the WHFC White List, 10 (25%) are endemic to Hawai'i – the same as the average level of overall endemism. All but one (*Anampses chrysocephalus*) also occurs at Johnston Atoll. The

endemic White List species are listed in the table below as well as notes to relative abundance. Listed in the third column are population estimates on West Hawai'i reefs in hard bottom habitat in 30'-60' depths. The fourth column lists the % of a species population in 30'-60' Open areas which is taken annually by aquarium collectors (based on FY 2010- 2012 records).

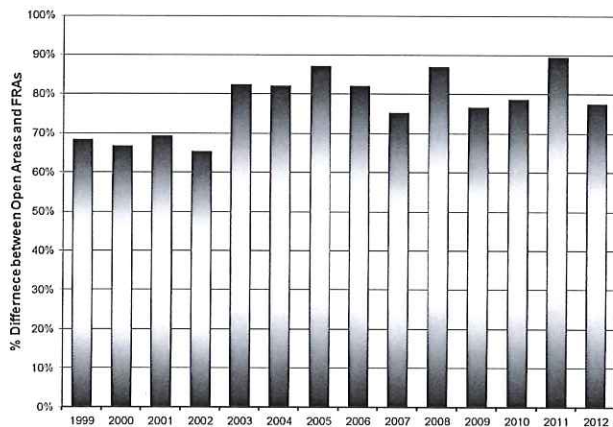
### Endemic species on 'White List'

| Species                          | Notes                                   | 30'-60' WHI Pop | % AQ Catch 30'-60' Open Areas |
|----------------------------------|-----------------------------------------|-----------------|-------------------------------|
| <i>Canthigaster jactator</i>     | Most common Toby <sup>1</sup>           | 114,447         | 0.05%                         |
| <i>Thalassoma duperrey</i>       | Most common inshore wrasse <sup>1</sup> | 548,014         | 0.21%                         |
| <i>Dascyllus albisella</i>       |                                         | 56,512          | 0.27%                         |
| <i>Chaetodon multicinctus</i>    |                                         | 661,184         | 0.38%                         |
| <i>Centropyge potteri</i>        | Most common angelfish <sup>1</sup>      | 310,666         | 0.47%                         |
| <i>Chaetodon miliaris</i>        | Most common B-Fly <sup>1,2</sup>        | 9,347           | 2.84%                         |
| <i>Macropharyngodon geoffroy</i> |                                         | 2,864           | 5.73%                         |
| <i>Anampses chrysocephalus</i>   |                                         | N/A             | N/A                           |
| <i>Cirrhilabrus jordani</i>      | Common in right habitat <sup>3</sup>    | N/A             | N/A                           |
| <i>Pseudanthias hawaiiensis</i>  | Abundant at 40-199m <sup>4</sup>        | N/A             | N/A                           |

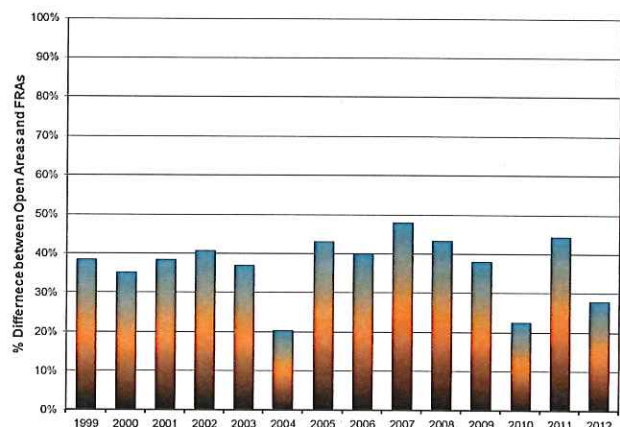
N/A - Species occurs in habitats deeper than transects

<sup>1</sup> Randall, JE. 2007, <sup>2</sup> Brock, VE and TC Chamberlain. 1968, <sup>3</sup> Hoover, JP. 2008, <sup>4</sup> Chave, EH and BC Mundy. 1994

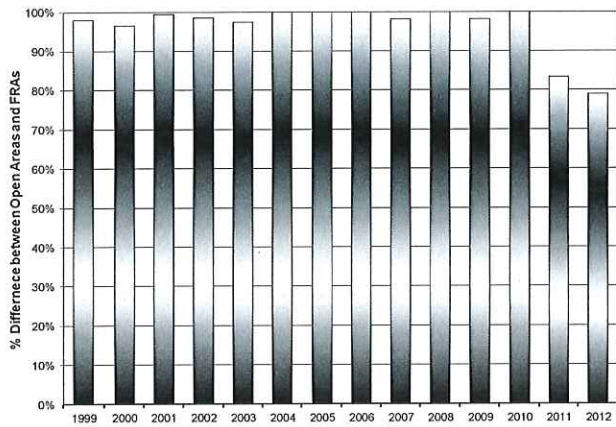
Figure 23 presents the difference in a species' abundance in West Hawai'i Fish Replenishment Areas (FRAs, n=9) relative to Open areas (n=9). Bars represent the % difference in abundance for each year from 1999 to 2012. Bars *above* the horizontal x axis indicate the species was more abundant in the Open areas (aquarium collected) than the FRAs. Similarly, bars *below* the x axis indicate greater abundance in the FRAs than the Open areas.



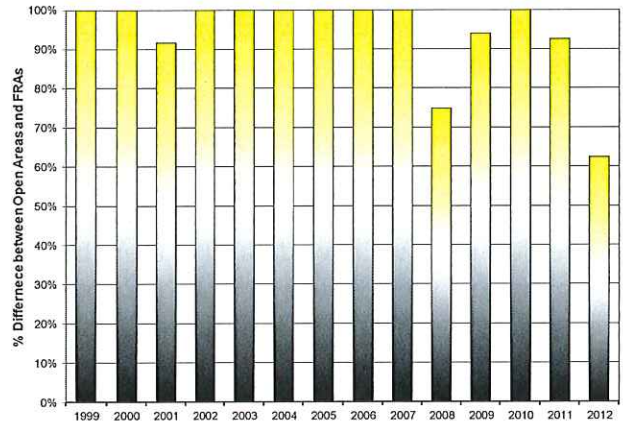
*Canthigaster jactator*



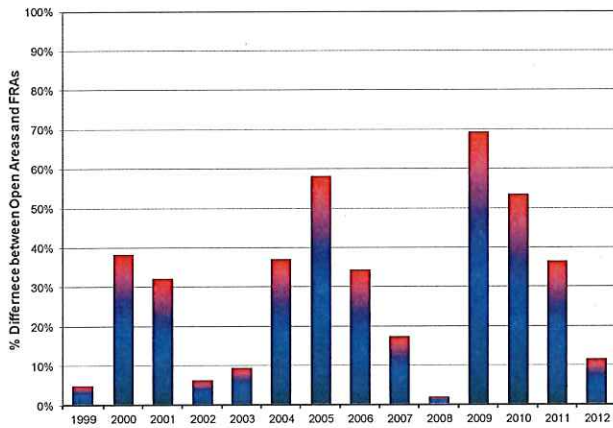
*Thalassoma duperrey*



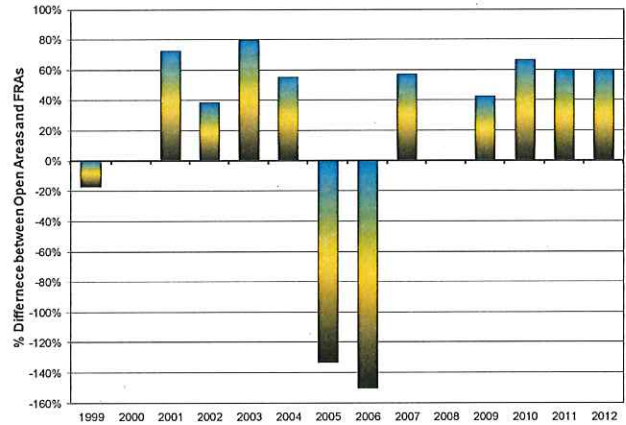
*Dascyllus albisella*



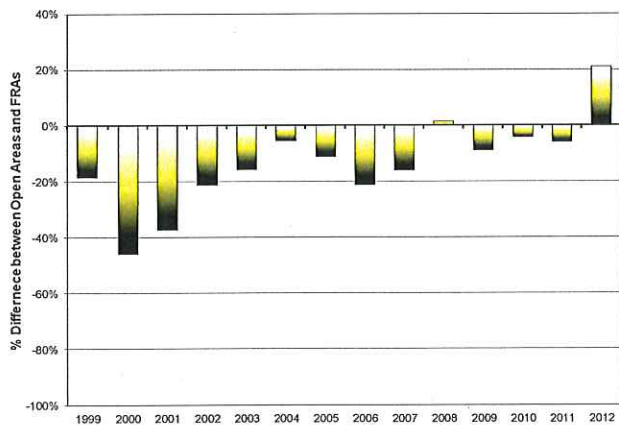
*Chaetodon miliaris*



*Centropyge potteri*



*Macropharyngodon geoffroy*



*Chaetodon multinctus*

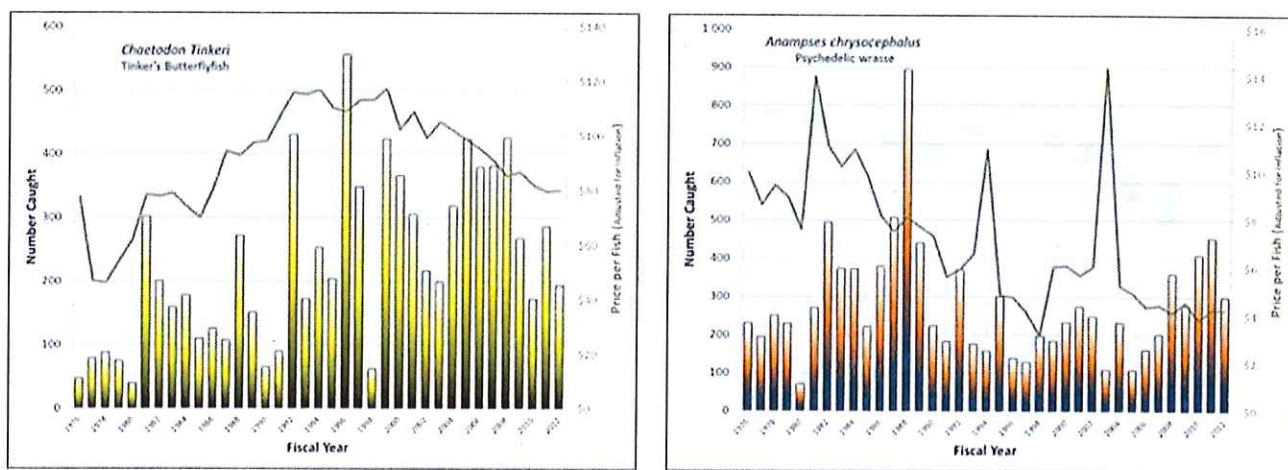
**Figure 23.** % difference in density between FRAs and Open areas. Bars below the x axis indicate densities are lower in the Open areas relative to the FRAs

Of the 7 endemic species for which we have survey data, only a single species, the multiband butterflyfish (*Chaetodon multicoloratus*), was consistently less abundant in the Open areas. However this difference has been decreasing in recent years and presently there are slightly more of this species in the open areas than in the FRAs. (Avg. 2010-2012). The % of the population of this species taken annually by aquarium collectors in recent years is 0.38% (see Table).

Six of 10 endemic species on the white list are regarded as being common in suitable habitat. For the 7 species for which we have data all of them have <6% of their open area population collected annually. Five of these 7 species have <1% of their population collected. Given past and present collecting preferences and effort, the inclusion of these endemic species on the white list appears to pose little or no threat to populations on West Hawai'i reefs.

There are 3 endemic species on the White List, Psychedelic Wrasse (*A. chrysocephalus*), Hawaiian Longfin Anthias (*Pseudanthias hawaiiensis*) and Flame Wrasse (*Cirrhilabrus jordani*), for which we do not have adequate population estimates to assess the impact of continued aquarium collection due to their deeper water habitats.. There is also another non-endemic species, Tinker's Butterflyfish (*Chaetodon tinkeri*), for which data is similarly lacking. Wherever possible other sources of data should be utilized to monitor the status of these species and their continued inclusion on the White List.

Figure 24 shows the West Hawai'i aquarium catch and price paid per fish (adjusted for inflation) for the 4 species noted above. Clear long term trends in catch numbers (vertical bars) aren't readily apparent for these species. It is clear that collection of Hawaii Longfin Anthias is a relatively recent development. The value of individual fish received by collectors has been increasing for Flame Wrasse and Hawaiian Longfin Anthias and decreasing for Tinker's Butterflyfish and Psychedelic Wrasse likely driven by market forces (i.e. aquarist preferences).



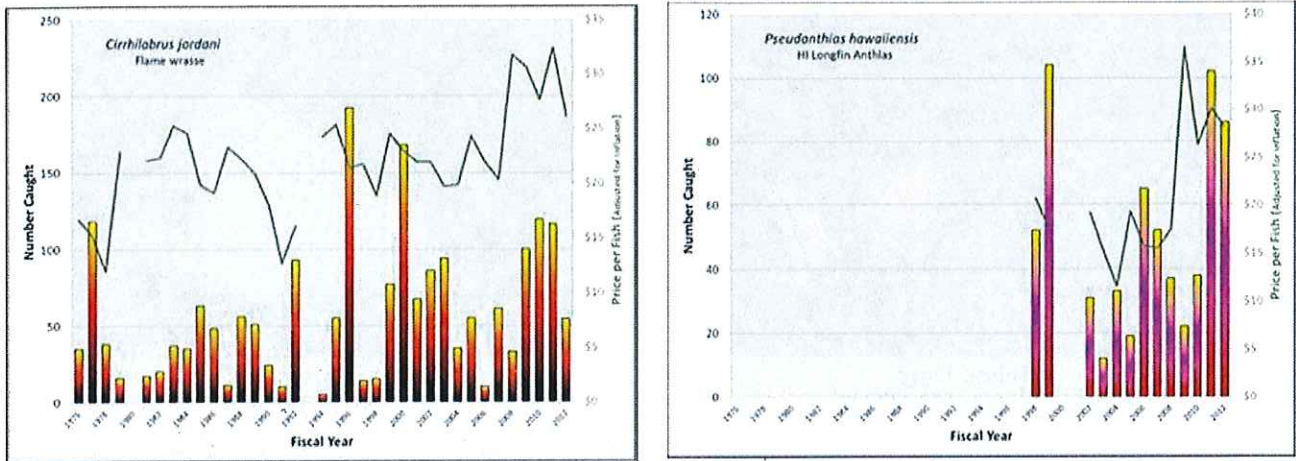


Figure 24. West Hawai'i aquarium catch (vertical bars) and value of selected species

The only other relevant sources of information on these four species are observations at depth from the dive logs of local technical divers Gerard and Vicky Newman. Dives ranged from a minimum depth of 60 feet (shallower dives were not cataloged) to a maximum depth of 331 feet. Figure 25 presents Gerard Newman's observations as percentage of dives on which a particular species was observed within a given type of management area over the period 2002-2011 (N=1,340 dives).

Tinker's Butterflyfish and Psychedelic Wrasse were substantially more common in the long term protected areas while Flame Wrasse and Hawaiian Longfin Anthias were more abundant in the FRAs. Sightings for all these species in all management areas did not exceed 25% of observational dives.

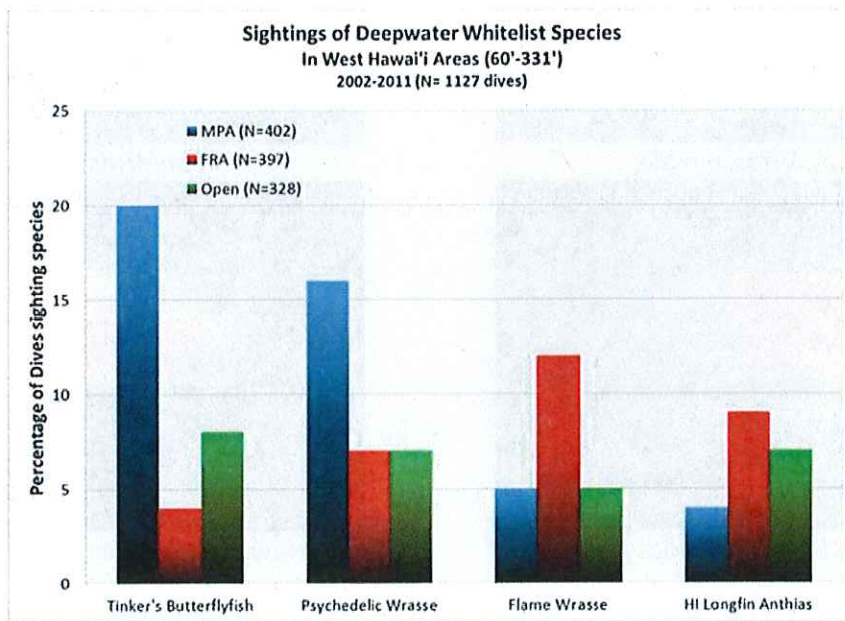
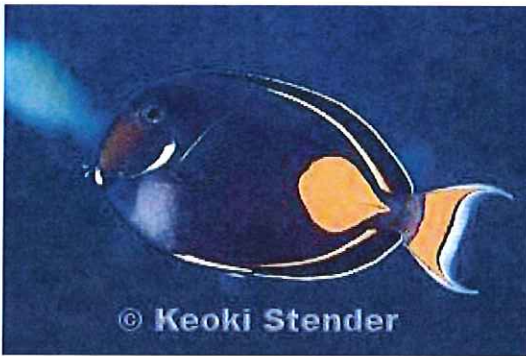


Figure 25.



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Achilles Tang



© Keoki Stender

Tinker's Butterflyfish



© Keoki Stender

Psychedelic Wrasse male



© Keoki Stender

Psychedelic Wrasse female



© Keoki Stender

Flame Wrasse male



© Keoki Stender

Flame Wrasse female



© Keoki Stender

Hawaiian Longfin Anthias male



© Keoki Stender

Hawaiian Longfin Anthias female

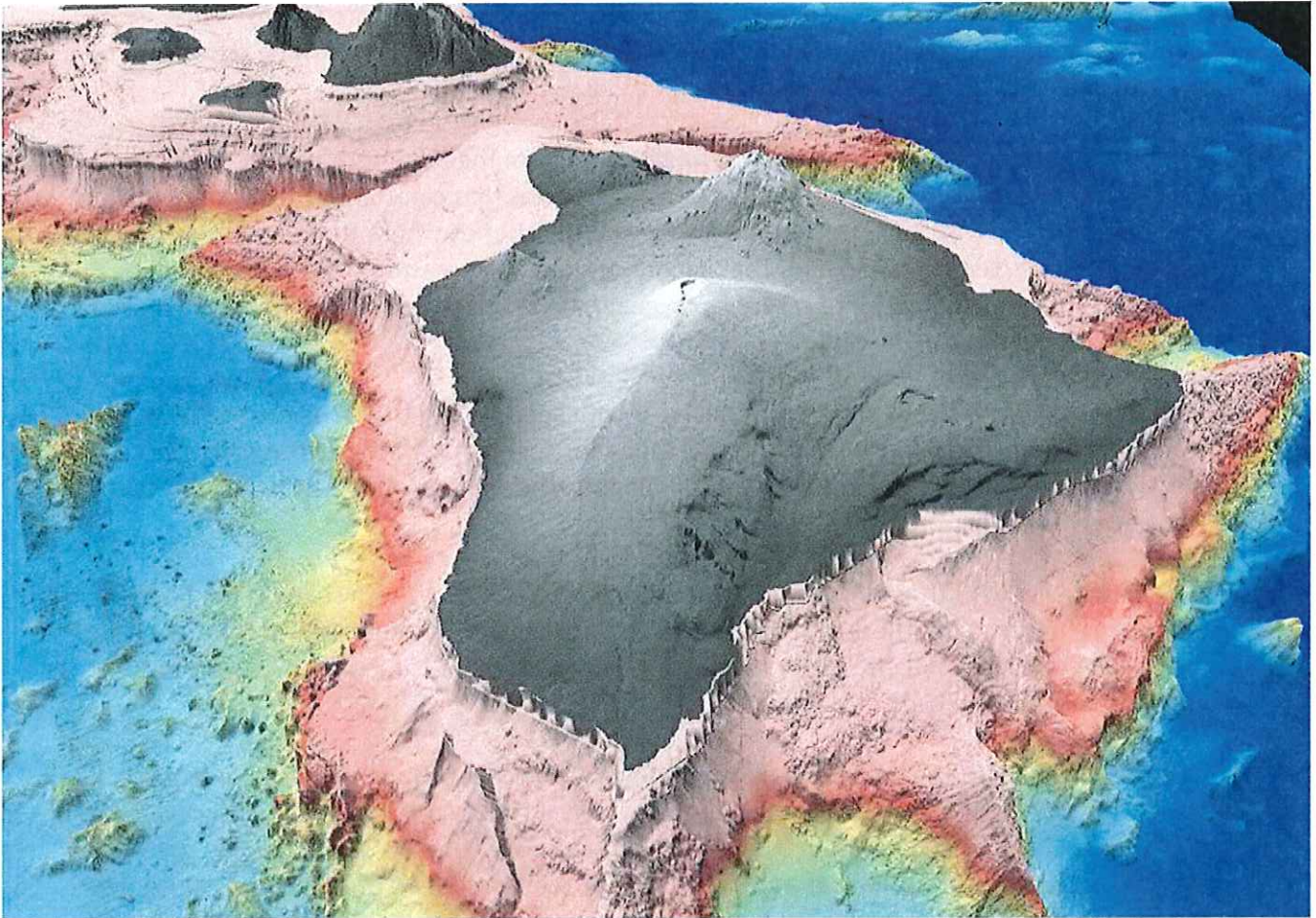
Figure 26. White List species of concern and those which lack adequate population estimates

# Background Paper on SCUBA Spearfishing

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Hawai'i Division of Aquatic Resources

January 2013





The following are annotated references relevant to SCUBA spearfishing management:

**Gillet R and W Moy (2006). Spearfishing in the Pacific Islands: Current Status and Management Issues FAO/Fish Code Review No. 19. 72pp.**

General conclusions on the matter of scuba spearfishing include: (a) for several reasons, a complete ban of scuba spearfishing coupled with effective enforcement is the single most important spearfishing management measure;

(b) spearfishing effort must be managed along with other forms of inshore fishing, since attempts at restricting spearfishing alone are not likely to be successful as fishing effort may be easily transferred to other small-scale fishing methods;

The notion that selectivity is “good and virtuous” arises from the assumptions that through selectivity, (a) discards are reduced/avoided, and (b) species that can support fishing pressure can be targeted. This “virtue” concept is less relevant in fisheries where there are no discards, or where fishers are selecting for species that cannot support the pressure. The available information indicates that, despite spearfishing gear having selective qualities, the gear is used rather non-selectively.

One of the most widespread problems associated with spearfishing concerns the use of scuba. The perceived problems associated with using scuba for spearfishing include reducing fish populations to low levels and diminishing or eliminating the positive effects of deep water acting as a sanctuary for fish.

Most Pacific Island countries ban the use of scuba in spearfishing. Where scuba is not banned, it appears to be because: (a) there is no issue as scuba use is minor or nonexistent; (b) there is lack of knowledge of its harmful effects; or (c) the scuba divers form an interest group with some degree of political influence.

In all but two countries the present legislation to ban scuba spearfishing appears inadequate. It is extremely difficult or impractical to collect the evidence required to prove conclusively in court that scuba was used to take fish (i.e. fishery officer underwater observing a fish being speared by a diver using scuba). A much better approach is to ban the possession of scuba and fishing gear in the same boat or car.

Judging from the experience of some of the countries, where scuba spearfishing does not now occur (e.g. Tuvalu), it may be a better, wherever possible, to ban the activity before it has a chance to become well established.

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Fenner D. 2012. Challenges for Managing Fisheries on Diverse Coral Reefs. *Diversity*, 4, 105-160;

Spearfishing is potentially highly selective and so the fisher can choose to avoid any species or size they choose, though size has to be estimated in a short period of time. However, in practice spearfishers may spear anything they see, making it very unselective.

Banning night spearfishing or SCUBA spearfishing is a significant control on effort. A SCUBA spearfishing ban is accepted and appears to have relatively high compliance in American Samoa, but a night spearfishing ban would be difficult to implement in Pohnpei.

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**Stoffle BW and SD Allen (2012). The Sociocultural Importance of Spearfishing in Hawai'i. NOAA Technical Memorandum NMFS-PIFSC-31. 38 pp.**

Fishermen feel night spearing with the use of scuba is another factor that leads to the decline of certain species, especially reef fish. Fishermen feel that scuba diving is a method that allows for inappropriate levels of efficiency. Coupled with its use at night to target various species that sleep in rock/reef cracks or under ledges, scuba makes it even more efficient and, in the opinion of many of the fishermen, creates an opportunity for fishermen to take much more than necessary.

Many fishermen feel that scuba spearfishing should be outlawed altogether, but if there had to be a compromise, they would prefer that people were only able to scuba spearfish during the day.

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Frisch AJ, Cole AJ, Hobbs J-PA, Rizzari JR and KP Munkres (2012). Effects of Spearfishing on Reef Fish Populations in a Multi-Use Conservation Area. PLOS ONE December 2012 | Volume 7 | Issue 12 | e51938

Coincident with accession of spearfishing to the multi-use conservation park zone at Palm Island was a 54% reduction in density and a 27% reduction in mean size of coral trout, the primary target species of spearfishers on the Great Barrier Reef. Given that benthic habitat characteristics and densities of non-target fishes at Palm Island were stable through time, and that the density and mean size of coral trout remained unchanged in the nearby control zone (where spearfishing was prohibited), the decline in the coral trout population at Palm Island can be attributed to spearfishing. As such, this study provides direct evidence that spearfishing can have rapid and substantial negative effects on reef fish populations, even when moderate size- and catch-limits apply.

In demonstrating that spearfishing can be detrimental to fish stocks, our study highlights the need for careful management of spearfishing to ensure that conservation goals are not compromised and that the harvest of fishery resources is sustainable.

Fishers typically target the larger individuals in a population, which tends to reduce the mean size of fished species. At Palm Island, spearfishing reduced the mean size of coral trout by 27% during the five years from 2004 to 2009. Intense, size-selective fishing pressure is concerning to fishery managers because reproductive output declines exponentially with decreasing fish size, such that depletion of the larger individuals in a population can rapidly precipitate recruitment over-fishing.

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**Houk P, Rhodes K, Cuetos-Bueno J, Lindfield S, Fread V, and JL McIlwain (2012). Commercial coral-reef fisheries across Micronesia: A need for improving management Coral Reefs 31:13-26.**

Despite the likely use of illegal SCUBA fishing techniques in CNMI, and its legal use in Guam, significantly smaller sizes of many target reef fish were reported in comparison with Yap and the known size at reproductive maturity (L50). This is alarming considering that deeper waters act as refuges from fishing pressure and support fish assemblages that are comparable with long-standing, no-take marine protected areas.

Historical fisher interviews in Yap between 1991 and 1992 had already recorded a consensus of lower catch-per-unit-effort, decreased sizes and stocks, and a need for improving management (Graham 1992). The introduction of new fishing techniques, spearguns, flashlights, and monofilament nets, were thought to be drivers of these trends, especially salient as traditional management and law do not encompass modern technology.

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Richards BL, Williams ID, Vetter OJ and GJ Williams(2012). Environmental Factors Affecting Large-Bodied Coral Reef Fish Assemblages in the Mariana Archipelago. PLoS ONE 7(2): e31374. doi:10.1371/journal.pone.0031374

Large-bodied species including bumphead parrotfish, humphead wrasse, stingrays, parrotfish, jacks, emperors, and groupers are considered rare in Guam, and it has been suggested that this may be the result of heavy fishing. Technological improvements, which have facilitated the expansion of activities like nighttime SCUBA spearfishing, have resulted in a reappearance of larger species in fishery catch statistics. While it is possible that this resurgence in catches indicates greater targeting of "healthy" populations, it would seem more likely that such increases are related to the use of new technology, representing the next step in the serial depletion cycle seen in many fisheries.

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**Rhodes KL, Warren-Rhodes K, Houk P, Cuetos-Bueno J, Fong Q and W Hoot (2011). An Interdisciplinary Study of Market Forces and Nearshore Fisheries Management in Micronesia. A Report of the Marine Program of the Asia Pacific Conservation Region, The Nature Conservancy. Report No. 6/11. 120 p.**

The abolition of destructive fishing practices, protection of critical habitat, and severe restrictions on the harvest of highly vulnerable species, such as green bumphead parrotfish, humphead wrasse, tridacnid clams, and turtles should be paramount management goals. SCUBA spearfishing, blast fishing, fishing with poisons, and gillnetting should be banned throughout Micronesia due to their known association with habitat destruction and overfishing.

In Guam and CNMI, where overfishing has been documented for decades, SCUBA spearfishing has eliminated the depth refugia of several reef fish species, similar to that observed elsewhere. As McClanahan (2010) concludes, many of the most efficient and economically rewarding modern practices inflict the greatest harm to fish and habitats.

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Goetze JS, Langlois TJ, Egli DP, and ES Harvey (2011) Evidence of artisanal fishing impacts and depth refuge in assemblages of Fijian reef fish. *Coral Reefs* 30:507–517.

The majority of species driving the greater species richness in the shallow protected areas were targeted species. This result is indicative of a depth refuge effect, which may have been caused by the limitation of artisanal fishing techniques (such as spearing) to fish at depths greater than 15 m and supports our depth refuge hypothesis. These fishing techniques may have removed rarer species targeted by fisheries from shallow fished sites and had little effect on these species in the deep. These results are supported by Tyler et al. (2009) who found evidence of a depth refuge in fished areas, also indicated by greater species richness with increasing depth.

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**Januchowski-Hartley FA, Graham NAJ, Feary DA, Morove T and JE Cinner (2011). Fear of Fishers: Human Predation Explains Behavioral Changes in Coral Reef Fishes. *PLoS ONE* 6(8): e22761. doi:10.1371/journal.pone.0022761**

coral reef fishes normally targeted by spear fishers showed lower FID (flight initiation distance) within areas protected from fishing pressure

Although levels of artisanal fishing can vary widely, even low levels of subsistence fishing have been associated with dramatic declines in fishery target species.

Acanthuridae and Scaridae, which are the 1st and 3rd most commonly spear fished families in the region, showed the highest sensitivity to increased fishing pressure, while Lutjanidae and Serranidae, both of which are primarily caught by hook and line and more rarely caught by spear gun, showed no significant changes in FID between fishing pressures.

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Godoy N, Gelcich S, Vásquez, JA and JC Castilla (2010). Spearfishing to depletion: evidence from temperate reef fishes in Chile. *Ecological Applications* 20:1504–1511.

Although the ecological consequences of reef fish depletion are not fully understood in Chile, evidence of spearfishing depleting temperate reef fishes must be explicitly included in policy

debates. This would involve bans or strong restrictions on the use of SCUBA and hookah diving gear for spearfishing, and minimum size limits.

This study shows that unregulated spearfishing has depleted reef fishes in temperate near shore ecosystems along part of the Chilean coast and has also caused shifts in the composition of catches over time.

Furthermore, artisanal speargun divers in Chile perceive that diving with hookah gear, to target reef fishes, has been a main cause for their overexploitation. Similar evidence suggests that heavy SCUBA spearfishing pressures across the tropical Pacific have caused, and continue to cause, severe declines in reef fish populations.

Spearfishing with SCUBA or hookah, while banned in many countries, is still permitted in many regions of the world... In addition night spearfishing is still permitted extensively around the globe. These situations need urgent review...An urgent discussion on the banning of SCUBA and hookah-diving gear for spearfishing is necessary.

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**Tyler EHM, Speight MR, Henderson P and A Manica (2009). Evidence for a depth refuge effect in artisanal coral reef fisheries. Biol. Conservation 143:652-667.**

Natural refuges can play a fundamental role in protecting species from overexploitation but have not been adequately quantified in the marine environment.

The abalone fishery in California provides a good example of a depth refuge effect. A ban on using SCUBA to collect abalone in northern California has resulted in 43% of abalone being larger than the sport size limit below 8.4 m, (compared to 16% above 8.4 m)

The depth refuge effect could be sustaining coral reef fisheries and should be taken in to account before implementing policies or subsidies that encourage or allow fisheries to exploit deeper waters.

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Guam Department of Agriculture's Division of Aquatic and Wildlife Resources. (2009). Offshore Fisheries, http://www.guamdawr.org/aquatics/fisheries2/offshore/document_view.

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Guam recognizes SCUBA spearfishing as a "serious threat to all reef fish stocks."

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Wilkinson C (2008). Status of coral reefs of the world: (2008). Global Coral Reef Monitoring Network and Reef and Rainforest Research Centre, Townsville, Australia, 296 p.

Micronesia and American Samoa - Fish populations around major population centres show clear signs of over-fishing with few large fish observed because of fishing pressure, particularly spearfishers using scuba;

The use of scuba and artificial lights for spear fishing and the continued use of monofilament gill nets are particular concerns. These methods have been banned or heavily restricted in most Pacific countries but remain legal on Guam. Local fisheries biologists suggest these methods have contributed to a boom and bust harvest of large humphead wrasse, the depletion of large groupers, a shift from preferred species (large slow-growing fish) to smaller, faster growing species, and a decrease in the number of other large wrasse, parrotfish, snapper, and grouper caught by other methods.

Local fisheries in Pohnpei are being unsustainably over-fished and 70% of fish sold at markets are immature or found with eggs. Night-time spearfishing is the most popular type of fishing and this overly efficient method is contributing to the overall decline in reef fisheries.

Korea - spear fishing with scuba tanks and hookah is degrading fisheries resources. Over-fishing and unsustainable fishing methods, such as spearing, are still common activities in Korea although they are decreasing.

Commonwealth of the Northern Mariana Islands- Sharks are scarce throughout the archipelago and the ban on the use of scuba spearfishing on Saipan has improved the abundance of food fish groups.

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**Frisch AJ, Baker R, Hobbs JA and L Nankervis (2008). A quantitative comparison of recreational spearfishing and linefishing on the Great Barrier Reef: implications for management of multi-sector coral reef fisheries. Coral Reefs 27:85–95.**

the mean size of target fish caught by spearfishers was significantly larger than the mean size of target fish caught by linefishers and spearfishers retained 43% more biomass of target species than did linefishers .

In ecological terms, it may be beneficial to target larger fish, since it increases the proportion of the population that reproduce before recruitment to the fishery. However, it is also undesirable to target very large fish, because they make a disproportionately large contribution to the reproductive output of the population.

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Lloret J, Zaragoza N, Caballero D, Font T, Casadevall M and V Riera, (2008). Spearfishing pressure on fish communities in rocky coastal habitats in a Mediterranean marine protected area. Fisheries Research 94 (2008) 84–91.

Results support the assumption that spearfishing can induce changes in both the trophic structure and the intrinsic vulnerability of taxa in the catch. Considering the biological implications of spearfishing, management should be supported by additional regulations in order to protect species that are vulnerable and have a higher trophic level.

One of the cornerstones of the conservation of Mediterranean rocky fish species is that they should be considered highly vulnerable to spearfishing because this type of fishing can affect the abundance and reproductive viability of long-lived, slow growing and top-predator species.

The results clearly show the pressure that spearfishing exerts on vulnerable fishes, and suggest that this recreational activity is probably causing not only a decline in the mean trophic level of the MPA (i.e. fishing down food webs, but also in the average intrinsic vulnerability of taxa in the MPA catch (similar to what has happened in the global fish catch, especially in respect of reef fish. In particular, the removal of large individuals by spearfishing can adversely affect the reproductive potential of these vulnerable fish populations. This is because larger females are proportionally more fecund, reproduce over an extended period and spawn bigger eggs and larvae with better survival rates. Finally, for sequential hermaphrodites where all the larger individuals may be of the same sex, significant removal of large fish may prejudice the spawning success of the population.

Spearfishing also has a particular stakeholder value since amongst participants it is greatly prized as a pastime. However, it should also be noted that, if spearfishing was banned, there could be an economic gain for artisanal fishermen (who could see an increase in their catches) and for other businesses such as diving centres (who could see a rise in the number of scuba-divers as they would enjoy the benefit of seeing more live fish underwater). Unfortunately, we cannot quantify these economic gains with the available data.

The biological implications of spearfishing mean that planning and implementing a comprehensive management strategy in Mediterranean coastal areas, especially in MPAs, must include this leisure activity.

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**Guidetti P, E. Vierucci E and S Bussotti (2008). Differences in escape response of fish in protected and fished Mediterranean rocky reef. *Journal of the Marine Biological Association of the United Kingdom* 88(3): 625-627.**

sea breams in areas targeted by spearfishing exhibited an altered “escape response” by swimming out to open waters rather than seeking rocky shelter. Why is this important? For two reasons: 1) The study suggests that spearfishing, especially on scuba, alters the natural predator-evasion response of some fish — meaning that there could be impacts to the populations even when spearfishing is not directly involved; and 2) Fish might avoid any scuba diver, not just those with spears.

**Sabater MG and SP Tofaeono (2006). Spatial variation in biomass, abundance, and species composition of “key reef species” in American Samoa. Department of Marine and Wildlife Resources, Pago-Pago, American Samoa.**

New technologies have enabled remaining fishermen to use more efficient methods to increase their catch. This includes use of SCUBA to increase their bottom time, spearguns enabling them to target bigger fish, and powerful boat engines enabling them to cover more area in one day. When SCUBA assisted spearfishing was introduced in 1994, there was a drastic increase in fish catch targeting mostly large fish. Parrotfish have since been heavily exploited, giving rise to a 15 fold increase in catch. Such efficient techniques enabled fishermen to harvest 18.7% of the standing stock. This was the basis for banning SCUBA spearfishing within the territory through Executive Order.

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Nevill J (2006). The impacts of spearfishing: notes on the effects of recreational diving on shallow marine reefs in southern Australia. OnlyOnePlanet Australia; Hampton Melbourne.

Spearfishing activities are often concentrated at particular sites, and the activity is, in the right conditions, an extremely effective and efficient method of harvesting target fish – being far more time-efficient than angling in many situations.

Where reef species are heavily targeted, local populations of adult fish can be completely removed, and recruitment from deeper reefs may be low or non-existent. These locations are particularly vulnerable, and anecdotal evidence indicates local extinctions have occurred

By way of background, it is important to note that, globally, the importance of recreational fishing has been consistently understated and under-reported and that recreational fishing can cause ecosystem degradation of similar scales and types compared with commercial fishing.

According to John Ottaway: I have no doubt that the popularity of spearfishing in the 1960s, and no controls (when scuba gear became readily available) on spearfishing on scuba in the mid to late 1960s, was the major factor in the staggering decline in near-shore fish populations along the South Australian coastline, starting with the reef areas near Adelaide, and then radiating away from Adelaide as the nearer reefs became depleted.

There were many reefs along the Hallett Cove to Port Stanvac area where during the early 1960s I always saw many hundreds of fish, and commonly saw reef and pelagic specimens that would have been 5 kg plus and occasionally 10 kg plus. We left those big fish alone because the smaller fish were abundant, better eating, and we thought the big fish were probably important breeding stock. We also saw sharks reasonably often, ranging from 60 cm wobbegongs (frequently) to 4-5 metre white pointers (rarely).

In 1978, I went back to that same area on several occasions to have a look around, and was shocked to find the whole area where I used to spearfish was now a ‘wasteland’ with not a single fish over a couple of hundred grams to be seen. Even the big schools of pelagics were absent.

It's clear that the pressure imposed by recreational spearfishing is considerable - easily enough to remove all the breeding stock from the site over a period of three or four years – and, even taking recruitment from deeper reefs into account, that's exactly what happened.

Spearfishing on compressed air, and night spearfishing should be banned immediately in all Australian waters, including all of the Australian EEZ. These techniques increase the vulnerability of reef fish, or open water aggregations, already under severe pressure. Spearfishing on SCUBA is currently banned in Queensland, New South Wales, Victoria and South Australia

Birkeland C and P Dayton (2005). The Importance in Fishery Management of Leaving the Big Ones. *Trends in Ecology and Evolution* Vol.20 No. 7.

Though the recreational spearfishing community argues that it does not contribute to the decline in fish stocks, because spearfishermen are generally selective of their catch and take very few fish, there is evidence that selective harvesting of the largest of slow growing species is more damaging than harvesting a larger biomass of juveniles and might be an additional problem with unregulated spearfishing in general.

(Dulvy N and N Polunin (2004). Using informal knowledge to infer human-induced rarity of a conspicuous reef fish. *Animal Conservation* 7:365-374.

C. Birkeland and G. Davis report that big schools of bumphead parrots were common in Guam in the 1960's, but they were spearfished out in the 1970's, and now they are rare. In Fiji, interviews with people revealed that when night time SCUBA spearfishing came to an island, the markets were filled with bumphead parrots, they were half or more of all fish in the markets. Now, in those same areas, they are rare and not seen in the markets. On some islands they have actually gone locally extinct

Lowry M and I Suthers (2004). Population structure of aggregations, and response to spear fishing, of a large temperate reef fish *Cheilodactylus fuscus*. *Marine Ecology Progress Series* 273: 199–210.

Spearfishing may have a significant impact on such a long-lived resident population. There is evidence that spearing is responsible for the localised depletion of Cheilodactylid populations in New Zealand. Spearing selectively removes the larger size class and has the potential of removing a large proportion of the males.

Green A, Birkeland C and N Dashbach (2003). Coral Reef Monitoring and Decision Making in American Samoa 2.

in response to several academic studies on the reef fisheries, the government of American Samoa decided to regulate SCUBA spearfishing in a way that prevents nearly all commercial catch.

The rules prohibit the use of SCUBA gear at night and limit catch from SCUBA spearfishing during the day to either two fish or five pounds per diver per day, whichever is greater.

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**Dalzell P and D Schug (2002). Synopsis of Information Relating to Sustainable Coastal Fisheries. Apia, Samoa, International Waters Programme, South Pacific Environment Programme. 38p.**

It might be expected that target species in a reef fishery would be spared total elimination by over fishing, as increasing scarcity would eventually render the fishery uneconomical. However, spear fishing (particularly with SCUBA), has reportedly driven some species to extinction or to very low levels in Guam (Charles Birkeland, University of Hawai'i, pers comm.; Hensley and Sherwood, 1993), Palau (Johannes, 1981a), American Samoa (Charles Birkeland, University of Hawai'i, pers. comm.) and Woleai Atoll in Yap (Smith and Dalzell, 1993). Another problem associated with SCUBA assisted spear fishing is a modification of fish behaviour over time, such that reef fish normally found in shallow water move down the reef slope to escape fishing pressure. This causes fishers to dive deeper to the margins of safety for SCUBA diving, with concomitant increase in health risks (Anon., 1999).

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Modern Spearfishing: A Risky Business. Pacific Islands Fishery News. Spring 1999: 1,3.

The threat to reef fishes posed by scuba spearfishers, particularly on small islands with high demand for reef fish, have led some traditional chiefs and local governments to take or contemplate regulatory action to curb this method of fishing. Without regulation, however, large snappers, groupers, parrotfish, wrasses and other reef fish will continue to live below their normal depth range and spearfishers will likely take increasing risks to hunt their quarry.

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**Page M (1998). The Biology, Community Structure, Growth and Artisanal Catch of Parrotfishes in American Samoa. Department of Marine and Wildlife Resources. 91 p.**

Analysis of catch statistics, growth data, fisheries models, and reproductive data suggests that populations of parrotfish in American Samoa may be threatened from over-fishing. Higher fishing pressure due to the introduction of SCUBA methods is likely to have increased exploitation rates of some species close to or beyond maximum sustainable yield (MSY). Given that; the mean size of large species of parrotfishes may be declining; the total estimated annual yield is close to MSY for the entire parrotfish stock; some parrotfish species may be over exploited; large, slow growing species are being caught before they reach sexual maturity; that SCUBA spearfishing accounts for up to an estimated 89% of the total annual yield.

Parrotfish and surgeonfishes sleep in refuges at night, which makes them vulnerable (especially the brightly colored terminal phase male scarids) to spearfishers. Introduction of SCUBA technology is making the problem worse by allowing fishermen to dive deeper for longer. They are able to catch fish that were previously afforded some sanctuary at depth. The practice of fishing at night is likely to have a significant effect on the inshore subsistence fishery.

It is recommendation of this study that the use of SCUBA spearfishing be outlawed.

SCUBA fishing should cease as soon as possible. Free diving should be allowed to continue, and does provide fishermen with a way to make a living. Banning

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Dalzell P, Adams, TJH and NVC Polunin (1996). *Coastal Fisheries in the Pacific Islands, Oceanography and Marine Biology: an Annual Review 1996 395-531.*

scientists have attributed the extinction of the doubleheaded parrotfish (*Bolbometopon muricatum*, the largest species of parrotfish) and the humphead wrasse (*Cheilinus undulatus*) in Guam to the practice of SCUBA spearfishing.

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**Johannes RE (1991). *Some suggested management initiatives in Palau's nearshore fisheries and the relevance of traditional management. Inshore Fisheries Research Project Country Assignment Report, CSIRO Division of Fisheries Hobart, Australia. August, 1991.***

A number of fishermen suggested banning spearfishing using SCUBA (as is already done in Koror State), and there was virtually unanimous support for this suggestion among other fishermen I talked with. Certain species of fish which were easily speared at night have moved into deeper water in the past 20 years according to fishermen. SCUBA enables divers to pursue them even into their deeper retreats and their numbers are reportedly seriously declining.

I recommend a total ban on spearfishing with SCUBA except for research purposes, and that a permit be required for the latter. The practice favors more affluent fishermen. Spearfishing using SCUBA also facilitates the pursuit of some declining species into the deeper water refuges they are widely reported to seek under pressure from snorkeling spearfishermen. The use of SCUBA for spearfishing will undoubtedly continue to increase and be harder to control if it is not checked as soon as possible. All fishermen I talked to supported such a ban, often suggesting it themselves.

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Oakley SG (1984). *The effects of spearfishing pressure on Grouper (Serranidae) populations in the Eastern Red Sea. Proc. Symp. Coral Reef Environ. Red Sea. Jeddah, 341-359.*

The poorer ethnic groups, mainly from the Far East (Philippines, Thailand and Korea) fished

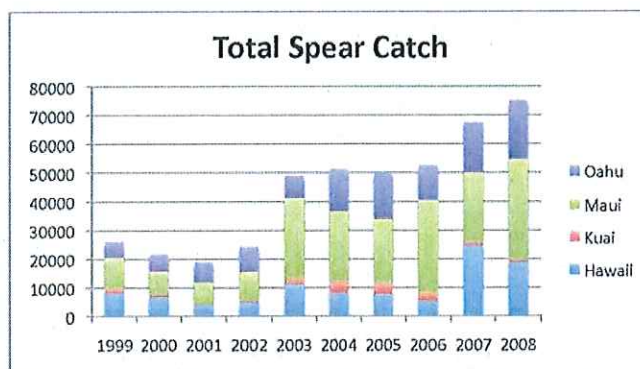
exclusively for food and were not species selective. These spearfishermen fished mainly in 2-3 m of water above the reef edge and took any fish available. Preference was indicated for the larger species and/or individuals. The remainder of the spearfishermen fished mainly for sport (shooting the largest fish possible and/or the maximum number). These people (of many nationalities) used snorkeling techniques or occasionally SCUBA to locate and shoot fish at depths of 10-15 m by snorkeling or at depths of up to 30 m using SCUBA. This second group were much more species and size selective, preferring large specimens of the following groups:- Groupers (Serranidae), Jacks (Carangidae), Wrasse (Labridae), Tuna (Tunnidae), Barracuda (Sphyraenidae), Snappers (Lutjanidae) although Grunts (Haemulidae) and Emperors (Lethrinidae) were taken if available. Spearfishing, can however be very selective taking the largest individuals from a population. More frequently, all individuals over a certain size are shot at.

SCUBA SPEARFISHING PROHIBITIONS	
Fiji	
American Samoa	No SCUBA spearfishing after sunset/before sunrise
Tonga	
Palau	
Samoa	
Solomons	
Yap	
Chuuk	
Pohnpei	
Kosrae	
Saipan	
Tinian	
Rota	
Society Islands	
Marquesas	
Tuamotus	
Austral Islands	
Gambier Islands	
Vanuatu	
New South Wales, Australia	
Queensland, Australia	
South Australia	
Northern Territory, Australia	
Wallis & Futuna	
Victoria, Australia	
Galapagos	No spearfishing
Niue	
Philippines	

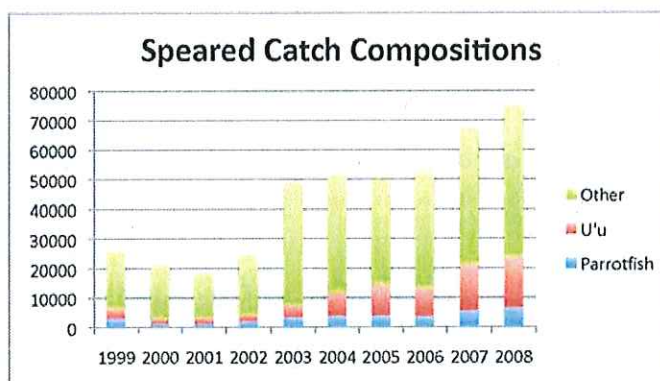
Okinawa	
New Caledonia	
PRIA –Pacific Remote Island Area	No SCUBA spearfishing 6PM – 6AM
Puerto Rico	No recreational SCUBA spearfishing
Panama	
Canada	
Tanzania	
St. Eustatius	
Cocos (Keeling) Islands	
Bermuda	
Costa Rica	
Cayman Islands	
British Virgin Islands	No spearfishing
Bonaire	No spearfishing
Bahamas	No spearguns, No SCUBA take
Curacao	No spearfishing
Netherland Antilles	No spearfishing
Antigua & Barbuda	No spearfishing
Mauritius	No spearfishing
Maldives	No spearfishing
Seychelles	No spearfishing
Malta	
Belize	
Cyprus	
Mallorca	
Grenada	
Greece	
Saudi Arabia	
United Arab Emirates	
Italy	
Croatia	
South Africa	
Mexico	
Bulgaria	
Djibouti	
Chagos	
Kenya	No spearfishing

Allen LC (2009). SCUBA Spearfishing Research Memorandum 2009, Hawaii DLNR-DAR. 32 p.

Total spear catch has been increasing in the islands over the past ten years, though catch on the Big Island and Kaua'i is less than it was ten years ago.



Though parrotfish and u'u have been identified as the most vulnerable species to SCUBA spearing, they do not account for a majority of speared fish.



On most islands, surgeonfish account for the majority of fish caught by spear.

Spearing of parrotfish has already resulted in changes in the population. On O'ahu and Hawai'i, the average size of parrotfish is half what it was in 1999. Only in Kaua'i has the average size remained constant; there the number of parrotfish speared is small and has remained relatively unchanged.

Averages in O'ahu and Hawai'i were closer to the L50 reproductive size (the size at which 50% of the population is reproductive) for most species of parrotfish before sharply dropping off between 2000 and 2003. This might suggest that the reproductive fish, especially the males, are being systematically fished first, and the remaining population is largely juveniles. This is of concern because according to Spearfishing in the Pacific, *supra* note 10, at 13 nightfishing and SCUBA spearfishing may be able to continue even after fish abundance is too low to sustain a reproductive population.

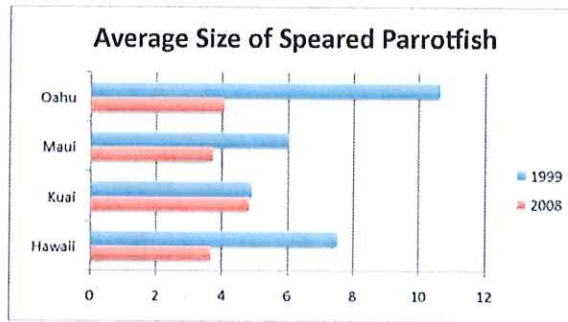
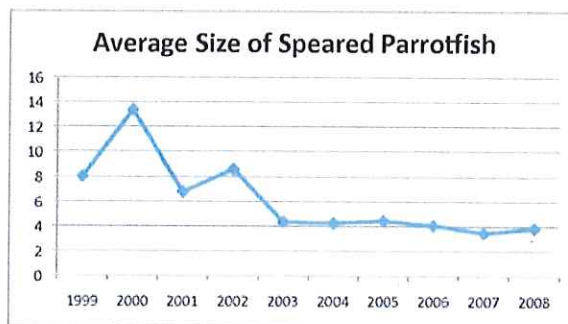


Figure 11



The u'u spear fishery faces similar problems. Though the number of fishermen has remained relatively constant in all the islands, the catch has dramatically increased and the average size declined.

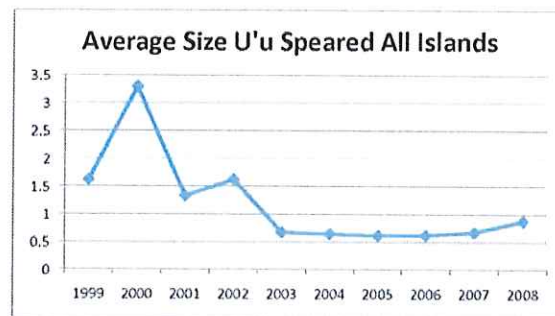
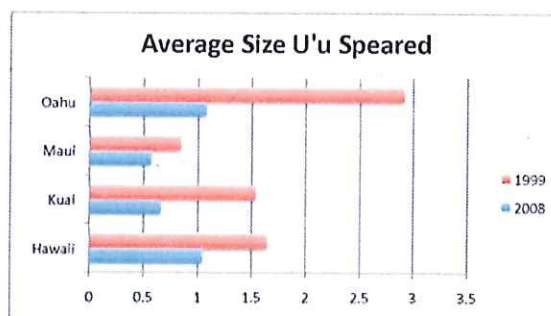


Figure 16



I would therefore recommend a management regime that combines limits on SCUBA spearfishing (either by banning it or limiting the number of fish speared), a ban on all night SCUBA take and bag limits and/or maximum size limits for parrotfish and possibly u'u.

West Hawai'i Commercial Spearfishing

The only data available on Scuba spearfishing are the mandatory catch reports for Commercial Marine License (CML) holders. For the purposes of these catch reports, spearfishing (i.e. "spearing") is defined as "Fishing with a shaft with one or more sharpened points at one end usually associated with diving. Includes bow and torch fishing." Unfortunately the catch report does not differentiate Scuba spearfishing from free dive spearfishing. Although it may be a valid assumption that most commercial spearfishing is conducted on Scuba, it should be acknowledged that the following data likely overestimates the actual amount of Scuba spearfishing since it may also include free dive spearfishing.

Figure 1 shows the number of commercial spearfishers in West Hawai'i in relation to the four main targeted fish groups. Over the last 5 years fishes in these four groups represented 92% of the total spearfishing catch and 100% of the value of the catch.

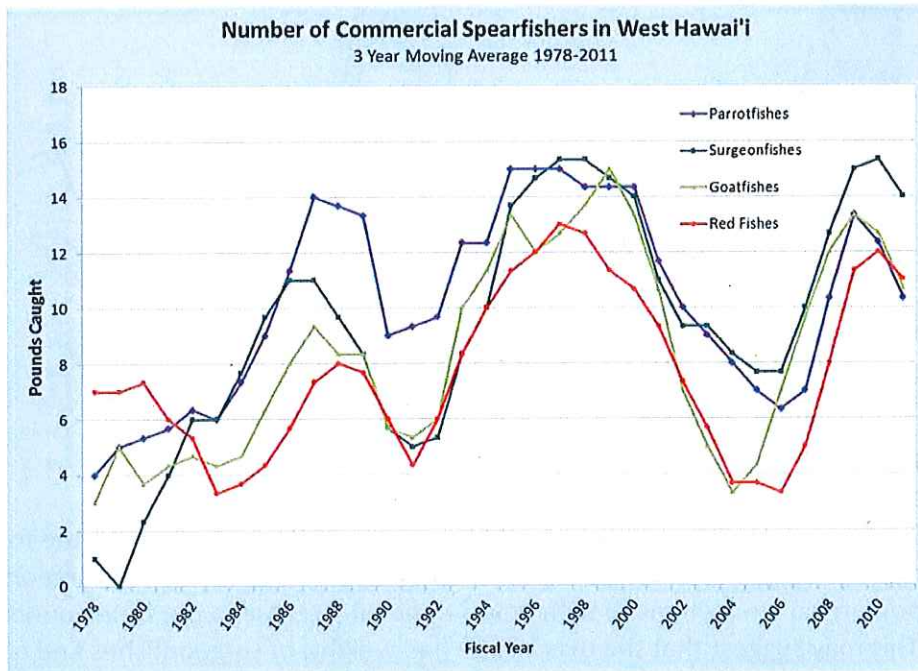


Figure 1.

The average number of commercial spearfishers in West Hawai'i over the past 5 fiscal years is 16. There were a total of 41 different CML holders spearfishing during this time period

indicating a relatively high turnover of participants.

2011	16
2010	16
2009	21
2008	13
2007	12
Avg.	16

Figure 2 shows the total pounds of fish caught by commercial spearfishers for the four primary targeted groups. Most of the groups (perhaps excluding red fish) had a peak in the mid 1990's.

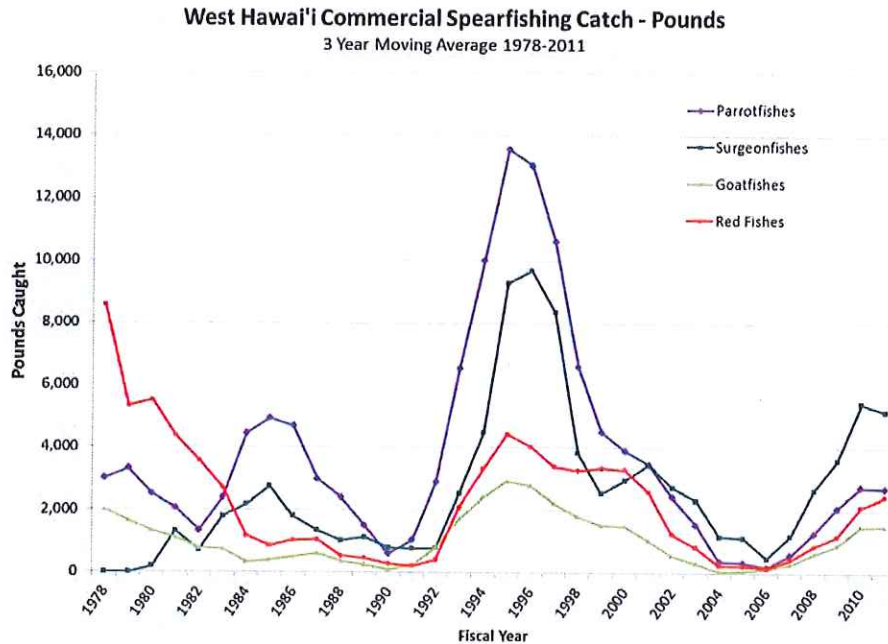


Figure 2.

Figure 3 shows the total number of fish caught by commercial spearfishers for the four primary targeted groups. Note the substantial increase in recent years in the take of surgeonfishes and red fishes (primarily u'u – menpachi) with only a minimal increase in the total poundage caught (Figure 2). This may suggest that the overall size (i.e. weight) of surgeonfishes and red fishes taken by commercial spearfishers has declined in recent years. In analyses of these sorts, data quality is always an important consideration and it is unknown whether commercial reports of catch numbers and poundage are equally reliable. Thus the relationship between fish numbers and weight should be viewed cautiously.

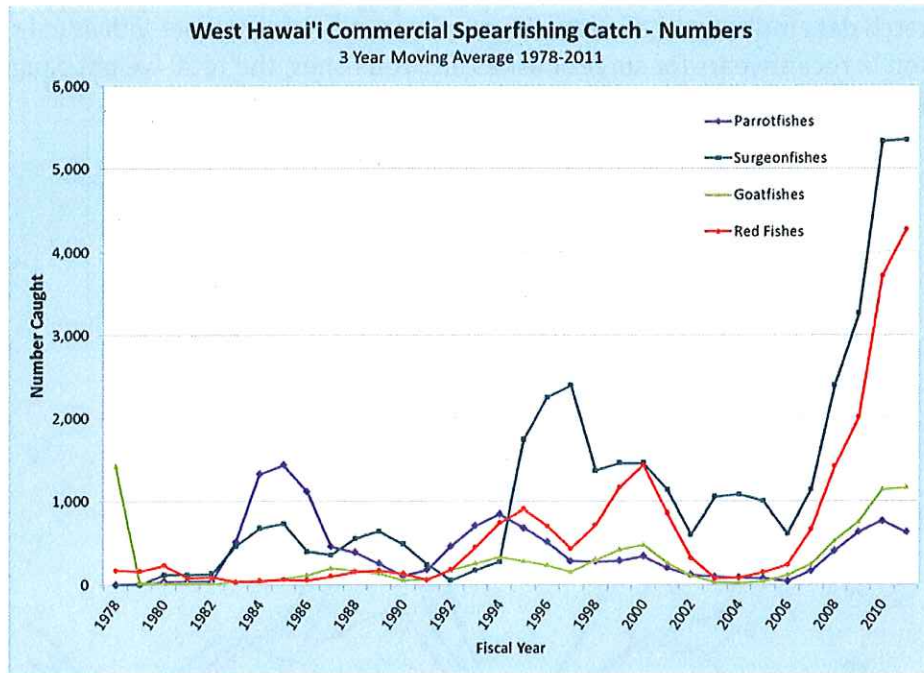


Figure 3.

Figures 4 and 5 show the commercial catch per spearfisher for numbers and pounds of fish respectively.

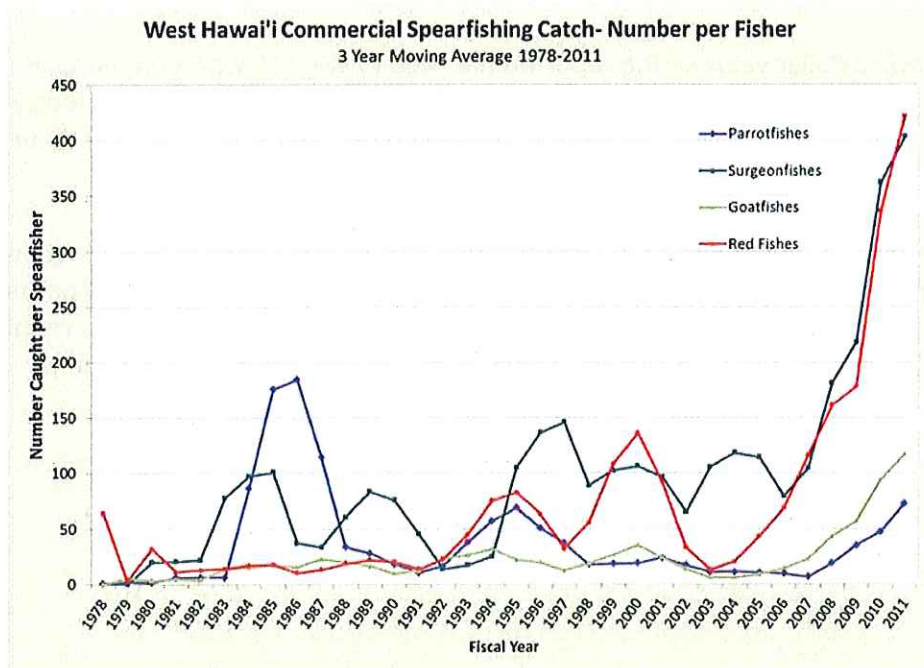


Figure 4.

Again the catch data indicates that while the numbers of fish landed per individual spearfisher has increased in recent years for surgeonfishes and red fishes, the total weight caught of these and other speared fishes has declined over time.

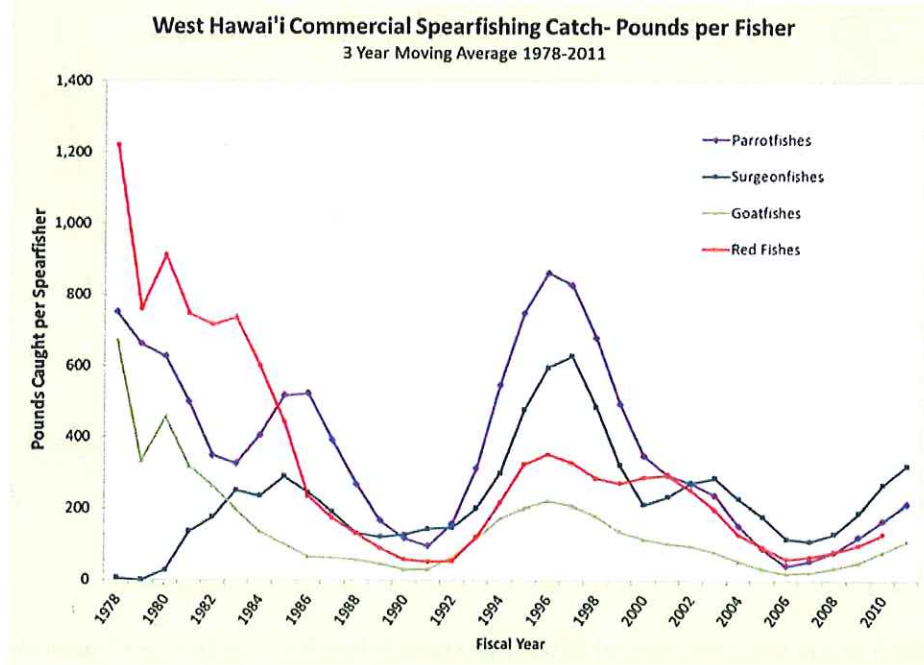


Figure 5.

The total annual dollar value of the reported (i.e. 'legal') West Hawai'i commercial spearfishery averaged over the past five fiscal years is \$25,647. As noted previously the number of commercial spearfishers during this period ranged from 12 to 21 with an average of 16.

Figure 6 shows the average value of spearfishing catch for the 41 different CML holders who reported spearfishing catch over the past five fiscal years. A near-majority of commercial spearfishers (20) reported total annual sales of less than \$50. Only two fishers reported catch exceeding \$5,000 and only a single fisher exceeded \$20,000 (for 2 of the 5 years).

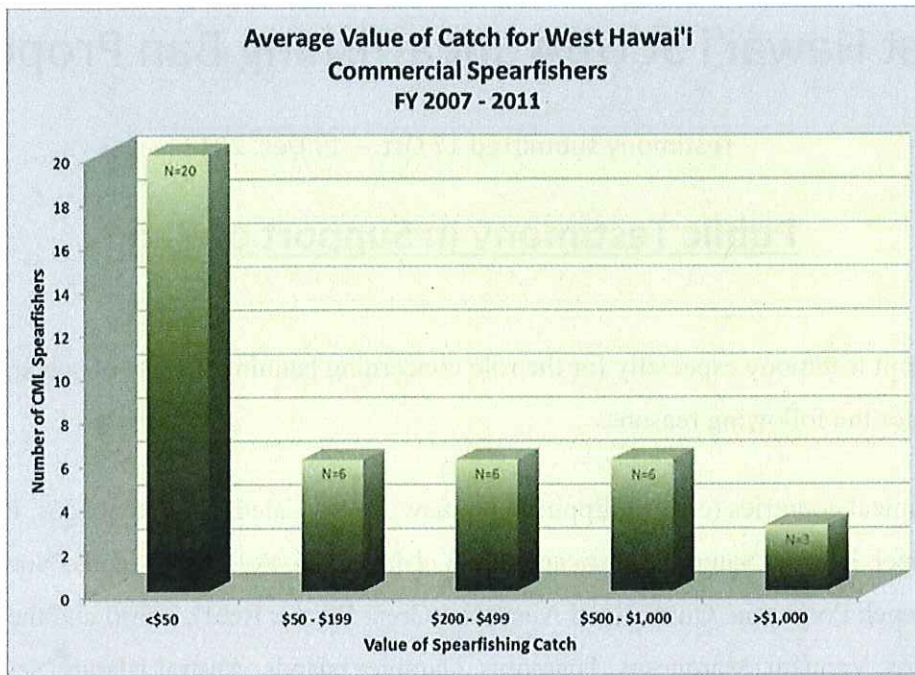


Figure 6.

Public testimony at all geographic levels was overwhelmingly in support of the proposed SCUBA spearfishing ban. This testimony is summarized below and following that are all the testimonies which directly related to the proposed SCUBA spearfishing ban.

Summary of Public Testimony on HAR 13-60.4 – SCUBA spearfishing Ban

	In Support		In Oppositon	
	No.	%	No.	%
All Testimony	668	90%	76	10%
State of Hawai'i	523	88%	71	12%
Hawai'i Island	491	89%	63	11%
West Hawai'i	462	89%	57	11%

West Hawai'i SCUBA Spearfishing Ban Proposal

Testimony submitted 17 Oct. – 19 Dec. 2012

Public Testimony In Support of Ban

I wish to submit testimony especially for the rule concerning banning the use of scuba with spearfishing for the following reasons.

Nearly all tropical countries (e.g., Philippines, Okinawa, New Caledonia, Galapagos, Palau, Yap, Chuuk, Pohnpei, Kosrae, Samoa, American Samoa, Tonga, Fiji, Solomon Islands, Northern Marianas, French Polynesia, Queensland Australia (Great Barrier Reef), Tahiti and the rest of the Society Islands, Vanuatu, Marquesas, Tuamotus, Gambier Islands, Austral Islands, Seychelles, Cocos Keeling, Mexico, Bahamas, Bermuda, Belize, Curaçao, Bonaire and most others) have banned the use of spearfishing with scuba because viable fisheries cannot be maintained if the removal of the breeding stock of larger fishes becomes too thorough. Spearfishing with free-diving (mask, snorkel and fins) is an honorable sport and a viable fishery can be maintained, but the added technology of scuba allows the fishers to be very effective in targeting sleeping parrotfishes at night and can be selective in targeting the larger fishes.

Studies of hundreds of species of fishes have demonstrated that when the age or size structure of a fish population is “truncated” (older or larger individuals are “chopped off” and the size distribution is abbreviated) by selective removal of larger individuals, then recruitment or population replenishment seriously declines, becomes sporadic, and the fisheries population loses resilience and sustainability (Longhurst 2002; Anderson et al. 2008; Venturelli et al. 2009, 2010; Hidalgo et al. 2011; Rouyer et al. 2011; Stewart 2011). Although gill nets can be detrimental because of wasted bycatch and by catching large numbers of fishes, spearfishing with scuba can have a greater effect on the sustainability of fisheries by selectively targeting the larger fishes which can lead to the exponential reduction in the number of eggs and larvae produced, shorten the population’s reproductive season and thereby reducing the chance that some of the larvae will encounter favorable conditions, lowering the average survival potential of larvae produced,

selection for slower growth and reproduction at a smaller size, and in extreme cases, lowering genetic heterogeneity (Birkeland and Dayton 2005).

How does effectively catching large fish have a greater impact on population replenishment than several times the total weight of medium-sized fishes? In nature, the fecundity goes up by about the cube (volume of gonads are length X height X width) of the gonads. It has been measured that a large snapper (61 cm length, 12.5 kg weight) has the same fecundity as 212 medium-sized snappers (42 cm each totaling 233 kg). Therefore, some Pacific islanders wisely harvest medium-sized fishes (e.g., 233 kg) and leave the big ones, because taking only one big one (12.5 kg) has the same effect on the sustainability of the population. In the modern world, people tend to be disconnected from nature and want the glory of taking a big one and don't think about the sustainability of the harvest, nor the value of 233 kg over 12.5 kg for the same cost to the system.

The late Robert Johannes spent much of his career learning the wisdom of the elder fishermen in Micronesia in resource management. He pointed out that the wise elders could see through the complex interactions and unpredictable recruitment patterns in assessing the state of their fisheries resources with straightforward observations as to whether the big ones were still there. Although there is still a great diversity and large numbers of colorful aquarium fishes on our reefs, the large fishes are scarce. The movies by Louis K. (Buzzy) Agard show that there was an abundance of large fishes immediately following World War II. But this was the time that scuba arrived and the large ones have substantially decreased since fishers have been given the power of high technology of scuba. It does not take rocket science to realize that we must ban the use of scuba with spearfishing.

In addition to reducing the sustainability of the fisheries, the taking of a substantial portion of large individuals of parrotfishes can have serious detrimental effects on the coral-reef ecosystem. Larger parrotfishes actually scrape the substratum when removing seaweed, thereby keeping the seaweed under control and facilitating coral growth for healthy systems. The smaller parrotfishes are relatively ineffective and so the decrease in large parrotfishes in Hawaii can lead to an increase in seaweed and the resulting degeneration of the Hawaiian coral-reef ecosystem. Kathrine Howard (2008) in her PhD dissertation on the "Community structure, life history, and movement patterns of parrotfishes: large protogynous fishery species" found that large individuals of the parrotfish

Scarus rubroviolaceus were ten times as abundance in Hanauma Bay where they were protected from spearfishers than other places with similar reef structure around Oahu. She calculated that only Hanauma Bay and a couple of other small areas largely inaccessible to divers had viable populations. It is urgent to ban the use of high technology such as scuba and night lights to harvest parrotfishes. For both the viability of parrotfish populations and the health of coral reef ecosystems, we must not allow scuba to be used with spearfishing. In the late 1970s, I observed the elimination of the large humphead parrotfish *Bolbometopon muricatum* from Guam. They were spectacular to observe until they were removed by commercial spearfishers when they began using scuba. The same was observed in American Samoa when commercial fishers began to use scuba (Page 1998).

I have heard several times in Micronesia and in American Samoa, the fishers say "Our resources do not belong to us, we are borrowing them from our children and our future generations." This is why most other countries and coastal villages allow spearfishing by free-diving, but prohibit the use of high-technology scuba.

I am particularly in support of the ban on spearfishing with SCUBA.

Anyone with knowledge of the marine resources of Hawai'i knows very well that the populations of our reef fishes are seriously depleted.

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In the case of SCUBA spearfishing, a number of fishermen in attendance vehemently opposed the rule banning the practice. Their reasons were:

1. I have to **feed my family**.
2. I am a "waterman" and this is the only **lifestyle** I know.
3. I need to **make a living** and this is what I do.
4. **I like to provide** for my friends and extended family.
5. My family has been **fishing for generations**.
6. As a **native Hawaiian**, I have a **right** to fish using any method.
7. This has been our **tradition** for "thousands" of years.
8. Hawaiians have **evolved** along with everyone else to use modem equipment instead of the

traditional ways. It is our right.

9. I have a right to pass on my fishing **tradition to my children**.

10. It is too **hard to find fish** at snorkeling depth. There aren't as many as before.

11. DLNR has **no jurisdiction** over native fishing privileges.

12. There is **no enforcement**, so the rule is meaningless.

13. The provision that bars having spears and SCUBA together in a boat or vehicle is **unfair**.

14. **I know more** about the habits of fish than any PhD from the mainland.

15. **Haoles** aren't going to come in here and tell us native Hawaiians how to fish.

There was a general lack of understanding of the real problem being addressed by this provision of the rules package: overfishing. In fact, this is the common link between most of the rules in the package. The issues are not of "native rights" or a "right to fish" or continuing a "tradition of generations" or passing on fishing knowledge to the "next generation." The issue is one of methodology. Spearfishing with SCUBA, especially at night, is a relatively new technique that represents a quantum advance in efficiency. It is proving to be too successful, and therefore, unsustainable. The grandfathers of the same people who were invoking the "tradition of generations" did not use SCUBA and/or high-powered spear guns. The right to pass this new "tradition" on to children will do them no good if there are no fish to be had. Opponents made the very point that the rules address: it is getting harder to find fish. Overfishing is already occurring in West Hawaiian waters, which is all the more reason to address it now.

Some opponents took the rule personally and turned it into a Haole vs. Native issue, or a "phony PhD science" vs. real life knowledge issue or an outsider vs. local issue. The point that most other Pacific Islanders and Australians, as well as Bahamians, Mexicans and many Caribbean Islanders have already banned this practice, apparently did not sink in. Those places also have their watermen, fishermen and generations of tradition, but they have seen the results of overfishing and taken steps to stop it and provide for future generations. Fishermen there will actually be able to pass on a fishing tradition to their children. One West Hawaii fisherman from down south who testified, made it clear that he would continue SCUBA spearfishing, regardless of any rules package, in defiance of the law.

Again, the issue is one of methodology. Dynamite and bleach are two very effective techniques for killing and then collecting fish. These are still used in other countries, even today. West Hawaii fishermen can certainly understand that these are destructive and unsustainable practices and would never support them here in Hawaii. The challenge is to get them to see that SCUBA spearfishing is another technique along a continuum, whose extreme on one end is dynamite, that will produce an unsustainable outcome.

Some people at the hearing were open to banning night SCUBA spearfishing alone, or setting bag



limits, or designating closure areas, but did not support an overall ban. The problem with this approach is insufficient protection and lack of enforceability. Various degrees of SCUBA spearfishing do not solve the basic problem of overfishing. Daytime SCUBA spearfishing will eventually lead to the same fish population depletion. It will just take longer.

Only banning the presence of spears and SCUBA in the same boat for any reason at any time produces a workable and enforceable outcome.

Enforcement is a legitimate concern, since DLNR doesn't have the manpower to patrol all of West Hawaii's waters. Citizen monitoring is the best method of enforcement in Hawaii. Other stakeholders will protect their interests. People on shore can see aquarium fishermen crossing FRA boundaries. Dive operators and line fishermen can see SCUBA spearfishermen in the water. Cell cameras can record boat registrations, so there is a way to address the issue of enforcement. People can report the presence of SCUBA and speared fish or spears in a vehicle or boat and record the registration or license number.

I have dived here for over two decades and have observed a decline in larger individual of certain species like parrotfish, jacks and wrasses at sites where I have also observed increased spearfishing activity targeting just these species. It's not science, but it's probably not coincidence either. I have seen SCUBA spearfishing up close and can say that, recreationally speaking, it is not a sport but rather a slaughter, especially at night when fish are actually asleep. For the same reason, it is commercially unsustainable and non viable. Almost everyone else in the world seems to have figured this out. Hawaii is one of the few places that have not already banned spearfishing with SCUBA and we need to remedy that now.

~~~~~  
Night dives reveal many diurnal fish which rest in cracks and crevices, relying on camouflage (like mucus) that works great against predators but not against divers. Parrotfish have suffered greatly elsewhere in the Pacific (notably Samoa) due to spearfishing at night by divers using SCUBA. A survey of dive spots not just in the South Pacific, but around the world, shows that Hawai'i is one of the last dive recreation destinations to still allow spearfishing with SCUBA because the toll of such fishing is just too a sacrifice for other people using the reefs. Other arguments aside, that puts Hawai'i in the unenviable position of attracting spearfishermen addicted to a technique that has proven harmful elsewhere.

Another red herring thrown out in the public hearing was the claim that SCUBA was primarily used by kupuna to allow them to do what they had done earlier in life by freediving. I am living proof that we start to wear out with age; and more specifically, that we cannot freedive as deep or as long in old age as we did in our prime. But the preponderance of the opponents' testimony leads to the obvious conclusion that the overwhelming majority of use of SCUBA for spearfishing is done by men in their healthy years. They may be giving a few extra fish to older people, but they are in it for the money.

Equally questionable is the claim that spearfishing with SCUBA is a "cultural practice" protected by laws specific to the Hawai'ian community. There is no doubt that Hawai'ians love to eat parrotfish. (So do a lot of other people!) But "cultural practice" cannot be extended to whatever puts uhu in the mouth of a

Hawai'ian. Obviously SCUBA has not been used by anybody for more than 2 generations. There were no ancient Hawai'ian SCUBA fishermen. One testifier suggested that the state recognize the "evolution" of cultural practices. That is a slippery slope. Special privileges have been rightfully granted to those in the Hawai'ian community who opt out of the money economy and support themselves largely through a subsistence economy similar to the one practiced before the European invasion. That is a cultural practice the whole society can accept and subsidize. One testifier, Leonard Torricer, has argued in the WHFC that "subsistence" fishing can be selling fish to pay for a grocery bill. There is nothing wrong with selling fish to pay for anything one wants, but DLNR, as well as the state as a whole, has to be careful to not stretch the English language in the way Mr. Torricer suggests. The subsistence laws were based on what "subsistence" really means in English, and the word "subsistence" precludes any activity in the money economy. You cannot buy a big truck; you cannot pay for a home; and you cannot buy parrotfish with money earned through fishing and call that "subsistence fishing." You cannot market fish from the "subsistence community" of Miloli'i in the city of Hilo. It can be legitimate business, but it is on a par with other small businesses in Hawai'i. These businesses are regulated by the state to prevent depletion of common resources, or, in this case, overfishing.

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It has come as welcome news that someone, somewhere in HI finally recognizes how spearfishing can seriously deplete our marine resources. And this is even more so using tanks and at night. I bet most people don't realize it, but spearfishing in general is an efficient way to eliminate species of fish. That's why roi roundups which are held to eliminate the roi, toau, and taape are spearfishing tournaments. Oh, but the divers who hold these tournaments will have you believe that they are our stewards of the ocean. To me, it's like letting the fox be the steward of the hen house. And they also have a big part in the proliferation of these so-called undesirable species of fish. The divers want zero restrictions on spearfishing. Instead they think or want others to think that establishing bag limits (which should only apply to themselves) is the way to go. Correct me if I'm wrong, but don't you need something to bag in order to have bag limits? It's not like we have tons and tons of kumu, uhu, menpachi, moana-ukali, etc, along our shoreline and we better set bag limits before they're all gone.

No, we hardly have any of these fish along our shorelines. So if you have 30 (and this is a very liberal amount) kumu along a one-mile stretch of shoreline and set a bag limit of two kumu per person per day, and one night five divers come in a boat and each take their bag limit share, this would total 10 in one night. In one night one-third of the kumu in that area is gone. Two more nights and you'll have zero in that area. On the fourth night another area will be hit. This scenario has played out many times. Awhile back I spoke with the DLNR officials on Samoa and they said the same thing. They told me that they might "think" about bag limits in the future.

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I have watched SCUBA divers fill up large bags with lobsters they took on SCUBA. A SCUBA diver can go into large caves, especially those that are 40 feet or more below the surface, and systematically take every lobster in the cave. I have never found lobsters in caves where SCUBA charters regularly visit.

This rule should be added immediately. All of these rules should have been passed 30 years ago.

Since June, 1983, I have spent tens of thousands of hours diving in Hawaii waters. I am adamantly opposed to spearfishing on SCUBA.

I have seen first hand how spearfishing on SCUBA has wiped out entire fish populations. I have frequently watched divers (in person) on SCUBA spear hundreds, perhaps thousands, of reef fish, and all of this in the course of an hour or two. I have watched large populations of mu and uhu completely disappear over the years due to commercial spearfishing on SCUBA.

As a respected and responsible freediver and spearfisherman, I find this deplorable. Spearfishing while using SCUBA, particularly at night, allows a person unlimited access to sleeping fish, and allows them to wipe out an entire area of many local species.

An argument was made last night in Kona that passing a law forbidding spearfishing on SCUBA would prevent locals from getting food they need.

As a freediving spearo, I dispute this argument. It is absurd and wrong. If anything, spearfishing on SCUBA has decimated fish populations throughout the islands, even in very difficult places to reach. I have seen the fish populations plummet since the 1980's. I have seen the ice chests full of reef fish, including massive amounts of Mu, Kumu, and Uhu. If anything, spearfishing on SCUBA has wiped out fish populations in such a way as to prevent locals from getting reef fish, because the reef fish aren't there to get!

Spearfishing on SCUBA (or any kind of supplied air) should be banned immediately.

The National Park Service (NPS) specifically supports the proposed ban of SCUBA spearfishing within the Kaloko-Honokohau Fisheries Management Area. Kaloko-Honokohau National Historical Park was authorized in 1978 "to provide a center for the preservation, interpretation, and perpetuation of traditional native Hawaiian activities and culture, and to demonstrate historic land use patterns as well as provide needed resources for the education, enjoyment, and appreciation for such traditional native Hawaiian activities and culture by local residents and visitors..." (Public Law 95-625). Breath-hold spearfishing is one of many fishing methods traditionally used by Hawaiians and this method can maintain a sustainable fishery. The proposed ban on SCUBA spearfishing in the Kaloko-Honokohau FMA is in keeping with the National Park's authorizing legislation and goals of preserving and perpetuating the traditional Hawaiian cultural and activities, and will enhance replenishment of nearshore fish stocks.

The majority of Pacific Island countries ban SCUBA spearfishing (Gillett and Moy 2006). The detrimental effects of SCUBA spearfishing includes selective targeting of larger fishes, targeting a wider number of species than other fishing gear, and accessing larger fishes in deep water refugia that are inaccessible to most breath-hold spearfishers (Gillett and Moy 2006). Selective targeting of and access to larger fish is of particular concern. Berkeley et al. (2004a) and Berkeley et al. (2004b) demonstrated that older, larger female fish produce offspring that survive better and grow faster than the offspring of younger fish. This finding has important implications for fisheries management (Berkeley et al. 2004b, Birkeland and Dayton 2005). These older, larger fish provide substantial economic and ecosystem value to the West Hawaii community (Cesar and Beukering 2004). Adoption of the proposed new rule will

ultimately support the sustainability of this important community resource.

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A group of fisherman has objected loudly and may have made the impression that there was more of them than the actual people present. These fisherman have primarily objected the ban on spearfishing on scuba with two main points. The first is the right to feed their families and the second is the right to continue fishing as their parents and grand parents before them. To these people I say, this bill only target spear fishing on scuba. Any one willing will be still allowed to spear fish for their family needs the traditional way (non-scuba) just like their parents and grand parents did before them.

I feel that these fisherman though passionate were misinformed, some may not have understood that the ban is for scuba spearfishing only and the others that wants to continue spear fishing on scuba can not justify this as a tradition (scuba certainly was not available to their ancestors) nor the need to feed their families which can be satisfied by other, less destructive, fishing methods.

I will strongly suggest the DLNR go a head and pass the spear fishing on scuba ban as well and make Hawaii join all the other countries that understood the importance of it as was stated in the hearing by all the wonderful and detailed testimonies.

Many other countries have outlawed spearfishing using scuba gear. It is a solid idea, and I'm glad that Hawai'i is finally catching up with the rest of the world!

~~~~~

The usual argument in favor of SCUBA spearfishing is that it is highly selective and avoids waste. However, this selective quality has also proven to be SCUBA spearfishing's greatest negative attribute. SCUBA spearfishing allows for highly efficient harvesting, enhanced targeting of prized species, and a preference for bigger fishes; together resulting in the removal of large numbers of important fishes at their most productive ages. SCUBA divers can spearfish for extended periods of time and at depths that are unavailable to other types of fishers and fishing methods and that would otherwise serve as refuges for many fishes. These conditions are magnified when SCUBA spearing is employed at night when many species are sleeping. This is particularly problematic when groups of fish like herbivores (e.g., uhu) are targeted in large numbers while sleeping under ledges, in holes or caves. The grazing behavior of such species is critical to ecosystem function, coral health and sand production.

Having experienced the negative effects of SCUBA spearfishing, several nations (e.g., Australia, Mexico, Belize) and most Pacific island countries and territories (e.g., Fiji, Marianas, Tonga, American Samoa, Samoa, Solomons) have banned or severely restricted SCUBA spearfishing. Coupled with other management regimes and consistent enforcement, the proposed ban on SCUBA spearing in the West Hawai'i rules package is a reasonable and justified component of a broader management strategy in support of near shore fisheries and habitat health so these resources will flourish for the benefit of present and future generations of people.

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I have been spearing fishes for over 70 years, first as a teenager for sport and proudly bringing home fish for dinner, later for my research as an ichthyologist.

If one is spearing fishes with SCUBA, it can hardly be considered as a sport. It is banned in many places in the world, such as Mexico, the Bahamas, and Australia, and it should be in Hawai'i. The most offensive is spearing sleeping fishes with SCUBA at night.

This is a special threat in Hawai'i because of the vulnerability of some of our endemic fishes, such as the Spectacled Parrotfish (*Chlorurus perspicillatus*), the male uhu uliu uliuli and female uhu 'ahu'ula, the largest of our parrotfishes. The largest of Atlantic parrotfishes, the Rainbow Parrotfish (*Scarus guacamaia*) is now extinct in Brazil, and the main cause has been attributed to spearfishing.

Another bad effect of spearfishing is the fear of man that it soon creates in resident fishes. If you dive on a pristine reef that has never experienced a skindiver or scuba diver, it is amazing how closely you can approach the resident fishes. All it takes is a single spearfisherman to disrupt this tranquility, especially one with noisy SCUBA gear.

So let us ban spearfishing with SCUBA and save it for observing our reef fishes, instead of killing them.

~~~~~  
I've worked both as a marine biologist and a commercial fisherman. My specialty as a fisherman was SCUBA spearfishing. As one of two people involved in this on the island that I lived on, I was able to witness firsthand the very destructive nature of this fishery to the resource.

The most offensive is spearing sleeping fishes at night. We all know that. Those of you that spear fish know the fishes that sleep at night. I kind of liken that as a defensive trainer of going into someone's bedroom and taking a shot at them without their eyes open.

this diving and taking fish, especially the parrot fish that are sleeping at night, I don't think that that's acceptable. How about not spearing at night.

Some of the rules changes included are the prohibition of spearing fish while on SCUBA. This has already been banned in most areas of the world.

There are many people removing fish from our reefs. Some are doing it while spearfishing on SCUBA, some are collecting the fish for resale, and others just not paying attention to the overfishing that is rampant across our reefs.

~~~~~  
I wish I could attend your public hearing to express my support for the ban of SCUBA Spear fishing and limiting of numbers of Acquarium species to 40. Unfortunately, I have no vehicle and I live far in Waikoloa Village. I am from the Marshall Islands and I just moved to live in Kona last March 2012. During my short here, I am amazed of the richness of the marine reef fish spieces here at Kona coastal waters. However, because these coastal reef fishes do not migrate far and wide that they are very sustible to over fishing

and population depletion especially by uses of destructive modern fishing methods like SCUBA spearing. Another negative impact on these reef resources is the proliferation of the number of fishermen on the island from neighboring Pacific Islands and Asia. My testimony therefore is ban use of destructive SCUBA Spearing in designated coastal areas as may be approved by this proposed law. Should you need further clarifications, please do not heshgtate to contact me. Thank you for the opportunity to comment on this very important proposal to protect the vulnarable reef fish species.

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For over 35 years I have conducted underwater studies on the reef fish that inhabit WH reefs. In those early days, a SCUBA diver swimming in less than 30 feet of water could commonly see large white ulua swimming in reef caves searching for menpachi to eat. Mu would commonly sit in the water column over the reef waiting to see the movement of crabs on the bottom to eat. At night, it was common to see very large uhu sleeping in crevices and cracks of the reefs. Today, it is a rare occasion to see any of these large fish. The popularity of SCUBA has made it possible for people to spear these fish with relative impunity for commercial purposes, especially when fish like the uhu are sleeping on the reef at night. In my opinion, the state should prohibit the taking of these fish by SCUBA divers because it is like 'shooting fish in a barrel' and has nearly eliminated from many reefs the large animals that are important for spawning.

~~~~~

I have also spent many hours researching how the rest of the world addresses the issue of spearfishing using scuba. Many countries around the world have banned it, having experienced the devastating effect it has had on their fish populations. Whole fish populations have been destroyed by it. It is happening before our eyes here in Hawaii. Hawaii is one of only a few places on earth where this practice is still allowed. As the population of Hawaii grows the threats to our reefs from overfishing grow as well. Scuba spearfishing is a destructive and unnecessary practice and needs to be banned before it is too late. The evidence is out there for all who wish to see it. It will be our shame if we allow this practice to continue in spite of the evidence against it.

~~~~~

I strongly support the ban on scuba spearing. When I dive I take maybe 15 pounds of fish for my home table. Many of those who testified at the public hearing take for commercial purposes. Taking 400-800 pounds is not pono to me. If it were still the 70's when only had a few guys taking that much, that is one thing, but today there are many more people using the resource, and the cumulative effect is greater. Many mentioned that they rotate where they go, that doesn't mean someone else, following their own rotation, won't pound the same area the following night. Again, the cumulative is great. I hope DAR can use some of the testimony to make rules that are pono, even to those who testified against these rules.

~~~~~

The scuba/spear-fishermen were clearly trying (and succeeded) in getting traditional spear-fishermen to come to the meeting, be very loud and intimidate many others.

Isn't it true that scuba/spearfishing is already against the law in most Pacific countries? Is it

correct for DAR and DLNR to continue to allow scuba/spear-fishers to think that removing HUNDREDS of POUNDS of fish at a time from the reef is subsistence fishing? This is what many of them said. And, of course, using scuba/spear at night equals a slaughterhouse! There were one or two local guys who did say that it wasn't 'pono' to scuba/spear at night. And even some people who were there to complain about the total ban did say that a ban on night scuba/spear would be fair.

~~~~~

The most offensive is spearing sleeping fishes at night. We all know that. Those of you that spear fish know the fishes that sleep at night. I kind of liken that as a defensive trainer of going into someone's bedroom and taking a shot at them without their eyes open. Okay. So that's my personal opinion. Those of you in the room know how good uhu is. Believe me, if you stuff it with Okinawan sweet potato, it's one of the best fish to eat. All of you who spear fish know the fish are pretty smart and they get a lot smarter after their cousins have been speared.

~~~~~

So I enjoy fishing and I enjoy spearfishing. But I grew up in New Jersey before I moved here, and I saw what happened with no regulations on any kind of fishing. And the fish disappeared and there aren't many fish left. People go out fishing and there is not much left there.

I do support the West Hawaii Fishery Council proposals because they are necessary. Families may have fished here forever and supported themselves and feed themselves and others, but you can't keep doing that, especially on SCUBA. The fish don't stand a chance, even during the day. People spearfishing on SCUBA, the fish disappear.

~~~~~

Among other things, Chapter 13-60.4 proposes to prohibit SCUBA spearfishing for the simple reason that it has already been demonstrated everywhere in the Pacific that the prohibition of SCUBA spearfishing is necessary, because this methodology leads to overfishing, overfishing that has had dire consequences for maintaining healthy fish populations. In addition, this problem is particular intensified when night fishing is involved it is at this time that the fish are most vulnerable. Relatively few numbers of SCUBA spearfishers can lead to rapid declines in local populations of particular species, which can have cascading deleterious effects that can travel up and down the food chain.

~~~~~

I hate the thought of interfering with any fisherman's livelihood, but according to DLNR catch records the dollar amount of speared fish sold has fallen dramatically over the years. There's been an average of 16 commercial spearfishers over the last 5 years with an average total reported catch value of less than \$26,000. It is unknown how much of that fish was speared on scuba and how much was speared breath holding.

All of Europe, Belize, Mexico, and all Pacific Island Nations except the Marshall islands have banned spearing on scuba. This has resulted in many fish populations making a big come back.

~~~~~

I support the provision to prohibit SCUBA spearfishing as it provides an imbalanced advantage that has been shown in other regions of the Pacific to rapidly deplete fish populations (Page 1998). Technological advances that increase fishing efficiency including SCUBA have the potential to place added pressure on an already vulnerable resource. The refuges that fish previously had such as deeper waters and the shelter of darkness have been virtually eliminated and with it the ability for populations to recover from fishing pressure. Thus, this prohibition of SCUBA spearfishing within the WHRFMA will support the maintenance of reproductive stocks.

~~~~~

I strongly support the banning of spearfishing on SCUBA, whether day or night. The practice has been found to be so destructive in island nations all around the Pacific, that many small and not very wealthy countries have decided to ban this fishing method. It is clear that any apparatus that allows a spearfisher to go deeper and stay longer than breathholding does affords the fish no refuge to escape the spear. Since many fish sleep at night, spearfishing at night can take many fish completely unawares. It's not sporting, it's not fair, and it's not ecologically sustainable.

~~~~~

I lived here all my life and love the fish I see when i go swimming, but I believe that spear fishing on scuba is truly unfair and gives no chance for the fishes to escape. If this is all that happens the fish population can be decimated and there will be no more beautiful fish to see

I support the proposed rule (Chapter 13-60.4). I do not believe SCUBA spearing is a sustainable fishing practice. SCUBA spearing is partly to blame for our decline in reef fish species (especially uhu and menpachi). Please end SCUBA spearing.

~~~~~

Spear fishing should not be allowed. No one should be able to spear fish in popular swim, snorkel and dive areas on the Big island and spear fishing should be severely limited by commercial companies. With so many tourists and locals enjoying Big island swimming areas, it is very disheartening to see the fish before your eyes being killed for sport and it is dangerous for swimmers to be in the same area as spear fishermen who are killing beautiful fish as well as adding to the destruction of the fish population.

~~~~~

Spearfishing while using scuba has the potential to result in unacceptably high fishing mortality, particularly on sought after species, especially when it is done at night when diurnal fishes are quiescent and particularly vulnerable to predation. For this reason, this fishing technique has been banned outright in many regions. Hawaii should follow suit and ban it outright or, perhaps as a compromise, ban nocturnal scuba spearfishing and place strict bag limits on species that may be taken in daylight hours.


~~~~~  
I attended the meeting last night and it seemed like everyone was on the same page, besides a few fishermen who opposed the ban on scuba spearfishing. I do not have a PH D, but it seems like a no brainer, if most other countries have banned this and after a decade of Hawaii mulling this over, it is time we follow suit. I don't think the Hawaiian's grandfathers were out there in their scuba gear doing this....  
~~~~~

Prohibition of SCUBA/Rebreather spearfishing and/or possession of such gear with a spear or speared aquatic life – This provision seems like a 'no-brainer'. "Fishermen" should not be allowed to use SCUBA gear while spear-fishing. Spear-fishermen using SCUBA gear can effectively remove all the targeted fish in an area, because they are essentially unlimited by their air supply. This is especially true at night, when a fisherman outfitted with SCUBA gear could target fish that are sleeping and more vulnerable.
~~~~~

The ban on SCUBA spearfishing is urgently needed to prevent severe over-harvest of targeted species. Experience in other locations has shown that this method of fishing is so effective (especially for species such as parrotfish which sleep in the open and are easily harvested) that even a small group of fisherman can rapidly deplete a fishery, to the detriment of the species, the reef, and the vast majority of users. I strongly support the ban on SCUBA spearfishing.  
~~~~~

Spearfishing on SCUBA, particularly at night when fish are extremely vulnerable, is banned in most other regions in the pacific because the potential for over exploitation using this fishing method is so high. There have been a number of examples (e.g., American Samoa) where relatively few fishers using this technology have lead to the rapid declines of local populations of species that are economically, culturally and ecologically valuable (e.g., parrotfish).
~~~~~

The prohibition of SCUBA spearfishing would allow free-divers to practice their sport and provide food for their families while allowing most of the large fish to escape death, and therefore reproduce and provide fish for future spear fishermen. Most other areas of the world have already seen the wisdom of protecting marine life from over fishing on SCUBA. Please support this protective measure for our crustaceans and fish.  
~~~~~

In Southern California, I was a diver and spear fisherman for many years. During that time, I saw the decline in fish stocks, especially the slower growing and slower moving fish that are relatively easy to spear by divers with scuba. After I realized I was part of the problem, I traded my spear for a camera and hope that I am now part of the solution.
~~~~~

the impacts of scuba diving and snorkeling on coral reefs is well-documented throughout the world – peer-reviewed studies in Egypt, Saint Lucia, Bonaire, the Cayman Islands, Eilat, the US Virgin Islands,

the Galápagos, the Maldives, and the Great Barrier Reef of Australia were all shown to significantly decrease hard coral cover, while simultaneously increasing the amount of dead coral and coral rubble.

The proposed prohibition on SCUBA spearfishing should be a “no-brainer.” Numerous scientific studies across the Pacific and around the world have shown that the significant advantage SCUBA gear provides to spearfishers allows them to be far too efficient, resulting in deleterious impacts on fish populations, particularly the larger breeders.

.....the prohibition of SCUBA spearfishing is overdue in Hawai'i. It has long been banned in many jurisdictions. Because of the importance of the West Hawai'i reefs and their fish resources its implementation in the Management Area will be an important lesson in the effectiveness of this simple measure.

The elimination of spearing using compressed gas is important to protect vulnerable species, especially at night. I saw the effects of unregulated spearing in American Samoa in 1997, where few adult fish were encountered and small ornamental fish were terrified by the sound of diver's bubbles.

As a trained observer of reef ecosystems I feel that every concept of the rule package is very much needed for the Kona coast. Scuba spearfish has been shown to be very destructive and has been banned in such places as Australia and American Samoa.

SCUBA spearfishing is a highly immoral way to fish. Many fish, like the important indicator parrot fish, sleep at night. You can literally go up and poke them. Most the SCUBA spearfishing is done at night when so many fish are extremely vulnerable.

I wholeheartedly endorse the intent of all of the new proposed provisions. Especially important is the provision (prohibiting SCUBA spearfishing within the WHRFMA). SCUBA spearfishing, particularly at night, is an entirely too effective and destructive technique to be allowed in the WHRFMA.

I believe that using the advantages of SCUBA to spear fish is highly inappropriate. In fact, this practice has been banned in other areas of the Pacific where it resulted in over-exploitation and rapidly declining fish populations.

Prohibition of SCUBA spearfishing is a necessary step to protect near shore food fish stocks because SCUBA fishing could rapidly over-fish current stocks. This measure has already been

taken in most other regions of the Pacific.

The prohibition of spearfishing on SCUBA in particular is a long overdue regulation, as this practice has the potential to overexploit fish populations, and has been banned elsewhere in the Pacific for this reason.

Our islands population has increased to the point that it is now important to manage our resources. Many other locations in the world, have already suffered with scuba and spearfishing, completely wiping out entire ecosystems.

The prohibition of spearfishing on SCUBA in particular is a long overdue regulation, as this practice has the potential to over-exploit fish populations, and has been banned elsewhere in the Pacific for this reason.

The prohibition of spearfishing on SCUBA in particular is a long overdue regulation, as this practice has the potential to overexploit fish populations, and has been banned elsewhere in the Pacific for this reason.

Fishes should only be speared by free divers, NOT by SCUBA divers. South Pacific Islanders have, in many areas, prohibited this practice after hard lessons were learned, per Dr. Charles Birkeland.

I strongly support banning spearfishing on scuba. It's against the law in a lot of countries now, and it should be illegal here, too.

Prohibiting spearfishing with scuba is a small but important start toward restore some of the larger fish to our reef ecosystems.

If SCUBA gear and spearfishing will be prohibited the aquatic life will live in their natural environment.

Scientists, Marine Researchers and Resource Managers Testifying  
in Support of WHRFMA SCUBA spearfishing Ban

|               |             |                |                                                        |
|---------------|-------------|----------------|--------------------------------------------------------|
| Dr.           | Jim         | Beets          | Dept. Marine Science, UH Hilo                          |
|               | Kathy       | Billings       | National Park Service                                  |
| Dr.           | Charles     | Birkeland      | Dept. Zoology, Mānoa Emeritus                          |
| Dr.           | Bruce       | Carlson        | Georgia Aquarium                                       |
| Dr.           | Jeremy      | Claisse        | Dept. Biology, Occidental College                      |
|               | Steven      | Colbert        | Dept. Marine Science, UH Hilo                          |
| MS.           | John        | Coney          | University of Hawai'i, Hilo                            |
|               | Stephen     | Cotton         | Pacific Cooperative Studies Unit, UH Mānoa             |
| PhD Candidate | Courtney    | Couch          | Dept. Ecology & Environmental Biology, Cornell U       |
|               | Victoria    | Cullins        | Wild Dolphin Foundation                                |
| Dr.           | Edward      | DeMartini      | Pacific Islands Fisheries Science Center, NOAA         |
| MS.           | Liz         | Foote          | Coral Reef Alliance                                    |
| Dr.           | Helen       | Fox            | Conservation Science Program, World Wildlife Fund      |
| PhD Candidate | Jonatha     | Giddens        | Dept. Biology, UH Mānoa                                |
| Dr.           | Craig       | Glenn          | Dept. Geology & Geophysics, UH Mānoa                   |
| MS.           | Donna       | Goodale        | Hualalai Academy                                       |
| Dr.           | Leon        | Hallacher      | Dept. Biology, UH Hilo                                 |
| Dr.           | Drew        | Harvell        | Dept. Ecology & Environmental Biology, Cornell U       |
| Dr.           | Mark        | Hixon          | Dept. Biology, UH Mānoa                                |
| PhD Candidate | Christopher | Jury           | Dept. Oceanography, UH Mānoa                           |
| Dr.           | Robert      | Kinzie         | Dept. Zoology, Mānoa Emeritus                          |
|               | Mike        | Lameier        | Pacific Islands Regional Office, NOAA                  |
| PhD Candidate | Lisa        | Marrack        | University of California, Berkeley                     |
|               | Betsey      | Morrigan       | University of Hawai'i, Hilo                            |
| MS.           | Rebecca     | Most           | Dept. Marine Sciences, UH Hilo                         |
| MS. Candidate | Emily       | Munday         | School of the Environment, Washington State University |
| MS.           | Kara        | Osada-D'Avella | Pacific Cooperative Studies Unit, UH Mānoa             |
| MS.           | Sara        | Peck           | UH SeaGrant Retired                                    |
| MS.           | Linda       | Preskitt       | Eyes of the Reef                                       |
| Dr.           | John        | Randall        | Ichthyologist Emeritus, Bishop Museum                  |
| Dr.           | Moshe       | Rappaport      | West Hawai'i Community College                         |
| Dr.           | Andrew      | Rhyne          | Dept. Marine Biology, Roger Williams University        |
| Dr.           | Marc        | Rice           | Hawai'i Preparatory Academy                            |
| Dr.           | Ku'uilei    | Rodgers        | Hawai'i Institute of Marine Biology                    |
|               | Richard     | Ross           | California Academy of Sciences                         |
| Dr.           | Dale        | Sarver         | Marine Ecologist                                       |
| Dr.           | Robert      | Shallenberger  | Conservation Biologist                                 |
| PhD Candidate | Kosta       | Stamoulis      | Dept. Biology, UH Mānoa                                |
|               | Keoki       | Stender        | University of Hawai'i Mānoa                            |
| MS. Candidate | Yuko        | Stender        | Geography Dept. UH Mānoa                               |

|     |          |           |                                                        |
|-----|----------|-----------|--------------------------------------------------------|
| Dr. | Todd     | Stevenson | School of the Environment, Washington State University |
| Dr. | Stephen  | Thompson  | Marine Environmental Research                          |
| Dr. | Brian    | Tissot    | School of the Environment, Washington State University |
| Dr. | Michael  | Thlusty   | New England Aquarium                                   |
| Dr. | Robert   | Toonen    | Hawai'i Institute of Marine Biology                    |
| Dr. | Timothy  | Tricas    | Dept. Biology, UH Mānoa                                |
|     | Chad     | Wiggins   | The Nature Conservancy                                 |
| Dr. | Ivor     | Williams  | Coral Reef Ecosystem Division, NOAA                    |
| Dr. | Thierry  | Work      | US Geologic Service                                    |
|     | Marjorie | Ziegler   | Conservation Council for Hawai'i                       |

## Testimony in Opposition to SCUBA Spearfishing Ban

With respect to the SCUBA spearfishing prohibition contained within the proposed rule package, OHA respectfully requests that some further consideration be given to those who have a bona fide need to utilize SCUBA gear to harvest marine resources for subsistence purposes. Such consideration may be made in the form of an expressly recognized affirmative defense to enforcement actions for bona fide subsistence practices, the imposition of subsistence-level marine life take and possession limits for those utilizing SCUBA gear and spears, and/or an optional permitting or registry structure that may recognize individuals' subsistence practices in advance, and outside of the criminal defense context.

OHA notes that much testimony has been submitted in regards to the possible impact of a blanket SCUBA-spearfishing prohibition on the subsistence practices of local families in the West Hawai'i region. OHA also notes that representatives from beneficiary communities in certain areas, such as Miloli'i, have voiced contrasting concerns regarding SCUBA spearfishing, and spearfishing at night, as detrimental to their subsistence lifestyle and the resources they depend upon. OHA is aware that the regulation of SCUBA spearfishing and spearfishing at night, have been topics of discussion within the WHFC and West Hawai'i communities since as early as 2003, and commends the WHFC in their efforts to find a community-based consensus on this sensitive issue.

However, to the extent that harvesting resources using SCUBA gear and spears may be necessary for the present subsistence needs of certain individuals, OHA believes that a more narrowly-tailored approach may accommodate the needs of these individuals, while respecting the resource and practical enforceability measures that are reflected in the proposed prohibition.

SCUBA divers tend to use the 60-ft to 100-ft depth area, an area not used by snorkel or free divers, therefore it spreads the fishing effort to a wider area. By banning SCUBA,

the divers will simply concentrate on areas where they can free dive, thus take more fish from shallower areas. Banning SCUBA gear for spearfishing will not reduce the total take of fish, it will simply move the harvest to different locations.

Spearfishing is a very selective fishing method. Divers can pick species and size of what they harvest, therefore size and species bag limits should be used to manage this fishery rather than a total ban.

Before a management method is put into place, there should be scientific evidence, not hearsay and speculation on the amount, type, and impact of SCUBA spearfishing on popular spearfishing areas in West Hawaii. To my knowledge, the rationale on why a ban was proposed was based on speculation, not science.

If the amount of current harvest by SCUBA spearfishers is not known, there will be no possible measure of success or failure of a management method utilizing a complete ban.

If SCUBA spearfishing is a problem to the nearshore ecosystem, then it should be looked at for the entire state, not just West Hawaii. The proposed ban in West Hawaii will create a hodge-podge of regulations.

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As many have said here very recently in their presentations, I don't think it's right to ban the taking of fish on SCUBA. I do agree that nighttime taking of fish on SCUBA, it shouldn't be done. And I've always kind of felt that the people that did that weren't very qualified to be out doing it. I mean if you're going to take fish, put some sport into it. It's pretty easy to shoot an uhu that's sleeping under a rock in the evening. As one gentleman just mentioned here recently, as we get older, our lung capacity is not what it used to be.

I don't want to see a ban on SCUBA spearfishing. If you want to modify the regulations, modify them in such a way that you can limit nighttime taking of fish on SCUBA, at least make it all right for recreational home consumption users to be able to take fish.

I don't know how many of you out there dive, but no, you can't go out to 30, 40, or 50 feet free diving and poke fish. It's real hard to do, and it's dangerous. I've had friends here in the islands that have died from shallow water blackout because they were trying to dive too deep and it doesn't work.

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I used to dive here on this side, on the west side, I used to shoot 700 to 800 pounds of uhu a night. And my conscious told me stop that, along with Junior Kanuha, so I learned to listen.

So to tell people that they can't go into the ocean and use a tank, that's intelligence, that's modern world just like we use our cell phones and our smart phones and our GPS, you're telling a people that because they want to use modern equipment to do something efficiently

and effectively and sustainably [sic] that they can't do it is wrong, completely wrong.

I dove the west side for years, and now I barely ever dive it. Why, because there is less fish, and I felt as though maybe I should dive down someplace where there is. I took a small ride in my boat on the west side from Kiholo Bay all the way down to Miloli'i, and there is a huge difference. There's mosses growing on the reefs that were never there before. I've been here 27 years, and I've seen things change.

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So when you look at other proposals like the SCUBA spearfishing. Current regulations on the book already state that there is bag limits, size limits that restrict fishermen in many ways, season of closures and everything else they testified to that said how fishing is restricted. This regulation makes something illegal more illegal. I mean if you are going to take 15 fish and that's your limit, that's your limit. Whether you put on a SCUBA tank and go and take 15 fish or you spear it without a SCUBA tank, all it does is makes it harder for a person to take their 15 fish so it's already a restriction in the books.

The possession issue of the SCUBA spear makes it difficult to enforce. It makes anybody who has a SCUBA and a spear on their boat automatically illegal. It's automatically a violation. It doesn't matter what you use it for if you didn't use it, and I think it's a really poorly written regulation if it's passed in such way.

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I am an old man with 1 lung and have been diving these island all my life. I am 70 now and this is the recreation I choose and cannot do it without a scuba tank. I go after tako and some kaukau fish from time to time and please do not pass this law. I agree the reefs are getting depleted but actually the night diving and the tropical fish collecting are the main reasons.

There is no way a responsible diver with a spear can wipe out a reef. The way they get wiped out is the divers that gas the holes and there is no policing of this practice here on the big island you folks do not have the boats or the man power to take care of this. I have seen bleached holes everywhere and even reported the persons involved with no satisfaction.

~~~~~

The proposal to ban scuba and spear is dangerous and compromises the community's ability to gather food, threatens the livelihood of small businesses and the safety of food providers. The proposal to ban scuba-spearfishing is irresponsible and redundant. With bag and size limit regulations already established, there is no need to restrict gear type or method of fishing. All this does is make it unsafe and difficult for people to fish for food.

HNF use of scuba is essential in our operations.

The use of scuba is essential for safety, essential for selectivity, essential to the way we operate.

HNF use scuba and spear in almost everything we do.

The use of scuba and spear is the nature of our gathering style. We have been sustainably gathering/harvesting in this manner for the last 50 years.

~~~~~  
**If one group cannot use SCUBA because it has been shown to deplete the reefs of fish then this rule should be applied to all groups.** Why is it proposed that aquarium fish collectors are allowed to remove fish from the reef using SCUBA yet local spearfisherman are not? I have looked over a lot of research and it does show that reefs tend to get overfished when populations start using SCUBA instead of traditional fishing methods.

**Therefore the rule should be that no aquarium collection/spearfishing can be done with SCUBA (or SNUBA).** This would allow the local spearfisherman to continue their traditional methods of spearfishing (free diving) which for centuries have been proven to be sustainable.

~~~~~  
I'd also like to say in getting the information on what science is available, and specifically I'm talking about the spearfishing ban but there may be other issues, and what science is available, but quite frankly on a spearfishing ban, I can say that there is very little.

I have a background in proposed Hawaii Administration Rules which was given to me, and I have a NOAA paper that was written in March 2012. Neither of them support with science the fact that there is a spearfishing SCUBA problem or that there should be a ban. The ban was, in fact, only one of seven proposals that were mentioned since the year 2001.

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In terms of banning spearfishing with SCUBA, the West Hawaii Fisheries Council has never put forth the ban before. What I'm proposing for that measure is FRAs work for the tropical fish collectors, then set up something like that for the SCUBA spearfishing guys so that there is fish for the future. Maybe even look at the fact that before there used to be no commercial sale of speared fish. If you guys looking at uhus, put that on the no-sale list, but don't ban and stop local people from feeding their families.

~~~~~  
Spearfishing, by whatever means, is a highly selective method of fishing that is important to local people statewide, including those who cannot fish for themselves and must purchase their fish at the market. Hawaii is unique among most Pacific islands in its ability to monitor and regulate nearshore fisheries, and it ought to be possible to manage this fishery without prohibiting it entirely. At this stage, imposing a ban appears to imply a failure of community based management, which sets a dangerous precedent for the future of our marine resources statewide.

the BIAAF, our association is against it, but only in the sense that a lot of the fishermen, aquarium collectors carry a spear for protection, and we also use it to move our fish. There have been occasions when we've had to use it to defend ourselves under water. And if we can be given a supplement to something that would work just as well, we would be glad to take it, but so far there is nothing that has been presented to us so that's a concern that we have.

We don't just go out there and terrorize fish at night. We have respect. By the time we go back to a spot that we've dove takes about a year, so we're not just a terror out there at night. We're, actually, not the problem. Why don't you guys look at the roi or the tilapia. Those, actually, are the problem at night.

Come on, realistically, to be a night diver with tank, you got to be an elite diver, and that's what we are.

So if we ban something like spearfishing with SCUBA, I know a lot of people who have been teaching their kids where to go, what kind of things to look for, how to find the fish, where the fish is. There is a hundred things involved. The knowledge doesn't fall out of the sky. You're trained. You do it over and over and over and over again until you master it. So I don't know how you can say we saving this for future generations.

A lot of us Hawaiians depend on diving. Some of us are older now. We cannot hold our breath as long as possible like we used to. We depend on providing fish and food for our family members. We give other people food when we provide it for ourselves also.

I am deadly opposed to the spearfishing ban. That's how we survive for hundreds of years, okay. Now, you guys only making bills that affect only us. That's why you guys don't give a shit about this bill because you guys don't eat reef fish, okay.

I know braddahs in this room that manuahi, they catch and they give to the kupuna that cannot go. Some of them might be on SCUBA. So now, what, we're going to penalize them. I understand that, hey, this is the right thing, but it hasn't been vetted properly.

Scientists, Marine Researchers and Resource Managers Testifying
in Opposition of WHRFMA SCUBA spearfishing Ban

None

Testimony In Support of West Hawai'i Rules and Amendments

From: John and Sue Kellam
Sent: Tuesday, November 13, 2012 10:41 AM
To: Bill Walsh
Subject: Support for the WHRFMA Rules Package

I wish to express my support for the West Hawai'i Regional Fishery Management Area Rules Proposal being considered at a public hearing in Kona on December 5.

I want to make it clear that I support all of the following:

- A new Fishery Replenishment Area for Ka'ohē Bay
- A ban on spearfishing with the use of SCUBA
- The proposed "White List" which would limit the commercial collection of aquarium fish to 40 listed species
- The bag and size limits for select species on that White List
- The ban on taking sharks, rays, and 2 large mollusks in West Hawai'i
- The clarification of current FRA boundaries
- The clarification of net rules proposed
- The establishment of a new permit for aquarium collection in West Hawai'i

Bean counters can stop here.

On the chance that someone on O'ahu reads these messages, I wish to use this one to expand on my support of these changes. During verbal testimony, the time limits prevent anyone from reasonably commenting on any more than one of these topics.

An FRA for Ka'ohē Bay

As a founding member of the Friends of Pebble Beach, I have worked with my neighbors for more than 8 years to provide a ban on commercial aquarium collection in one of the few areas of public access to the shore in South Kona. Noticing a distinct drop in tropical fish in Ka'ohē Bay, other members of our remote community had tried to work toward the same goal for years once the FRA system was established by Act 306, but their voices were ignored. We formalized our efforts in 2004 by circulating a petition asking to extend the Ho'okena FRA for 2 miles south in order to protect 4 popular dive spots along the rugged South Kona coast. Eventually more than 1600 people signed the petition before we suspended the petition drive at the end of 2004. We submitted the petition to the West Hawai'i Fisheries Council in November of that year and asked them to forward it to the chairman of DLNR. We felt that regulation by qualified specialists was preferable to the blunt instruments of legislative intrusion or judicial confrontation.

Our efforts were rewarded with seemingly endless delays and severe compromises. Our claims of decreasing fish counts were dismissed as "unscientific." When we asked that the fish population be

studied “scientifically,” Dr. William Walsh flatly refused. We were subjected to binding arbitration by a “User Conflict Committee” which included a collector who had been at the heart of our complaint. Eventually we bypassed the WHFC and negotiated directly with the Big Island Association of Aquarium Fishermen. Both sides made significant concessions that put aside roadblocks that had hindered an agreement for years. A couple of years ago, we submitted the agreement to the WHFC for their approval. Even with their overwhelming approval, it has taken another couple of years for DLNR to consider the arrangement formally. The area proposed for this FRA has been whittled down to a fraction (1500’) of the one requested in the petition. This is the one place where cars can approach the shore (outside of private roads) between Ho’okena and Miloli’i (a distance of 11 miles). Collectors would still be free to take tropical fish from the south side of Ka’ohe Bay which is where the bulk of the collection has always taken place.

It has been difficult to maintain support for this campaign over such a long period of time and through such severe compromises. I think it is remarkable that we have been able to come up with this solution essentially through consensus with collectors. I must say that if DLNR found some reason to not establish this FRA after all this negotiation, many of us would take that decision as a breach of good faith; we would lose confidence in the regulatory authority of state agencies; and we would seek a more comprehensive solution elsewhere.

A Ban on Spearfishing with SCUBA

This proposal was supposedly ready for submittal by the WHFC when we first submitted our petition 8 years ago. Night dives reveal many diurnal fish which rest in cracks and crevices, relying on camouflage (like mucus) that works great against predators but not against divers. Parrotfish have suffered greatly elsewhere in the Pacific (notably Samoa) due to spearfishing at night by divers using SCUBA. A survey of dive spots not just in the South Pacific, but around the world, shows that Hawai’i is one of the last dive recreation destinations to still allow spearfishing with SCUBA because the toll of such fishing is just too a sacrifice for other people using the reefs. Other arguments aside, that puts Hawai’i in the unenviable position of attracting spearfishermen addicted to a technique that has proven harmful elsewhere.

The White List

As I have said, we have listened to the progress of various issues at the WHFC for eight long years. For the first few years, we heard reports from representatives of collectors on the WHFC who had been assigned the task of developing a “Black List” of fish species that would be out of bounds for commercial collection. They made absolutely no progress, clearly stonewalling the effort. I believe that the development of this “White List” is an ingenious solution to the problem. It itemizes 40 species that represent the vast majority of the current income for commercial aquarium collectors and prohibits collecting any other fish. While the list looks daunting, clearly it leaves out many species that are highly valued by swimmers, snorkelers, and divers. Of course, species off the White List are much more likely

to be solitary and/or rare and therefore much more prone to disappear during even a brief fad in the aquarium trade.

Make no mistake: it is hard to look at some of the fish on the White List and think collectors are given carte blanche with them. Psychedelic Wrasses, Flame Wrasses, Tinker Butterflyfish, and Longfin Anthias quickly come to mind—and are a rhetorical weak point when arguing with environmentalists who claim collectors are getting away with murder. However, I, for one, appreciate the job Dr. Walsh has done negotiating this list with collectors. We were negotiating with collectors directly about the Ka'ohē FRA when the White List was worked out. I pleaded with Dr. Walsh to delink the White List from the Ka'ohē Bay FRA because I thought he would never get the collectors to agree to any list. We heard very heated negative feedback about the list when we talked with collectors. Dr. Walsh started with 25 species (many of them painful to accept) and ended with 40. Deep compromises have been made.

And I want to be a witness to the fact that the BIAAF did, indeed, agree to the list in its present form when it was submitted for approval to the WHFC, regardless of what certain collectors may claim now.

Bag and Size Limits

I am not really qualified to say whether 2", rather than 1.5", should be a minimum size for Yellow Tang. What I can say is that I think it is a good step to establish a size range for Yellow Tang, allow for some daily "mistakes" outside that range, and pressure the industry to collect only those fish that are likely to survive and leave the breeding stock on the reef. Protection of the breeding stock is also a good rationale for the maximum limit for kole. And there is a clear concern among fishermen as well as divers for the pressure on Achilles Tang (paku'iku'i). If nothing else, a daily limit on them begins to send a message to everyone that the take needs to be regulated.

Sharks, Rays, and Large Mollusks

Sharks and rays are a major part in the drawing power of West Hawai'i diving. We have not seen the depletion of sharks that other island nations have suffered, but even the WHFC has been contacted by Chinese fishermen interested in testing the waters for harvesting rays. Triton Trumpets are the only predator for Crown of Thorns, but they are disappearing from the West Hawai'i reef due to a demand for their shell for ornaments and as trumpets. Though we do not have much Acropora that are so prone to Crown of Thorn outbreaks, we have seen surges in Crown of Thorns infestations, notably in 2005. All of these species are clearly vulnerable, and banning their catch makes good sense.

Clarification of FRA Boundaries

There have been lingering controversies between collectors, particularly in the Puako area, and DAR over the exact boundaries of certain FRAs. Citations have not really solved the problem. A clear

delineation of the boundaries, which is now much easier with the widespread use of GPS, may put these controversies to rest. At the very least, it will put future citations on a firmer footing.

A New License to Collect in West Hawai'i

I have heard various explanations of why a unique permit should be required in West Hawai'i. A first step toward limiting entry to a reasonable number of collectors would be very welcome. Had the Superferry been allowed to come to the Big Island, we would have faced a significant crisis with easier access to the West Hawai'i reef by collectors from O'ahu and Maui. A clear means to orient local collectors to the new rules proposed in this Rules Package is also a good rationale for a new license.

I have heard considerable resistance to this new license from collectors who are now active in West Hawai'i. I believe the problem is not so much in the license itself, but in the way it has been explained. In the absence of a clear explanation, collectors suspect a hidden reason for the new license.

Conclusion

While I think these arguments are consistent, the rules themselves differ a great deal in terms of detail and contentiousness. The arbitrary lumping of all of them together, particularly the "take it or leave it" combination of items under the proposed Chapter 13-60.4, may make some sense to office workers in Honolulu; but it is totally unrealistic as far as carefully considering the merits of each item.

Thank you for listening to these concerns. In the future I will limit my testimony to the issue of the Ka'ohu Bay FRA. I hope you do not infer from that focus that we do not support the other aspects of this Rules Package.

Dec. 05, 2012

Good evening. My name is John Kellam.

More than eight-and-a-half years ago I helped found the Friends of Pebble Beach with my wife and Steve Meyer. Tonight you have heard some very subtle and persuasive speeches, but you're not going to hear one from me. I'm going to go over some very basic things that I think count in this process as I've been -- as I picked up from it in many years. One is a basic body count. The body count in this meeting is very important. Please be sure that you've signed in over here if you came in late, and we want the Board of Land and Natural Resources to recognize how many people are concerned with these issues.

I'd like to thank you individually for coming, regardless of your viewpoint, and I'd like to thank the organizations that help mobilize some of you, including the Eyes on the Reef, the Nature Conservancy, the Lost Fish Coalition, and of course, my own group, the Friends of Pebble Beach.

Secondly, I want to make it clear that however persuasive you are, you must make clear in your testimony, either oral or written, exactly where you stand on this rules amendment package. Some of you have, and some of you, even with very strong opinions, haven't. I want to make it clear that I fully support the rules amendment package being proposed by the West Hawaii Fisheries Council to the Department of Land and Natural Resources.

Thirdly, I want to try to give some impression on the recording that is made of people who are in support of different things. As I've said, my primary interest is in the FRA for Ka'ohē Bay. So if you agree with establishing an FRA, the smallest FRA possibly in the world, 1,500 feet in Ka'ohē Bay, after we've worked on it for eight-and-a-half years, give me an F, give me an R, give me an A. What does it spell? FRA. What does it spell? FRA. What does it spell? FRA. It could spell FRA, that's true. I've been asked to similarly rabble-rouse for the entire rules package. I'm not entirely sure how that would go. But what I would like to say is a good word for compromise

As you can see from my white hair, I come from a generation that reached very high. We wanted a lot of things out of life, but we settled for a lot less. Now some of the reasons for that were assassination and commercialization of music, but some of it is life. You have to compromise in life. I appeal to both extremes in this question, the people who want a complete ban, the people who want no interference with their activity whatsoever. Let's get real. In my lifetime this rules package is the best we can come up with. I hope you can support it, too.

Thank you.

John Kellam
Friends of Pebble Beach

I appeal to the of Department of Land and Natural Resources to take responsibility for the ambiguous results of the December 5 public hearing in Kona regarding the Rules Amendment Package proposed by the West Hawai'i Fisheries Council. Repeatedly in the eight years that the Friends of Pebble Beach has persevered with our effort to get DLNR to accept a new Fish Replenishment Area for Ka'ohē Bay, we have begged the Council to separate the proposal for the FRA from the complicated package that you see before you. The consistent answer has been that the Division of Aquatic Resources was reluctant to put forth any single proposal to the Attorney General's office. Instead they wanted to incorporate any changes coming from West Hawai'i into one omnibus package in order to economize on interaction with the rest of the state bureaucracy. You see before you the unfortunate, if highly predictable, results of that strategy: everything in the hearing seems at cross-purposes.

We have been told clearly by Kona DAR that the Package, particularly Ch. 13-60.4, will stand or fall as a whole. I feel confident that if, after all the positive testimony, both written and oral, that the Board has heard in the past months, BLNR chooses to reject the Ka'ohē FRA because it is a part of a larger Rules Package with more contentious parts, we will not feel constrained to honor the compromise we have made through the WHFC. One

way or another, we will seek to exclude aquarium fish collectors from, at least, a broader swath of South Kona than just Ka'ohē Bay. We would prefer to rely on DLNR to professionally regulate the situation, but in the absence of any timely action on the Board's part, that is not our only alternative. We urge BLNR to give each section of the Rules Package the careful, individual attention it deserves and to act responsibly on each one according to its merits.

Please bear with me while I offer what I think is helpful background information. When we presented the petition for the Ka'ohē FRA to WHFC in November 2004, we were told that the following monthly meeting would be taken up with "wrapping up" a Rules Package for banning spearfishing with SCUBA. At that point, it was considered a "done deal." From January of 2005 on, we attended the WHFC meetings religiously (primarily because we felt that, by skipping the December meeting, we had been finessed by collectors when our petition was routed to a "User Conflict Committee" rather than considered in a broader aspect of concern about depletion of reef fish). For years, the delay of the ban on spearfishing with SCUBA was not a question of whether it was a good idea on merits, but that DAR was considering implementing it on a statewide basis. Gradually, through different administrations, DAR kept encouraging the Council to lump disparate proposals together, regardless of the impracticality of careful consideration of each proposal as a part of a "mega-package." Eventually the ban on spearfishing with SCUBA was relegated back to the Council as a West Hawai'i issue and joined the package.

I don't mean to suggest that the FRA proposal was settled in its present form many years ago. Much of the delay in coming to a compromise with collectors was due to relying on the Council to arbitrate "the conflict." Only when we tried negotiating with collectors directly nearly three years ago did we finally make much progress. Nevertheless, considerable delay and much confusion and frustration resulted from the persistence of DAR in seeking a comprehensive Rules Package. And the ban on spearfishing with SCUBA was always considered the most finished, most thoroughly vetted part of the package.

No one who attended the December 5 public hearing can ignore the dramatic testimony concerning spearfishing with SCUBA. On a very basic level, I value the zeal with which many people came forward to speak out about our ocean resources. But the smokescreen thrown up around the subject needs to be cleared. Some of it is obvious. Several speakers took advantage of the forum to express a denial of the authority of DLNR, the state of Hawai'i, or even the United States to regulate Hawai'ian waters. They oppose the Rules Package as an affront to Hawai'ian sovereignty. They have their own overriding agenda. We are all familiar with this brand of obstructionism. It is not too dissimilar from the approach of Maui activists who seek an EIS on the aquarium trade while opposing this Package as well: they both challenge the authority and competence of DLNR to handle marine resources.

Only slightly more reasonable is the approach of another group of opponents who use a strategy often seen at regulatory meetings. They refuse to participate in negotiations on a proposal for years; silently watch it edge its way through committee work and the bureaucracy; and then pop up crying "Foul!" at a public hearing. In fact, we watched 3 of the vocal opponents of spearfishing with SCUBA (Mike Nakachi, Teresa Nakama, and Leonard

Torriger) serve for years on the WHFC without saying a word against the proposal that, as we have said, was a "done deal" as far as the Council was concerned by the end of 2004.

Another red herring thrown out in the public hearing was the claim that SCUBA was primarily used by kupuna to allow them to do what they had done earlier in life by freediving. I am living proof that we start to wear out with age; and more specifically, that we cannot freedive as deep or as long in old age as we did in our prime. But the preponderance of the opponents' testimony leads to the obvious conclusion that the overwhelming majority of use of SCUBA for spearfishing is done by men in their healthy years. They may be giving a few extra fish to older people, but they are in it for the money.

Equally questionable is the claim that spearfishing with SCUBA is a "cultural practice" protected by laws specific to the Hawai'ian community. There is no doubt that Hawai'ians love to eat parrotfish. (So do a lot of other people!) But "cultural practice" cannot be extended to whatever puts uhu in the mouth of a Hawai'ian. Obviously SCUBA has not been used by anybody for more than 2 generations. There were no ancient Hawai'ian SCUBA fishermen. One testifier suggested that the state recognize the "evolution" of cultural practices. That is a slippery slope. Special privileges have been rightfully granted to those in the Hawai'ian community who opt out of the money economy and support themselves largely through a subsistence economy similar to the one practiced before the European invasion. That is a cultural practice the whole society can accept and subsidize. One testifier, Leonard Torriger, has argued in the WHFC that "subsistence" fishing can be selling fish to pay for a grocery bill. There is nothing wrong with selling fish to pay for anything one wants, but DLNR, as well as the state as a whole, has to be careful to not stretch the English language in the way Mr. Torriger suggests. The subsistence laws were based on what "subsistence" really means in English, and the word "subsistence" precludes any activity in the money economy. You cannot buy a big truck; you cannot pay for a home; and you cannot buy parrotfish with money earned through fishing and call that "subsistence fishing." You cannot market fish from the "subsistence community" of Miloli'i in the city of Hilo. It can be legitimate business, but it is on a par with other small businesses in Hawai'i. These businesses are regulated by the state to prevent depletion of common resources, or, in this case, overfishing.

What is clear from the testimony is that there is a disconnect between WHFC and the general fishing community. Act 306 was passed to handle the aquarium trade in West Hawai'i. WHFC was formed to help with community response to those regulations. In fact, we brought our petition to WHFC because we knew they were supposed to deal with collection issues. They just don't deal with broader fishing issues as well. It is not due to lack of effort on the Council's part. Numerous fishermen—and I mean real fishermen, people who catch fish for food—have served on the Council. The Council continues to recruit more fishermen. Unfortunately we can testify to the fact that they do not feel that they get their point of view expressed effectively in the Council. As Mr. Nakachi testified, they all "seem to just drift away." There are probably many reasons for this disconnect. I know that by late 2004, the Council acted like it was shell-shocked. The agenda was closely guarded. Unscheduled speakers were unwelcome. The explanation was that meetings in the past had gotten "out of hand." When fishermen did come to meetings as a group, there was considerable apprehension in the air which didn't seem warranted by any misbehavior. Though English was used by everyone, the formal language used in the Council put off the fishermen. The testimony at the public hearing is also full of disrespect for PhDs and the

academic background of researchers. Education and cultural differences were obvious flashpoints: there is a clear lack of trust on both sides. There were even gross misunderstandings of the Rules Package itself that appeared to be the result of some testifiers not reading the (less than fascinating) document.

And there is the problem of logistics. Even we found the monthly drives from South Kona to Kailua-Kona for the WHFC meetings expensive and time-consuming. After a hard day fishing and with an extra 30 minute ride from Miloli'i, it can become a routine that doesn't make sense, especially if you feel you can't get through to members of the Council.

All of these points notwithstanding, it is clear that some people in West Hawai'i make a good living off of spearfishing with SCUBA (mostly at night). Anyone pulling in 800 pounds of uhu a night (cf. testimony to that effect) has a lucrative business, regardless of how he tries to justify it. Quite apart from kupunas, cultural practices, and demagoguery of any kind, there is a legitimate small business concern in this use of SCUBA. The question boils down to whether this practice leads to overfishing.

We are steadfast in our contention that it does. Even the opponents' testimony reveals multiple cases of people taking more fish at one time than is reasonable. Multiple examples from elsewhere in the Pacific have been cited that show that spearfishing with SCUBA, if left unchecked, leads to the disappearance of several prized species of diurnal fish. It can and will happen in Hawai'i unless it is controlled by DLNR.

I thank you for your careful consideration of this issue as well as the other respective parts of the Rules Package.

John Kellam
Friends of Pebble Beach

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To: DLNR, State of Hawaii, Department of Aquatic Resources  
Re: WHRFMA Chapter 13-60.4, 13-54, 13-57

From: Stephen E. Thompson, Ph.D., Director  
Marine Environmental Research

I attended the DNLN hearing in Kona on December 5, 2012. I submitted oral testimony and am including a written copy below. First, however, I would like to address the oral testimony of some of those in opposition that I heard.

The main objections to the new rules seemed to fall into two main categories: Spearfishing with SCUBA and the 40-species white list.

In the case of SCUBA spearfishing, a number of fishermen in attendance vehemently opposed the rule banning the practice. Their reasons were:

1. I have to **feed my family**.

2. I am a "waterman" and this is the only **lifestyle** I know.
3. I need to **make a living** and this is what I do.
4. **I like to provide** for my friends and extended family.
5. My family has been **fishing for generations**.
6. As a **native Hawaiian**, I have a **right** to fish using any method.
7. This has been our **tradition** for "thousands" of years.
8. Hawaiians have **evolved** along with everyone else to use modern equipment instead of the traditional ways. It is our right.
9. I have a right to pass on my fishing **tradition to my children**.
10. It is too **hard to find fish** at snorkeling depth. There aren't as many as before.
11. DLNR has **no jurisdiction** over native fishing privileges.
12. There is **no enforcement**, so the rule is meaningless.
13. The provision that bars having spears and SCUBA together in a boat or vehicle is **unfair**.
14. **I know more** about the habits of fish than any PhD from the mainland.
15. **Haoles** aren't going to come in here and tell us native Hawaiians how to fish.

There was a general lack of understanding of the real problem being addressed by this provision of the rules package: overfishing. In fact, this is the common link between most of the rules in the package. The issues are not of "native rights" or a "right to fish" or continuing a "tradition of generations" or passing on fishing knowledge to the "next generation." The issue is one of methodology. Spearfishing with SCUBA, especially at night, is a relatively new technique that represents a quantum advance in efficiency. It is proving to be too successful, and therefore, unsustainable. The grandfathers of the same people who were invoking the "tradition of generations" did not use SCUBA and/or high-powered spear guns. The right to pass this new "tradition" on to children will do them no good if there are no fish to be had. Opponents made the very point that the rules address: it is getting harder to find fish. Overfishing is already occurring in West Hawaiian waters, which is all the more reason to address it now.

Some opponents took the rule personally and turned it into a Haole vs. Native issue, or a "phony PhD science" vs. real life knowledge issue or an outsider vs. local issue. The point that most other Pacific Islanders and Australians, as well as Bahamians, Mexicans and many Caribbean Islanders have already banned this practice, apparently did not sink in. Those places also have their watermen, fishermen and generations of tradition, but they have seen the results of overfishing and taken steps to stop it and provide for future generations. Fishermen there will actually be able to pass on a fishing tradition to their children. One West Hawaii fisherman from down south who testified, made it clear that he would continue SCUBA spearfishing, regardless of any rules package, in defiance of the law.

Again, the issue is one of methodology. Dynamite and bleach are two very effective techniques for killing and then collecting fish. These are still used in other countries, even today. West Hawaii fishermen can certainly understand that these are destructive and unsustainable practices and would

never support them here in Hawaii. The challenge is to get them to see that SCUBA spearfishing is another technique along a continuum, whose extreme on one end is dynamite, that will produce an unsustainable outcome.

Some people at the hearing were open to banning night SCUBA spearfishing alone, or setting bag limits, or designating closure areas, but did not support an overall ban. The problem with this approach is insufficient protection and lack of enforceability. Various degrees of SCUBA spearfishing do not solve the basic problem of overfishing. Daytime SCUBA spearfishing will eventually lead to the same fish population depletion. It will just take longer.

Only banning the presence of spears and SCUBA in the same boat for any reason at any time produces a workable and enforceable outcome.

Enforcement is a legitimate concern, since DLNR doesn't have the manpower to patrol all of West Hawaii's waters. Citizen monitoring is the best method of enforcement in Hawaii. Other stakeholders will protect their interests. People on shore can see aquarium fishermen crossing FRA boundaries. Dive operators and line fishermen can see SCUBA spearfishermen in the water. Cell cameras can record boat registrations, so there is a way to address the issue of enforcement. People can report the presence of SCUBA and speared fish or spears in a vehicle or boat and record the registration or license number.

Opposition to the 40-species white list was fragmented, with claims of whitewashing, not going far enough, caving into aquarium interests and objections to certain species being on the list. Issues of process and access to input, as well as lack of cooperation from the DAR office were raised. Overall, people seemed ignorant of the general administrative rule making process where a rule contains a number of disparate provisions all falling under a single unifying principle: sustainable fisheries. To oppose the entire rule because of disagreement with just one provision, when someone supports everything else, throws the baby out with the bathwater and likely sets the whole effort back. Evidently, at least one person who was given practical advice about this political reality, reacted negatively, claiming DAR coercion. In effect, this is how the rule making and legislative process have always functioned and part of compromise is voting bills up or down on their overall merit. After years of discussion and debate, it is impractical to reopen the whole rules package just to tweak the aquarium species list. There is no line item veto in this process.

There was general consensus on almost everything else, especially the Pebble Beach FRA, except for those who objected to the entire process of DLNR and state jurisdiction over anything at all. Although there was some overt emotion in the opposition testimony, including a dramatic and theatrical chant from a woman claiming to be "hurt" by the rules (whose singing was not in Hawaiian incidentally, but some other language), the dispassionate written transcript will show untenable and contradictory arguments from opponents of the rule.

The bottom line is that some local fishermen need to be saved from themselves and bitterly resent the fact that someone else has to do it for them, so their children will have fish for the future.

Oral Testimony, December 5, 2012

My name is Stephen Thompson

I have been a resident of the Big Island for twelve years. I head Marine Environmental Research, a 501-C-3 non-profit that supports reef studies here in West Hawaii.

Before giving my own testimony, I have been asked to take three minutes to read a statement by Dr. Jeremy Claisse, who could not be here tonight (Note: See Claisse testimony on page xx).

## II.

For my own testimony I also strongly support the entire package of rules and amendments in Chapter 13-60.4. In particular, I first want to address spearfishing with SCUBA.

I have dived here for over two decades and have observed a decline in larger individual of certain species like parrotfish, jacks and wrasses at sites where I have also observed increased spearfishing activity targeting just these species. It's not science, but it's probably not coincidence either. I have seen SCUBA spearfishing up close and can say that, recreationally speaking, it is not a sport but rather a slaughter, especially at night when fish are actually asleep. For the same reason, it is commercially unsustainable and non viable. Almost everyone else in the world seems to have figured this out. Hawaii is one of the few places that have not already banned spearfishing with SCUBA and we need to remedy that now.

I support the 40 species white list and size and bag limits for key aquarium species. These have been developed as a result of a huge amount of time and effort by all stakeholders, and now is the time to make them a reality.

Finally, regarding the new FRA at Pebble Beach, not only does this resolve a conflict there, but an additional FRA is a good idea. Studies have shown: marine protected areas don't just protect the fish inside them, but as the fish increase in numbers and size, some gradually move out into surrounding unprotected areas, benefiting fisheries, a process known as spillover. Most importantly, as the fish in FRAs grow larger and produce more eggs, spawning provides more larvae which are transported by currents and settle on reefs both near and far. This form of replenishment was assumed to occur but had never before been documented.

I participated in a recent study of yellow tang sampled all around the Big Island that used DNA analysis. In one case, we discovered that adults in the Miloli'i FRA supplied new juvenile fish to unprotected reefs at Ho'okena and as far north as Wawaloli, about 40 miles. This definitive documentation of the seeding effect of yellow tang from an FRA was the first in the world for any species in any Marine Protected Area anywhere.

The lead scientist on that study, Dr. Mark Hixon, from Oregon State University, is now the new Hsiao Professor of Marine Biology at the University of Hawaii, Manoa, an endowed chair. He asked me to state that he, too, fully supports the entire package of rules and amendments in Chapter 13-60.4.

And finally, we must protect the sharks and rays, especially our signature manta rays for future generations. Thank you.

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**From:** Christopher Jury  
**Sent:** Wednesday, December 19, 2012 10:52 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** West Hawaii fishery management testimony

To whom it may concern,

This email includes testimony in support of the West Hawaii fishery management area rules package. For your convenience I have included my testimony in the body of this email below and have also attached a copy of the testimony as a MS Word document.

Testimony for the West Hawai'i Regional Fishery Management Area rules package

To whom it may concern,

I am submitting this testimony in support of the proposed regulations package for the West Hawai'i regional fishery management area.

Currently I am a PhD student in the Department of Oceanography at the University of Hawai'i at Mānoa. My dissertation research focuses on climate change and ocean acidification impacts on Hawaiian coral reefs. This work aims to inform management decisions and ultimately to maximize coral reef resilience under global change. As a citizen I care deeply about preserving the health of our coral reefs and the many organisms that inhabit them.

I became particularly interested in coral reefs when I was in high school, after a family trip to South Florida where I saw a coral reef in person for the first time. Two years later I visited Hawai'i and, while snorkeling in Hanauma Bay, I was mesmerized by the diversity of organisms I found there. Soon thereafter I began investigating the possibility of setting up a marine aquarium. After many months of research I finally made the leap and established my first coral reef aquarium. The thrill of seeing corals, reef fish, and other organisms thriving and growing in my own aquaria is ultimately what made me decide to pursue a career in marine science (and incidentally, to change my career plans).

About a year and a half ago I first became aware of the ongoing discussion we are having in Hawai'i about the marine aquarium trade. I saw that one side of the debate was advocating (and continues to advocate) for an outright ban on the collection of fish and invertebrates for the marine aquarium trade. This side of the debate states that collection for the marine aquarium trade is having a devastating impact on the populations of targeted species, and a significant negative impact on the reef ecosystems as a whole. When I first saw these claims I became deeply concerned. I am acutely aware that many fisheries in the U.S. and around the world have been poorly managed and as a result many have already collapsed, or are on a trajectory towards collapse in the near future. Therefore, the claims of devastating effects on targeted species and imminent fishery collapse left me very worried.

My reaction was to find all of the available data (from scientific journal articles and from DLNR) to see for myself what were the impacts of the marine aquarium fishery in Hawai'i. Rather than devastation and collapsing fisheries what I found was that essentially every claim made by those advocating for a ban on aquarium collection was either a misrepresentation of the data, a gross exaggeration, or an outright fabrication. In fact, the data that opponents of the marine aquarium trade cite shows precisely the opposite of what they claim. Rather than collapsing populations the data show that, for the vast majority of targeted species, collection for the marine aquarium trade simply has no effect whatsoever. This makes sense since collection rates for most species range from a few hundred to a few thousand per year while estimated populations of many target species are on the order of millions within the collection areas. For the most heavily collected species (Yellow Tang) in the most heavily exploited area (West Hawai'i) DLNR's data clearly show that their densities in areas open to collection have been stable at about 40-50% of their densities in areas closed to collection. These relative densities have been stable within this range over at least the period 1999-2010 (the period for which data are available to me). Even so, absolute densities of Yellow Tang vary from year to year in all areas (open and closed) largely as a consequence of variable rates of recruitment.

All of the available data demonstrate that the marine aquarium fishery in Hawai'i has been sustainable through at least 2010 (the most recent year for which I have seen data). The proposed regulations package for West Hawai'i will help to ensure that the marine aquarium fishery as well as the recreational and commercial food fisheries continue to be sustainable into the future.

Fundamentally, this debate is a conflict among resource users. Snorkel and dive shop owners want the fish and invertebrates left out on the reef so that they can take customers to see these organisms. Recreational users want the fish and invertebrates left on the reef so that they can go and see these organisms themselves. Commercial and recreational fishermen want the fish left out on the reef so that they can catch and eat them or sell them for food. Aquarium fishermen want the fish and invertebrates left out on the reef so that they can collect them for the marine aquarium trade. All of these are legitimate uses of the resource. DLNR is charged with the task of protecting the rights of all of these groups while also ensuring that the activities of any group does not unduly infringe on the rights of another. The proposed regulations help to achieve these tasks.

I strongly support the proposed regulations and urge DLNR to approve this package for the following reasons:

- 1) These regulations will reduce conflict among resource users.
- 2) The proposed regulations on gear and boat use will substantially reduce the risk of over-collection, helping to ensure that the fishery remains sustainable into the future.
- 3) The proposed bag limits will help to minimize the already very low levels of mortality, reducing take and ultimately minimizing the impact of the fishery. Further, the proposed bag limits on Achilles Tang will encourage population growth of this species which is also heavily targeted as a food fish.

4) The proposed bag limit on Yellow Tang <2 inches in length helps to minimize mortality for very small recruits which can be challenging to maintain in captivity, minimizing the impact of the fishery. The proposed bag limit on Yellow Tang >4.5 inches and Kole >4 inches in length reduces impacts on the broodstock, helping to minimize the impacts of the fishery.

5) Adoption of the 'White List' of species open to collection helps to ensure that rare species or species that can be challenging to maintain in captivity do not become over-collected, it minimizes unnecessary mortality, and it minimizes the impacts of the fishery.

6) The ban on harvest of sharks (Tiger Shark, Whale Shark, Whitetip Reef Shark, Blacktip Reef Shark, and Gray Reef Shark) and rays (Spotted Eagle ray, Broad Stingray, Pelagic Stingray, and Hawaiian Stingray) helps to ensure the viability of these species which are particularly susceptible to overfishing.

7) The ban on harvest of Triton's Trumpet and Horned Helmet helps to ensure that these relatively uncommon species are not overharvested and helps to protect the important ecological function that these species serve by feeding on Crown-of-Thorns Starfish.

8) This package allows DLNR to establish 'limited entry' regulations for the aquarium fishery in the future. A limited entry regulation mechanism has proven to be among the most effective measures in other fisheries to prevent over-harvest. I would strongly support future decisions by DLNR to utilize this measure.

9) The ban on SCUBA spearfishing is urgently needed to prevent severe over-harvest of targeted species. Experience in other locations has shown that this method of fishing is so effective (especially for species such as parrotfish which sleep in the open and are easily harvested) that even a small group of fisherman can rapidly deplete a fishery, to the detriment of the species, the reef, and the vast majority of users. I strongly support the ban on SCUBA spearfishing.

10) Adopting these regulations helps to preserve the economic benefits of the fishery to the state and preserves the jobs of collectors, wholesalers, and retailers involved in the marine aquarium trade and other resource users.

Lastly, I would like to stress two significant but often ignored benefits of a sustainable marine aquarium fishery in Hawai'i. First, as I mentioned above, the experience that ultimately led me to choose a career in marine science was keeping my own marine aquaria and seeing the organisms within them thriving under my care. If the marine aquarium hobby did not exist I can confidently say that I would not be working in the marine sciences today. Many of my friends and colleagues were also drawn to marine science or resource management because of their experiences keeping aquaria. Like me, many of them likely would not be marine scientists or managers today were it not for the marine aquarium hobby introducing them to these fields. The ability to care for a Yellow Tang, or a Kole, or a Potter's angelfish for many years in one's own aquarium has inspired scores of young people to preserve Hawai'i's reefs and has benefited all stakeholders as a result. The end of the marine aquarium trade in Hawai'i would, inevitably, kill at least part of the spark of curiosity which leads many of us to choose careers in marine science and management.



Second, the most serious threat facing coral reefs across the Hawaiian Islands as well as most coral reefs worldwide is the combination of climate change and ocean acidification. The technology needed to avoid levels of climate change and ocean acidification which would prove devastating to coral reefs already exists. The key to solving the climate change and ocean acidification problem is to develop the social and political will to do so. A recent NOAA survey found that among the most important predictors of a citizen's willingness to invest in protecting and restoring Hawaiian coral reefs are 1) familiarity with coral reefs, 2) having visited a coral reef in person, and 3) likelihood of visiting Hawai'i in the future. Hawaiian coral reef animals collected as part of the marine aquarium trade are ambassadors for our coral reefs. Hundreds of thousands of people in the U.S. alone who will likely never see a coral reef in person or visit Hawai'i nonetheless can become intimately connected to our reefs by keeping a marine aquarium, especially if they maintain Hawaiian animals. A sustainable marine aquarium fishery in Hawai'i helps to generate hundreds of thousands of impassioned voices demanding that we as a society take the steps necessary to protect Hawaiian coral reefs and other reefs around the world. In the fight to protect and preserve our reefs, marine aquarists are among our strongest allies. Therefore, sustainable collection for the marine aquarium trade is one of the most effective ways to ensure that Hawaiian coral reefs will be preserved into the future.

For these reasons, I strongly support the regulations and urge DLNR to approve the proposal.

Sincerely,

Christopher P. Jury

University of Hawai'i at Mānoa  
Hawai'i Institute of Marine Biology

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**From:** David Dart  
**Sent:** Tuesday, December 04, 2012 1:40 PM  
**To:** Bill Walsh  
**Subject:** WHRP (for)

As it stands now the aquarium fishery is the most heavily regulated fishery in the state. In West Hawaii alone there are over 55 miles of protected area providing huge areas for the tourist industry to view fish in non-collected areas. Daily fish catch reports are mandatory for the industry. These catch reports provide valuable information for fishery managers and include area fished, type and length of net used and total time spent underwater. The new west Hawaii rules package (WHRP) adds another layer of protection to ensure the sustainability of the fishery. In fact the majority of the rules package specifically addresses new aquarium regulations.

Fish and reef studies have been going on for several decades in West Hawaii. No other area in state waters have had such a through examination taken place. Dr. Walsh was one of many

working on the information that is the background and bases for the rules package. 48 field workers spending thousands of hours worked on this information gathering also. Studies by NOAA scientists and other marine biologists like Dr. Brian Tissot formerly of the University of Hawaii Hilo and now Washington State University, laid the foundation of the reef studies that were to follow. Dr. Mark Hixon's work on DNA tagging of yellow tang proved how protected areas can "seed" unprotected areas with fish and larvae. All studies undergo rigorous peer review ensuring scientific findings are accurate and the methodology correct. Dr. Walsh's and the WHFC work in West Hawaii is given high marks world wide by the scientific community. Earlier this year at the Australia Coral Reef Symposium Dr. Walsh's work with the WHFC was praised and the term FRA is now being adopted in other areas of the world. The WHFC through community representation and involvement determined what went into the rules package.

### **Pebble Beach FRA**

This is a great example of community members, fishermen, and the WHFC coming together to work out an agreement to make this into an FRA. In fact from what I hear all collectors respect that area now as an FRA even though we can legally work there.

### **White List**

The white list contains 40 species of fish deemed to be sustainable, and of the type to thrive in captivity. Hundreds of man hours went into compiling and venting each species of fish. The collectors had a say as did the scientific and local communities as to what fish made it on to the list. Bag and size limits on yellow tang, kole tang and achille tang are part of the white list. A slot limit on yellow tang will ensure fish under 2" and over 4 1/2" will not be allowed for collection. This will allow the small fish to grow and leave the breeding size population undisturbed. In fact, repeated fish count studies by DAR teams show that there is not much difference in count of breeding size yellow tang in open areas than there is in the FRA's right now. Any ocean user can view huge schools of breeding size yellow tang all along the coast line in West Hawaii. Why are there so many breeder size yellow tang everywhere even outside the FRA's? It's simple, the aquarium trade does not market many breeder size fish. By protecting the breeder population the count of yellow tang along West Hawaii has increased by 325,000 fish in the 30 to 60 foot range over the last 12 years. Even though the kole population has been proven to be sustainable as it now stands by DAR surveys, the breeding population will be totally protected by having a 4" size limit on aquarium collecting only. The kole population is very healthy with 1.25 million more in the 30 to 60 foot range over the last 12 years. The bag limit on achille tangs at 10 per day per aquarium diver will help with a falling population, but a bag limit on all take is badly needed to protect the breeding population. The collectors voted to approve the white list as did the WHFC. Even though the rays and sharks, have never to my knowledge been taken by collectors in West Hawaii, they need protection from all types of take just in case a fishing operation shows up here to fish on them. The Triton's Trumpet and Horned Helmet need to be protected as they feed on the starfish crown of thorns that can, if left unchecked, destroy a coral reef.

### **Clarification Of Boundaries**

The Puako FMA boundaries has been a confusing issue with long time collectors in that area. I support the effort to clarify and provide an accurate map of FMA boundaries.

Clarification of the Keauhou Bay boundaries is also welcomed as well as setting no-lay-netting boundaries.

### **INDUSTRY UNDER ATTACK**

I'm sure everyone in this room is aware that the aquarium fishery in West Hawaii is under attack spearheaded by Maui ecologists. It is my hope that true fishery science will prevail. When evidence is presented by so called experts from afar, questions need to be asked as to their qualifications. Are they fishery biologists or perhaps a biologist more in tune with mammals such as dogs and cats. How long have they been studying the reefs of West Hawaii? Where are their published studies. What methodology are they using? Do they stand up to peer review? Anyone can claim anything, but can it be proved? The West Hawaii Rules Package is backed by more scientific studies than anywhere in the Pacific.

What has the opposition done to improve the fish population in Maui where less than 2% of the take is aquarium related? There is less of the top ten aquarium fish in the closed areas of Maui than the open areas of West Hawaii by a wide margin. This difference is the result of good fishery management policy that has been implemented in West Hawaii. The proof of this success shows in the fish count.

### **Spearing On Scuba**

I hate the thought of interfering with any fisherman's livelihood, but according to DLNR catch records the dollar amount of speared fish sold has fallen dramatically over the years. There's been an average of 16 commercial spearfishers over the last 5 years with an average total reported catch value of less than \$26,000. It is unknown how much of that fish was speared on scuba and how much was speared breath holding.

All of Europe, Belize, Mexico, and all Pacific Island Nations except the Marshall islands have banned spearing on scuba. This has resulted in many fish populations making a big come back.

Dec. 05, 2012

Good evening, ladies and gentlemen. My name is David Dart. I'm a member of the West Hawaii Fishery Counsel, and I'm also an aquarium fish collector. There is not enough time in the three minutes to go through all the housekeeping rules, but I am in favor of the housekeeping rules that have been written into this rules package;

The Pebble Beach FRA, this is great example of community members, fishers, West Hawaii Fish Council coming together to work out an agreement to make this into an FRA. In fact, I haven't worked in front of Pebble Beach in

over 20 years, and I feel that most aquarium fish collectors haven't worked there either.

A size limit on yellow tang will ensure fish under 2 inches and over and 4-and-a-half will be westbound allowed for collection. In fact, the West Hawaii Fish Council voted on a 5-inch size limit. The collectors came back and said let's do a 4-and-a-half inch size limit and even gave more back.

Kole is another huge population out there that's increased 1.25 million over the last 12 years in that same 30- to 60-foot range. And from now on, if this rule package passes, the aquarium industry will not be allowed to collect the kole over 4 inches, totally protecting the breeders. The collectors voted to approve the White List as did the West Hawaii Fish Council.

Kole is another huge population out there that's increased 1.25 million over the last 12 years in that same 30- to 60-foot range. And from now on, if this rule package passes, the aquarium industry will not be allowed to collect the kole over 4 inches, totally protecting the breeders. The collectors voted to approve the White List as did the West Hawaii Fish Council.

The West Hawaii aquarium rules package is backed by more scientific studies than anywhere in the Pacific. There is less of the top 10 aquarium fish in the closed areas of Maui than the open areas of West Hawaii by a wide margin. The difference is the result of good fishery management policy that has been implemented in West Hawaii. The proof of this success shows in the DAR fish count.

I believe in managing fisheries through science, not closing them down. Thank you.

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December 5, 2012

SUPPORT FOR DAR PROPOSED WEST HAWAII RULES PACKAGE

Dear Board Members,

I am writing today in strong support of the West Hawai'i rules package proposed by the Division of Aquatic Resources. I am a researcher who has worked on resource management and conservation in Hawai'i for the past decade, and also someone who has served as an expert on an international panel to advise federal agencies on the impact of the aquarium trade to coral reef ecosystems.

Establishment of the West Hawai'i Regional Fishery Management Area in 1998 resulted in a rigorous and comprehensive research program that has culminated in one of the best available data sets regarding management of marine ornamental fishes anywhere in the world. In addition to collection of these data, the formation of the West Hawai'i Fisheries Council, which consists of stakeholders and community representatives, as well as non-voting members from programs including the Division of Aquatic Resources, the Division of Conservation and

Resources Enforcement, and UH Sea Grant, has ensured broad input from interested parties throughout this entire process. The design and execution of the study has been done in collaboration with researchers at Washington State University and the University of Hawai'i at Hilo and the data have been evaluated and the findings confirmed by researchers working for NOAA's Coral Reef Ecosystem Division. The results have passed peer-review and are held to the highest standards of scientific integrity. Only a handful of resource management areas in the world can boast this level of engagement and scientific study as the basis of their regulations.

I believe that the Kona DAR team has done an exemplary job of partnering with independent academic institutions, developing the Before-After-Control-Impact (BACI) design of the study, and collecting the data to shape their subsequent management decisions. As a marine scientist, I applaud their efforts and the process that has been followed for this effort. It is on that basis that I support the proposed rules package.

I understand that there is opposition to this proposed rules package, and I have been contacted by several NGO agencies (such as Earth Justice and Oceana) requesting my support to oppose the rules package in favor of a ban on the aquarium collection. I want to explain why I do not agree with those groups and am in favor of the proposed rules package. First, these groups are soliciting public support with a campaign of sensationalism and misinformation. For example, the following web site that I was asked to visit and voice my opposition does not mention the rules package at all, but simply asserts that the State of Hawai'i is breaking their own laws and that "if we don't act soon, Hawai'i could lose these vibrant sea creatures and the reef ecosystems that depend on them." The web page asserts that "One of our clients, a Hawai'i resident who has completed more than 10,000 scuba dives, has observed that particular species targeted by the tropical fish collection trade have completely vanished from certain reef areas." The website states quite openly that their goal is to flood DAR and Governor Abercrombie's offices with 15,000 letters before the proposed hearing:

<http://act.oceana.org/go/1067?t=4&akid=2578.639692.1IczgT> While spectacular and likely to incite a substantial response from those unaware of the facts, that claim is simply not supported by any peer-reviewed data to date, and is in direct opposition to those data collected by the State and independent academic partners involved in the studies outlined above. Second, the impacts of scuba diving and snorkeling on coral reefs is well-documented throughout the world – peer-reviewed studies in Egypt, Saint Lucia, Bonaire, the Cayman Islands, Eilat, the US Virgin Islands, the Galápagos, the Maldives, and the Great Barrier Reef of Australia were all shown to significantly decrease hard coral cover, while simultaneously increasing the amount of dead coral and coral rubble. In some cases the impacts of snorkelers significantly decreased live coral cover in as little as 6 months with as few as 15 snorkelers per week (Plathong et al. 2000 Conservation Biology, 14:1821–1830), or in a single month breakage of corals by snorkelers and divers was estimated at 17% of branching corals and 7% of total coral cover (Allison 1996, Coral Reefs 15:215-218). The fact that the opposition to implementing the proposed rules comes from a group that has roughly equal impacts on the reef suggests to me a political rather than a conservation agenda. Third, in my recent trip to survey coral reef impacts of the aquarium trade in Indonesia with NOAA, I was struck by the fact that the most stunning sites I went to were not the eco-tourism sites I paid to visit in my off time – they were the coral reef farms of aquarium trade exporters who were culturing coral fragments for the ornamental trade. I asked several of them why their area looked so beautiful compared to the surrounding area, and always got the same answer: they rely on that reef for their livelihood and protect it from others who wish to harvest. Areas where the reef was providing resources for the aquarium trade were actually *protected* by the aquarium trade because of their comparatively high value in relation to the outlying areas which were

exploited simply for food. Which leads me to my final point, I believe that contrary to the information presented by these groups, the ornamental trade is not universally exploitative and negative; it may in fact *conserve* reefs in some parts of the world. In Hawai'i, the ornamental trade provides direct benefits in several ways: 1) there is some economic input to the State, 2) there is considerable outreach and educational value to public tropical reef aquaria, and 3) the valuation of Hawai'i's reefs to the American public is high (33.57 billion/yr, NOAA Tech Memorandum CRCP 16, 406 pp.), and I would bet that for many of those who have not physically been to Hawai'i, that valuation likely comes from exposure to an aquarium at some point.

Overall, I believe that the proposed rules package is a great start to efforts to sustain Hawaiian reefs into the future. The bottom line is that many impacts are affecting the reefs of Hawai'i and it seems to me that efforts to block these proposed rules come from special interest groups with an equally strong financial interest as the group being singled out for control. It is ironic that groups purporting to be environmentalists should be opposed to regulations while collectors who will most directly be impacted are resigned to accepting them. A truly great compromise is one in which none of the special interests are happy, and it seems to me that the DAR West Hawai'i rules package is a pretty successful compromise.

I would hope that this fishery could serve as an example of sustainable harvest and could set the stage for other fisheries in the State of Hawai'i and around the world to follow suit. I believe that, being based on the best available data collected with stake holder oversight and input, the proposed guidelines are sound and likely to be effective. I believe we owe it to the decade of effort that has gone into developing these proposed rules to at least give them a try. Thus, I offer my enthusiastic support for the submission before you. Although I am a marine biologist with UH, it should be noted that my testimony on this issue is my own opinion and does not represent an institutional position of the University of Hawai'i.

Thank you for the opportunity to offer comment.

Sincerely,

Robert J. Toonen, Ph.D. Associate
Research Professor Hawai'i
Institute of Marine Biology

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Department of Land and Natural Resources  
Public Hearing, December 5, 2012, Kona, Hawaii

Testimony in Favor of the new West Hawaii Regional Fishery Management Area (WHRFMA) rules: the adoption of Chapter 13-60.4 and amendments to Chapter 13-54, 13-57, and 13-75-12.4

As a lifelong resident of Hawaii who has been diving and fishing Hawaiian waters for over 50 years, I am in support of the proposed WHRFMA rules and amendments that are subject to

this public hearing, because they are designed to ensure the sustainability of our near-shore resources, and to reduce user conflicts.

As a 30 year resident of West Hawaii, who first dove and fished these waters in 1966, I am quite familiar with the changes in our near-shore waters, and have observed first hand how geometric human population growth and evolving patterns of consumption (such as the introduction of tropical aquarium fish collection), have created user conflicts and impacted the sustainability of our marine resources.

Moreover, as a founding member of the West Hawaii Fishery Council who retired after 10-years of involvement, and having served as one of the Council's co-chairs, I am aware that many of the changes being proposed in this rule package were first brought to the Council by fishermen and divers from West Hawaii, in some cases over a decade ago, and that they have been carefully considered, scientifically justified and publicly vetted by the Council in numerous public forums, for years.

The West Hawaii Fishery Council (WHFC) is an open, transparent, easily accessible advisory body with publicly noticed monthly meetings in a well-known central location in West Hawaii. The Council is made up of a diverse array of dedicated volunteers from all segments of the West Hawaii ocean community, and they bring with them unique knowledge, experience and expertise which is shared at Council meetings and utilized in the development of advice to the DAR on rule changes, like those being proposed in this package.

I have a long history of serving on ocean resource management bodies including as a Council-Member-at-Large on the Western Pacific Fishery Management Council, and as a member of the Marine Protected Areas Federal Advisory Commission, so I am intimately aware of both state and federal marine resources management issues and rules-making processes. I detail my qualifications here by way of justifying my opinion that the work of the West Hawaii Fishery Council, and each of these carefully considered and widely discussed rule changes, should be positively considered, supported and adopted by the DLNR.

With regard to some of the specific new provisions:

- 1) The proposed prohibition on SCUBA spearfishing should be a "no-brainer." Numerous scientific studies across the Pacific and around the world have shown that the significant advantage SCUBA gear provides to spearfishers allows them to be far too efficient, resulting in deleterious impacts on fish populations, particularly the larger breeders.
- 2) The Kaohe Bay FRA was requested and has been continuously championed by the adjacent community for many years due to user conflicts with aquarium fish collection off one of the only publicly accessible beaches in South Kona. The WHFC has come up with an appropriate rule revision after intensive and lengthy public discussion.
- 3) The list of 40 fish permitted for aquarium take has also been scientifically justified and publicly vetted with input from subsistence fishers and both the aquarium fish industry and the dive industry. It wisely considers current population dynamics, reproductive capability of each species and the viability of each species for transport out of Hawaii.

Moreover protections afforded the species in this list that are endemic, are of particular importance for preserving these unique Hawaiian species.

- 4) The size and bag limits for kole, Achilles tang and yellow tang are also based on best available science and seek to protect these species reproductive viability, while at the same time respecting the demand for both subsistence and aquarium take.
- 5) The updates to the two FMAs and to lay net rules are essential changes that have also been carefully considered and publicly discussed by the WHFC for many, many years.
- 6) Finally, the no take provision for various sharks, rays and two species of shells provides important new protections for these slow-reproducing animals. Most of the listed sharks are critical apex predators and their protection contributes measurably to the health of our near-shore ecosystems. It also adds these species to the manta ray, which has appropriately, already been fully protected.

Please adopt the years of hard work by the West Hawaii Fishery Council and the West Hawaii DAR staff and help them to assure the sustainability the near-shore resources, and end user conflict on our coast, by adopting all of the proposed new rules and amendments.

Mahalo,  
Rick Gaffney

Dec. 05, 2012

I should also add that I was one of the founding members of the West Hawaii Fishery Council and retired after ten years as one of the co-chairs so I'm intimately familiar with the process that has culminated tonight.

The rules package, as it's been stated, proposes several essential provisions and protections for West Hawaii's reefs including establishment of an additional Fish Replenishment Area at the request of the Pebble Beach community, and I think that's very important here.

This is an example of the West Hawaii Fishery Council working. The community came and said we have a problem with conflict, we would like to see it solved. The West Hawaii Fishery Council has come to the conclusion that the creation of an additional fishery replenishment area off Ka'ohē Bay was the right thing to do.

Protection from aquarium collection of all coral reef fish and invertebrates, except for 40 on a White List; and establishing a West Hawaii aquarium collection permit which is the first step in the development of a limited entry fishery. The world of fishery management is going to limit entry fisheries, and this is an important first step that hasn't been mentioned earlier tonight, I don't believe.

The proposed rules package also has three minor amendments to strengthen and clarify other rules, including rules for the Puako Fishery Management Area, the Keauhou Fishery Management Area, and with regard to lay gill nets. Each



of these proposed changes are scientifically based. Most of them were originally proposed by members of this community, and all of them have been thoroughly vetted during scores of easily accessible meetings in West Hawaii.

Our community enjoys some of the most pristine waters in the State of Hawaii, thanks in no small part to the work of the West Hawaii Fishery Council. And these rules, those proposed here tonight, those being considered by the Board of Land and Natural Resources, will assure that the protections that have conserved and sustained our near shore marine resources are strengthened in several important ways. This rule package should be approved by the Board of Land and Natural Resources. Thank you.

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**From:** Doug Perrine  
**Sent:** Tuesday, November 06, 2012 8:56 AM  
**To:** Bill Walsh  
**Subject:** In support of WHFRMA Amendment

Dear Sirs:

I **SUPPORT the WHFRMA Amendment (Chapter 13-60.4)** both because it provides long-overdue and badly-needed management of marine resources in West Hawaii, while reducing user conflicts, but also because failure to implement this proposal will effectively end local community-based management of marine resources in West Hawaii, and probably, by extension, for the entire state. This proposed rule set was the result of over a decade of hard work involving thousands of volunteer hours, and extensive negotiations and compromise between disparate user groups and every member of the community who cared to participate. The rule set came about through an all-inclusive process that represents the best model for other communities throughout the state to use in formulating solutions to their resource management issues. The package was submitted to DAR HQ in Honolulu over 3 years ago, and the West Hawaii community is still waiting for action on it. To not implement these well-thought-out rules at this point would be not only to dash all hope for rational management of marine resources in West Hawaii, but also to derail the democratic process set up by Act 306, and deprive West Hawaii residents of the right to participate in creating their own future. Passing the WHFRMA amendment will lead us toward both democracy and a healthy ocean.

Sincerely,

Doug Perrine

Dec. 05, 2012

My name is Doug Perrine. I'm a resident of Kailua-Kona. I support the adoption of the proposed West Hawaii rules amendment.

My first involvement with the aquarium fish collecting controversy was as a student at the University of Hawaii in 1972 so that's at least 40 years this

conflict has been going on. I subsequently earned a master's degree in fisheries biology. I've worked both as a marine biologist and a commercial fisherman. My specialty as a fisherman was SCUBA spearfishing. As one of two people involved in this on the island that I lived on, I was able to witness firsthand the very destructive nature of this fishery to the resource.

Since then for the past 26 years I've worked primarily as a nature photographer specializing in marine wildlife, therefore, I have a commercial interest in maintaining healthy populations of Hawaii's reef fish.

Over a thousand years ago when the first Polynesians arrived in Hawaii, they discovered a marine and terrestrial ecosystem that can truly be considered one of the wonders of the world. Hawaii has a higher proportion of unique species of plants and animals than any other place in the world, bar none. Nearly a quarter of the fish found on Hawaiian reefs occur nowhere else in the world. There are about 150 known endemic or uniquely Hawaiian, fish species here, with more being discovered all the time. These are living treasures that will disappear entirely from the fabric of life and the timeline of the universe if we allow them to be extirpated from our reefs. Whether you believe that these living jewels evolved in this group of islands over a period of millions of years or whether you believe these unique and beautiful things were created and placed here, and only here, by an omniscient creator as part of His divine plan, it is indisputable that it is our kuleana as citizens of Hawaii to protect and perpetuate them. No one else will save these biological treasures if we fail in our duty.

When we allow our endemic wildlife to be exported as pets to the world, we authorize, with the shipment of each fish, the deletion of its genetic code from the gene pool of the species. The removal of each individual reduces the biodiversity contained in the population, making the species more fragile and subject to extinction. And for the endemic species, there is no reserve population anywhere in the world from which the species can recover if we allow it to fail here. With each native fish that leaves the islands, a piece of the soul of Hawaii disappears forever. Merely reducing the numbers of these special fish to very low levels on accessible shallow reefs and changing their behavior by eliminating the bolder individuals makes them effectively unavailable as a tourism attraction. This has already occurred with regards to number of species.

So why am I supporting a rule that would allow the collection and export of 40 species of reef fish? The answer is that I am not the king and cannot declare a kapu on collecting endemic fish here. We live in a democracy where people disagree and we have to work together and compromise in order to find mutually acceptable decisions. These rules represent 11 years of hard work, negotiation, and compromise involving all of the affected -- all of the effected user groups, resulting in an agreement that has been endorsed by the major organizations representing fish collectors, as well as groups representing fish huggers, and the state aquatic biologist for West

Hawaii. There are fish on the White List that I personally don't believe belong on it, but most of the fish that need protection will receive it, while allowing the fish collectors to stay in business. Yellow tangs which are the backbone of the fish collecting business are doing very well in West Hawaii thanks to our management area. This area was created by Act 306 which resulted in the formation of the West Hawaii Fisheries Council which is responsible for the rules being discussed today. This all-inclusive body welcomes representatives from all user groups and has allowed opposing groups to sit down together and find common solutions. The user conflict between fish collectors and the fish viewing industry dates back, as I mentioned, at least 40 years and has at times flared into violence here with boats being burned and lives threatened. Now we have a democratic process that allows the survival of both groups and encourages them to work together.

Passing these rules into law endorses that peaceful democratic process and acknowledges the success of the community-based marine resource management process in Hawaii. Failure to adopt the rules, essentially, negates Act 306, is a blow to democracy in the formation of fisheries policy, and throws us back into a situation of hostile user conflict. The result of such a situation will be that everybody loses. First fish populations will be severely and possibly irreparably damaged through lack of management, and then fish collectors will be forced out of business. These rules contain a number of other vitally important measures that needed to be implemented years ago, but I've used up my time. Thank you.

.....

**From:** Tina Owens  
**Sent:** Wednesday, November 28, 2012 1:13 PM  
**To:** William Walsh  
**Subject:** Testimony in SUPPORT of the West Hawaii Rules Package

Re: Testimony in Support of the West Hawaii Rules Package to be heard at a Public Hearing  
Date: Dec. 5, 2012  
Time: 6:00 PM  
Place: Kealakehe High School Cafeteria

To the Division of Aquatic Resources:

I wish to register my very strong support for the entire package of rules going to a public hearing in West Hawaii on Dec. 5, 2012.

I have been intimately involved with many of the factors included in this package of several different rules. I am fully aware of how much work and how much effort has gone into these rules and am very glad that, after so long a delay, they are finally coming to the stage of public hearing. I would like to

see all of the rules put in place as soon as possible. The people of West Hawaii have waited a long, long time for these.

I strongly support the banning of spearfishing on SCUBA, whether day or night. The practice has been found to be so destructive in island nations all around the Pacific, that many small and not very wealthy countries have decided to ban this fishing method. It is clear that any apparatus that allows a spearfisher to go deeper and stay longer than breathholding does affords the fish no refuge to escape the spear. Since many fish sleep at night, spearfishing at night can take many fish completely unawares. It's not sporting, it's not fair, and it's not ecologically sustainable.

The establishment of a small Fish Replenishment Area at Ka'ohē Bay in South Kona is an excellent idea. The people of that community, as well as the many recreational swimmers and divers, have had many unfortunate interactions with fish collectors in that area. Originally an attempt was made to give the collectors an equal amount of shoreline somewhere else, but failed in the long run. Now the collectors have decided to relinquish any rights to fish at Ka'ohē as a public service to the community. They are to be highly recommended for that stance.

The list of fish to be allowed for aquarium collecting, known as the "white list" is an important tool in safeguarding many of the rare marine animals that are important to the tourism industry. Although there are some who oppose the white list because they want no fish taken are, in effect, cutting off their noses to spite their faces, because opposing the list means no prohibition at all. I think this is a good compromise and I understand the the fish collectors as a whole support it as well.

I support the no-take list of nine species of sharks and rays, as well as no-take of Triton's trumpet shells and Horned helmet shells, as extremely important to the overall health of the reef. The sharks and rays have low reproductive rates and cannot repopulate very quickly. The sharks and rays are critical to cleaning up the reef and keeping it healthy. The two shells eat crown-of-thorns sea stars and maintain nature's balance.

The bag limits and size limits are necessary to ameliorate the downward population trend of several species which are not only popular aquarium fish but are also under heavy pressure from local populations as food fish. A double whammy, so to speak. Hopefully, we will soon have lots of fish for everyone.

Although the remaining rules could be considered as "housekeeping" (boundary clarifications, net identifications, rewording of the HAR section, etc.), that in no way diminishes their importance in the overall ability of the state to enforce marine regulations. I support all of these efforts.

I thank all the members of DAR, DLNR and the Board of Land and Natural Resources for helping us implement these important measures.

Mahalo.  
Tina Owens

Dec. 05, 2012

Aloha, everyone, and thank you for coming tonight. My name is Tina Owens, and I have lived in Kona for 20 years. I have already submitted written testimony in support of the entire rules package, but I would like to use this opportunity to clarify some truly egregious fallacies that have been spread about this rules package and about the West Hawaii Fisheries Council and about the people who have worked for ten years to put this together.

I'm hoping that some of you will realize that you are here under false pretenses, not of your own making but of somebody else egregiously spreading lies about how these things have come about. The first is that the West Hawaii rules package that we're discussing tonight is not the same thing as the Oahu rules that they are also discussing tonight. This is just something that happened to come up at the same day and the same time. I know there are people who have been told that they are the same thing, but unfortunately, the Oahu collectors, the aquarium collectors have their own set of rules that they're discussing, and it is not what we are discussing here tonight.

Now, the West Hawaii Fisheries Council, a recent issue of the Hawaii Fishing News had a two-page printout of egregious lies and misinformation. As it stated, that the West Hawaii Fisheries Council is "a group of individuals who designated themselves to manage the West Hawaii Fisheries Management Area with an agenda to restrict fishing in West Hawaii." First of all, the application process to be on the fisheries council is kind of a long process and people who want to be on the council must identify which stakeholder group and/or geographic area they represent. No one is on the council to represent themselves.

Excuse me, I have the chair.

The thing is that nobody is on the council to represent himself. Of the 68 people who have been on the council for the entire time that it's been there, 78 percent of them have identified themselves as fishers.

I have been asked to concentrate on what is in the rules package. I'm happy to do that. The fact is that these rules have been produced over, some of them, ten years with lots and lots of community input, lots and lots of science, despite what people are saying, and that they are all going to help increase fisheries for everybody, not just one group or another group. This is not about one group or another group. So all of the fishers will find these rules to be advantageous to them in the long run.

I hope that everybody will support this rules package. Thank you.

~~~~~

3 December 2012

Charles Birkeland

Hawaii Division of Aquatic resources

Attn: Board Members

1151 Punchbowl Street, Room 130

Honolulu HI 96813

Gentlemen:

I support each of the 5 provisions proposed in the Hawaii Division of Aquatic Resources' West Hawaii Rules Package. However, I wish to submit testimony especially for the rule concerning banning the use of scuba with spearfishing for the following reasons.

Nearly all tropical countries (e.g., Philippines, Okinawa, New Caledonia, Galapagos, Palau, Yap, Chuuk, Pohnpei, Kosrae, Samoa, American Samoa, Tonga, Fiji, Solomon Islands, Northern Marianas, French Polynesia, Queensland Australia (Great Barrier Reef), Tahiti and the rest of the Society Islands, Vanuatu, Marquesas, Tuamotus, Gambier Islands, Austral Islands, Seychelles, Cocos Keeling, Mexico, Bahamas, Bermuda, Belize, Curaçao, Bonaire and most others) have banned the use of spearfishing with scuba because viable fisheries cannot be maintained if the removal of the breeding stock of larger fishes becomes too thorough. Spearfishing with free-diving (mask, snorkel and fins) is an honorable sport and a viable fishery can be maintained, but the added technology of scuba allows the fishers to be very effective in targeting sleeping parrotfishes at night and can be selective in targeting the larger fishes.

Studies of hundreds of species of fishes have demonstrated that when the age or size structure of a fish population is "truncated" (older or larger individuals are "chopped off" and the size distribution is abbreviated) by selective removal of larger individuals, then recruitment or population replenishment seriously declines, becomes sporadic, and the fisheries population loses resilience and sustainability (Longhurst 2002; Anderson et al. 2008; Venturelli et al. 2009, 2010; Hidalgo et al. 2011; Rouyer et al. 2011; Stewart 2011). Although gill nets can be detrimental because of wasted bycatch and by catching large numbers of fishes, spearfishing with scuba can have a greater effect on the sustainability of fisheries by selectively targeting the larger fishes which can lead to the exponential reduction in the

number of eggs and larvae produced, shorten the population's reproductive season and thereby reducing the chance that some of the larvae will encounter favorable conditions, lowering the average survival potential of larvae produced, selection for slower growth and reproduction at a smaller size, and in extreme cases, lowering genetic heterogeneity (Birkeland and Dayton 2005).

How does effectively catching large fish have a greater impact on population replenishment than several times the total weight of medium-sized fishes? In nature, the fecundity goes up by about the cube (volume of gonads are length X height X width) of the gonads. It has been measured that a large snapper (61 cm length, 12.5 kg weight) has the same fecundity as 212 medium-sized snappers (42 cm each totaling 233 kg). Therefore, some Pacific islanders wisely harvest medium-sized fishes (e.g., 233 kg) and leave the big ones, because taking only one big one (12.5 kg) has the same effect on the sustainability of the population. In the modern world, people tend to be disconnected from nature and want the glory of taking a big one and don't think about the sustainability of the harvest, nor the value of 233 kg over 12.5 kg for the same cost to the system.

The late Robert Johannes spent much of his career learning the wisdom of the elder fishermen in Micronesia in resource management. He pointed out that the wise elders could see through the complex interactions and unpredictable recruitment patterns in assessing the state of their fisheries resources with straightforward observations as to whether the big ones were still there. Although there is still a great diversity and large numbers of colorful aquarium fishes on our reefs, the large fishes are scarce. The movies by Louis K. (Buzzy) Agard show that there was an abundance of large fishes immediately following World War II. But this was the time that scuba arrived and the large ones have substantially decreased since fishers have been given the power of high technology of scuba. It does not take rocket science to realize that we must ban the use of scuba with spearfishing.

In addition to reducing the sustainability of the fisheries, the taking of a substantial portion of large individuals of parrotfishes can have serious detrimental effects on the coral-reef ecosystem. Larger parrotfishes actually scrape the substratum when removing seaweed, thereby keeping the seaweed under control and facilitating coral growth for healthy systems. The smaller parrotfishes are relatively ineffective and so the decrease in large parrotfishes in Hawaii can lead to an increase in seaweed and the

resulting degeneration of the Hawaiian coral-reef ecosystem. Kathrine Howard (2008) in her PhD dissertation on the “Community structure, life history, and movement patterns of parrotfishes: large protogynous fishery species” found that large individuals of the parrotfish *Scarus rubroviolaceus* were ten times as abundant in Hanauma Bay where they were protected from spearfishers than other places with similar reef structure around Oahu. She calculated that only Hanauma Bay and a couple of other small areas largely inaccessible to divers had viable populations. It is urgent to ban the use of high technology such as scuba and night lights to harvest parrotfishes. For both the viability of parrotfish populations and the health of coral reef ecosystems, we must not allow scuba to be used with spearfishing. In the late 1970s, I observed the elimination of the large humphead parrotfish *Bolbometopon muricatum* from Guam. They were spectacular to observe until they were removed by commercial spearfishers when they began using scuba. The same was observed in American Samoa when commercial fishers began to use scuba (Page 1998).

I have heard several times in Micronesia and in American Samoa, the fishers say “Our resources do not belong to us, we are borrowing them from our children and our future generations.” This is why most other countries and coastal villages allow spearfishing by free-diving, but prohibit the use of high-technology scuba.



Charles Birkeland

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From: Jeremy Claisse

Sent: Tuesday, November 27, 2012 7:33 AM

To: darkona@hawaiiantel.net

Subject: Testimony in Support of adopting WHRFMA Chapter 13-60.4, HAR Chapter 13-57 and HAR Chapter 13-75-12.4, incorporating all proposed changes.

Division of Aquatic Resources
74-380B Kealakehe Pkwy,
Kailua-Kona, HI 96740

Dear Division of Aquatic Resources,

I am writing in support of adopting the WHRFMA Chapter 13-60.4, HAR Chapter 13-57 and HAR Chapter 13-75-12.4, incorporating all proposed changes to increase the sustainability of our resources. I obtained my PhD from the University of Hawaii, Department of Zoology and have studied coral reef fish biology and the impacts of fishing and management actions on their populations in West Hawaii for over a decade.

Scientific evidence, plus practical implementation and enforcement considerations have been incorporated to draft these rules and they should be adopted in their entirety. I would also like to specifically express my support for the following rules:

1) Prohibition of SCUBA spearfishing.

Spearfishing on SCUBA, particularly at night when fish are extremely vulnerable, is banned in most other regions in the Pacific because the potential for over exploitation using this fishing method is so high. There have been a number of examples (e.g., American Samoa) where relatively few fishers using this technology have led to the rapid declines of local populations of species that are economically, culturally and ecologically valuable (e.g., parrotfish).

2) Establishment of a white list, permitting take of only specific species for the aquarium trade.

This measure will help protect populations of species that are rare, potentially overfished and/or are not suitable for home aquariums. This rule will reduce the threat of population decline for rare species, a major concern for stakeholders interested in the long term conservation of coral reef biodiversity.

3) Prohibiting take of many shark and ray species and Crown-of-Thorns predators. The life histories of these species (for example, sharks and rays start reproducing at old ages and produce relatively very few offspring per year) make them more vulnerable to fishing pressure than most bony fish species. Live sharks and rays on our reefs are an extremely important economic concern to our tourist industries, and the benefits of maintaining viable populations greatly outweighs any value that would be gained by the relatively few individuals that may fish these species. Crown-of-Thorns starfish represent a substantial threat to hard corals and their predators should be protected to help prevent COTs outbreaks.

4) Size and bag limits for all fishers for yellow tang - Fish < 2" – 5 fish/person/day

Fish > 4.5" – 5 fish/person/day. These are very well thought out rules from both the fisher and management perspectives. Protecting yellow tang > 4.5" inches will help maintain the breeding populations to ensure long-term sustainability of the fishery. Adult yellow tang can live and breed for decades (the oldest individual aged to date is 41 years old). On the other hand, very small/young yellow tang (<2") do not survive transport and handling well, and therefore should not be taken in the aquarium trade. From the fisher perspective, combining these size limits with bag limits, provides fishers with flexibility and permits greater efficiency, so that they do not need to spend an extreme amount of extra effort being concerned about a few fish out of the dozens that might be taken on any given day being slightly above or below the size limits, a fair compromise for all concerned. However, in the event of a poor recruitment year, yielding a more limited amount of fish in the catchable size range, the populations of larger long-lived adults will still be protected from over exploitation.

5) Size and bag limits for aquarium collectors for kole Fish >4" – 5 fish/person/day. Kole, which are caught in much lower numbers for the aquarium trade than yellow tang, are also taken as adults by spear as a food fish. Therefore, given that this species is fished for 2 purposes, maintaining viable adult populations is of upmost concern and adult take limits for the aquarium trade makes sense. Again, combining this size limit with a bag limit helps maintain the efficiency for aquarium fishers.

6) Bag limits of Achilles tang 10 fish/person/day. Achilles tang are another species that is fished as juveniles for the both aquarium trade and as adults for food. Given that recently their populations have declined substantially and overall bag limit is necessary and should probably be even lower than 10 fish per day.

Thank you for carefully considering these new rules, particularly in light of the hundreds of hours that Hawaiian citizens from many different stakeholder groups on all sides of these issues, as members of the West Hawaii Fisheries Council, have donated to help carefully craft these rules so that the sustainability of our economic, cultural and ecological resources can be improved for generations to come.

Dr. Jeremy T. Claisse
Jeremy Claisse, Ph.D.
Adjunct Assistant Professor & Postdoctoral Research Fellow
Vantuna Research Group
Department of Biology
Occidental College
1600 Campus Rd.
Los Angeles, CA, 90041

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3 December 2012

To: William J. Aila, Jr., Chairperson Board of
Land and Natural Resources c/o DAR,
Kailua-Kona

From: Timothy Tricas, Professor

Department of Biology University of
Hawai'i at Manoa Honolulu, HI
96822

Dear Mr. Aila and DLNR Board Members:

Please find below my testimony regarding the proposed Changes and Updates to the West Hawai'i Regional Fishery Management Area (WHRFMA) Administrative Rule (chapter 13-60.3).

General Statement:

The fish that inhabit the coral reefs of West Hawai'i represent a unique and important natural resource that is of great value to all people of Hawai'i. The reefs provide food fish for local residents and businesses. Many fishermen use these resources for income and recreation. Many tourists come to West Hawai'i to snorkel and scuba dive to view these animals in their natural environment. The relative natural state of the fish communities in WH is of great interest and value to local, national and international scientists.

Therefore, it is in the best interest of the public, business and state to preserve the diverse fish resources on WH reefs. I believe the proposed rules and amendments should be supported.

Specific Comments on Proposed Provisions:

Prohibition of SCUBA spearfishing and/or possession of SCUBA and a spear or speared aquatic life.

For over 35 years I have conducted underwater studies on the reef fish that inhabit WH reefs. In those early days, a SCUBA diver swimming in less than 30 feet of water could commonly see large white ulua swimming in reef caves searching for menpachi to eat. Mu would commonly sit in the water column over the reef waiting to see the movement of crabs on the bottom to eat. At night, it was common to see very large uhu sleeping in crevices and cracks of the reefs. Today, it is a rare occasion to see any of these large fish. The popularity of SCUBA has made it possible for people to spear these fish with relative impunity for commercial purposes, especially when fish like the uhu are sleeping on the reef at night. In my opinion, the state should prohibit the taking of these fish by SCUBA divers because it is like 'shooting fish in a barrel' and has nearly eliminated from many reefs the large animals that are important for spawning.

Establish a section of Ka'ohē Bay as a Fish Replenishment Area with no aquarium collecting allowed.

I endorse the desires of the the Ka'ohē Bay community to protect their reef fish. The taking of adult reef fish reduces the numbers that will be available to spawn. The young fish which are targeted by collectors have endured many weeks or months during their larval life in the open ocean before settling back on the reefs. The taking of juvenile fish from the reefs is like robbing a nursery of

young before they can grow to reproduce and replenish the population.

Establish a list of 40 fish species permitted for aquarium take.

Many collected aquarium fish are juveniles and take many years to become spawning adults. Many are important herbivores that feed upon and keep limu and other algae in check. Strict regulations for the species, size and bag limits for all collected fish are needed to insure that healthy populations and spawning stocks are available to replenish the reef fish inhabitants.

Prohibit take or possession of inshore sharks and rays, and crown-of-thorn predators.

The coral reefs of Hawai'i represent a complex ecosystem that is of great value to the State and its people. The crown-of-thorns starfish is a well-known predator that can decimate living corals. Its natural enemies are the large Triton's and Horned helmet snails which are taken for their shells by the public and also professional collectors for sale. Taking of these mollusks in large numbers reduces these natural predators of the crown-of-thorns starfish and may allow greater destruction of our living reefs. Making it illegal to take these important guardians of our living corals is a good investment for insuring the future health of our reefs.

In a similar way, our inshore sharks and rays are the top predators of fish and invertebrates on the reefs of Hawai'i. They form an important part of the food web and keep the reef community healthy.

Taking of these animals from our reefs has the same effect on the ecosystem as does killing lions in Africa, mountain lions of the desert plateaus and wolves in the forest...it allows populations of their prey to go unchecked and increase to over-abundance, and in some instances over-exploit their own food items because of the lack of natural predators. The taking of inshore sharks and rays should not be allowed so that other inhabitants of Hawaiian coral reefs have a healthy environment in which to live.

From: Rachel Kochubievsky
Sent: Saturday, November 10, 2012 10:24 AM
To: darkona@hawaiiantel.net
Subject: In support of the WHRFMA amendments

I support the WHRFMA amendments. I am a resident of South Kona who is currently building a home here. I love to walk along the King's Trail which fronts Pebble Beach. I also enjoy diving and snorkeling in Ka'ohe Bay. It is such a beautiful bay which such an amazing variety of fishes and other critters. I am grateful that if this Rule Amendment passes through the Public Hearing on Dec. 5th that the bay will be protected from commercial aquarium fish collectors. I am also in full support of the other parts of the Rule. Many other countries have outlawed spearfishing using scuba gear. It is a solid idea, and I'm glad that Hawai'i is finally catching up with the rest of the world! Also, the "white list" is not a perfect idea but it is much better than no list at all! So, I support that, too.

Thank you very much. Please include me as fully supporting this Rules Package,

Rachel Kochubievsky

HI.

From: Rachel Kochubievsky
Sent: Tuesday, December 18, 2012 7:14 PM
To: darkona@hawaiiantel.net
Subject: A response to the FRA hearing from Dec 5

Aloha,

I am a resident of Kona Paradise who participated in the FRA hearing on Dec 5.

Let me begin this email by stating clearly that **I fully support the proposed package in its entirety!**

Since during the hearing there was no count of votes and since there was a very loud group of fisherman who may have made a disproportionate impression of their point of view, I feel called to followup and share with you my impressions from the hearing.

I think it was clear that the support for the bill among the people present as well as these that sent their testimony was overwhelming. I feel that the few negative testimonies showed little substance.

Since there were many wonderful testimonies that explained clearly the reasons and benefits of making Kahoehoe Bay FRA, restricting aquarium collector as well as the ban on spear fishing on scuba, I will limit this email to a response for what happened in the hearing itself.

A group of fisherman has objected loudly and may have made the impression that there was more of them than the actual people present. These fisherman have primarily objected the ban on spearfishing on scuba with two main points. The first is the right to feed their families and the second is the right to continue fishing as their parents and grand parents before them. To these people I say, this bill only target spear fishing on scuba. Any one willing will be still allowed to spear fish for their family needs the traditional way (non-scuba) just like their parents and grand parents did before them.

I feel that these fisherman though passionate were misinformed, some may not have understood that the ban is for scuba spearfishing only and the others that wants to continue spear fishing on scuba can not justify this as a tradition (scuba certainly was not available to their ancestors) nor the need to feed their families which can be satisfied by other, less destructive, fishing methods.

Some people worry that because of this loud objections for the scuba spear fishing ban the DLNR will cancel the **whole package**. To these people I have said that if the DLNR cancel the whole package because of these fisherman I think it prove they had no real intention in passing it in the first place. These fisherman showed very emotional personal concern that can easily be disproved as I did above. So though they were loud and emotional I don't think they had much substance to their objections. I assume that a package that took 10 year!!! to put together must have took into consideration these obvious personal concerns of the fisherman...

If the DLNR are honest in their intention to find a solution they must pass this bill, either in its entirety or minus the spear fishing on scuba part which is the only part that had any notable objections... That being said I will strongly suggest the DLNR go a head and pass the spear fishing

on scuba ban as well and make Hawaii join all the other countries that understood the importance of it as was stated in the hearing by all the wonderful and detailed testimonies.

Mahalo nui loa,

Rachel Kochubievsky
~~~~~

Dec. 05, 2012

Hello, I'm Michael Stroschen. I'm a professional SCUBA diver. I have to support the bill, the resolution. It's a Hobson's choice. It's either you support it and you get some of the things you want done, or you say I don't support it and then they throw it out, and a bunch of the stuff that you want to see done, doesn't get done for another ten years.

There is nobody here that wants to see the sharks and the rays fished or caught or endangered or anything else. Likewise, the horn helmets and the Triton's trumpets, we all want to see that. Some of us want to see the tropical fish collection taken care of.

Others want to continue SCUBA diving and using spearfishing. So if we say we support it, then we get some of the things we want; and if we say we don't support it, then nobody gets anything.

Of course, the tropical fish collectors love this. The whole West Hawaii Fishery Council, have you been to some of those meetings, I have, you guys know what I'm talking about, it's people who drive boats that are owned by corporations and take people out to catch marlin and they make up their rules and then they throw them out there, and this is what we're going to do.

Well, the only thing I really care about is protecting the sharks, protecting the shells that eat the Triton's trumpets -- excuse me, that eat the crown-of-thorns and doing something about the tropical fish collection.

40 fish, of course, they love it. Those are the fish they catch. Of course they want a bag limit on the yellow tang. The ones that are unlimited in the middle, they can take as many as they want. It doesn't affect them at all.

So you cannot say, okay, we support the SCUBA spearfishing and we're all about that, so they get your support there; and if it passes, they get what they want, because they still get to collect the 40 fish they're collecting anyway. And if it fails, then they get what they want, because there is no regulation and they just keep collecting what they want anyway.

So do I support it, yeah, I guess I kind of got to, but what I really support is the referendum that was sent to the state by the Hawaii council

saying that the majority of citizens both Hawaiian, haoles, everybody on this island do not want to see tropical fish collecting on our coast because it is depleting our natural resources.

And I don't think anybody out there except the tropical fish collectors -- have you noticed there has been one that's come up here, because they win either way. If they get the 40 fish, they keep doing what they do; and if it doesn't pass, they keep doing what they do.

But what's really happening here is we're all being shammed. We've had a thing put in front of us. If we say we support it, great. And if we say we don't support it, it still wins. So what we really have to look about is fishermen are not fish collectors.

Fishermen fish to eat and feed their families.

Fish collectors collect fish to send them to the mainland to put them in aquariums so they can make money. And there is, what, about 70 of those people. And they make a lot of money doing it. Oh, I don't know, \$800 a day. If I made \$800 a day and could morally swallow it, I would probably do it.

I like to go down and watch fish. I bet you fishermen couldn't give a crap about the tropical fish collectors. But what you really need to think about is they're depleting the ecosystem that supports the fish that you eat. And the White List that has 40 fish on it, but they're already collecting anyway, ain't helping the ecosystem. And those yellow tangs that have a bag limit on two inchers and four-and-a-half inchers, well, guess what, if they collect all the ones in the middle, pretty soon there won't be any four-and-a-half inchers left and they're the ones producing the yellow tang.

So when you're thinking about this thing and you're supporting it or not supporting it, we're all just being shammed, and this is really a game that's being played.

Have a great day.

~~~~~  
Dec.05, 2012

Good evening. Aloha, kakou. I'm Glennon Gingo. I'm the chair of the West Hawaii Fisheries Council. I've been active on the council for about -- as long as I can remember, at least a few thousand hours, probably since 1999. So when people say how to get involved and they have excuses about not making -- and I'm reaching out to my colleagues and my friends and my fellow fishermen, is that if I can make these meetings, you can make them. And there are people reading testimony tonight for others. So if you can't make our meetings, then write up some testimony and have it read at our regular meetings because I think the importance of the Fisheries Council is to have that representation, to have that voice, and to have that involvement. With

that I welcome you to be involved. My mom used to always tell me if you don't like something, then get involved and try to change it.

So one of the things that I did tonight is to just let you know it's not me personally mostly that is speaking for tonight, but I'm very proud of my colleagues on the Fisheries Council, many of them are here tonight. I give them a lot of credit for showing up, tirelessly working, showing up every month, spending the hours, spending the time, doing the job and we're not perfect. We try to find a balance. We try to reach out to people. Many of our people in this room do a lot of things. It would be easy for anyone in this room to say I do three things and I do it well. I could be a fisherman, I could be a diver, and I could be a trainer. And some of you in this room, I've had your children that I've trained in free diving and spearfishing and competitive free diving. I've worked with kids at Kamehameha Schools at Hale O'Ho'oponopono, Ke'ei, Maluhia, worked with kids that don't have a chance and taught them how to spear fish, spent time with them, lots of hours and lots of time with them. That's my personal background. That's why I do what I do and get involved and volunteer my time.

The one thing I was asked to do, and again, this is just reading for somebody that wanted to have representation tonight, most of you know Dr. Jack Randall from the Bishop Museum. He's in support of the proposed West Hawaii rule package. He's particularly in support of the ban on spearfishing with SCUBA.

The most offensive is spearing sleeping fishes at night. We all know that. Those of you that spear fish know the fishes that sleep at night. I kind of liken that as a defensive trainer of going into someone's bedroom and taking a shot at them without their eyes open. Okay. So that's my personal opinion. Those of you in the room know how good uhu is. Believe me, if you stuff it with Okinawan sweet potato, it's one of the best fish to eat. All of you who spear fish know the fish are pretty smart and they get a lot smarter after their cousins have been speared.

I'd like to close with my own personal statement since I have a few seconds; and that is, there are a lot of people in this room that do a lot of good things in this community. Many of those people come to our meetings. Some of those that have family and have children and have three jobs, like we joke in Kona two jobs are better than three, I'd like to see you come to the council meeting and find out what we do because our council is only as good as how many people get involved. And I reach out to my brothers, my friends, my fishermen friends that can't make it who are trying to take care of their families to make it to these meetings. If you can't make it, send us some testimony, get involved. It's better than to get involved than throw stones at the people that are trying to make a difference.

Thank you very much.

Testimony for West Hawai'i Regional Fishery Management Area (WHRFMA) Rule Proposals

December 2, 2012

Donna R. Goodale
West Hawaii Fisheries Council

Dear DLNR: My name is Donna Goodale. I am here tonight to encourage you to pass the entire rule package, including all of the amendments, and put these proposed rules into practice as soon as possible. I am a member of the West Hawaii Fisheries Council and have been working on these rule proposals for over 7 years. I have a Master's Degree in Zoology with a concentration in Marine Biology. I am also a teacher where I work with young people helping them to grow and develop into educated, responsible citizens. Some of these students are here tonight to support these rule proposals.

The West Hawaii Fisheries Council is a community organization put brought together by legislative mandate. A large part of the mandate and the reason that the council was formed was and is to work with the citizens of West Hawaii to find resolutions to user conflicts in the near shore areas of West Hawaii.

The process of resolving conflicts requires compromise. The proposed rules I am here to support represent 100's of volunteer hours, including extensive discussions between opposing parties. The rules represent a workable compromise to resolve conflicts and are the best next step in the protection of our near shore ecosystems.

The prohibition of SCUBA spearfishing would allow free-divers to practice their sport and provide food for their families while allowing most of the large fish to escape death, and therefore reproduce and provide fish for future spear fishermen. Most other areas of the world have already seen the wisdom of protecting marine life from over fishing on SCUBA. Please support this protective measure for our crustaceans and fish.

The establishment of Ka'ohe Bay as a Fish Replenishment Area was a compromise worked out between participating Aquarium Fishermen, and the people who live in

the area and who use the area for recreational swimming, snorkeling and SCUBA diving. Please support protecting this area as an FRA.

The establishment of a “white list” of fish that aquarium fishermen would be allowed to take may be the most controversial of the proposals put forward by the WHFC and DLNR. There are many people who would like to see aquarium fish collecting banned outright and have zero fish on the “white list”. In addition, there are fish on the list such as the Tinkers Butterfly fish that many say should not be on the list. However, once again the white list is a compromise worked out between conflicting parties and represents our next best step to protect the reef fish. If this rule is rejected in favor of a total ban, then for the present and undetermined future, there will be NO restrictions on the types of fish that can be taken. That would be far more detrimental to the numbers and species of fish seen on the reefs. This proposed rule change would limit the types of fish taken, as well as limiting the numbers and sizes of Yellow tangs, Kole tangs and Achilles tangs that can be taken by aquarium fish collectors. Please support and implement the “white list” and its size and bag limitations.

The protection of sharks, rays and the large mollusks that prey on crown of thorns with further protect the coral reef ecosystem. Large predators are an integral part of any ecosystem. Their removal from the system changes the systems dramatically. Please support their protection.

Please support the additional rule proposal that would require a West Hawai'i Aquarium Permit of any aquarium fish collector in the West Hawai'i area. This will add further protection of the fish and therefore reefs in this area.

Thank you for the opportunity to express my support for the West Hawai'i Regional Fishery Management Area (WHRFMA) Rule Proposals

Sincerely,

Donna R. Goodale, MS Zoology

Dec. 05, 2012

These rules represent compromises that were formulated between opposing parties. The rules are also based on systematic scientific research conducted by multiple research groups and agencies.

Some of the rules changes included are the prohibition of spearing fish while on SCUBA. This has already been banned in most areas of the world.

12/13/12

Aloha,

This letter concerns the Public Hearing that took place on Wednesday, December 5th, in Kailua-Kona at the high school. This Hearing pertained to the WHRFMA Amendments package which we hope will pass in its entirety.

Three friends and I, three divers and one snorkeler, attended the meeting together. We had all intended to sign up to read testimony. However, as we waited to enter the cafeteria at the school, it was obvious that there was a fairly large group (maybe 30?) of men who were talking loudly and planning a disruptive strategy for the hearing. So, we didn't sign in to read our testimonies. It was intimidating.

It seemed very clear that the vast majority of the folks there were in favor of the Rules Package. That was clear.

Once the meeting got underway, and the testimony against the ban on spearfishing on scuba began (it seemed to occur in a cluster), things got loud. In fact, although one woman, Tina Owens, had been told by Mr. Tam that she had to stop talking about anything that was not her direct opinion about the Rules Package, Mr. Tam allowed almost a DOZEN others limitless talking sessions. A few of those tedious diatribes (discussing Hawaiian history, the fact that the US has no jurisdiction over Hawaiians, and how scuba/spearfishing SEVEN HUNDRED POUNDS!!! of Parrotfish a NIGHT is SUBSISTENCE fishing????) lasted 10-15 minutes, even though there was a 3 minute limit on speaking. Nobody, not one person in attendance, corrected this crazy misinterpretation of 'subsistence fishing.' Additionally, there were obviously many traditional spear-fishermen who thought that THEY were going to be banned or might have to abide by the same rules as the commercial aquarium fishermen.

There was a lot of misinformation about the spearfishing/scuba aspect of this Rule Package passed around Kona in the 2 weeks prior to the meeting. There were posters with all kinds of nonsense on them. D.A.R. was alerted (I understand) but once people see something like that, it makes a lasting impression. The scuba/spear-fishermen were clearly trying (and succeeded) in getting traditional spear-fishermen to come to the meeting, be very loud and intimidate many others.

Isn't it true that scuba/spearfishing is already against the law in most Pacific countries? Is it correct for DAR and DLNR to continue to allow scuba/spear-fishers to think that removing HUNDREDS of

POUNDS of fish at a time from the reef is subsistence fishing? This is what many of them said. And, of course, using scuba/spear at night equals a slaughterhouse! There were one or two local guys who did say that it wasn't 'pono' to scuba/spear at night. And even some people who were there to complain about the total ban did say that a ban on night scuba/spear would be fair.

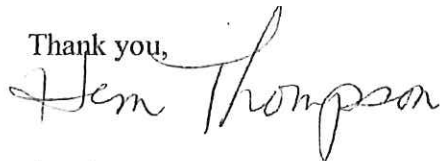
I hope that the Board watches the video that was made during the Hearing. Half of it is filled with a few people rambling on, even chanting!, and saying some pretty wacky stuff. However, there was definitely a lot of coherent, intelligent testimony given, too. Of course, there were many testimonies from researchers and marine biologists who reiterated that spearfishing on scuba is bad for the reef, bad for the fish population, and just a bad practice. These scientists have based their testimonies on years of research done in the Pacific, on reefs that have suffered terribly from overfishing on spearfishing with scuba.

I hope that the Board will pass this WHRFMA Amendments package in its entirety, or is able to withdraw or amend the scuba/spear element to a ban on night scuba/spearfishing in order to placate the folks who do use this very nontraditional method of fishing.

Thank you for your time and consideration.

I wish that we had felt comfortable enough to read the testimonies that we prepared for the Hearing but now, we feel that this is more appropriate and speaks to the specific issue at hand.

Thank you,



Kim Thompson, PhD

*Craig R. Glenn, Professor
University of Hawaii
School of Ocean & Earth Science & Technology Department of
Geology and Geophysics
1680 East-West Road, POST Building Room 701, Honolulu, HI 96822*



05 November 2012

State of Hawaii, Department of Land and Natural Resources Division of
Aquatic Resources
74---380B Kealakehe Pkwy Kailua---
Kona, HI 96740

To whom it may concern,

I submit this testimony in support of the adoption of Chapter 13-60.4 and its ancillaries. As a concerned citizen of Hawaii, and as a tenured Professor of the University of Hawaii School of Ocean

and Earth Sciences and Technology of 23 years, I am deeply troubled by the ever-worsening depletion and destruction of Hawaii's coral reefs and fish communities. I thus write this letter in support of the DNLR proposal for repealing Chapter 13-60.3, and adopting instead proposed Chapter 13.60.4 (West Hawaii Regional Fishery Management Area, Hawaii), and to amend regulations 13-54 (Puako Bay and Puako Reef Fisheries Management Area), 13-57 (Keauhou Bay Fisheries Area), and 13-75-12.4 (Lay Nets). I briefly explain my endorsement of these changes and amendments below.

Among other things, Chapter 13-60.4 proposes to prohibit SCUBA spearfishing for the simple reason that it has already been demonstrated everywhere in the Pacific that the prohibition of SCUBA spearfishing is necessary, because this methodology leads to overfishing, overfishing that has had dire consequences for maintaining healthy fish populations. In addition, this problem is particular intensified when night fishing is involved it is at this time that the fish are most vulnerable. Relatively few numbers of SCUBA spearfishers can lead to rapid declines in local populations of particular species, which can have cascading deleterious effects that can travel up and down the food chain.

Concerning the taking of aquarium fish, I strongly endorse DNLR's proposal for the creation and enforcement of the "White Listed" species identified in the proposal to initiate a strictly curtailed taking of only certain fish species for aquarium takers. To these ends, I also support the establishment of a West Hawaii Aquarium Permit for both recreational and commercial collectors. I see this is only one correct step to put an end to this harmful practice, but an important and necessary one to help curtail it. As for the proposal for the formation of a 1550 foot Fish Replenishment Area at Pebble beach, at a minimum, this is needed to help ease the tensions and conflicts between the members of the Ka'ohe community and their problems with aquarium takers.

I endorse the prohibition of take or possession of the identified nine species of inshore sharks and rays because it is well known that sharks and rays are a critical ecological rheostat in the ecological balance of our reefs, and are also thus important to not only reef-habitat health. Although most people do not realize it, in this way sharks and rays are thus also important components in the economics of Hawaii's ocean recreation industry itself.

To better preserve our finite and dwindling corals, which form the true underpinning and backbone of the entire reef community itself, I endorse the prohibition of taking Triton's Trumpet and Horned Helmet shells as these invertebrates are critical to protecting our reefs, being but a few known predators to the crown-of-thorns starfish. If Australia's bitter experiences at the Great Barrier Reef have taught us anything at all, it is that the crown-of-thorns starfish feed on, and massively devastates the corals, and any action to reduce this threat is a needed one throughout Hawaii.

Last, in addition to the adoption of the new WHRFMA rules, I also endorse the proposed amendments to 13-54 (Puako Bay and Puako Reef Fisheries Management Area), 13-57

(Keauhou Bay Fisheries Area), and 13-75-12.4 (technical amendments to the statewide lay net rule to clarify language and to update references to the WHRFMA rule). These are all also sound, and needed.

Please pass the adoption of all of these changes. While they may fall short of the substantial changes that are really needed to help protect Hawaii's fragile corals and fish, they do promise to begin to move the State of Hawaii forward in the correct directions of controlling and mitigating the damages already being done.



Sincerely,
Craig R. Glenn
Professor of Geology and Geophysics
University of Hawaii
School of Ocean and Earth Science and Technology

From: Ron Tubbs
Sent: Wednesday, December 05, 2012 7:22 AM
To: darkona@hawaiiantel.net
Subject: Testimony in Support of West Hawaii Rules package

Aloha Governor Abercrombie, Chairman William Aila, Land Board members, and Dr Bill Walsh,

I am testifying today in overall support of West Hawaii proposed rules draft to further regulate the aquarium fishery and for increased FRA management.

I applaud all of your support in this matter and thank each of you for your time. Managing Hawaii's fisheries is not an easy task and I appreciate those who work hard to ensure that Hawaii's fisheries are there for all ocean users now and in the future.

I would like to ask you to please consider changing or adding to one point of the rules draft when it is necessary.

13-60.4 section d and e regarding a limited entry date. I support limited entry as do many of the fishermen. I think due to increased population growth and demographics we will be forced at one point to limit the number of ocean collectors or manage take by some other means. If current regulations fail to maintain sustainability in the future we will need to act accordingly. For now we may not need such rules but by addressing them now we can plan for the future.

At current levels with the current amount of divers there should not be a need for a back limited entry date. I have relatives who dive for my Kona shop who may not meet your date not because they are new to the fishery but because they came to Kona from Oahu and their Kona permit is not that recent.

I too am a permit holder since 1982 and have a large stake in the Kona fishery. I own a shop in Kona that buys fish from divers and ships them to my Oahu facility. Please allow me as a diver for 30 years to collect from Kona waters. Many divers come to Oahu from Kona to fish with their Kona permit. To allow them on Oahu and those from Oahu not to be able to dive Kona is not fair. When issued my permit it was for all Hawaii not just one Island. Please consider these points and future changes.

I believe it is very important to understand the basic law behind ocean management so below is what little I know about this. Let's be fair to all user groups.

What is the legal precedence to the use of Hawaii's near shore fisheries? United Nations Conference on Environment and Development laws state the Oceans and their resources are the common heritage of man.

State of Hawaii regulates near shore waters within 3 miles. Outside that falls under Federal regulations. Following International and Federal law, The State of Hawaii has the responsibility to care for and share with all our Oceans resources.

No one group in Hawaii can make claim or shut out another group. Ecology groups cannot claim and close all to others for their preservation views. Fishermen cannot claim areas for their use only. International law states no one group can lay claim to the ocean or its resources.

U.S. laws are based on these UN resolutions. State law should follow this precedence. We must all share in caring for and utilizing our States Ocean resources. Catch report data completely back the claim that aquarium fish collecting is a sustainable industry. User conflict and protectionist ecologist objections to aquarium fishing is the source of the conflict.

I am very willing to give back to the ocean I love and have chosen to be my source of income. If I can ever do anything for researchers or management let me know.

Thanks for your time and consideration,

Ron Tubbs

RT Distributors Inc.

Waimanalo Hawaii and

Kailua Kona Hawaii

Dec. 05, 2012
Chad Wiggins

Thank you. I've seen a lot of really important people, knowledgeable people tonight, people that I have a deep respect for, people that want to work together to solve problems, so do I, and thank you all for coming tonight and sharing what you know and being committed to working on making things better.

I live in Waimea. That's where my son was born. I'm originally from Alabama, so I fall into the category of the people who don't have that deep generational knowledge here, but I do support the amendments.

Some of us have said that the fishery and reef fish protections proposed are too extreme, while others say that they're not sufficient. That means that the volunteers of the Fisheries Council succeeded in working to find a balance where each side was willing to compromise.

All of the proposed amendments should benefit coral reefs, but the one that I most support is prohibiting take of predators that play a vital role in structuring coral reef fish communities. Protections for predatory shells, rays, and especially, sharks is a sensible step to maintain the health of our coral reef.

Sharks may be powerful, but they're also vulnerable. They mature slowly, they give birth to few young. Kohala kupuna tell us in the 1950s and '60s many sharks were caught to make fish cake. This was likely the major impact that led to reduced reef shark populations today.

Sharks have always shaped how coastal people interact with the ocean. In West Hawaii tales of sharks abound; expert lua warriors ritually battling sharks in open water, religious practices at Hale O' Kapuni, the belief that living spirits dwell in these guardians of the ocean, that on a deep level they are part of us.

In North Kona the relationship between people and sharks was also practical. Fisherman adapted innovative and ingenious ways of feeding ko'a with opae ula and cinder to avoid attracting sharks and devised clever ways of distracting sharks using ipus so that their abundant catch was landed.

Without the resource we could not dwell here. We have asked the ocean to adapt to us, but now we must adapt for the ocean, even if it means changing behavior or making hard decisions.

In our living ocean sharks are like an immune system that keeps the whole healthy. Just as a person without an immune system will remain ill, so too, should we expect an ocean where the immune system has been compromised to weaken and die.

We can help give our living ocean back what she needs to survive by giving her the time and space to recover on her own, if we so choose.

Where I'm from it is said give a man a fish, and he eats for a day. Teach a man to fish and he eats for a lifetime. And this adage may be true where the eating of fish is concerned, but I would add to these, teach a man to manage fish and his children will eat forever.

The knowledge is already here, not being shouted across the room, but in the quiet resolve of those with the deep responsibility of caring for a place already; or perhaps we may choose otherwise, doing as we have done, with a full understanding of where that path will lead.

Mahalo no.

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**From:** Deanna Zivalic  
**Sent:** Wednesday, December 05, 2012 11:52 AM  
**To:** darkona@hawaiiantel.net  
**Subject:** Testimony

## Our Testimony IN FULL SUPPORT OF THE WEST HAWAII REGIONAL FISHERIES MANAGEMENT AREA Amendments

The mention of Hawaii and the first thoughts that come to mind are beauty, excitement and intrigue to the imaginative mind.

Hawaii has three distinctive categories.

The first is the visual day with waterfalls, white coral beaches, sunsets and rainbows.

The second is the night with breaking opalescent waves behind a full moon's crossing wake or under a starry night next to a campfire talking about Hawaiian legends and the night walker's deadly glow.

The third and most giving is under the blue sea. To see this underwater world takes your mind into another dimension of life abounding fish, corals and aquatic beauty which parallels the Great Barrier Reef.

There is a virus though. There are many people removing fish from our reefs. Some are doing it while spearfishing on scuba, some are collecting the fish for

resale, and others just not paying attention to the overfishing that is rampant across our reefs.

Why are tropical fish so important?

It is a scientific fact that when one observes tropical fish , our heartbeat and breathing slows down, blood pressure drops mending the body from stress through hypnotic stimuli by watching the coloring and movement of fish. Also, as we well know, reef fish have a symbiotic relationship with the reef. The yellow tang and other algae-eaters keep the corals clean, and the fish remain healthy in this circular system.

Take our tropical fish away and you take tourism away and a treasure Hawaii cannot afford to lose. The state is worried about the loss of about 100 jobs. . Perhaps, the state could hire the aquarium collectors and use their expertise to promote tourism of aquatic resources, selling Hawaii's underwater healing aquarium to other high stressed countries bringing people to Hawaii instead of stealing her away.

We fully support the Hawaii Regional Fisheries Management Area Amendments.

Please Protect Kaohe Bay

Sincerely, Walter, Deanna, & Zoe Zivalic

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From: Deanna Zivalic
Sent: Thursday, December 06, 2012 1:46 PM
To: darkona@hawaiiantel.net
Subject: My Testimony IN FULL SUPPORT OF THE WEST HAWAII REGIONAL

My Testimony IN FULL SUPPORT OF THE WEST HAWAII REGIONAL FISHERIES MANAGEMENT AREA Amendments

Aloha,

I attended the meeting last night and it seemed like everyone was on the same page, besides a few fishermen who opposed the ban on scuba spearfishing. I do not have a PH D, but it seems like a no brainer, if most other countries have banned this and after a decade of Hawaii mulling this

over, it is time we follow suit. I don't think the Hawaiian's grandfathers were out there in their scuba gear doing this....

I did not know that Hawaii exports two thirds more fish off our small reef than Australia, with their great reef. I did agree with the locals that someday it would be great to stop all this exporting, leaving the fish for the people that live here, but one step at a time. Our fish in the local stores has doubled in price for us in the last few years!

I think it is excellent that at least the fish collectors must have a permit. I also do wonder how any of this will even be enforced?

I am a resident living in Kona Paradise by Kaohe Bay for 12 years. To let our bay be a place where fish can replenish warms my heart.

I hope this does not sit on the table for another 10 years, and this can move forward.

Sincerely, Deanna Zivalic



United States Department of the Interior

NATIONAL PARK SERVICE
Kaloko-Honokohau National Historical Park
73-4786 Kanalani St., Suite 14
Kailua-Kona, HI 96740

IN REPLY REFER TO:

L7621

December 19, 2012

William J. Aila, Jr. Chairperson
Board of Land and Natural Resources
Division of Aquatic Resources
74-380B Kealakehe Pkwy.
Kailua-Kona, HI 96740
VIA EMAIL to darkona@hawaiiantel.net

Subject: National Park Service comments on proposed new rule Chapter 13-60.4, West Hawaii Regional Fishery Management Area, Hawaii (WHRFMA). Dear

Mr. Aila:

Thank you for the opportunity to comment on the proposed new rule Chapter 13-60.4, West Hawaii Regional Fishery Management Area, Hawaii (WHRFMA). The waters of Kaloko-Honokohau National Historical Park are within the West Hawaii Regional Fishery Management Area, specifically the Kaloko- Honokohau Fisheries

Management Area (HAR 13 Chapter 60.3 §13-60.3-16). The National Park Service supports the proposed rule-package in its entirety as developed by the West Hawaii Fisheries Council and others. The proposed rules are science-based, will enhance sustainability of Hawaii's nearshore ocean resources, and will improve enforcement.

The National Park Service (NPS) specifically supports the proposed ban of SCUBA spearfishing within the Kaloko-Honokohau Fisheries Management Area. Kaloko-Honokohau National Historical Park was authorized in 1978 "to provide a center for the preservation, interpretation, and perpetuation of traditional native Hawaiian activities and culture, and to demonstrate historic land use patterns as well as provide needed resources for the education, enjoyment, and appreciation for such traditional native Hawaiian activities and culture by local residents and visitors..." (Public Law 95-625). Breath-hold spearfishing is one of many fishing methods traditionally used by Hawaiians and this method can maintain a sustainable fishery. The proposed ban on SCUBA spearfishing in the Kaloko-Honokohau FMA is in keeping with the National Park's authorizing legislation and goals of preserving and perpetuating the traditional Hawaiian cultural and activities, and will enhance replenishment of nearshore fish stocks.

The majority of Pacific Island countries ban SCUBA spearfishing (Gillett and Moy 2006). The detrimental effects of SCUBA spearfishing includes selective targeting of larger fishes, targeting a wider number of species than other fishing gear, and accessing larger fishes in deep water refugia that are inaccessible to most breath-hold spearfishers (Gillett and Moy 2006). Selective targeting of and access to larger fish is of particular concern. Berkeley et al. (2004a) and Berkeley et al. (2004b) demonstrated that older, larger female fish produce offspring that survive better and grow faster than the offspring of younger fish. This finding has important implications for fisheries management (Berkeley et al. 2004b, Birkeland and Dayton 2005). These older, larger fish provide substantial economic and ecosystem value to the West Hawaii community (Cesar and Beukering 2004). Adoption of the proposed new rule will ultimately support the sustainability of this important community resource.

We appreciate the efforts of the Division of Aquatic Resources, the West Hawaii Fisheries Council, and the community members who work tirelessly to guide sustainable management of community and state resources. If you have any questions regarding our comments please contact me at 808-329-6881 x1201 (kathy_billings@nps.gov) or Sallie Beavers, Chief of Resources, at x1220 (sallie_beavers@nps.gov).

Sincerely,


Kathy Billings
Superintendent

References:

Berkeley, S., C. Chapman, and S. Sogard. 2004a. Maternal age as a determinant of larval growth and survival in a marine fish, *Sebastes melanops*. *Ecology* 85:1258-1264.

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Gillett, R. and W. Moy. 2006. Spearfishing in the Pacific Islands. Current status and management issues. *FAO/FishCode Review*. No. 19. Rome, FAO. 72 p.

Birkeland, C. & Dayton, P.K. 2005. The importance in fishery management of leaving the big ones. *Trends in Ecology and Evolution* 20: 356-358.

From: Sue Kellam
Sent: Friday, November 16, 2012 12:31 PM
To: Dr. Bill
Subject: IN SUPPORT OF WHRFMA Rule Proposal

IN SUPPORT OF WHRFMA Rule Proposals:

It has been more than 8 years that we at the Friends of Pebble Beach have worked tirelessly to add Ka'ohē Bay to the Fish Replenishment Areas (FRA) in West Hawai'i. Along the way, our "user conflict" (ocean users vs. collectors) resolution has been added to a DLNR Rule Amendment Package that is now coming to a public hearing on December 5th at Kealakehe High School at 6pm..

While this package is not a perfect solution, each part is a step in the right direction. Including Pebble Beach/Ka'ohē Bay as an FRA is extremely important. Ka'ohē Bay is very easily accessible and is used by both kama'aina from all over the island and by visitors. It is a beautiful reef which is popular for SCUBA diving, as well as snorkeling, swimming, kayaking and just relaxing. It is such a good shore dive that dive shops in Kona offer underwater maps of the bay to shore divers. I'd also like to add that many commercial aquarium collectors have agreed (at County Council meetings and other venues) that the bay should have been in the original FRAs that were created in Act 306, in 1999.

Do we agree with the other parts of this package? Mostly, yes: a ban on spearfishing with SCUBA (while leaving traditional spearfishing alone); clarification of FRA borders; and an ingenious "White List" that limits collection to 40 species of tropical fish, thereby protecting hundreds of others—all are steps in the right direction. In fact, our biggest disagreement is that some "charismatic" fish have made it onto the White List. Some very vocal critics from Maui have condemned the whole package for this reason. Despite claims that they have exhausted all means of controlling collection through DLNR, those Maui critics (like Robert Wintner and Rene Umberger) have never sat down and worked out with collectors a realistic plan for keeping the tropical fish catch in control. They are too self-righteous and impatient. It is to the credit of Dr. Bill Walsh (of DAR) and the West Hawai'i Fishery Council that they have ground out a solution that maintains current income levels for collectors but prevents the industry from going wild. Deep compromises have been made—too deep for many of us. But the collectors feel the same way. Mutual frustration is often a result of successful compromises. I hope that everybody realizes that if this Rule passes, EVERYTHING that is NOT on the White List will be protected. Sure it is hard for us who enjoy tropical fish to read the White List, but all of those fish will still be protected in FRAs. And all other fish will be protected everywhere. Think of it: Bandit and Flame Angelfish, Turkeyfish, Moorish Idols, Whitley's Boxfish, Bicolor Anthias, Picasso Triggerfish, Teardrop Butterflyfish—the list goes on and on of fish that will never be taken again to languish in some teenager's fish tank in the Midwest. They will continue to reproduce here and build to healthier populations.

There is protection for rays, sharks, Triton Trumpets (finally!), and Horned Helmets, too. These are positive steps!

While this Amendment Proposals are not a perfect solution, they are steps that will help to protect the reef ecosystem on the Big Island. For those who don't live on our island or haven't been here long, you might think that small steps aren't worth taking. We disagree. As we know from last year's failed attempt at banning the aquarium trade spearheaded by Snorkel Bob, the legislature twisted that bill, suggesting the establishment of a Maui advisory council very similar to the one he loves to criticize, namely the WHFC. As for the legal efforts to throw an Environmental Impact Statement in the way of aquarium collection, it is clear by the reaction of the Attorney General's office this week that, at best, there will be a protracted court case before anything is decided. The truth is that banning any established business in Hawai'i is very tricky business. There are plenty of legal and cultural barriers to doing any such thing.

If these Proposed Rule Amendments don't pass, West Hawai'i will not increase its protection for the reefs at all. It means that it will be 'business as usual' with aquarium collectors operating under 'carte blanche'-- no restrictions, no size or bag limits outside the FRAs. Nothing. Since banning aquarium collecting is not currently an option, passing more regulation of the aquarium trade, and more protection for the reef critters is good. This proposed package DOES deliver on that. And many collectors are willing to cooperate. They recognize that it is not in their interest to generate so much public hostility. Let's seize on this cooperative mood and establish reasonable regulation of their trade.

Additionally, in no way does this Rule Proposal prevent anybody from continuing with further island or state-wide restrictions. After 8 years of fighting tooth and nail for 1500 feet of protection of Ka'ohe Bay, we've got one thing to say. Good luck!

I support the West Hawai'i Regional Fishery Management Area (WHRFMA) Rule Proposals. At this point, they cannot be changed or altered. They will pass or fail. It would be a terrible thing for this Package to fail. It is our kuleana to protect the reef. Small steps are much better than none at all.

Mahalo,

Susan Kellam

Friends of Pebble Beach/ Ka'ohe Bay

Dec. 05, 2012

My name is Susan Kellam, and I am one of the founders of Friends of Pebble Beach. Eight years ago, petition of 1,600 signatures in hand, we asked the West Hawaii Fisheries Council to add the bay to the current Fish Replenishment Areas. About three years ago, the Big Island Association of Aquarium Fishermen made a gentlemen's agreement with us to halt collecting in the bay directly. We have been very pleased with their cooperation in this effort. The problem is that new collectors who don't respect this

arrangement could come in at any time. An FRA will ensure that we will never again have the kinds of user conflicts that led us to the Fisheries Council in the first place.

Recently, I've seen several posters around town stating that adding Ka'ohe Bay as an FRA would be "bad for small business." Since the aquarium collectors haven't fished in the bay for almost three years and totally on a volunteer basis, they've agreed to do this, I would say that the other claims are quite farfetched.

About the White List; some groups are very vocal in complaining that it's too lenient and others say it's too much. I think it's a good compromise because it allows commercial aquarium collectors to continue their livelihood while providing some regulations and protections for many species at the same time. The environmental element of this list is that while it allows most of the species that collectors do take, it bans collection of all the rest. Some of the fish that will be protected if this passes are, flame angelfish, teardrop butterfly fish, Moorish idols, Hawaiian cleaner wrasse, bi-color anthias, reticulated butterflies, and many others. Some opponents, like For the Fishes on Maui, say that any charismatic fish on the White List is one too many. We have seen Maui's plans fail time after time because they won't compromise. How can groups like For the Fishes claim to be conservation-minded when they are undermining a rules package that would add more protections and regulations to our reefs here in West Hawaii? Is it because they're involved in a lawsuit in Honolulu that might benefit from this package failing?

In the last several weeks a lot of people who are against this rules package have come out of the woodwork. During the eight-and-a-half years that I've been actively involved in this process, in monthly meetings, presentations by researchers from various universities and plenty of public vetting at forums from ReefTalk to the Natural Energy Lab, I don't know where these folks have been. I have personally witnessed years of vetting and have sat through dozens and dozens of scientific studies.

I say this. Let's pass these decade long, well-vetted rule proposals. While I have focused on certain parts of this package, I do support all sections. Should folks say this is not enough, I suggest they continue working for more. To those who say it's too much, I say that most of us recognize some kind of regulations are needed. After almost a decade of working together with several diverse groups to reach a reasonable consensus, I ask DLNR and the Attorney General's office to pass this through the rule-making process in its entirety. Thank you.

~~~~~

December 17, 2012

To whom it may concern,

It has come as welcome news that someone, somewhere in HI finally recognizes how spearfishing can seriously deplete our marine resources. And this is even more so using tanks and at night. I bet most people don't realize it, but spearfishing in general is an efficient way to eliminate species of fish. That's why roi roundups which are held to eliminate the roi, toau, and taape are spearfishing tournaments. Oh, but the divers who hold these tournaments will have you believe that they are our stewards of the ocean. To me, it's like letting the fox be the steward of the hen house. And they also have a big part in the proliferation of these so-called undesirable species of fish. The divers want zero restrictions on spearfishing. Instead they think or want others to think that establishing bag limits (which should only apply to themselves) is the way to go. Correct me if I'm wrong, but don't you need something to bag in order to have bag limits? It's not like we have tons and tons of kumu, uhu, menpachi, moana-ukali, etc, along our shoreline and we better set bag limits before they're all gone.

No, we hardly have any of these fish along our shorelines. So if you have 30 (and this is a very liberal amount) kumu along a one-mile stretch of shoreline and set a bag limit of two kumu per person per day, and one night five divers come in a boat and each take their bag limit share, this would total 10 in one night. In one night one-third of the kumu in that area is gone. Two more nights and you'll have zero in that area. On the fourth night another area will be hit. This scenario has played out many times. Awhile back I spoke with the DLNR officials on Samoa and they said the same thing. They told me that they might "think" about bag limits in the future.

I reside on the island of Maui, and back in 2001 suggested to the DLNR officials here that something needed to be done about diving with tanks and night diving. I've submitted written testimony and have spoken with them on numerous occasions, but obviously to no avail. I've pretty much given up on trying to help replenish our marine resources. I'd taken up the attitude that I don't care already, and the only way that diving with tanks and night diving (and spearfishing in general) will have restrictions placed on them, will be when we have absolutely nothing left on our reefs. But now there might be renewed hope. Even though the planned regulations will be only for West Hawaii, I believe it's a giant step in the right direction. I think by making these proposals, people on all islands will start to realize that diving with tanks and at night greatly decimates many types of our valued food fishes. If you folks haven't yet, try going to a wholesale fish market and you will see that 90% of the reef fish from HI have spear marks on them. Just like to mention that I'm a shoreline, hook and line fisherman.

Sincerely,

John Tokumatsu Moniz Barclay

Kahului, Maui

~~~~~



www.aza.org
8403 Colesville Road, Suite 710
Silver Spring, MD 20910-3314
301-562-0777 tel 301-562-0888 fax

December 12, 2012

Division of Aquatic Resources
Department of Land and Natural Resources
74-380B Kealahou Parkway
Kailua-Kona, HI 96740

Division of Aquatic Resources
Department of Land and Natural Resources
1151 Punchbowl Street, Room 330
Honolulu, HI 96813

On behalf of the 223 accredited member institutions of the Association of Zoos and Aquariums (AZA), we want to express our support for the regulatory amendments to the Hawai'i's Administrative Rules for the management of aquarium fish collecting for West Hawai'i and O'ahu. AZA is very supportive of the scientifically-based, adaptive management regime for coral reef fisheries currently employed in Hawai'i which has proven to be very successful from both an economic and ecological perspective. The data collected over many years on Hawai'i's coral reefs conclusively indicate that tropical fish collecting can be managed on a sustainable basis. This is critical to AZA to gain our support for these new proposed rules.


AZA accredited zoos and aquariums fully understand, recognize and support Hawai'i's desire to maintain its unique and diverse coral reef habitat. We also acknowledge Hawai'i's marine aquarium fishery to be one of the best-studied and best-managed fisheries in the United States, if not the world. The fishery is a model for similar aquarium fisheries management programs around the world. We applaud the numerous efforts underway by state, federal and private organizations to accurately determine the health of this fragile ecosystem. Sustainably managed fisheries have a long term positive impact on the public aquarium industry (as well as other economies) ensuring that generations of children visiting our member institutions and viewing the species acquired from these fisheries will be inspired to a lifetime of proactive stewardship of all our collective marine resources.

AZA is a non-profit organization dedicated to the advancement of accredited zoos and aquariums in the areas of animal care and husbandry, conservation, education, science and recreation. With 180 million visitors to 223 accredited zoos and aquariums, AZA's focus on connecting people and animals provides a critical link to helping animals in their native habitats. AZA zoos and aquariums are committed to conserving the world's oceans for future generations of Americans and people around the globe. We do this by inspiring our millions of visitors with compelling exhibits that showcase the natural beauty of marine life and habitats, including coral reefs. We also educate our audiences about issues related to ocean health, and encourage them to join us in reducing threats to fragile ocean ecosystems and wildlife. This is very important as a recent National Research Council study found that people learn as much as 90% of their science in informal settings such as accredited zoos and aquariums. We strongly believe that our message of respect, wonder and appreciation of the natural world contributes significantly to coral reef conservation and management.

The AZA community views itself as potential partners with Hawai'i. We have the ability to speak to millions of visitors annually about marine conservation needs and how fishery management is one of many tools that help protect the ocean's resources. AZA accredited institutions agree that common-sense regulatory approaches that governs the take of coral reef species, such as these regulatory

amendments, is a positive step in the management of this fishery and a key element in enhancing the coral reef fishery populations in Hawai'i. Thank you for the opportunity to provide input on these important decisions.

Respectfully,



Steven G. Olson
Vice President, Federal Relations
of Zoos and Aquariums



Doug Warmolts
Director, Animal Care
Columbus Zoo and Aquarium
And
Chair, AZA Marine Fish Taxon
Advisory Group



Bruce Carlson
Science Officer, Association
Emeritus
Georgia Aquarium
Ewa Beach, Hawaii

Note: The following is a list of AZA affiliated members from the AZA website

- | | |
|---|---------------------------------------|
| Abilene Zoological Gardens, Texas | Blank Park Zoo, Iowa |
| Adventure Aquarium, N.J. | Boonshoft Museum of Discovery, Ohio |
| Africam Safari Park, Mexico | Bramble Park Zoo, S.D. |
| African Safari Wildlife Park, Ohio | Brandywine Zoo, Del. |
| Akron Zoological Park, Ohio | BREC's Baton Rouge Zoo, La. |
| Alameda Park Zoo, N.M. | Brevard Zoo, Fla. |
| Alaska SeaLife Center, Alaska | Bronx Zoo/WCS, N.Y. |
| Albuquerque Biological Park, N.M. | Brookgreen Gardens, S.C. |
| Alexandria Zoological Park, La. | Buffalo Zoological Gardens, N.Y. |
| Aquarium of the Bay, Calif. | Busch Gardens (Tampa), Fla. |
| Aquarium of the Pacific, Calif. | The Butterfly House, Mo. |
| Arizona Sonora Desert Museum, Ariz. | Buttonwood Park Zoo, Mass. |
| Atlantis, Paradise Island, Bahamas | Cabrillo Marine Aquarium, Calif. |
| Audubon Aquarium of the Americas, La. | Caldwell Zoo, Texas |
| Audubon Zoo, La. | Calgary Zoo, Alberta |
| Bergen County Zoological Park, N.J. | California Science Center, Calif. |
| Bermuda Aquarium, Museum and Zoo, Bermuda | Cameron Park Zoo, Texas |
| Binder Park Zoo, Mich. | Cape May County Park Zoo, N.J. |
| Binghamton Zoo at Ross Park, N.Y. | Capron Park Zoo, Mass. |
| Biodôme de Montreal, Canada | Central Florida Zoological Park, Fla. |
| Birch Aquarium at Scripps, Calif. | Central Park Zoo, N.Y. |
| Birmingham Zoo, Ala. | Chahinkapa Zoo, N.D. |

Charles Paddock Zoo, Calif.
 Chattanooga Zoo at Warner Park, Tenn.
 Chehaw Wild Animal Park, Ga.
 Cheyenne Mountain Zoological Park, Colo.
 Chicago Zoological Society - Brookfield Zoo, Ill.
 Children's Zoo at Celebration Square, Mich.
 Cincinnati Zoo and Botanical Garden, Ohio
 Cleveland Metroparks Zoo, Ohio
 Clyde Peeling's Reptiland, Pa.
 Columbus Zoo and Aquarium, Ohio
 Como Park Zoo and Conservatory, Minn.
 Connecticut's Beardsley Zoo, Conn.
 Cosley Zoo, Ill.
 CuriOdyssey, Calif.
 Dakota Zoo, N.D.
 Dallas World Aquarium, Texas
 Dallas Zoo, Texas
 David Traylor Zoo of Emporia, Kan.
 Denver Zoological Gardens, Colo.
 Detroit Zoological Park, Mich.
 Dickerson Park Zoo, Mo.
 Disney's Animal Kingdom, Fla.
 El Paso Zoo, Texas
 Ellen Trout Zoo, Texas
 Elmwood Park Zoo, Pa.
 Erie Zoo, Pa.
 Florida Aquarium, The, Fla.
 Fort Wayne Children's Zoo, Ind.
 Fort Worth Zoo, Texas
 Fossil Rim Wildlife Center, Texas
 Franklin Park Zoo, Mass.
 Fresno Chaffee Zoo Calif.
 Georgia Aquarium, Ga.
 Gladys Porter Zoo, Texas
 Granby Zoo, Quebec
 Great Plains Zoo and Museum, S.D.
 Greenville Zoo, S.C.
 Grizzly & Wolf Discovery Center, Mont.
 Happy Hollow Zoo, Calif.
 Henry Vilas Zoo, Wis.
 Henson Robinson Zoo, Ill.
 Honolulu Zoo, Hawaii
 Houston Zoo, Inc. Texas
 Hutchinson Zoo, Kan.
 Indianapolis Zoological Society, Inc., Ind.
 International Crane Foundation, Wis.
 Jackson Zoological Park, Miss.
 Jacksonville Zoo and Gardens, Fla.
 Jenkinson's Aquarium, N.J.
 John Ball Zoological Gardens, Mich.
 John G. Shedd Aquarium, Ill.
 Kansas City Zoo, Mo.
 Knoxville Zoological Gardens, Tenn.
 Lake Superior Zoo, Minn.
 Landry's Downtown Aquarium - Denver, Colo.
 Landry's Houston Aquarium, Inc., Texas
 Lee G. Simmons Conservation Park and Wildlife Safari, Neb.
 Lee Richardson Zoo, Kan.
 Lehigh Valley Zoo, Pa.
 Lincoln Children's Zoo, Neb.
 Lincoln Park Zoological Gardens, Ill.
 Lion Country Safari, Fla.
 Little Rock Zoological Gardens, Ark.
 Living Desert, The, Calif.
 Living Desert Zoo & Gardens, N.M.
 Los Angeles Zoo and Botanical Gardens, Calif.
 Louisville Zoological Garden, Ky.
 Lowry Park Zoo, Fla.
 Maryland Zoo in Baltimore, Md.
 Memphis Zoological Garden and Aquarium, Tenn.
 Mesker Park Zoo & Botanic Garden, Inc.
 Mill Mountain Zoo, Va.
 Miller Park Zoo, Ill.
 Milwaukee County Zoological Gardens, Wis.

Minnesota Zoological Garden, Minn.
 Mississippi River Museum, Iowa
 Monterey Bay Aquarium, Calif.
 Montgomery Zoo, Ala.
 Moody Gardens Rainforest and Aquarium, Texas
 Mote Marine Laboratory and Aquarium, Fla.
 Museum of Science, Mass.
 Mystic Aquarium & Institute for Exploration,
 Conn.
 Naples Zoo, Fla.
 Nashville Zoo, Tenn.
 National Aquarium in Baltimore, Md.
 National Aviary, Pa.
 Natural Science Center & Animal Discovery of
 Greensboro, N.C.
 New England Aquarium, Mass.
 New York Aquarium, N.Y.
 Newport Aquarium, Ky.
 North Carolina Aquarium at Fort Fisher, N.C.
 North Carolina Aquarium at Pine Knoll Shores,
 N.C.
 North Carolina Aquarium on Roanoke Island,
 N.C.
 North Carolina Zoological Park, N.C.
 Northeastern Wisconsin (NEW) Zoo, Wis.
 Northwest Trek Wildlife Park, Wash.
 Oakland Zoo, Calif.
 Ocean Park Corporation, Hong Kong
 Oglebay's Good Zoo, W.Va.
 Oklahoma City Zoological Park, Okla.
 Omaha's Henry Doorly Zoo, Neb.
 Oregon Coast Aquarium, Ore.
 Oregon Zoo, Ore.
 Palm Beach Zoo at Dreher Park, Fla.
 Parque Zoologico de Leon, Mexico
 Peoria Zoo, Ill.
 Philadelphia Zoo, Pa.
 Phoenix Zoo, The, Ariz.
 Pittsburgh Zoo and PPG Aquarium, Pa.
 Point Defiance Zoo and Aquarium, Wash.
 Potawatomi Zoo, Ind.
 Potter Park Zoological Gardens, Mich.
 Prospect Park Zoo, N.Y.
 Pueblo Zoo, Colo.
 Queens Zoo, N.Y.
 Racine Zoological Gardens, Wis.
 Red River Zoo, N.D.
 Reid Park Zoo, Ariz.
 Ripley's Aquarium at Myrtle Beach, S.C.
 Ripley's Aquarium of the Smokies, Tenn.
 Riverbanks Zoological Park, S.C.
 Riverside Discovery Center, Neb.
 Roger Williams Park Zoo, R.I.
 Rolling Hills Adventure Center, Kan.
 Roosevelt Park Zoo, N.D.
 Rosamond Gifford Zoo at Burnet Park Zoo, N.Y.
 Sacramento Zoo, Calif.
 Safari West, Calif.
 St. Augustine Alligator Farm, Fla.
 Saint Louis Zoo, Mo.
 Salisbury Zoological Park, Md.
 San Antonio Zoological Society, Texas
 San Diego Zoo, Calif.
 San Diego Zoo Safari Park, Calif.
 San Francisco Zoological Gardens, Calif.
 Santa Ana Zoo, Calif.
 Santa Barbara Zoological Gardens, Calif.
 Santa Fe Community College Teaching Zoo, Fla.
 Scovill Zoo, Ill.
 Seas, The, Fla.
 Seattle Aquarium, Wash.
 SeaWorld Orlando, Fla.
 SeaWorld San Antonio, Texas
 SeaWorld San Diego, Calif.
 Sedgwick County Zoo, Kan.
 Seneca Park Zoo, N.Y.

Sequoia Park Zoo, Calif.
Shark Reef Aquarium at Mandalay Bay, Nev.
Six Flags Discovery Kingdom, Calif.
Smithsonian National Zoological Park, DC
South Carolina Aquarium, S.C.
Squam Lakes Natural Science Center, N.H.
Staten Island Zoo, N.Y.
Steinhart Aquarium, Calif.
Stone Zoo, Mass.
Sunset Zoological Park, Kan.
Tautphaus Park Zoo, Idaho
Temaiken Foundation, Buenos Aires
Tennessee Aquarium, Tenn.
Texas State Aquarium, Texas
Toledo Zoological Gardens, Ohio
Topeka Zoo, Kan.
Tracy Aviary, Utah
Trevor Zoo, N.Y.

Tulsa Zoo and Living Museum, Okla.
Turtle Back Zoo, N.J.
Utah's Hogle Zoo, Utah
Vancouver Aquarium Marine Science Centre,
British Columbia
Virginia Aquarium and Marine Science Center,
Va.
Virginia Living Museum, Va.
Virginia Zoological Park, Va.
Western North Carolina Nature Center, N.C.
Wildlife Safari, Ore.
Wilds, The, Ohio
Woodland Park Zoo, Wash.
Zoo Atlanta, Ga.
Zoo Boise, Idaho
Zoo Miami, Fla.
ZOOAMERICA NA Wildlife Park, Pa

From: Jamie Pardau
Sent: Wednesday, November 21, 2012 10:11 AM
To: darkona@hawaiiintel.net
Subject: Testimony for WHRFMA Chapter 13-60.4

Name: Jamie Pardau

Position on Amendments: Support with grave reservations

While I am writing in favor of these amendments, I cannot do so without outlining the grave reservations I have about the weak protections that they place on our most fragile and important resource in West Hawaii - the ocean environment. Protective measures have been lumped into this action with other items that do not help - and probably harm- our reefs. I am very skeptical of the inclusion of these protective measures and view them as a "bribe" to get the white list passed. To make my points as clear as possible, I will list the parts of this action and my reaction to each.

Spearfishing on SCUBA prohibition: I support this
Pebble Beach designation as FRA: I support this
White List: I **do not and never will** support this
Protection of sharks, rays, and invertebrates: I support this
Establishment of a permit for collecting: I support this

I, further, am in support of 13-54 and 13-57 which clarify maps of Puako and Keauhou and the use of nets.

I would like to explain that the White List, in my view, is the real issue here. Every other part of this action has been tacked on to encourage reluctant citizens to support the measure. While these other parts of the action are valuable, they can not balance the harm done by the White List. I will give a few examples.

1. Tinker Butterflyfish are rare. They live in deep water (usually at least 100 feet). They have no business on a list of allowable collection. Just bringing them to a boat puts them in jeopardy.
2. Flame wrasses are ENDEMIC and rare. They are one of the fish that divers travel to our island to see. Again, their natural habitat is deep.
3. Psychedelic wrasses are among the most colorful fish on the reef. They are ENDEMIC. We cannot allow them to be collected to extinction. Divers search for them in deep water. While there may be sizable harems of females, each group has just one male. It is the male whose colors lure collectors.
4. Hawaiian longfin anthias are ENDEMIC! That alone should protect them from collection. If they are eliminated from our reefs in Hawaii, they will be extinct.
5. Hawaiian Saddle wrasses are also ENDEMIC and their numbers, for reasons that research has not been able to explain, are declining. It is not appropriate to further reduce their numbers by collecting.

In conclusion, the ocean life of our island brings in millions of dollars in tourist trade each year. When the collection of the fish on the white list produces a depleted reef population, snorkelers and divers will leave with them, taking their

tourist dollars with them. It is not sustainable use of a resource to ship it away. I am **supporting** these amendments with **grave reservations**. I can only hope that those who call it a "step in the right direction" intend to "keep walking", and not just sit back while our reefs are destroyed.



The Nature Conservancy of Hawai'i
923 Nu'uuanu Avenue
Honolulu, HI 96817

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nature.org/hawaii

Testimony of The Nature Conservancy
Supporting the Proposed Amendments to Hawai'i Administrative Rules Ch. 13
Relating to the West Hawai'i Fishery Management Area
December 5, 2012

The Nature Conservancy supports the entire package of proposed rule changes for the West Hawai'i Fisheries Management Area. The proposals are the result of thoughtful deliberation, widespread community input, careful incorporation of historical and current knowledge and observation, consideration of local and international management experiences, and the application of sound scientific information all gathered over more than a decade. In particular, we support the proposed prohibitions on SCUBA spearfishing and on taking of nine species of sharks and rays.

In 2008, a comprehensive population survey and analysis by NOAA, the Oceanic Institute, DLNR, and UH of 55 near shore fish species in the Main Hawaiian Islands found that 75% of species are in critical (42%) or depleted (33%) condition, with an additional 11% below desired level. (*The State of Coral Reef Ecosystems of the Main Hawaiian Islands*, Friedlander, A., et al., 2008) The species in most trouble include parrotfish, jacks and sharks, all of which play critical roles in ecosystem health and function either as predators or plant eaters. Jacks and parrotfish are prized by fishers using a variety of gear types in Hawai'i. Though sharks and rays are not necessarily targeted by fishers here and are somewhat long-lived, many don't reach reproductive maturity for several years, have long gestation periods and produce relatively few offspring. Thus, their populations tend to grow slowly and are also slow to recover if depleted.

The usual argument in favor of SCUBA spearfishing is that it is highly selective and avoids waste. However, this selective quality has also proven to be SCUBA spearfishing's greatest negative attribute. SCUBA spearfishing allows for highly efficient harvesting, enhanced targeting of prized species, and a preference for bigger fishes; together resulting in the removal of large numbers of important fishes at their most productive ages. SCUBA divers can spearfish for extended periods of time and at depths that are unavailable to other types of fishers and fishing methods and that would otherwise serve as refuges for many fishes. These conditions are magnified when SCUBA spearing is employed at night when many species are sleeping. This is particularly problematic when groups of fish like herbivores (e.g., uhu) are targeted in large numbers while sleeping under ledges, in holes or caves. The grazing behavior of such species is critical to ecosystem function, coral health and sand production.

Having experienced the negative effects of SCUBA spearfishing, several nations (e.g., Australia, Mexico, Belize) and most Pacific island countries and territories (e.g., Fiji, Marianas, Tonga, American Samoa, Samoa, Solomons) have banned or severely restricted SCUBA spearfishing. Coupled with other management regimes and consistent enforcement, the proposed ban on SCUBA spearing in the West Hawai'i rules package is a reasonable and justified component of a broader management strategy in support of near shore fisheries and habitat health so these resources will flourish for the benefit of present and future generations of people.

Thank you for this opportunity to offer The Nature Conservancy's comments in full support of the proposed package of rule changes for the WHFMA.

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From: Lisa Choquette
Sent: Sunday, December 02, 2012 11:37 PM
To: Bill Walsh
Cc: Donna Goodale
Subject: Testimony re: Draft Rules on Aquarium Fishing.

Aloha, Everyone,

I am sending my testimony from the Solomon Islands, where I have lived and worked for the past 6 years. establishing a SCUBA charter business run by Islanders, educating them on conservation, and establishing Kicha Island as a Marine and Terrestrial Protected Area.

I lived and worked, operating Dive Makai Charters in Kona for 30 years. I watched the steady decline in our reef fishes due mainly to completely unregulated removal by Tropical fish collectors. Hundreds of thousands of our reef fish were shipped to aquaria around the world every year, most of them dying before they reached their destinations. And there is no fish ATM to replace them. Many of these species are very slow breeders, taking up to 7 years to reach breeding age. I spent much of my time there struggling with others to establish some kind of limits and controls on the aquarium industry. I served on the West Hawaii Fisheries Council from its inception until I left Hawaii. I think we achieved a great deal in establishing areas up and down the Kona Coast that were protected from aquarium collectors. These proved, without any doubt, the value of such areas, as the populations of many of the collected species slowly but steadily increased. Sadly, by the time I left, some species had yet to show any sign of substantial recovery.

I have read these draft rules sent to me by E mail. They are good rules, and should be adopted. I would be overjoyed to see a complete ban on aquarium collecting. I live in an area where there is NO collecting, and the fecundity of our reefs is staggering to the imagination. But I also am realistic enough to know that it is not likely to happen in the near future in Hawaii, and I stand firmly in support of tightening up the existing laws and adding new controls and restrictions as is deemed necessary. The opposition claims that it is not "good science". The reality is that fisheries science is not, and probably never will be, an exact science, being in a realm that is difficult to study with 100% accuracy. What IS good science is that we know certain species are declining rapidly, and certain areas are highly susceptible to over collecting. ANYTHING we can do to protect these species and areas IS GOOD SCIENCE.

Between the year 2000 and 2005, I made well over 100 dives in the Pebble Beach area, and found that it is a crucial nursery for many of the highly collected species, especially yellow tangs, and therefore should be protected to ensure their survival and the replenishment of near by reefs.

In conclusion, I fully support the proposed rules, and hope, that as more knowledge becomes available, protective measures will be enacted to ensure the passing down of our reef system in as healthy a state as possible to our children, and to our children's children. Thank you for your time.

Lisa Choquette
SOLOMON DIVE ADVENTURES
VUANA GUEST HOUSE
Peava Village- Marovo Lagoon

~~~~~  
**From:** normetta@aol.com  
**Sent:** Monday, December 03, 2012 11:00 AM  
**To:** darkona@hawaiiantel.net  
**Cc:** susankellam@yahoo.com  
**Subject:** In support of WHRFMA Amendments

December 3, 2012

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Aquatic Resources-Kona  
74-380B Kealakehe Parkway  
Kailua-Kona, HI 96740

To Hawaii Department of Land and Natural Resources:

I read the new provisions proposed for the West Hawai'i Regional Fishery Management Area and feel they are a good compromise between all parties...spearfishermen, aquarium collectors, swimmers, scuba divers, surfers, and beach users. I recently returned from a scuba diving trip to the Philippines and saw both ravaged reefs and sustainable reefs. It is so important for West Hawaii ocean sustainability to have the new provisions added. We cannot continue to let our reef fish be taken without regulations and size limitations. Our reef at Ka'ohe Bay has minimal numbers of tropical fish at this time and the population continues to decline because of fish collecting. When

I first moved here five years ago, I saw many yellow Tangs in Ka'ohē Bay, now I see a few. The Clownfish population is almost gone; on my last dive I saw one in a very hidden spot. The establishment of a Fish Replenishment Area at Ka'ohē Bay would allow the reef fish population to replenish. Please establish a Fish Replenishment Area at Ka'ohē Bay.

My husband was a spearfisherman and watched as the populations of eatable fish decline and disappear in the ocean off the California Coast. He realized too late that fish don't repopulate without some replenishment time. I support prohibition of scuba spearfishing for West Hawaii.

The establishment of a White List for aquarium collectors is needed to protect the long term health and biodiversity of West Hawaii coral reefs. Size and bag limits would bolster populations of Yellow Tang, Kole, and Achilles. The Kole and Achilles are food fish and regulations are needed to maintain a viable adult population for fishing.

I have seen the decrease in live coral on reefs due to Crown of Thorns starfish here in West Hawaii, and, therefore support a ban on taking Triton's Trumpet and Horned Helmet shells. I also support the permit for cultural take of these species.

Shark and Ray protection is economically important to the West Hawaii recreational businesses. People come from around the world to dive and swim in West Hawaiian waters to see rays and sharks. Also, these species produce few offspring and need protection.

The proposed rules to the existing aquarium collecting regulations will facilitate enforcement of the rules.

Puako is a well known and popular recreational area for visitors and local residents. Any additional regulations of clarification of existing rules is important to the fish populations and the recreational use of the area. Again people come from around the world to stay in Puako for its pristine beaches and beautiful reefs.

As an Ocean lover and resident of West Hawaii, it is so important to me that the DLNR pass the new provisions for West Hawaii. I want my children, grandchildren and great-grandchildren to see and appreciate the West Hawaiian coral reefs and aquatic life.

PLEASE pass the new rule proposals to the West Hawai'i Regional Fishery Management Area.

Sincerely,

Normetta Muir

December 19, 2012

Division of Aquatic Resources  
74--380B Kealakehe Parkway Kailua-Kona, HI 96740  
Email: [darkona@hawaiiantel.net](mailto:darkona@hawaiiantel.net)

RE: support of WHRFMA Proposed Rule Chapter 13--60.4

Dear Sir or Madam:

With this letter, please find my full support for adopting **ALL** of the West Hawai'i Regional Fishery Management Area Amendments proposed rule chapter (13--60.4). Several of the new provisions are especially critical for preserving the biodiversity of species off West Hawai'i as well as promoting health fish and coral reef communities. I've discussed these provisions below.

- Prohibition of SCUBA/Rebreather spearfishing and/or possession of such gear with a spear or speared aquatic life

This provision seems like a 'no-brainer'. "Fishermen" should not be allowed to use SCUBA gear while spear-fishing. Spear-fishermen using SCUBA gear can effectively remove all the targeted fish in an area, because they are essentially unlimited by their air supply. This is especially true at night, when a fisherman outfitted with SCUBA gear could target fish that are sleeping and more vulnerable.

- Pebble Beach will become an FRA where commercial aquarium fish collectors cannot collect fish.

In many other areas of the world, fish replenishment areas or marine protected areas have been found to be highly successful in serving as nursery areas. These fish do not stay in the FRAs but disperse to other areas. There needs to be a location where fish populations are not targeted by fishermen, allowing juveniles to grow to breeding size.

- Establishment of a list of 40 fish species permitted for aquarium take. Only fish found on this "White List" could be collected live for aquarium use. Size and bag limits would be established for three of the species on the White List.

This amendment just makes sense. There has to be a limitation on what species can be taken for aquaria use. Removing all the fish in a given area means you don't have any chance for juveniles to reach breeding age, which would allow for replenishment. Different fish species have different breeding rates and thus need to be protected in different ways. Yellow tang collection needs to be regulated as in the past, there has been widespread indiscriminate and wasteful removal of these fish in some areas.

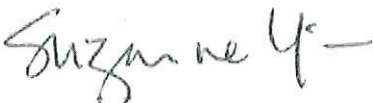
- Prohibition of take or possession of nine species of inshore sharks and rays and two invertebrate crown-of-thorns predators

Crown-of-thorns have the ability to eat their way through a coral reef, leaving dead coral in their wake. Coral reefs are the backbone of the eco-system and without live, healthy coral, the fish and invertebrate communities that live in these communities will disappear.

Inshore sharks and rays are apex predators that breed slowly with only one to a few offspring per year. Having healthy populations of elasmobranchs is essential for healthy reef and fish communities. Juveniles of these species can be found in near-shore areas where they are vulnerable to fishing and other human induced mortality. They need to be protected.

Thank you very much for taking the time to read my thoughts. Sincerely

yours,



Suzanne Yin

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TESTIMONY IN SUPPORT OF THE WEST HAWAII REGIONAL FISHERY MANAGEMENT AREA RULE PROPOSALS

Prepared for the Board of the Department of Land and Natural Resources  
By Katrina Nakamura, Sustainable Fisheries Partnership

19 December 2012

Dear Members of the Board;

Thank you for this opportunity to show support for the WHRFMA rule proposals. They represent yet another step forward for sustainable fisheries management in Hawaii. I would like to let you know firsthand that the WHRFMA plays an important role worldwide for sustainable fisheries by symbolizing best practice in local fisheries area management. I was an independent certifier and consultant to the Marine Aquarium Council program and recently asked to join in its revival, and for the past seven years have worked on sustainable fisheries planning here in Hawaii and internationally. Back in 2005/6 I formally reviewed the management system of the WHRFMA for certification and have kept watch on developments since. I often use the example of the WHRFMA in speeches about sustainable fishing. It is one of the best sustainability case studies I know in any sector, and I have reviewed thousands of cases in a career focused on common property and community-based resource management since 1991.

My specialty is the verification of sustainability claims. When I reviewed the WHRFMA carefully, in 2006 as a certifier (auditor), I was surprised by the consistently positive outcomes it generated for the aquarium industry, other marine users and residents alike --not to mention for the marine life! I was surprised that from extensive stakeholder engagement had come intensive management that accommodates the needs for all, acknowledges what's at stake, and gets on with the day to day management of risks. I would like to offer that the rules proposal is the result of what we call "fisheries improvements" in the sustainable fisheries movement and a 'continuous improvement trajectory' for the fishing industry. True sustainability is a work in progress and that is what the WHRFMA demonstrates so well, that the work is progressive, and all hands in for everyone. Our thorough evaluation of management outcomes at the time of certification included the formal and informal rules, quality of stakeholder engagement, adequate provisions for conflict resolution, and demonstrated commitments for conserving biodiversity, ethical treatment, and avoiding adverse impacts and waste. The review included site visits and interviews conducted over a year-long period. All three levels of management area, aquarium collectors and exporters were recommended for certification.

The Hawaii yellow tang is an iconic symbol of quality to aquarists worldwide. It is one of many important exports from Hawaii contributing to Hawaii's international reputation for sharing Aloha. Ongoing support from the State of Hawaii will enable ongoing improvement and a continuous stream of benefits from the WHRFMA to the people and the ecosystem.

I encourage the Board of Land and Natural Resources to show support for the rules proposal in order to demonstrate clear support for the community to continue the sustainable use of Hawaii's marine resources.

Mahalo for the opportunity to contribute.

Sincerely,



Katrina Nakamura

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Dec 2, 2012

Dr. William Walsh  
Division of Aquatic Resources  
74-380B Kealakehe Pkwy.  
Kailua-Kona, HI 96740

RE: Testimony in Support of Hawaii Administrative Rules §13-60.4

Dear Dr. Walsh,

I am writing to give you my strong support for Hawaii Administrative Rules §13-60.4, the West Hawaii rule amendments. I have been working in West Hawaii since 1992 while I served on the faculty of the Department of Marine Science at the University of Hawaii-Hilo until 1998 and as faculty member at Washington State University since 1998. As such I have conducted multiple research projects on the aquarium fishery in West Hawaii including evaluating the effectiveness of the West Hawaii Regional Fishery Management Area (I helped author both the 2005 and 2010 Legislative reports), research on the habitat, ecology and genetics of aquarium fish, and the dynamics and long-term sustainability of the aquarium fishery. As a marine scientist I have authored or co-authored 20 scientific papers on West Hawaii through more than 20 funded research projects, many supported by NOAA and the State of Hawaii.

Fishery management in West Hawaii is unique for the unparalleled amount and quality of scientific data available for management, the effective leadership of DAR in West Hawaii by Dr. William Walsh, and the very important high level of engagement of the community through co-

management with DAR through the West Hawaii Fisheries Council (WHFC). The proposed rules package outlined in HAR 13-60.4 specifically address important issues that have been identified in West Hawaii and are the result of ten years of research, committee meetings, and community discussions; all facilitated by the WHFC. I believe these rules are absolutely necessary to not only ensure the long term viability of West Hawaii's aquarium fishery, but to also prohibit the use of SCUBA for spearfishing, which is a long overdue regulation. More importantly, HAR 13-60.4 was developed in conjunction with a large number of diverse stakeholders, including the native Hawaiian community, and therefore has extensive regional support. Lastly, HAR 13-60.4 is the most rational, well-constructed and equitable piece of legislation considered in recent past for improving the management of West Hawaii's aquarium fishery.

I recently conducted an international review of the global aquarium trade and published a paper with 18 co-authors, all experts in various fields relating to the aquarium trade (Tissot et al., 2010, Marine Policy). One of the conclusions of our study was that Hawaii, and West Hawaii in particular, was one of the best managed fisheries in the world. However, to continue this distinction the adoption of the HAR 13-60.4 rules package is essential to address issues that have risen during the course of adaptive management of the fishery as identified by DAR and the WHFC. As a result I strongly support Hawai'i Administrative Rule 13-60.4 and encourage you to adopt it in its entirety.

Thank you in advance for this opportunity to provide this testimony.

Sincerely,



Brian N. Tissot  
Professor, School of the Environment

360-624-8138



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College of Arts & Sciences  
Science / Mathematics Department  
December 17, 2012

**STRONG SUPPORT FOR DAR PROPOSED WEST HAWAI'I RULES PACKAGE**

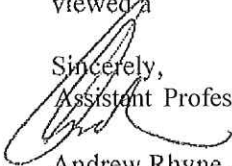
Dear Board Members,

I am writing today in strong support of the West Hawai'i rules package proposed by the Division of Aquatic Resources. I have been studying the ornamental fish trade, as well as the biology of the animals involved in this trade for the past decade with the goal to assess the value of this biodiversity in a public trade. I also have developed an academic program at Roger Williams University to train the next generation of biologists and aquarists that will inherit the results of our current efforts.

I fully support the notion that effective management is necessary. My prior research on the live aquatic animal trade, both in Florida as well as globally, points to the need for the development of effective regulations. In assessing the management of species collected for the ornamental fish trade, the rigorous and comprehensive research program enacted by the state and local researcher and coalesced into the West Hawai'i Regional Fishery Management Area in 1998 is one of the best available data sets regarding management of marine ornamental fishes anywhere in the world. In part, this is because of the multi-stakeholder approach utilized that called upon input from stakeholders and community representatives, as well as non-voting members from programs including the Division of Aquatic Resources, the Division of Conservation and Resources Enforcement, and UH Sea Grant. Ensuring broad input from interested parties throughout this entire process has made this a rigorous process in which the rules put forth could account for the divergent needs to those that engaged within the process. As well, the science, including the Before-After-Control-Impact study design has been done in collaboration with researchers at Washington State University and the University of Hawai'i at Hilo and these data have been evaluated and the findings confirmed by researchers working for NOAA's Coral Reef Ecosystem Division. The results have passed peer-review and are held to the highest standards of scientific integrity. In my presentations at conferences, to academics, and also to the trade, I use Hawai'i as an example of where management and other conservation initiatives can help protect functioning resilient reefs.

From a scientific standpoint, the management of the Hawai'i ornamental fishery is robustly developed. There are many impacts affecting the reefs of Hawai'i and globally, and the proposed regulations are a necessary means to keep this low biomass fishery in check. I encourage you to review your rules package every few years to update as the industry changes and increase the standards that fisherman and traders work by. Thus your work should be viewed as an ongoing process and not an endpoint.

Sincerely,  
Assistant Professor of Marine Biology



Andrew Rhyne, Ph.D.

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December 5, 2012

To: Board of Land and Natural Resources; William Aila, Chair

From: Marni Herkes, Kona

RE: This testimony is in support of the DLNR adopting a new rule - Chapter 13-60.4, West Hawai'i Regional Fishery Management Area, Hawai'i (WHRFMA) and amending regulations of the following Hawai'i Administrative Rules (HAR); Chapter 13-54, Puako Bay ad Puako Reef Fisheries Management Area, Chapter 13-57, Keauhou Bay Fisheries Management Area and Chapter 13-75-12.4, Lay Nets.

DLNR is proposing to repeal the existing WHRFMA rule (chapter 13-60.3) and adopting a new chapter (13-60.4) in its place. This new rule repeals the existing WHRFMA rules; clarifies the rule amendment now in force and adds new provisions to further preserve West Hawaii's reef environment.

West Hawai'i is the most protected and studied coastline in the main Hawaiian Islands. The recent Kona Symposium had over 100 scientists presenting over two days about the work they have done, or are doing, in West Hawai'i. The West Hawai'i Fisheries Council has been in place for over 14 years and has worked on these recommendations for many of these years. The new provisions (and the existing ones) have been well thought out, vetted in the community and with stakeholder groups, and submitted to DLNR in the hope that the regulations will maintain and enhance the reef life on the West Hawai'i coast.

It is true some of the recommendations are controversial but none of them are unusual. The banning of SCUBA with spearfishing is done in over 30 countries in the Pacific; the list of 40 fish species permitted for the aquarium trade (the White List) is admittedly a compromise but the Council was set up to mitigate conflict; the establishment of the West Hawai'i Aquarium Permit is vital for this protected coastline as the rest of the state gets "fished out".

The changes in Fish Replenishment Areas (FRAs) were also created as a compromise to mitigate a conflict with user groups. The big surprise was that none of the communities in the areas that are in FRAs would give up even 10 feet of their FRA. After much resistance in the 1990s, the communities that are near the FRAs are enjoying providing protection of their coral and replenishment of their reef fish as well as some spillover, which is just beginning.

Enforcement is always a problem but communities can be taught to enforce the regulations in their neighborhoods and we all have to be vigilant. There are many communities that need education and common sense to preserve their reef resources. These regulations will help.



Cornell University

Drew Harvell

*Professor*

*Department of Ecology and Evolutionary Biology  
Associate Director for Environment*

*Atkinson Center for Sustainable Future*



I fully support the proposed WHRFMA rule additions and rule changes. I am a Cornell Professor that has been actively engaged in teaching and research on Hawai'i island for the last 12 years. Our research on Hawai'i focuses on drivers of health of corals. My research lab at Cornell focuses on the functioning of the coral immune system and how it is affected by pollutants, key components of the biota and climate factors. Work done by my group in Palau, the Philippines and now Indonesia is supporting the hypothesis that intact fish communities can improve the health and resilience of the corals themselves. My PhD student, Courtney Couch, is mapping indicators of coral health over water quality gradients in W Hawai'i. I am very relieved to see the rules developed to help maintain the health of Hawai'i's coral reefs. Many of these proposed rules have been in development for nearly ten years and they all represent important steps toward better management of the near shore marine fish populations, which in turn improve health of the corals themselves. Several key new rules and rule changes are addressed below:

- Prohibition of SCUBA spearfishing is a necessary step to protect near shore food fish stocks because SCUBA fishing could rapidly over-fish current stocks. This measure has already been taken in most other regions of the Pacific.
- Establishment of an aquarium collection "White List" will help protect species that are rare, overfished and/or not suitable for home aquariums. I have long been concerned about the extent of harvesting of inappropriate fish for home aquaria. The size and bag limits proposed in this rule are based on detailed science studies and their purpose is to protect the most heavily collected aquarium species. Similarly, the Aquarium permit will help educate harvesters and hopefully control pressure of this rapidly expanding fishery.
- Prohibition of take or possession of the crown-of-thorns predators should help control the population of this species which can have huge impacts on live coral cover if left unchecked. Crown of thorns starfish are currently the largest source of mortality to live coral on the Great Barrier Reef of Australia and are a significant threat to Hawai'i's reefs.

These proposed rules are based on many years of research on West Hawai'i's reefs and strong consensus among scientists and managers. This package is an impressive and necessary step in maintaining the sustainability of the near shore living marine resources of West Hawai'i.

Sincerely,



Drew Harvell  
Professor

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## **SUPPORT FOR DAR PROPOSED WEST HAWAI'I RULES PACKAGE**

Division of Aquatic Resources  
74-380B Kealakehe Pkwy  
Kailua-Kona, HI 96740  
Via email: [darkona@hawaiiantel.net](mailto:darkona@hawaiiantel.net)

December 17, 2012

Dear Board Members,

I am writing today in strong support of the West Hawai'i rules package proposed by the Division of Aquatic Resources. I am the Director of Research at the New England Aquarium in Boston Massachusetts, a public aquarium dedicated to educating, inspiring, and researching the world of water. Public zoos and aquariums are one of the most popular tourist attractions in North America. In a single year more people visit zoos and aquariums than attend NBA, NHL, NFL, and MBL games combined. Being a conduit to the public is critical, as we have conducted surveys that demonstrate that visitors to a public aquarium are twice as likely as the general public to be home aquarium hobbyists.

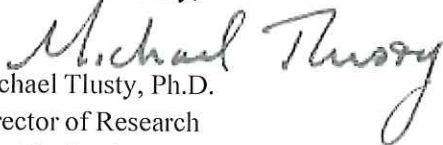
In a time when our oceans face a grave number of threats, we need to make sure that all people, even those not living by the oceans, care about their fate. One of the best ways to connect people to the oceans is through intimate contact, and bringing live aquatic animals into the home is the best connection that can be made. It is also a means through which interest in the natural resources of Hawai'i is generated. The fish leaving the reef are ambassadors to bring more people to the state.

Aquarium fish are also a cornerstone in developing scientific and research skills in children. Hypothesis testing and deductive reasoning are necessary skills to be successful in a home aquarium, and by engaging children in this hobby, can be developed at an early age.

Finally, my research points to the integral piece that the ornamental fish trade can have in maintaining the coral-reef Social-Ecological System. This is a high value, low biomass fishery that can effectively create value to a healthy extant reef. This gives fishing communities a means to create an economic livelihood in a manner consistent with suitable development principles. The effective management developed by the Hawai'i Division of Aquatic Resources is an integral piece of this management and sustainable development puzzle. This management is effective because it occurred in a multi-stakeholder format, and incorporated high-quality, peer reviewed science in the decision making process. This effort exceeds many of the management plans that have been developed for much higher biomass food fisheries. This management plan for ornamental fish needs to be adopted in order to help Hawai'i demonstrate the way for effective leadership and management in the ornamental fish trade the world over.

Thank you for the opportunity to offer

comment. Sincerely,



Michael Tlusty, Ph.D.

Director of Research

New England

Aquarium Boston MA

02110

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WHRFMA Rule Proposals: Public Testimony

November 21, 2012

Kostantinos (Kosta) Stamoulis

Researcher

Hawaii Cooperative Fishery Research Unit
Department of Biology
University of Hawaii at Manoa
2450 Campus Rd, Dean Hall Rm 2
Honolulu, HI 96822

I fully support the proposed WHRFMA rule additions and rule changes. I currently live on the island of Oahu. However, I lived on Hawai'i island for over seven years and four of those years were spent in Kona. During that time I was employed with the Hawai'i Division of Aquatic Resources and participated in some of the marine research which informs management in West Hawai'i. Many of these proposed rules have been in development for nearly ten years and they all represent important steps toward better management of the near shore marine fish populations. Several key new rules and rule changes are addressed below:

- Prohibition of SCUBA spearfishing is critical to the protection of near shore food fish stocks because of the high potential for over exploitation. This measure has already been taken in most other regions of the Pacific.
- Establishment of an aquarium collection "White List" will help protect species that are rare, overfished and/or not suitable for home aquariums. This will reduce the threat of declines in reef health and biodiversity. The size and bag limits proposed in this rule are based on hard scientific data and their purpose is to protect the most heavily collected aquarium species to ensure sustainability of this fishery.
- Prohibition of take or possession of inshore sharks and rays is an important measure because the life histories of these families make them more vulnerable to fishing pressure than most other fish species. Sharks and rays play important ecological roles on the reef and are economically important to ocean recreation industries. Prohibition of take or possession of the crown-of-thorns predators ensures that nature is able to control the population of this species which can have huge impacts on live coral cover if left unchecked.
- Establishment of a West Hawai'i Aquarium Permit is logical because the vast majority of the fishery takes place in West Hawai'i and it will help educate aquarium collectors about the rules they must follow as well as facilitate enforcement of these rules.

These proposed rules are based on the best science available as well as the experience of other jurisdictions in the Pacific. The rule amendments are for the purpose of enabling and enhancing enforcement of new and existing rules. This package represents a leap forward in the effective management of the near shore living marine resources of West Hawai'i and in my opinion should be adopted into law.

Sincerely,



Kostantinos (Kosta) Stamoulis

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Division of Aquatic Resources  
74-380B Kealahou Pkwy  
Kailua –Kona HI 96740  
9<sup>th</sup> December 2012  
Dear Sir

Ref: Testimony for West Hawaii Area rules

Tropical Marine Centre is Europe's largest and oldest importer of ornamental marine animals for use in the Aquarium trade. We have a long association with the Hawaiian ornamental industry and have been a strong supporter of a humane, sustainable and ethical aquarium trade for over 40 years.

Tropical Marine Centre was a founding supporter, data provider and financial sponsor of UNEP -WCMC's Global Marine Aquarium Database (GMAD) as well as being a founding member of the Marine Aquarium Council (MAC) and became one of the first certified livestock operations in Europe. Tropical Marine Centre maintains a close relationship with our own Government's Department of the Environment and Rural Affairs and assists with the training of CITES Wildlife Inspectors in the United Kingdom in respect of identification and handling of CITES listed corals species.

Through the collecting operations in both O'ahu and in particular Kona, which supply Tropical Marine Centre, we support the amendment of existing rules and the adoption of new measures to ensure the sustainability and viability, both of the marine ornamental fish collection industry and the wild resource in Hawaii.

It is important for all stakeholders to note that the Hawaiian marine collecting businesses supplying Tropical Marine Centre already conform to the highest standards of best practice in our industry and this is reflected in the very high quality and condition of collected Hawaiian fish, and the low mortality both during transport and post transport to the UK. These mortalities are typically less than 0.1 -0.3% for the long journey from the Pacific, and the onward survivorship in our aquariums, with our retailers and with the hobbyist is very high.

Tropical Marine Centre already consider the aquarium fishery in Hawaiian to be one of the best managed and regulated of all the 42 collection areas we work with worldwide. The further proposed measures and

regulations relating to bag/size limits, no take of breeding size fish, net size limits and other restrictions will ensure that the aquarium trade will continue to access a unique natural resource in the knowledge that it is supported by a world leading fishery management plan which will ensure its sustainability and future for all of us who benefit from its riches.

I hope that all parties will accept and support the proposed rule package as the best way forward for all stakeholders in the West Hawaii Regional Fishery Management Area.

Paul West BSc. Hons (Zool./Mar. Zool.) Managing Director

~~~~~  
From: Zac and Nancy
Sent: Wednesday, November 07, 2012 1:40 PM
To: darkona@hawaiiantel.net
Cc: Sue Kellam; Zac & Nancy Zorn
Subject: In Support of WHFRMA Amendment (Chapter 13-60.4)
Aloha,

I am in support of the above subject amendment.

I am in favor of the entire amendment; however, if for some reason negative public testimony should create a problem, I hope that the Pebble Beach/Kaohe Bay amendment can move forward. The community has worked hard and has worked with the commercial tropical fish collectors to put forth a compromise that works for all stakeholders. This is quite unprecedented. I have attended past hearings and have heard several commercial tropical fish collectors voice their support of a Pebble Beach/Kaohe Bay FRA. It would be devastating if some other part of the amendment package were to destroy all our hard work. Please help us protect this special place.

Zachary Zorn

Dec. 05, 2012

Hello, my name is Zachary Zorn. I live in Kona Paradise.

I would like to come out in full support of the West Hawaii Regional Fisheries Management Area amendments. I'm certainly in favor of the White List approach to scientific management of our marine resources. I have strong feelings about controlling the shark population and our rays which are so popular to tourist attractions. I am in favor of updating FRA boundaries in Puako and Keauhou in order to clarify where those boundaries are. And most importantly, to me as a resident of Kona Paradise, I'm very much in favor of designating an FRA at Pebble Beach. I've lived there 20 years, and I've watched the swing in the fish populations from '89 when I moved there and saw a great abundance. And without scientific support, I did watch fish collecting happen on a fairly large scale for a long time. And when I came back to build my home, I realized that that population for

one reason or another, scientific or serendipitous, had declined greatly. We had some members of our community that really, really stepped out and took command of leading a charge on investigating why and what to do about it. And after eight years of real, real, trench warfare and battle and developing relationships and trust with the fishermen, we feel that we have gotten to a point of communication that has integrity and trust as its foundation. And it seems to me that now is the time to follow through and make something happen with these amendments and changes that will certainly bode well for all of the future of fisheries. Thank you.

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November 30, 2012

Aloha Department of Land & Natural Resources, Division of Aquatic Resources,

My name is **Malia Kipapa** and I sit on the West Hawaii Fisheries Council as a representative and I am in full support of the West Hawaii Regional Fishery Management Area Amendments including the following:

- Establishing an FRA designation for Pebble Beach so “NO” commercial aquarium fish collectors are allowed to collect.
- Not allowing scuba gear for spearfishing along the west side of Hawaii Island.
- Banning the collection and harvesting of rays and sharks.
- The protection of the Triton’s Trumpet and Horned Helmet which predate on the Crown of Thorns sea star (pose a threat to our coral reefs); exception can be made to collect with a permit.
- And all the provisions being made to clarify regulations and requirements for the commercial aquarium fish collectors and existing rule provisions.
  - Also the bag limits on for the (3) white listed fish species for commercial aquarium fish collectors (Yellow Tang, Kole, and Pakuikui).
- The rule changes for the FMA’s in Keauhou and Puako, to eliminate illegal aquarium collecting and regulating the lay net time period (24 hour period limited to one net).

As a Native Hawaiian I personally feel that by enhancing the education of marine regulations and projecting clarity in the fishing community is important. The need for sustainable and pono harvesting of our marine resources are what is important to me. And looking towards the future and ensuring that resource for the next generations to come.

As an individual that has worked with fishing communities and families in South Kona and in Kalapana fishing rights and harvesting is a Kuleana (responsibility) and a privilege, you need to malama (take care) your responsibility as a lawai’a (fisherman) before you reap the benefits to harvest. Developing and changing things are all part of the cycle and as people of Hawaii we have adjusted to many different changes in the past, and by making these provisions to the rule package we are fitting the rules to what is happening in our oceans today.

With my science and volunteer background I've noticed the changes that have taken place in our oceans and how important it is for us to pay attention to these changes and make a difference by taking political action.

By this I end in saying, I support the WHRFMA Proposed Rule Chapter 13-60.4

Mahalo for your time and consideration,



Malia Kipapa

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**From:** Eva Hillman

**Sent:** Saturday, November 17, 2012 3:59 PM

**To:** darkona@hawaiiantel.net

**Subject:** WHRFMA Rule Proposals

To Whom It May Concern:

I am in full support of the WHRFMA Rule Proposals that are coming to Public Hearing on Dec. 5th.

Kaohe Bay (a.k.a. Pebble Beach) is in immediate need of protection from fish collectors. It is one of the few accessible beaches in the South Kona area and is enjoyed by many for its healthy reef ecosystem and its variety of fish and coral species. I understand that the Department of Land & Natural Resources attempts to balance the needs of all stakeholders. Since the fish collectors access their collection sites by boat, they have alternative areas for collection that do not come into this type of conflict with swimmers, snorklers and divers. Thus, I strongly urge you to protect Kaohe Bay by designating it as an FRA.

I additionally support the other proposals as a means of more broadly ensuring that the reef systems on the Big Island maintain healthy populations of reef fish, invertebrates, rays, sharks, corals, etc.

Thank you for your consideration.

Respectfully submitted,

Eva Hillman

Dec. 05, 2012

Hello. My name is Betsy Morigan. I live in Ka'ohe Bay, Kona Paradise. I'm speaking tonight on behalf of Eva Hillman who's my friend and neighbor who couldn't make it tonight.

To whom it may concern: I am in full support of the West Hawaii Regional Fisheries Management Area rule proposals that we are here to discuss. Ka'ohe Bay, known as Pebble Beach, is in immediate need of protection from fish collectors. It's one of the few accessible beaches in the South Kona area and is enjoyed by many for its healthy reef ecosystem and its variety of fish and coral species. We are grateful that the Big Island Association of Aquarium Fishermen has been very reliable in cooperating with the

Gentlemen's agreement and staying out of the bay but new collectors could come in at any time, collectors who are not sympathetic to our situation. Therefore, we would like Ka'ohē Bay made into an FRA so that all collectors will be restricted from the bay. I understand that the DLNR attempts to balance the needs of all stakeholders. Since the fish collectors access their collection sites by boat, they have alternative areas for collection that do not come into conflict with swimmers, snorkelers, and divers. Thus, I strongly encourage you and urge you to protect Ka'ohē Bay by designating it as a Fish Replenishment Area, FRA.

I additionally support the other proposals as a means of more broadly ensuring that the reef systems on the Big Island maintain healthy populations of reef fish, invertebrates, rays, sharks, and corals.

Thank you for your consideration.

Respectfully submitted, Eva Hillman,  
Ili'ili Road, Captain Cook, Hawaii.

From: Mark Barville Sent: Sunday, November 11, 2012 8:12 AM  
To: darkona@hawaiiantel.net  
Subject: Re: WHI management rules

I feel strongly that taking any marine life (such as lobsters) on SCUBA should be prohibited.

I have watched SCUBA divers fill up large bags with lobsters they took on SCUBA. A SCUBA diver can go into large caves, especially those that are 40 feet or more below the surface, and systematically take every lobster in the cave. I have never found lobsters in caves where SCUBA charters regularly visit. This rule should be added immediately.

All of these rules should have been passed 30 years ago.

You may quote me.

Mark=

From: Mark Barville  
Sent: Wednesday, November 28, 2012 7:17 AM  
To: Bill Walsh  
Subject: Support for WHRFMA Rule Proposals

To Whom It May Concern:



I am writing in support of the WHRFMA Rule Proposals. I urge the State to adopt the proposed chapter (13-16.4) as soon as possible.

Since June, 1983, I have spent tens of thousands of hours diving in Hawaii waters. I am adamantly opposed to spearfishing on SCUBA.

I have seen first hand how spearfishing on SCUBA has wiped out entire fish populations. I have frequently watched divers (in person) on SCUBA spear hundreds, perhaps thousands, of reef fish, and all of this in the course of an hour or two. I have watched large populations of mu and uhu completely disappear over the years due to commercial spearfishing on SCUBA.

As a respected and responsible freediver and spearfisherman, I find this deplorable. Spearfishing while using SCUBA, particularly at night, allows a person unlimited access to sleeping fish, and allows them to wipe out an entire area of many local species.

I support the entire WHRFMA Rule proposals exactly as written, and I ask you to do the same.

Thank you,

Mark Barville

From: Mark Barville To: Bill Walsh  
Subject: SCUBA Spearfishing

To the DLNR:

An argument was made last night in Kona that passing a law forbidding spearfishing on SCUBA would prevent locals from getting food they need.

As a freediving spearo, I dispute this argument. It is absurd and wrong. If anything, spearfishing on SCUBA has decimated fish populations throughout the islands, even in very difficult places to reach. I have seen the fish populations plummet since the 1980's. I have seen the ice chests full of reef fish, including massive amounts of Mu, Kumu, and Uhu. If anything, spearfishing on SCUBA has wiped out fish populations in such a way as to prevent locals from getting reef fish, because the reef fish aren't there to get!

Spearfishing on SCUBA (or any kind of supplied air) should be banned immediately.  
Thank you,

Mark Barville

~~~~~  
Brian Yannutz

December 5, 2012

**Testimony of Brian Yannutz
regarding the WHRFMA Rule Proposals**

In Support of WHRFMA Rule Proposals

To Department of Land and Natural Resources, Division of Aquatic Resources:

I, Brian Yannutz, am in support of the WHRFMA rule amendments including:

1. Pebble Beach will become an FRA where commercial aquarium fish collectors cannot collect fish.
2. Spearfishing using scuba gear will be illegal along the west coast of the Big Island.
3. There will be a 'White List' of 40 species of fish which commercial collectors can take, but all others (and invertebrates) will be illegal to take. There are also some size & bag limits included.
4. The taking or possession of 9 inshore species of rays & sharks will be banned.
5. Two large mollusks which eat the Crown-of-Thorns sea star (which devours coral) will be protected.

As a marine biologist and graduate from the University of Hawaii at Hilo, I am aware of these issues and how fragile coral reef ecosystems can be. These rule amendments are mandatory in providing a better future for Hawai'i. The tourist economy in Hawai'i is driven by observing wildlife that the reefs have to offer, not from killing the reefs for minimal profit. Please consider the future of Hawai'i as you make your decision to include these rule amendments in the WHRFMA.

Sincerely,
Brian Yannutz

~~~~~  
**From:** John Randall  
**Sent:** Saturday, November 10, 2012 2:51 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** Article for newspaper

I have been spearing fishes for over 70 years, first as a teenager for sport and proudly bringing home fish for dinner, later for my research as an ichthyologist. If one is spearing fishes with SCUBA, it can hardly be considered as a sport. It is banned in many places in the world, such as Mexico, the Bahamas, and Australia, and it should be in Hawai'i. The most offensive is spearing sleeping fishes with SCUBA at night.

This is a special threat in Hawai'i because of the vulnerability of some of our endemic fishes, such as the Spectacled Parrotfish (*Chlorurus perspicillatus*), the male uhu uliuli and female uhu 'ahu'ula, the largest of our parrotfishes. The largest of Atlantic parrotfishes, the Rainbow Parrotfish (*Scarus guacamaia*) is now extinct in Brazil, and the main cause has been attributed to spearfishing.

Another bad effect of spearfishing is the fear of man that it soon creates in resident fishes. If you dive on a pristine reef that has never experienced a skindiver or scuba diver, it is amazing how closely you can approach the resident fishes. All it takes is a single spearfisherman to disrupt this tranquility, especially one with noisy SCUBA gear. I have been surprised at how quickly the fishes perceive this threat (I believe through warning sounds that many species emit).

So let us ban spearfishing with SCUBA and save it for observing our reef fishes, instead of killing them.

I support the additional sections of the rule as well.

John E. Randall, PhD  
Senior Ichthyologist Emeritus  
Bishop Museum, Honolulu

Dec. 05, 2012

Testimony in Support of the Proposed West Hawaii Rule Package

I am particularly in support of the ban on spearfishing with SCUBA. Anyone with knowledge of the marine resources of Hawai'i knows very well that the populations of our reef fishes are seriously depleted.

What are the reasons? One is pollution. Inadequate flood control can cause siltation of coral reefs, and fertilizer in run-off water promotes the growth of benthic algae that kills coral and associated marine life. The foremost cause is overfishing, of which the most offensive is the use of gill nets. We need to totally ban lay gill nets, as have other maritime states in the U.S. Another is the use of scuba for spearfishing.

John E. Randall, PhD  
Senior Ichthyologist Emeritus  
Bishop Museum, Honolulu

~~~~~  
November 16, 2012

Bill Walsh, Ph.D.
Chief Aquatic Scientist
Division of Aquatic Resources - Kona
74-380B Kealakehe Parkway
Kailua-Kona, HI 96740

Dear Dr. Walsh:

I write to provide testimony in support of three of the proposals in the new provisions section of the West Hawaii Regional Fishery Management Area (WHRFMA) Rule Proposals. My lack of commentary on the proposal to establish a new Ka'ohe Bay FRA should not be interpreted as my being against the proposal. I simply do not know enough about that particular provision and its history to offer informed testimony. However, I wholeheartedly support a ban on spearfishing while using scuba, the implementation of a 40-species "white list" of fishes that may be collected for the aquarium trade, and the protection of nine species of near shore sharks/rays and the triton trumpet/horned helmet shell.

Spearfishing while using scuba has the potential to result in unacceptably high fishing mortality, particularly on sought after species, especially when it is done at night when diurnal fishes are quiescent and particularly vulnerable to predation. For this reason, this fishing technique has been banned outright in many regions. Hawaii should follow suit and ban it outright or, perhaps as a compromise, ban nocturnal scuba spearfishing and place strict bag limits on species that may be taken in daylight hours.

The aquarium trade fishery on the leeward coast of the Island of Hawaii is well regulated and sustainable, based on the current model of pelagic larval replenishment of fished areas from populations of adults residing in protected areas (FRA's, FMA's and MLCD's). The establishment of a list of 40 species that will be collectable for the aquarium trade will only strengthen the sustainability of this fishery, as will the size/limit restrictions being placed on three particularly popular aquarium species: *Zebrasoma flavescens*, *Ctenochaetus strigosus*, and *Acanthurus achilles*.

Given the reproductive life history of sharks and rays and the trophic roles of the nine near shore species listed in the WHRFMS document, it is reasonable to protect them from fishing mortality. It is also reasonable to protect the two mollusc species that prey on *Acanthaster*.

In closing, I reiterate my support for a ban on scuba spear fishing, for allowing the collection of 40 species of aquarium fishes, for the protection of near shore sharks and rays, and for the protection of the two mollusc species listed in the proposal. Thank you for considering my testimony.

Sincerely,

Leon E. Hallacher, Ph.D.
Professor of Biology and Chair of the
Natural Sciences Division
University of Hawaii at Hilo



**U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE**

Pacific Islands Fisheries Science Center
2570 Dole St. • Honolulu, Hawaii 96822-2396 (808)
983-5300 • Fax: (808) 983-2980

December 1, 2012 F/PIFSC:eed

Subject: Comments on WHRFM Rule Proposals

I wholeheartedly endorse the intent of all of the new proposed provisions. Especially important is the provision (prohibiting SCUBA spearfishing within the WHRFMA). SCUBA spearfishing, particularly at night, is an entirely too effective and destructive technique to be allowed in the WHRFMA. Also, shark stocks are presently so depleted in the MHI that the proposed provision to prohibit their take or possession is long overdue. The proposed provision to establish a West Hawaii Aquarium Permit also is long overdue as a necessary first step in creating a limited entry system that will cap the take of ornamentals from west Hawaii's reefs.

While I support the intent of all of the proposed provisions, I do differ, however, on specifics regarding the "white list" of species to be permitted in the aquarium trade. The stated purpose of the list is to protect the many other, rare species that are infrequently encountered by ornamental fishers. The populations of some species deserving such protection (e.g., Hawaiian lionfish, *Dendrochirus barberi*; Hawaiian turkeyfish, *Pterois sphex*) will benefit from the prohibited extraction. There are two additional functional groups of fishes, however, that need special protection but that have member species included on the white list. First, there are small-bodied species like the *Centropyge* spp pygmy angelfishes that are collected by ornamental fishers both as juveniles and as adults (i.e., the reproductive adults have no refuge in size). Second, there are species, large-bodied targets for consumption as adults that have a refuge in size for reproduction, but which are long-lived and have low, episodic replenishment by rarely successful year-classes (achilles tang, *Acanthurus achilles*; palani surgeonfish, *Acanthurus dussumieri*). In my experience, both the pygmy angelfishes and the long-lived, episodically recruiting surgeonfishes need additional protection from ornamental harvesting. Conversely, there are some unlisted species that might replace species that I have just recommend be taken off the white list. An obvious species is the arc-eye hawkfish, a non-trivial component of the west Hawaii ornamental trade that is much more abundant and has less episodic recruitment than the two other hawkfish species that appear on the white list.

I sincerely hope that my recommendations are seriously considered. Thank you very much for the opportunity to express my concerns.

Sincerely yours,

Edward E. DeMartini, PhD
Fisheries Biologist (Research)

Dr. William J. Walsh
Hawai'i Division of Aquatic Resources

Honokohau Marina
74-380B Kealakehe Pkwy.
Kailua-Kona, HI 96740
808-327-6226

2 December 2012

Dear Bill:

This letter is being written in support of the West Hawaii Regional Fishery Management Area (WHRFMA) Rule Proposals. Specifically, the adoption of a new chapter incorporating increased protection for nearshore and pelagic fish and benthic molluscs. Fish and molluscs play a critical role in maintaining healthy reef ecosystems. For example, many of the fish not on the white list are grazers that help keep algae at bay on coral reefs, and many serve as prey for top level predators. The threats of overfishing to coral reefs have been well documented globally (1), and it is also well known that healthy fish stocks lead to more resilient reefs (2).

The Hawaii Division of Aquatic Resources has been assiduously documenting demographics of aquarium fish in West Hawaii over the past 10+ years, so the rationale upon which these rules are based is scientifically sound and defensible. The protection of two known predators of crown of thorn starfish (COTS) also makes eminent sense, particularly in light of recent findings that COTS are a major cause of declines of reefs in the Western Pacific (3).

We recently documented an epizootic of disease in coral reefs in North Kauai. The reefs were severely degraded so it will be interesting to see how well corals recover. Maintaining healthy reefs (by maintaining healthy fisheries) should promote resilience and more rapid recovery from catastrophic events like storm damage and diseases whilst providing a sustainable source of income and food for fishers. These rule changes can only help us move closer towards that goal.

Thank you for the opportunity to comment.
Sincerely,

Thierry M. Work MS, DVM, MPVM PO

1. Hughes, T.P., 1994. Catastrophes, phase shifts, and large-scale degradation of a Caribbean coral reef. *Science* 265, 1547-1551.
2. Hughes, T.P., Rodrigues, M.J., Bellwood, D.R., Ceccarelli, D., Hoegh-Guldberg, O., McCook, L., Moltschanivskyi, N., Pratchett, M.S., Steneck, R.S., Willis, B., 2007. Phase shifts, herbivory, and the resilience of coral reefs to climate change. *Current Biology* 17, 360-365.
3. De'ath, G., Fabricius, K.E., Sweatman, H., Puotinen, M., 2012. The 27-year decline of coral cover on the Great Barrier Reef and its causes. *Proc Natl Acad Sci USA* 109, 17995-17999.

From: christiane schmidt
Sent: Sunday, December 02, 2012 10:49 AM
To: darkona@hawaiiantel.net
Subject: Testimony in support of West Hawai'i Regional Fishery Management Area (WHRFMA) Rule Proposals

Dear Dr. Walsh

as representative of SAIA, a project of ESAIA e.V., expressing concerns and the wish for a sustainable marine aquarium trade and hobby in Europe, I would like to support the proposed West Hawaii Rule Package.

Reefs are vulnerable resources and face many threats by the ever changing conditions (climate change, ocean acidification, ocean pollution, raising coastal populations, conflicting land use, increased dive tourism, effluents from hotels, etc. are only those that come ad hoc to my mind). We, as citizens, often living far from reefs, but with a deep love for their beauty and inhabitants, see our responsibility when basing our business or hobby on this natural resource. As such we are fully supportive of the West Hawaii Management of marine aquarium fisheries, which we recognize as one of the very limited worldwide efforts to regulate reef resource use in a meaningful way.

However, as conditions are changing and thus affect reefs and reef associated fish stocks, existing management rules and legislation need to be assessed and amended according to research results. The proposed rule package reflect adaptive management as a tool to cope with changing conditions and identified trends in fish stocks. The changes proposed and additional tools like permit regulated access for aquarium fish collectors, size and bag limits for species, in need of increased regulation and the white list of 40 species for aquarium fishery, respond to the findings of research done and will improve management of resource use, certainly reflected in future development of concerned populations in the ecosystem.

We especially appreciate the process of stakeholder consultation, presenting research results, negotiating, and balancing resource user conflicts to ensure a fair and meaningful result as achieved now by the WHFC, DLNR and DAR.

We hope you will consider and approve adoption of the new rule - Chapter 13-60.4, West Hawaii'i Regional Fishery Management Area, Hawaii'i (WHRFMA) and amend regulations of the following Hawaii Administrative Rules (HAR): Chapter 13-54, Puako Bay and Puako Reef Fisheries Management Area, Chapter 13-57, Keauhou Bay Fisheries Management Area and Chapter 13-75-12.4, Lay nets.

Kind regards,

Christiane Schmidt

MSc. Tropical Marine Ecology & Marine Biology

SAIA/ESAIA e.V.
Project Coordinator

Skype: csonair

From: Sarah Courbis
Sent: Wednesday, December 05, 2012 12:13 PM
To: darkona@hawaiiantel.net
Subject: comments

Aloha! Attached are comments I would like to submit with respect to the WHFMA proposed rules. These comments are from me personally and do not reflect the position of my employer or any other entity. Please let me know if I need to send them to another address as well as emailing them to you. Thanks!

12/5/12

State of Hawaii
Department of Land & Natural Resources
Division of Aquatic Resources-Kona
74-380B Kealakehe Pkwy
Kailua-Kona, HI 96740

Dr. Sarah Courbis

DLNR&BLNR,

As a citizen of Hawaii, I am in favor of the rules proposed by DLNR in collaboration with the West Hawaii Fisheries Council and other community groups on Hawaii Island (Administrative Rule proposal 13-60.4). This rule proposal combines community-based requests with scientific information to improve sustainability of resources on Hawaii Island.

Walsh et al 2010's report "Long Term Monitoring of Coral Reefs of the Main Hawaiian Islands" states that implementation of fish replenishment areas (FRAs) has coincided with increases in several of the popular aquarium fish species in West Hawaii. The science supports FRA's, and I encourage the use of such areas to maintain fish populations.

I am a proponent of managing aquarium collection rather than banning the practice, which I have heard as an option among some groups. However, I also agree that some species are not well suited to aquaria, and I am pleased to see that collaboration with communities and aquarium fishers resulted in information that allowed creation of a white list and prohibited list of species.

I also support the concept of permits that will be accompanied by information that will keep fishers and community members abreast of rules and rule changes, as well as scientific and cultural information. I encourage DAR to continue to increase education and outreach actions.

Sharks & rays are often keystone species that serve important apex predatory functions in their ecosystems. Although you would think that predators would have a negative impact on prey, in fact, they drive local diversity, evolutionary change, and health of prey species. This makes protection of these species very important to ecosystem health and the support of ecological services, like fisheries. Likewise, predators like Triton's trumpet and homed helmet shells maintain balance with respect to crown-of-thorns starfish that consume reef building corals, so it is important to avoid depleting these species.

Further, I am in favor of allowing cultural and subsistence permits under the rules. The cultural practices of Hawaii should be cherished and maintained for future generations.

Thank you for the opportunity to comment.



PET INDUSTRY JOINT
ADVISORY COUNCIL
1146 19th Street, N.W., Suite 350
Washington, DC 20036
Tel: 202-452-1525
Fax: 202-452-1516

Division of Aquatic Resources
74-380B Kealahou Parkway
Kailua-Kona, HI 96740

December 18, 20012

Dear Sir:

Ref: West Hawai'i Regional Fishery Management Area Rules Package

On behalf of the Pet Industry Joint Advisory Council (PIJAC) and its membership, we appreciate the opportunity to submit comments in support of the proposed rules.

PIJAC is the world's largest pet trade association representing the interests of all segments of the pet industry. PIJAC's membership includes member associations, organizations, and corporations as well as individuals involved in the commercial and hobby pet and aquarium trade. More specifically, we represent the interest of live animal retailers, importers/exporters/ breeders, product manufacturers, wholesale distributors, and hobbyists.

PIJAC, for more than 40 years, has promoted best practices including the sustainable use of renewable natural resources pursuant to the IUCN and UN Sustainable Use Guidelines. PIJAC endorses and supports high standards of excellence in the care and handling of marine organisms covered by the proposed rules. For many decades PIJAC has participated in organizations devoted to conserving natural resources; PIJAC incorporates such materials in its programs that educate the pet industry on the need for fostering environmental stewardship. Moreover, PIJAC's efforts contribute to the industry's increasing awareness of the threats to reef ecosystems and the continuing need for industry involvement in the promotion of science-based regulatory regimes aimed at ensuring sustainable use and a healthy and viable fishery.

PIJAC commends the Department for its comprehensive and considered approach reflected in the proposed rules package covering fish replenishment areas, bag limits, size/bag limits for certain species and establishment of a West Hawai'i Aquarium Permit in the WHFRMA. Adoption of a permit system and record-keeping will improve DAR's oversight of collection activities. Additionally, the establishment and clarification of permissible fishing area boundaries coupled with setting standards for gear, nets, no take areas, etc. will benefit both the resource and DNR enforcement.

Adoption of the proposed rules will benefit the resources and aid the ornamental collecting industry's collaboration with the State in ensuring an effective management regime for a healthy and productive, self-sustaining resource. Therefore, PIJAC supports the proposed rules as an important component of Hawai'i's overall fishery management plan.

Sincerely yours,

Michael Canning, Esq

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Dec 4, 2012

Dr. William Walsh
Division of Aquatic Resources
74-380B Kealakehe Pkwy.
Kailua-Kona, HI 96740

RE: Testimony in Support of Hawaii Administrative Rules

Dear Dr. Walsh,

I am writing in support for Hawaii Administrative Rules. I am a master's student at Washington State University Vancouver and have conducted my research in West Hawaii for the past two years. My research has focused on the effects of aquarium fish collection methods implemented by fishers and the methods used by West Hawaii exporters on short- and long-term yellow tang health and mortality. This research was supported by the NOAA Coral Reef Conservation Program (CRCP).

My expertise allows me to address the benefits of the white list in the new rules package. The new rules do not permit collection of fish species that are not well suited for home aquariums. It does, however, include species that make up the majority of the catch in the Hawaii aquarium trade (i.e. yellow tangs), and fish species that are better suited for life in captivity. In regards to concerns about the ability of these fish to survive in captivity, I would like to present some recent

results from a study I began this past summer. In June, I collaborated with fishers and exporters in Kona, and caught 60 yellow tangs from the reef, held them in an export facility, and shipped them from Kona, HI to Portland, OR. The tangs were then transported to the Hatfield Marine Science Center in Newport, OR where they have resided for nearly 6 months. My study shows 100% survival rate of these tangs during collection, holding in the export facility, air transport, and after a 6-month holding period. These results are congruent with the proposed continued collection of yellow tangs through their inclusion on the white list.

Not only does science support the implementation of the new rules, but also the rules reflect the cooperation of different stakeholders working hard to solve difficult problems. I think it is worth supporting this unique collaboration, an example of successful community based management, that has resulted in well-reasoned ideas incorporating the interests of multiple stakeholders.

Thank you for hearing my testimony.

Sincerely,

Emily S. Munday
Master's Student
School of the Environment
Washington State University Vancouver

From: Chris Gabriele
Sent: Saturday, December 08, 2012 2:04 PM
To: darkona@hawaiiantel.net
Subject: West Hawai'i Regional Fishery Management Area Amendments

To Department of Land & Natural Resources, Division of Aquatic Resources:

Thank you for getting the word about about the opportunity to comment on these important proposals. I fully support the West Hawai'i Regional Fishery Management Area Amendments including:

1. Pebble Beach will become an FRA where commercial aquarium fish collectors cannot collect fish.
2. Spearfishing using scuba gear will be illegal along the west coast of the Big Island.
3. There will be a 'White List' of 40 species of fish which commercial collectors can take, but all others (and invertebrates) will be illegal to take. There are also some size & bag limits included.
4. The taking of most rays & sharks will be banned.
5. Two large mollusks which eat the Crown-of-Thorns sea star (which devours coral) will be protected.

As a marine biologist and ocean user in West Hawaii since 1988, I very much appreciate that DAR has undergone the process of gathering the data and soliciting public comment on these additional protections.

It's an ecosystem (obviously) and these changes will cascade their effects to other species and lead to a healthier marine environment over all. The fact that we are so ill-equipped to deal with insults to the pelagic environment outside state waters make these coastal protections all the more important. Additionally, changes in ocean temperature, acidity and climate cycles that are already occurring and may accelerate over time mean an uncertain future to many of these species despite the proposed protective measures. They can use all the help they can get.

Without exception, the proposed amendments offer needed protections that will benefit West Hawai'i's marine environment to the benefit of all. Special interests will of course oppose these new restrictions, but for the DAR to give in to their selfish claims would be short sighted and detrimental to the rest of us. Claims of economic hardship from collectors should be balanced against the economic hardships that all of us will face if we do not take good care of our coastal marine resources.

Sincerely,

Christine Gabriele

From: allenhe@aol.com
Sent: Saturday, December 01, 2012 5:16 PM
To: darkona@hawaiiantel.net
Cc: pebblebeach@hawaii.rr.com
Subject: Personal comments in support of WHFRMA Amendment

Allen Eggleston

Saturday, December 01, 2012

I support the WHFRMA Amendment

Last Thursday night, my wife, Normetta Muir, and I returned from three weeks of scuba diving in the Philippines. We dove in fish sanctuaries in which there was abundant sea life, including fish and many other sea critters, such as shellfish, crabs, lobsters, and sea snakes. These were wonderful dives. Local fishermen maintain the sanctuaries, and these areas serve to increase sea life in the areas outside the sanctuaries.

The last place we stayed was a highly recommended resort with a reputation for excellent diving. However, there were virtually no fish other than very small reef fish and only a few other animals of interest. We were very disappointed. Our boat passed a sanctuary, but we were told that no diving was allowed. We asked about a few local small fishing boats at the edge of the sanctuary, and were told that there was only one inspector and that there was no enforcement after dusk.

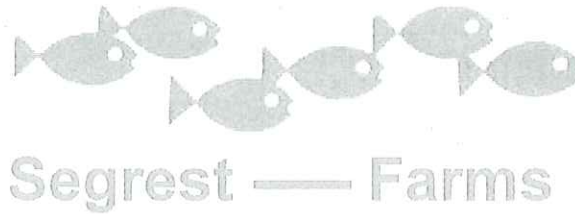
As residents and divers at Pebble Beach, we have been aware of the decline in certain species over the past few years. We want a Fish Replenishment Area (FRA) that will bring back all species and provide for the restoration and sustainability of species outside the FRA. We also want a "white list" to identify which species are sustainable.

In Southern California, I was a diver and spear fisherman for many years. During that time, I saw the decline in fish stocks, especially the slower growing and slower moving fish that are relatively easy to spear by divers with scuba. After I realized I was part of the problem, I traded my spear for a camera and hope that I am now part of

the solution.

This is a win-win solution for everyone. There will be more fish, more people can enjoy the marine life, and the sustainability of species will be improved.

Allen Eggleston
Pebble Beach



December 17th, 2012

Division of Aquatic Resources
74-380B Kealakehe Pkwy. Kailua-Kona, HI 96740
RE: West Hawaii Regional Fishery Management Area WHRFMA Administrative Rules Package

Dear Sir,

Based in Gibsonton, Florida, Segrest Farms has provided retailers, public aquariums, and research facilities across the world with ornamental fish for over 50 years. We hold leadership positions within Ornamental Fish International (www.ornamental-fish-int.org), Florida Tropical Fish Farmers Association (www.ftffa.com), and Pet Industry Joint Advisory Council (www.pijac.org). Our facilities have been Marine Aquarium Council (MAC) Certified. We have been importing and supplying native Hawaiian fish for the past 25 years, and proudly promote these fish as they are known for their quality, high standards of care with which they are caught and the husbandry in the supply chain.

While the overall take from your local waters for ornamental use is small in comparison to other collection points, this rules package promotes the sustainable use of natural resources under a well-reasoned, fact based fisheries management plan. This proposed rules package-which clarifies key management matters such as improved record keeping, bag limits, and size limits-should be adopted to ensure the sustainable collection of fish as well as the continued health of the reefs. In addition, the management area rules package allows the ornamental fishery to remain viable and takes into account the local fishermen who rely on this trade for their livelihood.

Therefore, we fully support the proposed rule package as an important part of achieving both a fishery that is truly sustainable in the long term and a vibrant and protected reef ecosystem which will be enjoyed by generations to come. This rules package can be seen by other island nations as an example of best-in-class fisheries management.

Very best regards,

Sandy Moore
Vice President

P.O. BOX 758 • GIBSONTON, FLORIDA 33534
NATIONAL (800) 237-9317 • FLORIDA (800) 677-9196 • FAX (813) 677-4448 • LOCAL (813) 677-9196

~~~~~  
**From:** Ira Leitel  
**Sent:** Tuesday, November 13, 2012 12:37 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** Public Comment

Dear DAR:

Please see the attached letter. We are unable to attend the public hearing in question and wish to present comments on the issues contained in the attached letter. Thank you,  
Ira Leitel

## IRA & TOMOE LEITEL

KOHALA COAST, HAWAII 96743

Monday, May 06, 2013

By email only to: [darkona@hawaiiantel.net](mailto:darkona@hawaiiantel.net)

Department of Land and Natural Resources  
Division of Aquatic Resources  
74-381 Kealakehe Parkway  
Kailua-Kona, HI 96740

Re: Comments for Upcoming Public Hearing

Dear DLNR/DAR:

We have lived in Hawai'i, and at the Mauna Lani Resort for more than 20 years; we swim almost every day in Makaiwa Bay at the Mauna Lani Resort (some people refer to the area as the 'Beach Club'). Resort home owners, hotel guests, visitors and local residents use this popular swimming beach. An article in West Hawaii Today dated 11/13/12 told us we could present testimony in written form regarding the practices of taking reef fish, scuba spear fishing and related subjects along the West Hawaii Coast. It follows:

From our personal and regular observations from swimming and snorkeling in the same area of the ocean for many years, it is apparent that there are less and less of the beautiful reef fish in and around Makaiwa Bay. We also see scuba and non-scuba spear fishing in and around Makaiwa Bay in increasing numbers.

Something(s) are depleting our resources; whatever it is, it hurts everyone who recreates along this coast and tourism in general, which, as an industry may be more important to Hawai'i than the aquarium collection industry. Further, it is frightening - particularly for tourists on the beach and in the water - to see long spear guns in the same area where they are swimming, snorkeling or paddle boarding. This is a tragic accident waiting to happen, and is an uncomfortable situation for many. It is not a good idea to have spear guns in the water around swimmers, kayakers, and paddle boarders.

We ask that the DLNR Division of Aquatic Resources protect Hawai'i's coastline for everyone who uses it; allow our reef fish to replenish, especially in areas where both locals and tourists use the water; and keep the scuba and free dive spear fishing away from the Resorts or other public beach areas.  
Thank you for your consideration.

Respectfully,  
Ira & Tomoe Leitel

~~~~~  
From: Robert Rothrock
To: darkona@hawaiiantel.net
Subject: In support of WHRFMA Proposed Rule Amendments

DAR:

Please accept this email as support for your upcoming amendments, specifically:

1. Pebble Beach will become an FRA where commercial aquarium fish collectors cannot collect fish.
2. Spearfishing using scuba gear will be illegal along the west coast of the Big Island.
3. There will be a "White List" of 40 species of fish which commercial collectors can take, but all others (and invertebrates) will be illegal to take. There are also some size & bag limits included.
4. The taking of most rays & sharks will be banned.
5. 2 large mollusks which eat the Crown-of-Thorns sea star (which devours coral) will be protected.

As a land owner in South Kona, I full support these changes. We came to the Big Island and south Kona in 2004 and found ourselves living above Pebble Beach and Kaohe Bay. You cannot imagine our delight as we took our, then 1 year old, daughter down to Pebble Beach to discover the beauty of the coral reefs. The time we have

spent in the water and with the creatures living there have been cherished, and never cease to amaze. We were trained and became part of the fish counters that tried to create a census in our little bay. We witnessed the beauty of reef sharks and the damaging effects of the Crown-of-Thorns. We travel north to Two Step, and even further north to Kailua-Kona and beyond, to drink in the wonders of the West Hawaii coastline and its environs. We cannot imagine what these places of beauty would be like if they were left to prosper, but we can imagine what they will look like if they are left to be harvested at will. Please protect our coastline and the native species that dwell there.

Aloha nui loa,
Robert D. Rothrock

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Ku‘ulei Rodgers Ph.D  
Hawai‘i Institute of Marine Biology  
46-007 Lilipuna Road  
Kāne‘ohe, Hawai‘ 96744  
16 November 2012

Department of Land and Natural Resources  
Division of Aquatic Resources  
74-380B Kealakehe Pkwy  
Kailua-Kona, HI 96740

I am submitting written testimony in support of Chapter 13-60.4, West Hawai‘i Regional Fisheries Management Area, Hawai‘i (WHRFMA) and amend regulations of Hawai‘i Administrative Rules (HAR) Chapter 13-54, Puako Bay and Puako Reef Fisheries Management Area, Chapter 13-57, Keauhou Bay Fisheries Mangement Area and Chapter 13-75-12.4, Laynets.

I support the provision to prohibit SCUBA spearfishing as it provides an imbalanced advantage that has been shown in other regions of the Pacific to rapidly deplete fish populations (Page 1998). Technological advances that increase fishing efficiency including SCUBA have the potential to place added pressure on an already vulnerable resource. The refuges that fish previously had such as deeper waters and the shelter of darkness have been virtually eliminated and with it the ability for populations to recover from fishing pressure. Thus, this prohibition of SCUBA spearfishing within the WHRFMA will support the maintenance of reproductive stocks.

Marine protected areas including FRAs can act as the refuges of the past. Research undeniably shows an increase in the number and size of fishes within reserves (Friedlander 2001). In addition, fishing adjacent to the reserves increases since fishes moving in and out of the area “spill-over” into nearby regions (Johnson et al. 1999). I believe that these regulations will strengthen the WHFMA, rebuild fish stocks and benefit all resource users.

Even though a much smaller proportion of the population presently fishes or consumes local fish products relative to ancient times, marine resources have steadily declined over time. Unlike fishing



communities of the past, we are currently out of sync with many of the natural cycles. If we are to maintain a viable fish population for all stakeholders including recreational and aquarium fishers for future generations, regulations such as these bring us a step closer to sustainability.

Sincerely,



Ku'ulei Rodgers Ph.D  
HIMB Research Faculty  
Coral Reef Ecologist

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Dr. William Walsh, DAR West Hawaii

Division of Aquatic Resources, Honokohau Harbor

Kailua-Kona HI 96740

Dec 17, 2012

I support HAR13-60.4 and other amendments as proposed. The rule changes support the intent of Act 306 which was legislated in 1998. Research conducted by UH Manoa and Hilo professors, the Division of Aquatic Resources biologists and NOAA supports the rule changes. Research and fisheries statistics throughout the Atlantic, Caribbean and Pacific Oceans detail collapsed or near failing fisheries. The West Hawaii Regional Fisheries Management Area already has, through community input and strong DAR support, seen repopulation of a number of heavily collected aquarium fished species. Fishes should only be speared by free divers, NOT by SCUBA divers. South Pacific Islanders have, in many areas, prohibited this practice after hard lessons were learned, per Dr. Charles Birkeland.

I was the University of Hawaii Coastal and Marine Resources Extension Agent on the Big Island from 1995 to Aug. 2010. During those years I worked closely with the DAR office in West Hawaii and tangentially with the DAR office in East Hawaii to involve the communities of the Big Island in fisheries discussions. With respect to the rule changes in HAR 13-60.4, I can testify to the fact that many meetings with community members were held to take input on the rule changes, and the rules evolved based on that input. From 2001 to June 2010, I conducted and/or facilitated an average of 4 meetings each year, not including the 100+ West Hawaii Fisheries Council meetings, at which topics addressed in the proposed rules package were discussed and public input was gathered.

The West Hawaii Fisheries Council's goal is to include among its members a broad cross section of island residents, the majority of whom have been or are commercial, subsistence or recreational fishers. Fishermen and women contributed substantially to this rules package.

Thank you,

Sara Peck, retired UH Sea Grant College Program

~~~~~



Cornell University

Courtney Saltonstall Couch
PhD
Candidate
Department of Ecology and Evolutionary Biology

Cornell University
E323 Corson Hall
Ithaca, NY 14853

Telephone: 607 254-4296
Fax: 607 255-8088

December 18, 2012

William Walsh, PhD
Department of Land and Natural Resources
Division of Aquatic Resources-Kona
74-380B Kealakehe Pkwy
Kailua-Kona, HI 96740

Dear Dr. Walsh,

I strongly **support** the adoption of the new ruling – Chapter 13-60.4, West Hawai'i Regional Fishery Management Area, Hawai'i. I also urge legislators to amend regulations of Chapter 13-54, Puakō Bay and Puakō Reef Fisheries Management Area, Chapter 13-57, Keauhou Bay Fisheries Management Area and Chapter 13-75-12.4, Lay Nets.

I am currently a PhD Candidate from Cornell University where I am researching the ecological and environmental factors influencing coral health and disease along the leeward coast of the Island of Hawai'i. I have spent the last three years conducting detailed coral health assessments at reefs just north of Kawaihae to Ho'okena. West Hawai'i has the largest expanse of intact coral reefs in the Main Hawaiian Islands. While West Hawai'i still has relatively healthy reefs overall compared to adjacent Islands, I have witnessed strong evidence that the combination of overfishing of herbivorous fish and coastal eutrophication is not only having a detrimental effect on coral health but is also negatively affecting ecosystem structure and function. There are an alarming proportion of coral colonies being overgrown by algae

that is clearly resulting in partial or complete coral mortality. If we do not take steps to curb the level of fishing, West Hawaii's reefs are likely to experience a similar phase shift from a coral-dominated reef to an algal dominated reef that Maui, Oahu and much of the Caribbean has already experienced. There are decades of research indicating that once reefs make this transition, not only are they less able to support the remaining fish community, but it is nearly impossible to return reefs back to their original coral-dominated state. West Hawaii's healthy reef fish populations sustain its residents culturally, economically and nutritionally. Let's protect this fragile ecosystem before it is too late.

Sincerely,



Courtney S. Couch
Ph.D. Candidate

~~~~~

Dr Bill Walsh  
Biologist  
Hawaii Division of Aquatic Resources  
Division of Aquatic Resources  
74-380B Kealakehe Parkway  
Kailua-Kona, HI 96740

Dear Dr Walsh:

I am writing this letter to you on behalf of my family, as concerned citizen, fisher, diver and father of a future fisher. Please note that I am also a federal employee of NOAA and recognize that none of the thoughts, ideas or comments expressed in this letter reflects the opinion of my employer or anyone else other than myself and my family.

I am in support of the Division of Aquatic Resources 'proposal to amend and adopt Hawaii Administrative Rules (HAR) pertaining to West Hawaii, specifically to amend chapters 13-54, 13-57, and 13-75, repeal 13-60.3, and adopt a new replacement chapter 13-60.4. The rules propose a SCUBA spearfishing prohibition, closing a 1,500 foot section of Ka'ohe Bay, South Kona, to aquarium collecting, establishment of a list of 40 fish species permitted for aquarium take with size and bag limits on three of these species, prohibition on take or possession of nine species of inshore sharks and rays and two invertebrate crown-of-thorns predators, and several other rule changes to enhance enforcement of aquarium collecting regulations and to clarify existing rule provisions.

I have fished and gone scuba diving in numerous countries in the Pacific (Palau, Yap, Chuuk, Pohnpei, Vanuatu, Kosrae, American Samoa and Western Samoa) and the fishing and diving I have experienced in past six years, since my family has lived in Hawaii, has been disappointing compared to the other locations. I believe that the proposed rules will improve the management of the reef ecosystems of West

Hawaii, hopefully inspire additional management improvements on other islands and ultimately improve the quality of the fishing and diving experiences for all residents and visitors in Hawaii.

In particular, a state wide ban on scuba spearfishing is long overdue.

Sincerely, Mike Lameier and Family

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**From:** Steve Cotton  
**Sent:** Wednesday, December 19, 2012 12:37 PM  
**To:** William j. Walsh  
**Subject:** In Support of West Hawaii Regional Fishery Management Area Administrative Rules amendments

To whom it may concern,

As a long time resident of Hawaii and an ocean professional who has spent many years monitoring our coral reefs from Kure to South Point I stand in full support of the proposed amendments for the West Hawai'i Regional Fishery Management Area Administrative Rules.

I have also spent many hours researching how the rest of the world addresses the issue of spearfishing using scuba. Many countries around the world have banned it, having experienced the devastating effect it has had on their fish populations. Whole fish populations have been destroyed by it. It is happening before our eyes here in Hawaii. Hawaii is one of only a few places on earth where this practice is still allowed. As the population of Hawaii grows the threats to our reefs from overfishing grow as well. Scuba spearfishing is a destructive and unnecessary practice and needs to be banned before it is too late. The evidence is out there for all who wish to see it. It will be our shame if we allow this practice to continue in spite of the evidence against it.

The time is now to take positive steps to enhance management of these precious and fragile reefs. Once they are gone they are gone forever and it will be us who will have to answer to our children and grandchildren. We should not have to say to them that we had the chance and we let our egos and parochial interests trump our responsibility to protect their heritage.

These rules were painstakingly developed by dedicated volunteers and scientists over many years. I know and respect them for their good faith efforts to preserve one of Hawaii's last and best coral reefs.

Stephen Cotton  
Waimea, Hawaii

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**From:** Steven Meyer  
**Sent:** Friday, November 30, 2012 6:52 AM  
**To:** darkona@hawaiiantel.net  
**Subject:** Ka'ohe bay

To whom it may concern, Being a long time Scuba diver and water enthusiast I surely hope you close Ka'ohē bay to commercial tropical fish collectors. Having a home in Kona Paradise for 20 years and seeing all of the conflicts with the people and the damage to the reef do to poor collecting it is so important that you close this bay to commercial collecting. As you know there are only a few access roads to the water and places for people to snorkel and enjoy the beach. Why you would have this bay open to such conflict I just don't understand. In the past I have scene collectors screaming at kids snorkeling and swimming to get away from there boats while they net the same fish the kids are trying to look at. This is just not right! Over the years Ka'ohē bay has become a very popular scuba diving area. I think the locals have the right to enjoy the diving and have collectors there taking the same fish they came to look at (many of them rare and endangered) is ridiculous. I also have a home in Fiji and in the Philippines and sadly Hawaii's conservation laws are worse than third world countries. This would be a small step in the right direction to prove you want to do the right thing and that you are better than third world countries, not money hungry and corrupt and or in bed with the fish collecting industry. Please finally do what is right. Aloha, Steve Meyer

Steve Meyer

From: Steven Meyer Sent: Friday, November 30, 2012 7:17 AM  
To: darkona@hawaiiantel.net  
Subject: amendment

Please give me a yes vote in support of the entire amendment package at the Dec 5 meeting. I'm currently in Colorado and can't make the meeting. Thank you.  
Steve Meyer

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Support Ch. 13-60.4

I am writing to express my strong support for the complete package of rule changes to Ch. 13-60.3 proposed by the West Hawaii Fisheries Council. I am a knowledgeable SCUBA diver with 18 years of experience diving and snorkeling around the reefs of West Hawaii

I see that our fish populations have increased since the Fish Replenishment Areas (FRAs) were established, which has led to healthier reefs. I believe that the "White List" is very important to continue the protections to the fish and the reefs. I know it was developed with community input and represents the best compromise for our people and our resources.

In addition, I believe that using the advantages of SCUBA to spear fish is highly inappropriate. In fact, this practice has been banned in other areas of the Pacific where it resulted in over-exploitation and rapidly declining fish populations.

Our community, including a majority of fish collectors, supports protecting Ka'ohē Bay as a Fish Replenishment Area (FRA), as do I. Protecting this precious bay will lead to greater populations of fish in the future for ocean users as well as collectors. It has been a desire of the community for so many years, it is time to protect it now.

The health of our reefs includes the sharks, rays and shells that inhabit them. I absolutely support banning all catching and killing of all live species. These important reef dwellers are not as prolific as other fish species, take much longer to mature, and therefore should be protected in order to maintain our vital reef ecosystem.

Please replace the current Ch. 13-60.3 with **all of the changes** contained in the new Ch. 13-60.4.

Respectfully Submitted by:

Janice Kerr

December 3, 2012

**To: Department of Land & Natural Resources, Division of Aquatic Resources
74-380B Kealakehe Pkwy.
Kailua-Kona, HI 96740**

From: Bob Jacobson, Hawaii County Councilmember 2002-2008 Puna/Kau/South Kona

Topic: Proposed Rules, In support of WHRFMA Proposed Rule Chapter 13-60.4 and support for West Hawaii Regional Fisheries Council (WHRFC) amendments

To Whom It May Concern:

I am writing to this to let you know that I fully support the West Hawai'i Regional Fishery Management Area. After working at Kona Hospital for 25 years and serving six years on the Hawaii County Council and can say unequivocally that these amendments suggested by the West Hawaii Regional Fisheries Council (WHRFC) are needed and well researched. They are vital to maintaining

and restoring this resource that belongs to the people of Hawaii. They are needed to protect the tourism industry that promotes the financial health of our residents and to protect the good name of Hawaii's assets. To continue to allow the rape of our reefs is unconscionable and shortsighted. I represented this area for six years and spoke with thousands of residents on this issue. Except for a few fish collectors that exhibit denial (this is a charitable appraisal) and worse yet, outstanding greed and selfishness, everyone I spoke with during the last thirty years wanted the maximum protections applied to this area. To do anything strikes me as criminal and wholly irresponsible.

These amendments are as follows:

- 1. Pebble Beach will become an FRA where commercial aquarium fish collectors cannot collect fish.**
- 2. Spear fishing using scuba gear will be illegal along the west coast of the Big Island.**
- 3. There will be a 'White List' of 40 species of fish which commercial collectors can take, but all others (and invertebrates) will be illegal to take. There are also some size & bag limits included.**
- 4. The taking of most rays & sharks will be banned.**
- 5. Two large mollusks which eat the Crown-of-Thorns sea star (which devours coral) will be protected.**

Sincerely,

Councilmember Bob Jacobson

Submitted by email

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To whom it may concern,

I submit this testimony in **support** of the adoption of Chapter 13-60.4 and all that it encompasses. As a concerned citizen of Hawai'i, a Marine Science graduate from University of Hawai'i Hilo, and a avid scuba diver, I feel this rule package will a large step forward in the effort of conservation and management to the Kona coast reef ecosystem.

As a trained observer of reef ecosystems I feel that every concept of the rule package is very much needed for the Kona coast. Scuba spearfish has been shown to be very destructive and has been banned in such places as Australia and American Samoa. The adoption of the "White List" will be a huge step forward in the protection of our rare and charismatic species of fish. The protection of two know species of invertebrates that eat Crown of Thorn sea stars *Acanthaster planci*. These sea stars are a boom and bust species but without their natural predators these sea stars can reek more havoc on the ecosystem in times of boom. The formation of the FRA at Pebble beach will be very good for the community of Ka'ohe as there has been confrontations between residents and aquarium collectors in the past and FRA's have been shown to be beneficial to surrounding habitats. And last but not least the Protection of nearshore sharks and rays is very much needed!!!! Sharks are a keystone species. They keep the ecosystem healthy by consuming the weak and diseased fish. The more sharks on the reef the healthier the reef ecosystem.

Please pass the proposed rule package. It is a step in the right direction for ocean conservation and management for west Hawai'i.

Mahalo,

Ross Martin

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Sciences Programs

December 5, 2012

Department of Land and Natural Resources  
Attn: Board Members  
1151 Punchbowl Street, Room 130  
Honolulu, HI 96813

RE: TESTIMONY IN SUPPORT OF NEW HAWAII ADMINISTRATIVE RULES Dear

DLNR Board Members,

I have worked in West Hawaii pursuing my doctoral research on social-ecological aspects of the marine aquarium fishery over the past six years. During that time, I was fortunate to have worked with many West Hawaii aquarium fishers, Kona-based Division of Aquarium Resources personnel, and West Hawaii Fisheries Council members, and I have grown intimately familiar with the region's fishery management issues.

I strongly support the new Hawaii Administrative Rule Chapter 13-60.4 and amendments to Hawaii Administrative Rules Chapter 13-57, Chapter 13-54 and Chapter 13-75-12.4. Not only HAR 13-60.4 help safeguard the long term sustainability of West Hawaii's aquarium fishery, but it will also prohibit the use of SCUBA for spearfishing activities, which I feel is long overdue and should be considered statewide. More importantly, HAR 13-60.4 was developed in conjunction with countless stakeholders and therefore has extensive regional support. Lastly, HAR 13-60.4 is the most rational, well-constructed and equitable piece of legislation considered in recent past for improving the management of West Hawaii's aquarium fishery.

Having worked as a scientist and conservation practitioner in more than seven countries located in the tropical Pacific, I have never witnessed anything as scientifically robust with so much public support as the West Hawai'i Regional Fishery Management Area. The numerous internationally recognized scientific publications generated from this region has underscored the importance of West Hawaii's marine ecosystem and its management practices, and a lot of people are watching to see how the state will respond to the pending new administrative rules.

Please consider my testimony in support of HAR Chapter 13-60.4, Chapter 13-57, Chapter 13-54, and Chapter 13-75-12.4. Thank you in advance for this opportunity.



Mahalo,

Todd C. Stevenson, Ph.D.  
School of the Environment  
Washington State University

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**From:** John Tullock  
**Sent:** Wednesday, November 28, 2012 6:41 AM  
**To:** darkona@hawaiiantel.net  
**Subject:** RE: Support needed

Good Morning, Bill,

I am writing you to express my wholehearted support for the proposed new management rules for West Hawai'i. As a biologist, I understand the importance of effective reef resources management in furthering the goal of long-term vitality of coral reef communities. As a businessman with long experience in the aquarium industry, I understand how science-based regulation of the aquarium fishery helps to insure that there will be plenty of fish to catch for the foreseeable future, without negative impacts on reef resources.

I believe the proposed White List of species permitted to be taken by collectors should become a model for resource managers wherever reef organisms are harvested for the aquarium trade. As long as mechanisms exist for modifying such lists, either via addition or deletion, as new scientific evidence comes to light regarding the targeted species, I believe this approach will find support among a majority of industry stakeholders. Similarly, bag limits for the three surgeonfish species make sense. Experienced aquarium keepers know that long term survivability of these species often depends upon the size at which the individual is collected. Outright bans on the taking of sharks, rays, and the two crown-of-thorns predators will have minimal impact, if any, on the aquarium trade.

The aquarium industry is uniquely situated to call attention to, and share the beauty of, the world's coral reefs. To contribute, via unsustainable collection practices, to negative impacts on these very same reefs is inconsistent with industry goals. We owe the scientists at the DAR a debt of gratitude for their hard work and dedication to fact-based management of the reef resources of West Hawai'i.

Best regards,  
John Tullock

 **John Tullock, Executive Director**  
[AquaLife Dealer Lounge](#), Knoxville, TN

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2253 AIR PARK RD • PO BOX 100  
RHINELANDER, WI 54501-0100  
PHONE (715) 369-3305  
DrsFosterSmith.com

December 18th, 2012

Division of Aquatic Resources  
74- 380B Kealakehe Pkwy.  
Kailua-Kona, HI 96740  
Email: darkona@hawaiiintel.net  
RE: Testimony for the West Hawaii Regional Fishery Management Area rules package

**Staunch Support for DAR Proposed West Hawaii Rules Package**

Dear Sirs,

Thank you for considering improvements regarding managed collection of fish and aquatic life from Hawaii's coastal waters. My name is Kevin Kohen, and I am the Director of Drs. Foster and Smith's LiveAquaria.com, one of the fish industry's leading advocates for responsible aquarium keeping through education, responsible aquarium keeping, and environmentally-responsible fisheries management. LiveAquaria.com is a proud corporate sponsor of the Marine Aquarium Societies of North America, member of the Pet Industry Joint Advisory Council, and strong supporter of the proposed rules package.

While Hawaii's Marine Ornamentals Fishery is already one of the best-managed fisheries in the world, we agree that the oversight proposed in collaboration with The Hawaii Department of Land & Natural Resources will ensure it continues to be a sustainable and viable fishery in the future. We urge you to adopt the proposed rules package, including imposition of bag and size limits on certain species, no take of other species, net size limits, certain closures, and boundary clarifications. Doing so will help to ensure sustainable collection to maintain a viable fishery, with the continued well being of the reefs, while taking into account the fishermen who depend on the marine ornamentals trade for their livelihood.

As both global educators and local community employers, we at Drs. Foster and Smith LiveAquaria.com value the continued management of Hawaii's beautiful waters to keep this important fishery in check. As an industry leader, we pledge to continue our efforts to help establish best practices in the marine aquarium ornamentals trade, and responsible aquarium keeping. We look forward to working in concert with you on this important legislative issue.

Sincerely,

Kevin Kohen  
Director, LiveAquaria.com

Drs. Foster and Smith

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**From:** KATHLEEN JOHNSON  
**Sent:** Wednesday, December 05, 2012 12:07 PM  
**To:** darkona@hawaiiantel.net  
**Subject:**

To Whom it May Concern:

I am in strong support of the proposed rule package for West Hawaii, including the adoption of a new rule (Chapter 13-60.4), and the amendment of the HAR regulations (Chapter 13-54, Chapter 13-57, and Chapter 13-75-12.4), which collectively represent an important step forward in the conservation of marine resources.

I've hiked the complete shoreline of West Hawaii and how sad it is that it's rare to see schools of fish. It's said that Kona was called the Gold Coast because of all the yellow tang. I would love to see it restored to it's former beauty.

It's unconscionable to me that aquarium fishing is even allowed when the fish have such a short lifespan outside of their environment.

The prohibition of spearfishing on SCUBA in particular is a long overdue regulation, as this practice has the potential to over-exploit fish populations, and has been banned elsewhere in the Pacific for this reason. The white list and associated size and bag limits are also measures that are based on long-term ongoing scientific studies and are intended to prevent over-exploitation. Finally, measures to protect sharks and rays as well as the mollusks Triton's Trumpet and Helmets, all ecologically important species, should be commended as well as passed.

I understand that this effort has been underway for years, and represents a collaborative and inclusive multi-stakeholder process to develop a rule package that makes a meaningful difference in the conservation landscape. This is the type of approach that CORAL supports as an organization, and we feel that it should be a model for the rest of the state.

Thank you for your consideration,

Kathleen Johnson

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**From:** arpad horvath  
**Sent:** Sunday, November 11, 2012 12:59 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** In support of WH Rule Amendments

I am writing today in support of the proposed amendments to the West Hawaii administrative rules.

I own a property in South Kona. For so many of us down here pebble beach is a special place; the bay and reefs need to be preserved for everyone in the area. In the years I have been coming to this coast, I can see the loss of diversity on many of the reefs. Pebble beach should be closed to fish collecting.

My first trip to Hawaii was a scuba trip up and down this coast, and from that day I knew I would end up here. As a dive instructor, I have worked and dived in many places and seen what a reef looks like when left unprotected from commercial interest. Extractive industries add nothing, they simply take - we must promote interactive industries instead; divers and snorkelers stay in our hotels and support our restaurants, aquarium owners do not.

While I personally would prefer a total ban and protection for the entire coastline, these amendments are absolutely a big step in the right direction. A 'White-List' is certainly better than no list. Banning spearguns with scuba is another long overdue rule. Hawaii has shown leadership before with the recent shark fin legislation. The protection of sharks and rays here is an important measure. It is magical to me to be able to waddle out from shore and dive with these magnificent creatures, there are so few places in the world today - let alone as accessible as Kona - where you can do that.

Arpad Horvath

~~~~~  
Division of Aquatic Resources
74-3800 Kealakehe Pkwy. Kailua-Kona
HI 96740

RE Public Hearing on New Rule-Chapter 13-60.4 WHRFMA

Dear Department of Land and Natural Resources:

I began my work on Hawaii's reefs and nearshore areas in 1963. In the almost half century since then, I have witnessed the decline, not only of resources such as fishes and limu, but also of natural habitats and their communities. Through those decades the Division of Aquatic Resources has fought an uphill battle working to preserve nearshore fisheries and the stocks that maintain them. The Division has had some success over this time, but also many setbacks. The West Hawai'i Fisheries Management Area is a shining example of DAR's efforts and a nationally and internationally recognized successful management program.

The proposed rules and amendments will strengthen the protection of this area and support the wise management of these resources. Specifically, the prohibition of SCUBA spearfishing is overdue in Hawai'i. It has long been banned in many jurisdictions. Because of the importance of the West Hawai'i reefs and their fish resources its implementation in the Management Area will be an important lesson in the effectiveness of this simple measure.

The listing of fish on the "white list" and the prohibition of take for several sharks and rays as well as the predatory gastropods, will clarify the permitted and prohibited takes making following the rules and enforcing them clearer and simple.

I support these new rules and commend DLNR, DAR and the West Hawai'i Management team for their efforts in promotion of sound management of our marine resources

Respectfully

Robert A. Kinzie III

Professor (Emeritus) Zoology UHM

From: Bill Anderson
Sent: Wednesday, December 05, 2012 9:44 AM
To: William J. Walsh
Subject: DAR WHRFMA Rules

Friends at DAR Kona,
Attached are my comments regarding the proposed rules.

To whom it may concern,

Over the past several years my wife and I have had the pleasure of visiting Hawaii regularly. We have swum and snorkeled along the reasonably accessible beaches of the Kona coast. We have also attended public meetings held by DAR Kona over those years. Those meetings were well attended by a spectrum of aquatic resource users. The scientific findings are extensive. Explained in a simple straightforward manner the facts were interesting and informative. They were undisputed by anyone and caused us to look with different eyes at the marine environment of the West Coast of the Big Island. It is obvious even to casual observers like us that the managed areas have much healthier and balanced populations of species than the open areas. We also appreciate the need for effective harvesting of the marine resources. We understand the importance of aquariums to many people and fish as a food source both nutritionally and culturally.

The proposed rules have taken into account the needs of all user groups and the aquatic resources. The development process was extensive and innovative. An excellent example of this is the "White List" of species that may be taken by aquarium collectors, a positive approach as opposed to a negative approach. The licensing requirements are not onerous and access to the resource is still available to sport, commercial, and subsistence fishing.

We strongly support WHRFMA's proposed rules.

William Anderson
Bellevue, Washington



5420 W. 104th Street
Los Angeles, CA 90045 U.S.A
Ph: 310-645-1107 Fax: 310-670-8837
www.qualitymarine.com

December 5, 2012

Division of Aquatic Resources

74- 380B Kealakehe Pkwy.

Kailua-Kona, HI 96740

Via Email : darkona@hawaiiintel.net

RE: West Hawaii Regional Fishery Management Area WHRFMA Administrative Rules Package

To Whom It May Concern,

Quality Marine, established in 1976, is one of the North America's largest and longest-standing marine aquarium fish wholesalers. Quality Marine has been involved with the Hawaiian ornamental fish industry for the past 35 years and has distributed fishes from Hawaiian waters to industry throughout North America. Although the actual harvest is very small by almost any other fishery standards, this is a very valuable industry, not only to the fishermen, their families, and economy of Hawaii, but also to the many thousands of retail stores, and tens of thousands of employees of those stores, public aquaria and associated industries across North America.

The Aquarium Fish fishery in Hawaii, like any other fishery in any North American waters needs effective, proactive and sensible management. This includes a cooperative effort by the fishermen in the fishery through their actions and willingness to harvest the resource sustainably, and responsiveness by the Department of Land and Natural Resources, charged with managing the resource so it remains healthy and productive for both the health of the State's resource and the industries that depend on it.

Quality Marine views the proposed rules as effective tools for management of these resources and is encouraged by the levels of support garnered for these measures by the fishermen of Hawaii. We support the proposed rules package as it pertains to the ornamental marine fish fishery in the West Hawaii Regional Fishery management Area.

Sincerely,



G. Christopher Buerner

President, Quality Marine

~~~~~  
Lisa Marrack

Aloha DLNR Representatives,

I strongly **support** the adoption of the new ruling- Chapter 13-60.4, West Hawai'i Regional Fishery

Management Area, Hawai'i. I also urge legislators to amend regulations of the following Hawaii Administrative Rules (HAR): Chapter 13-54, Puako Bay and Puako Reef Fisheries Management Area, Chapter 13-57, Keauhou Bay Fisheries Management Area and Chapter 13-75-12.4, Lay Nets.

I am from the Big Island of Hawaii and have worked for over 15 years on West Hawaii coral reefs as a marine scientist and educator. I am currently a PhD Candidate at UC Berkeley where I am researching coastal conservation on the Island of Hawaii. While the Big Island reefs are still relatively healthy, there are strong indications that there is heavy pressure on herbivorous reef fishes due to aquarium fishing as well as non-commercial fishing. If we do not take steps to protect these fish populations, our reefs could shift to algae dominated systems as has happened on parts of Maui and Oahu and many other places around the world (ie. Florida, Bahamas). When there are not enough grazing fish to keep the algae off the corals, the coral are overgrown and die. Then the fish go away. Restricting fishing and creating no-take areas have been successful solutions around the world. Fishing, tourism and our own livelihoods depend on healthy fish populations and healthy reefs. Let us take steps to protect them before it is too late.

Best Regards

Lisa Marrack

11/13/2012

~~~~~

20 November 2012

Division of Aquatic Resources
74-380B Kealakehe Pkwy,
Kailua-Kona, Hi 96740

Dear DLNR,

This letter is in support of adopting new rule changes (Chapter 13-60.4) West Hawaii Regional Fishery Management Area, Hawai'i being proposed. Born and raised in Kaneohe, and part Hawaiian as well as a father of three, it is important to manage our near shore resources for our future generations to come. The Hawaiian's had a strong Kapu system; this provided management, information and specifics to better care for our important resources.

These management rules, while I don't like to tell people what to do are truly needed. Our islands population has increased to the point that it is now important to manage our resources. Many other locations in the world, have already suffered with scuba and spearfishing, completely wiping out entire ecosystems.

As mentioned growing up in Hawaii, there are far fewer fish then before. Having visited the North West Hawaiian Islands and having dove all the way to Midway and Kure, with strong management practices and distance from fisherman, these reefs are teeming with fish, many of which are endemic, found only in Hawaii. Puako and Pebble beach are two of my favorite dive locations. I used to find tinkers butterfly fishes and flame wrasses, but rarely find them anymore.

Please without amendment adopt this new rule in support of protecting our precious marine environment.

Mahalo Nui Loa



John Coney

~~~~~

Dec. 05, 2012

My name is Richard Osada. My daughter works for DLNR. I also work for DLNR. I make my living on the water. I've done that for the 13 years I've lived here. I don't fish. I have fished. I have nothing against fishing, and I did my first spearfishing when I was about ten years old off the coast of New Jersey with a broom stick and a trident and a mask and fins.

So I enjoy fishing and I enjoy spearfishing. But I grew up in New Jersey before I moved here, and I saw what happened with no regulations on any kind of fishing. And the fish disappeared and there aren't many fish left. People go out fishing and there is not much left there.

A lot of people with a lot of things to say here tonight, a lot of good points, a lot of people finally listening maybe, both directions.

I do support the West Hawaii Fishery Council proposals because they are necessary. Families may have fished here forever and supported themselves and feed themselves and others, but you can't keep doing that, especially on SCUBA. The fish don't stand a chance, even during the day. People spearfishing on SCUBA, the fish disappear.

Not much else to say but aloha, and I'm glad everyone is here trying to get their points across.

Thank you.

~~~~~

From: Julie Klaz
Sent: Wednesday, December 05, 2012 10:11 AM
To: darkona@hawaiiantel.net
Subject: Rules package

Hi Dr. Walsh,

I support the rules package. The only part I do not like is the slot size for the Yellow Tang. I believe some of the members of the Bid Island Association on Aquarium Collectors were quite over zealous in making too small of a 'size window' on the Yellows .We , the majority of collectors, were a tad

'railroaded' into these numbers and quite a few collectors distanced themselves from Pete Basabe, Tony Nahake, Jim Lovell over this, myself included.

and quite a few other collectors do not think a 2 " minimum size is realistic . 1.5 inches -5"would have made more sense. During dink season we collect fish very close to 2 inches, because that is all that's out there on the reef and that is what the buyers want. I was adamantly against not accepting your offer of 1.5 inches as the lower size number. I was out numbered in the executive council 'vote' (the general membership was not included on this vote) by the handful of primarily non-Yellow collectors mentioned above.

If there would be anyway to return to that number (1.5")as a lower size limit, it would be much more realistic for those of us who collect Yellows.

I advocate supporting your rules package and thank you for supporting our fishery in the current "climate " of lawsuits.

Thank you,
Julie Klaz



UNIVERSITY
OF HAWAII
HILO

Dec 4, 2012

Dr. William Walsh
Division of Aquatic Resources
74-380B Kealakehe Pkwy.
Kailua-Kona, HI 96740

Subject: Testimony in Support of Hawaii Administrative Rules §13-60.4

Aloha Dr. Walsh,

I want to provide strong support for Hawaii Administrative Rules §13-60.4. The West Hawai 'i rule amendments are very sound conservation strategies that are needed sustain the very valuable marine resources in Hawai 'i. The model developed for community-based management with community stakeholders represented by the West Hawaii Fisheries Council (WHFC) and with State of Division of Aquatic Resources (DAR, Dr. William Walsh) has been successful and should be shared throughout the

State of Hawai'i. The sound management support and monitoring has been critical to provide the necessary information for effective management justification for the proposed rules. The proposed rules in HAR 13-60.4 address important conditions identified in West Hawai'i and on several years of resource monitoring conducted by DAR and committee meetings/discussions facilitated by the WHFC. The proposed rules are essential for conservation of Hawaiian natural resources in this unique coral-rich region of Hawaii. The proposed rules were developed by diverse groups of stakeholders, carefully reviewed by community and government employees, and has extensive support.

I strongly support Hawai'i Administrative Rule 13-60.4 and encourage adoption.

Additionally, Dr. Mark Hixon, the new Hsiao Endowed Professor of Marine Biology at UH Manoa, and lead scientist of the study that found that yellow tang spawning within WHI FRAs help to replenish fished populations outside the reserves, fully supports the proposed administrative rules.

Mahalo,

Jim Beets

Marine Science Department

351 California Street, Suite 650
San Francisco, CA 94104
www.coral.org



Headquarters: (415) 834-0900
Hawai'i: (808) 669-9062
info@coral.org

State of Hawaii Department of Land and Natural Resources
Division of Aquatic Resources - Kona
74-380B Kealakehe Parkway
Kailua-Kona, HI 96740

November 30, 2012

To Whom it May Concern:

On behalf of myself, and my organization, the Coral Reef Alliance (CORAL), I am in strong support of the proposed rule package for West Hawaii, including the adoption of a new rule (Chapter 13-60.4), and the amendment of the HAR regulations (Chapter 13-54, Chapter 13-57, and Chapter 13-75-12.4), which collectively represent an important step forward in the conservation of marine resources.

The prohibition of spearfishing on SCUBA in particular is a long overdue regulation, as this practice has the potential to overexploit fish populations, and has been banned elsewhere in the Pacific for this reason. The white list and associated size and bag limits are also measures that are based on long-term ongoing scientific studies and are

intended to prevent overexploitation. Finally, measures to protect sharks and rays as well as the mollusks Triton's Trumpet and Horned Helmets, all ecologically important species, should be commended as well as passed.

I understand that this effort has been underway for years, and represents a collaborative and inclusive multi-stakeholder process to develop a rule package that makes a meaningful difference in the conservation landscape. This is the type of approach that CORAL supports as an organization, and we feel that it should be a model for the rest of the state.

Thank you for your consideration,



Liz Foote
Hawaii Field Manager, Coral Reef Alliance
Wailuku, Maui, Hawai'i

From: Kristin Hamlin
Sent: Wednesday, December 12, 2012 12:08 PM
To: darkona@hawaiiantel.net
Subject: Testimony: WHRFMA Proposed Rules Package

To Whom It May Concern,

Petco, as a leading pet specialty retailer with currently nearly 1,200 stores in all 50 states, prides itself on its high animal care standards. We work closely with our Independent Animal Care Advisory Council (IACAC) – a panel of animal care, welfare and animal behavior experts – and our Vice President of Veterinary Medicine (Dr. Thomas Edling, DVM, MSpVM, MPH), to ensure we offer the appropriate companion animals, services and supplies to our customers.

I recently reviewed the proposals in West Hawaii regarding marine ornamental fish regulations. Petco strongly supports this legislation as it promotes resource sustainability efforts for this highly valued industry. It is essential to have reasonable rules packages in place to benefit the long term health of the marine resources the industry and state depend on.


These proposed rules are deemed appropriate and necessary for the continued success of the fisherman, the local economy and the associated industries across the country. It is noted that the proposed rules package is the result of the cooperative effort between the fisheries and the DLNR, and we are encouraged by this partnership. We are fully supportive of this legislation that is necessary for the Aquarium Fish Fishery to continue to be a sustainable and viable fishery in the future.

Please feel free to contact me with any questions or concerns.

Thank you.

Kristin Hamlin

Companion Animal Regulatory Specialist
Petco Animal Supplies, Inc.
(858) 453-7845 x3806

 Healthier **Pets**. Happier **People**. Better **World**™

~~~~~

**From:** Tal Sweet  
**Sent:** Sunday, December 16, 2012 8:33 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** Testimony for the West Hawaii Regional Fishery Management Area rules

To whom it may concern,

I am writing to voice my support in favor of passing the proposed rules for the West Hawaii Fishery Management Areas. As an avid marine enthusiast, recreational diver, and breeder of marine fishes I support the proposed legislation.

Hawaii has one of the best regulated fisheries in the world. I hope the scientific data is given more consideration than the emotional responses against the issue.

I have been involved with the marine aquarium hobby for over eight years and have been instrumental in forming the Marine Breeding Initiative (MBI) <http://www.mbsite.org/Default.aspx> It is the goal of the MBI to promote responsible practices and to share information about captive breeding with anyone that wants to learn.

Advanced "hobbyists", such as myself, are very concerned with the environment and how fish are collected in the wild. Significant strides have been made in the realm of breeding many marine fishes in captivity and that can only continue if responsible, wild, collection is not shut down.

While some people see the practice of housing reef fishes in a captive environment as cruel, I view it as a way to educate people that may never get a chance to see them in person. This also helps to inspire the next generation of marine biologists to become caretakers of the reefs.

Sincerely,  
Tal Sweet  
[www.FishtalPropagations.com](http://www.FishtalPropagations.com)  
"Making captive breeding easier."

~~~~~

To whom it may concern:

As a resident of Hawaii for over 12 years, a local dive Instructor, researcher and leader in conservation work for the community I am in strong support of the proposed rule package for West Hawaii, including

the adoption of a new rule (Chapter 13-60.4), and the amendment of the HAR regulations (Chapter 13-54, Chapter 13-57, and Chapter 13-75-12.4), which collectively represent an important step forward in the conservation of marine resources.

These rules have gone through their due diligence in vetting with the community over the last ten years and it is time to see them passed. With over 10 years of research on the Kona Coast monitoring aquarium collecting along with the amazing community work and meetings through the West Hawaii Fisheries Council these rules represent a great balance between science and community for regulations.

It is time for Hawaii to step up as other areas have to protect our environment through the banning of SCUBA spearfishing, protection of sharks and rays as well as COT's predators. To use good science as a base for increased regulation where it is needed for the aquarium trade and have these regulations as a starting point for a limited entry fishery in the future.

Thank you for your consideration

Kara Osada-D'Avella

Dec. 18, 2012

To: State of Hawaii DLNR – DAR Kona
74-380B Kealakehe Pkwy.
Kailua-Kona, HI 96740

Re: West Hawaii Regional Fishery Management Area Rule (WHRFMA) Proposals

To whom it may concern,

I am native Hawaiian and active scuba diver since 1984. The Kona coast has always been my favorite place to visit because of the excellent diving conditions and relative abundance of marine life in comparison to Oahu. I am encouraged by the protective measures previously implemented in West Hawaii and have seen firsthand an increase in fish abundance over the past decade.

I am writing in support of the recommended changes to the WHRFMA Administrative Rules with the adoption of Chapter 13-60.4.

The elimination of spearing using compressed gas is important to protect vulnerable species, especially at night. I saw the effects of unregulated spearing in American Samoa in 1997, where few adult fish were encountered and small ornamental fish were terrified by the sound of diver's bubbles.

I support the creation of an FRA at Ka'ohe Bay, one of the best shore diving sites in South Kona.

I support the adoption of an aquarium fish White List and associated bag and size limits for Yellow tang, Kole, and Achilles tang.

I support the protection of sharks, rays, and COTS predator snails.

I support the clarification of West Hawaii Aquarium Fishery regulations

I support the clarification of rules regarding Puako and Keauhou Bay

I support the clarification of rules regarding lay nets

Mahalo,

G. Keoki Stender

~~~~~  
From: Kekaulike Tomich

Sent: Tuesday, December 18, 2012 7:27 PM

To: darkona@hawaiiantel.net

Subject: Testimony West Hawaii Rules Package

My name is Kekaulike Tomich, I am from Kaupulehu, North Kona. I support the proposed rule package. Sharks, rays, and crown of thorn predators need protection. I think the more rare animals on the white list should have bag limits. I strongly support the ban on scuba spearing. When I dive I take maybe 15 pounds of fish for my home table. Many of those who testified at the public hearing take for commercial purposes. Taking 400-800 pounds is not pono to me. If it were still the 70's when only had a few guys taking that much, that is one thing, but today there are many more people using the resource, and the cumulative effect is greater. Many mentioned that they rotate where they go, that doesn't mean someone else, following their own rotation, won't pound the same area the following night. Again, the cumulative is great. I hope DAR can use some of the testimony to make rules that are pono, even to those who testified against these rules. Even those who testified against the rule had some positive comments such as bag limits, spawning seasons, L50 as the minimum size limit, and a maximum size limit for all species of interest.

Malama kakou i ka honua.  
~~~~~

From: TERRY - MARIE SCHROEDER

Sent: Monday, December 03, 2012 1:54 PM

To: darkona@hawaiiantel.net

Subject: In support of WHRFMA Proposed Rule Chapter 13-60.4

Importance: High

To Department of Land & Natural Resources, Division of Aquatic Resources:

My husband and I volunteer and work on doing studies for the West Maui Area KHFMA. We have loved and been visiting Maui for the past 27 years. We finally moved here permanently last year. We have witnessed the decline in the reefs and work hard to protect it, keep it clean, and share our knowledge with anyone who will listen/are interested. PLEASE know how important this is to our community, our tourism, our ecology system and our ocean and world!

I fully support the West Hawai'i Regional Fishery Management Area Amendments including:

- A ban on SCUBA/Rebreather spearfishing

- Total Protection for 9 species of sharks and rays
- Total Protection for 2 Crown-of-Thorns predators

- Establishing another Fish Replenishment Area (FRA) where aquarium collecting is prohibited at Pebble Beach, South Kona.

- Protection from aquarium collecting of *all* coral reef fish and invertebrates except for 40 fish species contained on a permitted 'White List'.

- Establishing a West Hawai'i aquarium collecting permit as step toward the development of a limited entry fishery.
- three other minor amendments to other rules (Puako FMA, Keauhou FMA & lay gill nets) which strengthen and clarify the rules.

12/3/12

Marie Schroeder

Marie Schroeder

From: Janice Palma-Glennie **Sent:** Wednesday, December 05, 2012 4:24 PM
To: darkona@hawaiiantel.net
Subject: New rules package
Importance: High

Aloha,

First, I am absolutely opposed to reef fish collection and have seen, first-hand, the loss of fish populations in the 30 years I have lived and dived in Kona.

Next, it's clear that these new rules ignore the fact that so many people disagree with fish collecting, but that improvements won't be made without adopting this rules package. This seems unfair to those who support ecosystem protection but who feel that our state is unwilling to do the right thing, which is to stop commercial aquarium fish collection.

So, having said that, I support the positive changes in this package, but hope that new rules banning fish collection on all islands will be considered and adopted as soon as possible.

Mahalo,
Janice palma-glennie

I support:

A ban on SCUBA/Rebreather spearfishing

Total Protection for 9 species of sharks and rays (long overdue)

Total Protection for 2 Crown-of-Thorns predators

Establishment of another Fish Replenishment Area (FRA) where aquarium collecting is prohibited at Pebble Beach, South Kona. This will add to the 9 other FRAs (comprising 35.2% of the coastline) already so protected.

Protection from aquarium collecting of *all* coral reef fish and invertebrates (no exceptions)

Establishing a West Hawai'i aquarium collecting permit as step toward the development of a limited entry fishery

From: SandraScar@aol.com
Sent: Saturday, December 01, 2012 7:16 AM
To: darkona@hawaiiantel.net
Subject: Re: Support for WHI coral reef management

To the Department of Land and Natural Resources, Division of Aquatic Resources:

The Hawaii Division of Aquatic Resources (DAR) is developing and implementing management rules to help insure the long-term vitality of West Hawai'i's coral reef communities. This effort, facilitated and nurtured by the West Hawai'i Fisheries Council (WHFC), is the result of over ten years of research, committee meetings, and public discussions.

I strongly support the rules package, which proposes several very important and essential provisions for West Hawai'i's reefs including:

A ban on SCUBA/ Rebreather spearfishing

Total Protection for 9 species of sharks and rays

Total Protection for 2 Crown-of-Thorns predators

Establishing another Fish Replenishment Area (FRA) where aquarium collecting is prohibited at Pebble Beach, South Kona. This will add to the 9 other FRAs (comprising 35.2% of the coastline) already so protected.

Protection from aquarium collecting of *all* coral reef fish and invertebrates except for 40 fish species contained on a permitted 'White List

Establishing a West Hawai'i aquarium collecting permit as step toward the development of a limited entry fishery

The rules package also has three other minor amendments to other rules (Puako FMA, Keauhou FMA & lay gill nets) which strengthen and clarify the rules.

Please adopt this well-researched rules package, which has the support of the West Hawaii community.

Aloha,
Sandra Scarr
Holualoa

12/1/12

SUPPORT FOR RULE AMENDMENT

I am writing to express my support of the Hawaii Regional Fishery Management Area amendment. This letter will be brief because it repeats arguments that you have already heard.

Passing the amendment is a good compromise because it would reduce the collection of aquarium fish without hurting those who depend on this trade as a living. Unless the amendment is passed, commercial collectors will continue to operate without reasonable restrictions.

Some people will argue that that the white list includes too many species but this list is a good beginning to protect species that have become depleted. In time, these species will reproduce to build healthier populations instead of suffering in someone's private fish tank.

The amendment would also add protection for sharks, rays and other invertebrates, an additional provision to help preserve our reefs. These very special ecosystems are fragile and need out vigilance and protective measures because the ocean supports our lives and the economy in very complex ways.

Human beings have the power to choose. It is our responsibility to choose wisely. The proposed amendment is not perfect and will leave both sides wishing for more, but it is a good compromise and should be passed.

Susan Olson

WRITTEN TESTIMONY FOR: Public hearing to adopt a new rule- Chapter 13-60.4, West Hawai'i Regional Fishery Management Area, Hawai'i (WHRFMA) and amend regulations of the following Hawai'i Administrative Rules (HAR): Chapter 13-54, Puako Bay and Puako Reef Fisheries

Management Area; Chapter 13-57, Keauhou Bay Fisheries Management Area; and Chapter 13-75-12.4 Lay nets.

I SUPPORT THE RULE CHANGES PROPOSED.

The fisheries in West Hawaii are being depleted and there is a great need for better management. The changes proposed are a good start in developing a more reasonable management framework. The West Hawaii Fisheries Council recognized this need many years ago and has been working on improving the rules to better protect and manage the fish populations along our coast. This was not a task that was taken lightly. The Council spent more than 10 years gathering scientific data in addition to input from the various stakeholders in the region. The Council includes member from a wide range of fishers, scientists, environmentalists, teachers, tourist and dive industry, aquarium collectors, cultural practitioners, the public, and State officials.

We have built a consensus among these groups and come up with these proposed changes that were unanimously adopted by the Council. I think this effort represents the best scientific information available. Fishing is a big part of the Hawaiian culture and was based on a strict management system that supported a healthy vibrant marine ecology. That system recognized a balance between harvesting the ecosystem for food and protecting sustained fishery populations. These management suggestions attempt to regain some of that balance.

Thank you.

Dale Sarver, Ph.D.
Marine Ecologist
West Hawaii Fisheries Council Member
Fisherman



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keith@ornamentalfish.org www.ornamentalfish.org

Division of Aquatic Resources
74- 380B Kealakehe Pkwy.
Kailua-Kona, HI 96740

17 December 2012

Dear Sir,

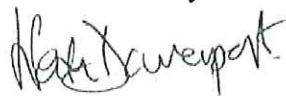
West Hawaii Regional Fishery Management Area rules package

OATA represents the interests of over 700 businesses in the ornamental fish industry throughout the UK. A number of these import and supply ornamental fish from Hawaii to aquatic retailers. Ornamental marine fish imported from Hawaii are held in high regard for their quality. This is a reflection of the already high standards of care with which they are caught and the husbandry in the supply chain.

OATA has a long track record in promoting best practice, for instance through our Code of Conduct and working with the Marine Aquarium Council, as well as data gathering via such initiatives as the Global Marine Aquarium Database.

Clear rules effectively managed to ensure that fish stocks are sustainable is in the best interests of all concerned. The new rules will clarify key management matters such as improved record keeping, bag limits, size limits and species lists is reasonable and should be adopted to ensure the continued health of the reefs, the viability of the fisheries and the livelihoods which rely upon them. Thus we support the proposed rule package as an important part of achieving these outcomes which are important to us all.

Yours faithfully



Keith Davenport
Chief Executive

~~~~~

**From:** Bill Anderson  
**Sent:** Wednesday, December 05, 2012 9:49 AM  
**To:** William J. Walsh  
**Subject:** Proposed DAR WHRFMA Rules

Please find attached my support letter for the new DAR WHRFMA Rules.

To Whom It May Concern:

The coral reefs are one of the most important reasons why my family and I visit West Hawaii on a regular basis. The loss of such an important resource would be a tragedy for all who want long term health and biodiversity of the coral reef. I have a strong interest in supporting effective management of the reef resources. Many years of good scientific research have gone into the process of developing management rules to help insure the long term vitality of West Hawaii's coral reef communities. Now, before it's too late to save this dwindling resource, is the time to implement these new rules. Having attended the public discussions, it is mind boggling to learn and witness all the various delay tactics that have been put in front of the West Hawaii DAR in its many efforts to save your/our reef resources.

Let's get these new rule clarifications of sustainable collecting in force so everyone interested is abiding by the same rules! I declare my support of approval of the new rules package. It's a huge step forward for good fisheries management in West Hawaii.

Sincerely submitted,  
Trish Anderson  
Washington State and Kona, HI

**From:** Kunar Samoa  
**Sent:** Monday, December 03, 2012 8:36 AM  
**To:** [darkona@hawaiiantel.net](mailto:darkona@hawaiiantel.net)  
**Subject:** My Testimonyfor Protecting reef fish

Date: Mon, 3 Dec 2012 09:43:48 +0000

Dear Sir: I wish I could attend your public hearing to express my support for the ban of SCUBA Spear fishing and limiting of numbers of Acquarium species to 40. Unfortunately, I have no vehicle and I live far in Waikoloa Village. I am from the Marshall Islands and I just moved to live in Kona last March 2012. During my short here, I am amazed of the richness of the marine reef fish spieces here at Kona coastal waters. However, because these coastal reef fishes do not migrate far and wide that they are very sustible to over fishing and population depletion especially by uses of destructive modern fishing methods like SCUBA spearing. Another negative impact on these reef resources is the proliferation of the number of fishermen on the island from neighboring Pacific Islands and Asia. My testimony therefore is ban use of destructive SCUBA Spearing in designated coastal areas as may be approved by this proposed law. Should you need further clarifications, please do not heshgtate to contact. Thank you for the opportunity to comment on this very important proposal to protect the vulnarable reef fish species.

**From:** Kathy and Kawika Devine  
**Sent:** Thursday, November 08, 2012 10:45 AM  
**To:** [darkona@hawaiiantel.net](mailto:darkona@hawaiiantel.net)  
**Subject:** Puako FMA

Dr. Bill Walsh,

Aloha. My name is Kawika Devine, we have met several times in the past. I was born and raised in Hilo and was lucky enough to have my parents buy property in Puako in 1952. I have enjoyed the reef since I was 2 years old. I am hoping that instead of clarifying the existing FMA boundary we can extend it out to 100 fathoms like the other FMA's. This would clear up any question of whether aquarium collectors are inside of the 250 yards. I would appreciate your help in pushing for this change.

I also support the other proposed changes especially banning spearfishing with scuba. It would be nice if we could stop the night fishing with nets and spears at night on the Puako reef. At times it looks like a city out there, they take everything and anything. When you go snorkeling the next day huge rocks and coral heads are turned over and left. No respect for the reef. One other thing is I would like to see stricter regulations on octopus. A larger minimum size and a take limit.

Mahalo,  
Kawika Devine

Date: 11/24/12

From: Ron and Michele Croci, land and homeowners

To: the Dept. of Land and Natural Resources,

As a land and homeowner in South Kona, we fully support the West Hawaii Regional Fishery Management area improvements amendment to include the following stipulations:

- Pebble will become a FRA where commercial aquarium fish collectors are PROHIBITED from COLLECTING and often killing these endangered, exquisite fish for some stupid collector
- Spearfishing with scuba gear will be illegal on the west coast of our precious Big Island
- A whitelist of 40 species of fish will be agreed upon for collectors to take but no others and all else will be illegal to take
- The taking of most rays and sharks will be banned. And large mollusks which eat Crown of Thorns will be protected.

Banning of commercial aquarium fish collecting at Pebble Beach with exceptions noted above, must stop as this is a unique aquatic environment for all to enjoy for generations to come and for travelers to visit. These waters must be protected from the short-sighted greed of commercial and private collectors. We would like to see this ban imposed in an area one mile north and south of Pebble Beach.

Signed,

*Ron and Michele Croci*

~~~~~  
From: Denise Ulrich
Sent: Wednesday, December 05, 2012 3:45 PM
To: darkona@hawaiiantel.net
Subject: West Hawaii Fish Management Area Hearing Input

I strongly support the proposed rule package for West Hawaii, including the adoption of a new rule (Chapter 13-60.4), and the amendment of the HAR regulations (Chapter 13-54, Chapter 13-57, and Chapter 13-75-12.4), which collectively represent an important step forward in the conservation of marine resources.

The prohibition of spearfishing on SCUBA in particular is a long overdue regulation, as this practice has the potential to overexploit fish populations, and has been banned elsewhere in the Pacific for this reason.

The white list and associated size and bag limits are also measures that are based on long-term ongoing scientific studies and are intended to prevent overexploitation.

Measures to protect sharks and rays as well as the mollusks Triton's Trumpet and Helmets, all ecologically important species, should be commended as well as passed.

Establishing Ka`ohe Bay as a Fish Replenishment Area is also important.

I understand that this effort has been underway for years, and represents a collaborative and inclusive multi-stakeholder process to develop a rule package that makes a meaningful difference in the conservation landscape.

Thank you for your consideration,

Denise Ulrich

To: State of Hawaii DLNR – DAR Kona
74-380B Kealakehe Pkwy.
Kailua-Kona, HI 96740

Re: West Hawaii Regional Fishery Management Area Rule (WHRFMA) Proposals

To whom it may concern,

I am a coral reef researcher at the Hawaii Institute of Marine Biology. The Kona coast has always been my favorite place to visit because of the excellent diving conditions and relative abundance of marine life in comparison to Oahu. I am encouraged by the protective measures previously implemented in West Hawaii and have seen firsthand an increase in fish abundance over the past decade.

I am writing in support of the recommended changes to the WHRFMA Administrative Rules with the adoption of Chapter 13-60.4.

I support the elimination of spearing while using compressed gas

I support the creation of an FRA at Ka`ohe Bay, one of the best shore diving sites in South Kona.

I support the adoption of an aquarium fish White List and associated bag and size limits for Yellow tang, Kole, and Achilles tang.

I support the protection of sharks, rays, and COTS predator snails.

I support the clarification of West Hawaii Aquarium Fishery regulations

I support the clarification of rules regarding Puako and Keauhou Bay

I support the clarification of rules regarding lay nets

Mahalo,

Yuko Stender

From: Carla Womack

Sent: Friday, November 16, 2012 10:03 PM

To: darkona@hawaiiantel.net

Subject: Dear DNLN, Protect Pebble Beach fish, rays, some sharks... Collectors are depleting Hawaii's beautiful fish for their own monetay gains. Please help us.

Aloha DLNR,
I support items 1, 2, 3, 4 below.
Please help us protect Hawaii's fish.
Mahalo,
Carla Womack

As property owners in Kona Paradise, we feel that you have a special reason to support these environmental efforts which are at the final stage of approval. Wouldn't it be wonderful to own property above a protected reef?

Here is a summary of the new Dept. of Land & Natural Resources Amendments Chapter 13-60.4. (The chapter must be accepted as a whole):

1. Pebble Beach would be closed to commercial aquarium fish collectors (an FRA).
2. A "White List" would limit aquarium collection to 40 species of tropical fish outside of FRAs. (These species account for 95% of collectors' current income.)
3. Spearfishing with SCUBA would be banned in West Hawai'i. Traditional spearfishing would not be affected.
4. There would be protection for rays and most sharks.

DLNR will finally hear public testimony on this Rule Amendment package on December 5 at 6:00pm in Kona at Kealakehe High School. If you will be on island, please come to this public hearing and support the changes!

~~~~~

December 15<sup>th</sup>, 2012

To: DLNR/DAR 74-380B Kealakehe Pkwy, Kailua Kona, HI 96740

From: Justin Viezbicke

Re: Public Hearing Testimony IN SUPPORT of proposed rule change

- Amend Hawaii Administrative Rules (HAR) Title 13, chapters 54 and 57;
- Repeal HAR Title 13, chapter 60.3;
- Adopt HAR Title 13, chapter 60.4; and
- Amend HAR Title 13, chapter 75

Aloha,

I am writing to show my strong support for all of the proposed amendments to the Hawaii Administrative Rule sections relating to the West Hawaii Regional Fishery Management Area.

The HRS 188F requires the DLNR to develop science-based resource management regulations based on close consultation and facilitated dialogue with stakeholders. Through the West Hawaii Fisheries Council and DAR Kona, community members and stakeholders were provided sound science and a forum to discuss concerns, challenges and ultimately make compromises to help better protect West Hawaii's future while still providing for today. I believe that these amendments will help to better protect some of Hawaii's marine coastal resources and that at this point where mans' increasing power to utilize, consume and destroy environments is at an all-time high it is increasingly important to err on the side of caution.

Please support what the West Hawaii community believes is the right way to move forward and choose to make the amendments and changes to Hawaii Administrative Rule sections relating to the West Hawaii Regional Fishery Management Area.

Mahalo,

Justin Viezbicke

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From: Kathryn Lezenby  
Sent: Tuesday, November 27, 2012 6:18 PM  
To: darkona@hawaiiantel.net  
Subject: Comment on Proposed Rules for Aquarium Collection

I'm writing to urge the Department of Land and Natural Resources to strengthen the proposed rules for aquarium collection of Hawaii's reef fish. Hawaii is lucky to be home to a treasure trove of beautiful and fascinating sea life that find sanctuary in its reefs. Please be a good steward of these creatures and their world. Fish tanks are cruel places to confine animals who are adapted to swim freely in the vast expanses of the ocean with its rich variety of landscapes. A fish in a tank is forced to live its entire life confined with other fish with whom it may not be compatible or by whom it may be threatened. During transport or after being sold, fish often die from the living conditions to which they are subjected. Fish are better off in the ocean and are integral to its ecosystem. We can better enjoy and appreciate them there as well. I urge you to adopt much stronger protections for our coral reefs.

Thank you for the opportunity to comment.

Kathryn Lezenby

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Jonatha Giddens  
UH Manoa Biology



Pre-doctoral candidate  
NSF Graduate Research Fellow

To Department of Land & Natural Resources, Division of Aquatic Resources:

I fully support the West Hawai'i Regional Fishery Management Area Amendments including:

- A ban on SCUBA/Rebreather spearfishing
- Total Protection for 9 species of sharks and rays
- Total Protection for 2 Crown-of-Thorns predators
- Establishing another Fish Replenishment Area (FRA) where aquarium collecting is prohibited at Pebble Beach, South Kona.
- Protection from aquarium collecting of all coral reef fish and invertebrates except for 40 fish species contained on a permitted 'White List'.
- Establishing a West Hawai'i aquarium collecting permit as step toward the development of a limited entry fishery.
- three other minor amendments to other rules (Puako FMA, Keauhou FMA & lay gill nets) which strengthen and clarify the rules.

It is our responsibility to ensure that future generations will inherit a vibrant and healthy coastal ecosystem. These FMA amendments are a major step forward towards our goal, and I fully support the immense amount of dedication and hard work that has gone into this collaborative process. Please feel free to contact me with any questions.

Date: 12/07/12

Print name: Jonatha Giddens



Signature:  
~~~~~

From: Terry Schroeder
Sent: Monday, December 03, 2012 1:51 PM
To: darkona@hawaiiantel.net
Subject: Subject: In support of WHRFMA Proposed Rule Chapter 13-60.4

To Department of Land & Natural Resources, Division of Aquatic Resources:

Aloha. As a volunteer for the Kahekili Herbivore Fish Management Area on Maui I fully support the West Hawai'i Regional Fishery Management Area Amendments including:

A ban on SCUBA/Rebreather spearfishing (how unfair is that?)

- Total Protection for 9 species of sharks and rays
- Total Protection for 2 Crown-of-Thorns predators
- Establishing another Fish Replenishment Area (FRA) where aquarium collecting is prohibited at Pebble Beach, South Kona.
- Protection from aquarium collecting of *all* coral reef fish and invertebrates except for 40 fish species contained on a permitted 'White List'.
- Establishing a West Hawai'i aquarium collecting permit as step toward the development of a limited entry fishery.
- three other minor amendments to other rules (Puako FMA, Keauhou FMA & lay gill nets) which strengthen and clarify the rules.

I have seen the how the coral is declining and see the WHRFMA proposed rules as a big step in preserving our coral reefs here on West Maui.

I am interesting in receiving updates on the progression of this proposal.

Aloha,

Terry Schroeder

December 3, 2012

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**From:** Laura Jackson  
**Sent:** Friday, November 30, 2012 10:18 AM  
**To:** darkona@hawaiiantel.net  
**Subject:** Support rule amendments

November 30, 2012

To whom it may concern:

As long time Big Island residents and ocean enthusiasts, we totally support all of the West Hawaii Rule Amendments going to public hearing on December 5<sup>th</sup>, 2012. Despite the fact that we would

appreciate more enforcement of natural resource rules and stricter rules in general, we understand how things work in Hawaii and that compromise is inevitable and these rules are better than the status quo.

We appreciate all of the hard work that has gone in to making this rule amendment package and hope that the West Hawaii voices will be heard loudly over any others outside of West Hawaii. Each of the aspects of the rule amendments (ban SCUBA spearfishing, more AQ rules, close Kaohe Bay to AQ collecting, prohibit take of important COTs predators, sharks and rays, etc) is important. We hope the state government has the temerity to do the right thing and put these rules in to place and not bow down to a few loud voices/squeaky wheels.

Thank you for your consideration,

Mark & Laura Jackson

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December 4, 2012

To Whom It May Concern:

I have been diving off the leeward side of the Big Island for over 15 years. The fish population, particularly specific species, has declined dramatically. Certain species that were seen 10 years ago are rarely if ever seen now. I am not a scientist and won't deny several factors could be contributing to the decline. However, I won't be so naive to assume the fish collecting industry doesn't have a big impact on this decline. I am not blind to the repercussions this would have on that industry, but I find it difficult to support an industry, which robs our natural resources only to stick them in a tank for public display and dramatically shorten their lifespan.

Most of the world is becoming more conscious of these types of non-sustainable industries and it would do the people in this industry well to consider an alternative lifestyle that doesn't require the constant drain from the environment. There wouldn't be so much opposition if there truly weren't an impact.

Susan Wilson

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**From:** Liz Lees  
**Sent:** Friday, November 30, 2012 9:28 AM  
**To:** darkona@hawaiiantel.net  
**Subject:** Dec 5 Testimony

I would like to say I am in support of the proposed rules for reef management. I currently reside in Kona and snorkel several days a week. I spent most of my life in Florida and can say from first hand experience, that sensible natural resource management benefits everyone. While in Florida, I was active in helping establish the inshore limit for commercial netting. While this did have an impact on a few local commercial netters, within one year of the ban, the inshore fishery rebound was AMAZING. This benefited tourism, sport fishing, offshore commercial fishing, local ecology and the local economy by providing a safe haven for fish to spawn and reproduce. Natural resources should be for everyone's enjoyment and benefit, not just a select few who harvest that resource without meaningful regulation.

These proposed rules strike a good balance between the needs of the few (collectors), and the needs of the many (everyone else), to preserve the fishery resources for the future.

Liz Lees

~~~~~

From: Ross, Richard
Sent: Tuesday, December 18, 2012 2:42 PM
To: darkona@hawaiiantel.net
Subject: West Hawaii Fishery Management administrative Rules Package

To whom it may concern,

I am a biologist at an AZA certified institution (though this letter represents my personal view, not necessarily the view of the institution), as well as a long time marine hobbyist, author and speaker. My goal has been to help steer the Marine hobby and industry towards sustainable, responsible and science based practices during my presentations and articles and I am always thrilled when science based action or legislation is discussed.

Therefore I support the Proposed West Hawaii Regional Management Area WHRFMA Administrative Rules Package. The rules package presents a well thought out plan to better manage record keeping, bag limits and size limits should be adopted to help ensure responsible collection and management of Hawaii's coral reef environments, as well as allowing Hawaii's Aquarium Fishery to continue supporting the local ornamental fisherfolk as well as sharing the beauty of the animals with aquarium enthusiasts.

Please adopt the rule package, and please let me know if I can be of any assistance.

Thank you
Richard Ross
Biologist 2
California Academy of Sciences

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**Testimony in Support of Ch. 13-60.4**

I ardently **support ALL of the proposed changes to Ch. 13-60.3.** These changes are not only vitally important for the continued protection of our precious West Hawaii reefs, they are also the **result of years of collaboration, compromise and consensus** among the representatives of the entire community.

These **changes are appropriate and have been developed with good scientific measurements and informed user evaluations.** They were properly communicated around the community and have had enormous public input. This should not be ignored or downplayed, because the way these rules were developed and presented exemplifies the best **community-based process for reaching appropriate solutions.** (Indeed, we should continue to follow this sensible way of dealing with future West Hawaii resource issues.)

I respectfully request you to **repeal the chapter of the Hawaii Administrative Rules pertaining to the West Hawaii Regional Fisheries Management Area (Ch. 13-60.3) and simultaneously replace it with the new Ch. 13-60.4 in its entirety.**

Thank you,

James Kerr

~~~~~  
From: Steve
Sent: Thursday, November 08, 2012 2:49 PM
To: darkona@hawaiiantel.net
Subject: I support WHFRMA

I am writing to support the West Hawaii Fishery Management Area proposal. My wife and I have been visiting the Big Island for 18 years now and we have finally settled and bought a home in South Kona.

As a local home owner I would like to see the rules proposals pass for the purpose of better regulating the reefs and as an environmentalist I want to see the fish protected from those who would take them out of our waters for the purpose of putting them in tanks or selling them such as the commercial aquarium collectors.

I want to outlaw spearfishing using scuba, and create a list of fish that the collectors can take. Being a swimmer, snorkeler and scuba diver I am in the Kaohe Bay Area frequently and wish it to remain as beautiful and protected as possible. I think the proposed amendment will help deal with this very important issue.

Thank you,

Steve Monahan

From: terri2@hawaii.rr.com
Sent: Monday, November 12, 2012 9:18 AM
To: darkona@hawaiiantel.net
Subject: IN SUPPORT OF WHFRMA AMENDMENT

I support the WHFRMA Amendment. Our oceans and all of its contents are important to our island and our world.

The beauty and abundance of our waters brings thousands of tourists each year. After talking with divers from other parts of the country, who have traveled worldwide to dive, I believe our reefs and our waters are well worth supporting just in terms of the dive tourists they attract. Protecting the creatures who live in and around those reefs is a huge part of supporting and protecting the reefs.

If we continue to ignore the damage we have done to the ocean, we will soon have to live with the ugly consequences. Although this amendment comes years after I think it should have, I don't believe it's too late to change our path of destruction.

I ask that you pass this important environmental amendment on behalf of all Hawaii islanders, their children, and their grandchildren.

Mahalo,

Terri L. Peterson

Subject: Testimony for the Protection of Fish and Wildlife at Pebble Beach, South Kona, Hawaii, USA

To whom it may concern -

My name is Colby Allen. I have been visiting Pebble Beach since 2005. I have enjoyed this natural resource with my family and I am constantly amazed by the vibrancy and diversity of the fish and wildlife that make their home in that bay and reef. I believe that Pebble Beach, the reef, the bay and the fish and wildlife that live there are a unique natural resource because I have not seen anything like it, anywhere else in the world. Because of this uniqueness, I believe Pebble Beach, the reef, the bay and the fish and wildlife should be protected from commercial fishing - especially aquatic commercial fish collectors. I believe this natural resource should be protected for the enjoyment of current and future generations of Hawaiians and Americans,

rather than risking the health and longevity of the hundreds of species of fish and wildlife who live there.

Thank you for your consideration.

Regards,
Colby Allen

12-10-2012

From:
Rebecca Most

To:
Board of Land and Natural
Resources Department of land
and Natural Resources State of
Hawaii

Re: Written testimony in support of the proposed rule and amendments for the West Hawaii Regional Fisheries Management Area

Aloha,

I personally support the proposed rule (Chapter 13-60.4) and proposed rule amendments (Chapter 13-54J 13-57, and 13-75-12.4) for the West Hawaii Regional Fisheries Management Area .I believe that the rules package in its entirety is a great example of management in the right direction to protect our marine resources. The rules are backed by sound science, and these management strategies have been the shown to be successful in many other areas in the Pacific where they have been implemented. The intended benefit of each component of the rules package will protect important predators and reef fish, ensuring that our reefs remain thriving for economic value, food security and ecosystem health. The rules have been developed with careful consideration of all the stakeholders, and are an excellent example of compromise and management for a common good. I encourage you to support this rules amendment, thank you for the opportunity to submit written testimony.

Sincerely,



Rebecca Most

From: Ruby Tzimeas
Sent: Tuesday, December 04, 2012 4:26 PM
To: Dr. Bill Walsh
Subject: Fishery Management Area amendments

Aloha,

I have not participated in the process by which you developed the proposed amendments. I am speaking as someone who was first drawn here by the ocean several decades ago, and who values it and the natural beauty it contains.

We should appreciate how fortunate we are that the waters surrounding our island remain in relatively good condition, and realize how easily this could be lost. Many things threaten the quality of our near-shore waters, and many things need to be addressed. A total ban on collection of fish for aquariums is one important piece of the puzzle. Our marine resources should be harvested exclusively for food production.

So I see the current proposals as a half-measure. Nevertheless, I wholeheartedly support them until more can be done to protect all of our fish.

Mahalo to everyone who invested time and energy in developing these new regulations,

Ruby Tzimeas
Kailua-Kona

~~~~~  
**From:** Kurt and Debbie Black  
**Sent:** Friday, November 09, 2012 5:13 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** SUPPORT AMENDMENT  
**Importance:** High

Aloha,

I, Debbie Black, fully support the WHFRMA Amendment (Chapter 13-60.4).

I live on the Big Island, and I want our reefs to be as healthy as possible.

For many years, I lived on a boat and traveled the world. I have seen what happens when people don't take care of their delicate reef systems. Now, on our island, we can try to keep our reefs full of fish and healthy, or give up and let collectors take the fish away. We can move forward with some regulation or just give up. I choose to support regulation, even if it's not as much as I'd like to see. Banning spearfishing on scuba is good. Some sort of limited list that collectors can take is better than no list. And protecting rays, sharks and some predatory shells is good, too. So, I support this entire package.

Thank you.



Debbie Black

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October 22, 2012

Aloha!

My name is Lorraine Newport. I live in Ocean View, and I love Pebble Beach! I go to the beach just about every weekend and have for over a decade. It's about time that DLNR is passing this Rules Package. It seems that many of the current fish collectors are agreeing to stay away from Pebble Beach but who knows what the future will bring? That is why it's so important to pass this Rules Package and make sure that the bay is protected for the future of our keiki.

I also think that a list of fish that collectors can take is a good idea, even though it sounds like the vast majority of them are on this list! Still, I understand that many fish and invertebrates will be protected. That's good.

Please pass along my support to those at the Public Hearing.

Lorraine Newport

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**From:** Kirk Olsen

**Sent:** Monday, November 05, 2012 8:29 PM

**To:** darkona@hawaiiantel.net

**Subject:** Re: The WHFRMA Amendment

To whom it may concern,

I am writing this testimony to show my full support for the West Hawaii Fishery Regional Management Area (WHFRMA) Amendment.

As a resident of South Kona, and an almost daily user of Pebble Beach, I hope that it will become an FRA. If I never see a

commercial aquarium collector again, it will be too soon!

Also, I strongly support banning spearfishing on scuba. It's against the law in a lot of countries now, and it should be illegal here, too. As for the 'white list,' I wish that some of the fish weren't on it but something is better than nothing. So, I support it.

As a scuba diver, snorkeler, and member of the South Kona community, I love Ka'ohe Bay and our island. I hope that these Proposals pass after such a long wait.

Thanks, Kirk Olsen

Kirk Olsen

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**From:** Jeffrey Iverslie  
**Sent:** Saturday, November 17, 2012 4:11 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** WHRFMA Rule Proposals

To Whom It May Concern:

I am in full support of the WHRFMA Rule Proposals that are coming to Public Hearing on Dec. 5th.

I urge you to protect Pebble Beach by delineating it as an FRA where aquarium fish collecting is prohibited. Because of its accessibility, Pebble Beach is utilized by swimmers, snorkels and divers who specifically come to the beach to enjoy its pristine reef ecosystem. This is an amazing resource, particularly in South Kona, and is deserving of protection.

I understand that this hearing is not about whether or not to permit fish collecting but rather to establish guidelines that will address the needs of all parties. Therefore, I urge you to support the additional proposals that define what can and cannot be taken, thereby protecting our reefs while considering the collectors need to make a living.

Mahalo,

Jeff Iverslie

~~~~~  
From: Patrick Wong]

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Patch Wong

Dear DHNL, My thoughts are that new rules will change a lot, not badly change, but a good kind of change. I've been to Oahu before and have snorkeled there before and guess what? There were very few fishes that I saw, I THINK that in a few years our island of Hawaii could be exactly like Oahu. The new rules will save our island from going under. If SCUBA gear and spearfishing will be prohibited the aquatic life will live in their natural environment. I also have a solution/rule, we should have more "No-take" areas. I've been to a public hearing before, the Kaupulehu Fishing Hearing. My knowledge is not far yet known, so this would be a good experience for me. I think you guys should impose the rules.

Your Friend,

Patch

~~~~~  
**From:** RZ Ullrich

**Sent:** Tuesday, November 06, 2012 4:13 PM

**To:** darkona@hawaiiantel.net

**Subject:** Chapter 13-60.4

To Whom It May Concern:

It is a shame that the entire state of Hawaii is not a marine preserve. Millions of people come here every year to enjoy the reefs that are still healthy and thriving. It is neither sensible nor efficient for the state to save only one small reef at a time. If my understanding that there is only a handful of commercial aquarium collectors taking fish from the reefs is correct, why are they allowed to destroy one of the irreplaceable treasures of our waters that belong to all of us? It is wrong. Is someone getting paid off to look the other way?

I support the Rule Proposals, Chapter 13-60.4 which will add Pebble Beach to the current Fish Replenishment Areas, as well as the other parts of the Package.

Regards,  
Miranda Ullrich

~~~~~  
From: Babara Payne
Sent: Thursday, November 08, 2012 3:24 PM
To: darkona@hawaiiantel.net
Subject: In support of WHRFMA Amendment

As a resident of South Kona and frequent swimmer at Pebble Beach and Kaohe Bay I fully support the proposed amendments by the West Hawaii Regional Fisheries Management Area. I am concerned about the taking of reef fish that is so vital to the health and welfare of the bay. Protecting nature isn't about putting up fences around pristine places to keep people out but to protect the places and resources we depend on for the benefit of all species—plants, animals and people. I support the protection of these vital ecosystems. I love Pebble beach and wish to protect it for harmful aquarium collecting and scuba spear fishing. Not passing this amendment would be a detriment and travesty to this bay, reef and all of its inhabitants.

BarBara A Payne
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## Testimony for West Hawai'i Regional Fishery Management Area (WHRFMA) Rule Proposals

December 2, 2012

Nathaniel Goodale

Dear DLNR:

My name is Nathaniel Goodale. I was born and raised in Kailua-Kona. I am an avid SCUBA diver as well as snorkeler and long distance open ocean swimmer. I have spent a lot of time on the reefs in the West Hawaii area. I believe in the need to protect the fish, sharks, and mollusks covered by these proposed rules and to manage the aquarium fishery. Full protection from all take of any kind would be the best protection, but that simply isn't feasible or practical. This entire rule package, with all its proposed amendments is the best way to protect these organisms and through that protection, the best way to protect their ecosystem.

Please pass and quickly enact this entire rule package.

Thank you,

*Nathaniel Goodale*

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**From:** saule apulskiene  
**Sent:** Thursday, November 29, 2012 2:47 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** In support of WHRFMA Amendments

Aloha,

I fully support the WHRFMA Amendments which include Ka'ohe Bay becoming an FRA.

I support the Rule Amendment Chapter 13-60.4 which will help to protect our ocean resources. I visited South Kona and am pleased that Ka'ohe Bay will be protected from commercial aquarium collecting when this Rule passes through the Public Hearing.

I support the other parts of this Package, too. Please make sure that DLNR knows that we have worked for many years to get more protection for our reefs in West Hawai'i.

Please pass this Package so that aquarium collectors will have some kind of rules to follow, so that spearfishing on scuba will be no more, and that Pebble Beach will be added to the Fish Replenishment Areas.

Saule Apulskiene  
Valdas Tarasevicius

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**From:** Jeff Stark  
**Sent:** Monday, November 26, 2012 9:46 AM  
**To:** darkona@hawaiiantel.net  
**Subject:** In support of WHRFMA Amendments

Hi,

My name is Jeff Stark and I am a homeowner in the Kona Paradise subdivision in South Kona. I fully support the WHRFMA Amendments which include Ka'ohe Bay becoming an FRA. I frequently go to Ka'ohe Bay ('Pebble Beach') and enjoy seeing all the reef fish when I snorkel and dive there. The marine wildlife of West Hawaii is an important natural resource, the beauty of which draws visitors from all over the world. To lose this resource because of the over-collection of fish would be a devastating blow to the Big Island. I believe the proposed amendments will help to protect the marine wildlife of West Hawaii not only for current residents and visitors but for future generations as well.

Aloha,

Bruce Jeffry Stark

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**From:** LYNN BRAITMAN  
**Sent:** Monday, December 03, 2012 6:37 AM  
**To:** darkona@hawaiiantel.net  
**Subject:** Proposed rulenchanges and public hearing

Dear Board

I have been a resident of Puako Beach Drive for 10 years and during this short time I have noticed a significant decline in the health , numbers and incidence of corals and fish. I have also noticed an increased activity of spearfishing, netting, and fishing during the day and night. The impact of this increased use and lack of regulation,combined with the effects of climate change and pollution are devastating this natural resource.

You have the opportunity before you to make a significant contribution to protecting our natural resources for the future by approving these proposed rule changes and the addition of others.

I strongly support your positive actions on this proposals.

Thank you for your consideration,  
lynn Braitman

**From:** Moshe Rapaport  
**Sent:** Thursday, November 08, 2012 3:53 AM  
**To:** darkona@hawaiiintel.net  
**Subject:** In support of WHFRMA Amendment

Aloha,

I support the WHFRMA Amendment. Studies have shown that the aquarium trade on Kona reefs has resulted in significant declines of reef fish. Conversely, closures have resulted in a rebound of targetted species (Tissot and Hallacher 2003, 2004). The reef adjacent to Pebble Beach/Ka'ohē Bay has long been valued by area residents for diving and other activities and should be protected.

References

Tissot, Brian N. and Leon E. Hallacher. Effects of Aquarium Collectors on Coral Reef Fishes in Kona, Hawaii. Conservation Biology 17.6(2003): 1759-1768.

Tissot, Brian N. and Leon E. Hallacher. Evaluating The Effectiveness Of A Marine Reserve Network In West Hawai'i To Improve Management Of The Aquarium Fishery. Hawaii Coral Reef Initiative and NOAA, 2004.

Moshe Rapaport  
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From: Zac and Nancy
Sent: Wednesday, November 07, 2012 12:24 PM
To: darkona@hawaiiintel.net
Cc: Sue Kellam; Zac & Nancy Zorn
Subject: In Support of WHFRMA Amendment (Chapter 13-60.4)

Aloha,

Let me begin by stating I am in support of the above subject amendment.

I realize there are several 'parts' to the amendment. I am in favor of the entire amendment; however, if for some reason negative public testimony should create a problem, I hope that the Pebble Beach/Kaohe Bay amendment can move forward. The community has worked hard and has worked with the fish collectors to put forth a compromise that works for all stakeholders. I have provided testimony at past hearings and have spoken with several commercial tropical fish collectors who have voiced their support for a Pebble Beach/Kaohe Bay FRA. It would be devastating if some other part of the amendment package were to destroy all our hard work. Please help us protect this special place.

Nancy A. Zorn
~~~~~

George A. Paleudis

Division of Aquatic Resources  
74- 380B Kealakehe Pkwy.  
Kailua-Kona, HI 96740  
To Whom This May Concern

This document is to serve as testimony in support the DLNR proposed rule packages.

Adoption of the proposed rules would not only support measures necessary to conserve this community's aquatic resources, but would also serve as a definitive endorsement of community based management.

The proposed rules represent (literally) thousands of hours of time and effort donated to the state and our community in an effort to conserve resources that we recognize to be an integral part of our culture, lifestyle and economy.

Thank you for the opportunity to comment on this issue. I can be reached via the contact information provided above, should my further involvement in this matter be warranted.

Respectfully Submitted

George A. Paleudis

Dec. 05, 2012

Good evening. My name is Pamela Harlow, and I reside at 72-1075 Pu'ukala Road, Kailua-Kona.

I'm here tonight to encourage the Board of Land and Natural Resources to adopt the proposed rules including all of the amendments.

The prohibition of SCUBA spearfishing, the establishment of Ka'ohe Bay as a Fish Replenishment Area, the establishment of a White List of allowable species of aquarium fish, the protection of sharks, rays and the large mollusks that prey on crown-of-thorn starfish, and the expanded oversight of aquarium fish collecting are reasonable and balanced measures that will protect the fish and reefs of this biologically rich coastal area for present and future generations.

Thank you for the opportunity to express my support for the West Hawaii Regional Fishery Management Area rule proposals.



To Whom It May Concern,

Re. : WHRFMA Amendments to be considered at public hearing Wed., Dec. 5, 2012

As a resident of Kona Paradise I frequently use the ocean along parts of South Kona for recreational purposes. Over the past seven years I have seen the drastic decline in the numbers of reef fish in this area, making it much less attractive as a dive and snorkel area, and far less naturally alive, in general.

I urge the enactment of tougher regulations to curtail the taking of reef fish throughout Hawaii.

I am in full support of the WHRFMA Amendments which are being proposed and will face a Public Hearing on Wed., December 5th. Thank you,

Dan Swenson

From: Kristina Anderson

Sent: Tuesday, November 06, 2012 9:21 AM

To: darkona@hawaiiantel.net

Subject: IN FAVOR OF PROTECTING PEBBLE BEACH with WHFRMA Amendment (Chapter 13-60.4)

I support of the West Hawaii Fishery Regional Management Area (WHFRMA) Amendment. (Chapter 13-60.4)

I have lived near this bay for a total of 15 years and HIGHLY SUPPORT PROTECTIONS FOR OUR BAY, which will include:

1. Pebble Beach/Ka'ohe Bay will become an FRA where aquarium collectors can no longer come.
2. Spearfishing using scuba gear will be illegal along the west coast of our island.
3. There will be a 'white list' of 40 fish which commercial collectors can take but all others (and invertebrates) will be illegal to take.

There are also some size and bag limits included.

4. Many rays, sharks, and Triton Trumpet & Helmets will be protected.

Mahalo,

Kristina Anderson

To: Division of Aquatic Resources

Aloha,

November 25, 2012

I support as a whole and without objection all provisions as proposed in the following rules package:

Chapter 13-60.4, West Hawaii Regional Fishery Management Area, Hawaii (WHRFMA) and amend regulations of the following Hawaii Administrative Rules (HAR): Chapter 13-54, Puako Bay and Puako Reef Fisheries Management Area, Chapter 13-57, Keauhou Bay Fisheries Management Area and Chapter 13-75-12.4, Lay nets.

Having collected aquarium fish in Hawaii for 45 years I believe these provisions are pro-active and will help to ensure the current sustainable aquarium fisheries into the future. Further these changes should add other benefits, for example clarification of boundaries. The non- aquarium provisions will help to manage other aquatic resources.

Sincerely,  
Anthony Nahacky

~~~~~  
From: Kara Osada-D'Avella
Sent: Sunday, December 02, 2012 11:08 AM
To: Dr. Bill Walsh; Laura Livnat
Subject: Testimony for Matthew and I

As an 18 year resident of Hawaii who has worked as a Dive Instructor and Captain I am in full support of all of the West Hawaii Rule amendments that will be brought forth during the December 5th, 2012 public hearing. I believe it's about time Hawaii stopped the take of fish by SCUBA spearfishing. That it is long overdue that we have a complete no take of sharks, rays and COT predators. That although I would like to see a complete ban on aquarium collection in West Hawaii, I understand the need for compromise and believe the White List of 40 species meets this.

Thank you for your consideration

Matthew D'Avella

~~~~~  
**From:** linda hour  
**Sent:** Thursday, November 08, 2012 9:11 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** Supporting Rule Proposals

Good Morning,  
I support the Rule Amendment Chapter 13-60.4 which will help to protect our ocean resources. I live in South Kona and am pleased that Ka'ohe Bay will be protected from commercial aquarium collecting when this Rule passes through the Public Hearing.

I support the other parts of this Package, too. Please make sure that DLNR knows that we have worked for many years to get more protection for our reefs in West Hawai'i. Please pass this Package so that aquarium collectors will have some kind of rules to follow, so that spearfishing on scuba will be no more, and that Pebble Beach will be added to the Fish Replenishment Areas.

Mahalo,  
Linda Cuthbetson

**From:** Richard Landon  
**Sent:** Friday, November 02, 2012 7:54 AM  
**To:** darkona@hawaiiantel.net  
**Subject:** Rule Proposals, Chapter 13-60.4

To Whom It May Concern:

I support the Rule Proposals, Chapter 13-60.4, which will add Pebble Beach to the current Fish Replenishment Areas. I also support the other parts of the Package. It is a pity that this entire state is not a marine preserve. Millions of people come here, like me, every year to enjoy the reefs that are still healthy and thriving. However, if the state chooses to only save one small reef at a time, then I will show my support. It is my understanding that there are only a handful of commercial aquarium collectors taking fish from the reefs. Why are they allowed to continue to do this? It is wrong.

Thank you,

Richard Landon

~~~~~

November 2, 2012

To Whom It May Concern:

I support the Rule Proposals, Chapter 13-60.4, which will add Pebble Beach to the current Fish Replenishment Areas. I also support the other parts of the Package. It is a pity that this entire state is not a marine preserve. Millions of people come here, like me, every year to enjoy the reefs that are still healthy and thriving. However, if the state chooses to only save one small reef at a time, then I will show my support. It is my understanding that there are only a handful of commercial aquarium collectors taking fish from the reefs. Why are they allowed to continue to do this? It is wrong.

Thank you,

Margaret Zorn

~~~~~

**From:** Charmaine  
**Sent:** Tuesday, November 06, 2012 11:50 AM  
**To:** darkona@hawaiiantel.net  
**Subject:** Support of amendment

Good Morning,

I support the Rule Amendment Chapter 13-60.4 which will help to protect our ocean resources. I live in South Kona and am pleased that Ka'ohē Bay will be protected from commercial aquarium collecting when this Rule passes through the Public Hearing.

I support the other parts of this Package, too. Please make sure that DLNR knows that we have worked for many years to get more protection for our reefs in West Hawai'i. Please pass this Package so that aquarium collectors will have some kind of rules to follow, so that spearfishing on scuba will be no more, and that Pebble Beach will be added to the Fish Replenishment Areas.

Mahalo,  
Charmaine Hackney

~~~~~  
From: Gil Robinson
Sent: Thursday, November 08, 2012 12:27 AM
To: darkona@hawaiiantel.net
Subject: In support of WHFRMA Amendment

I support the WHFRMA Amendment (Chapter 13-60.4). The following are just a FEW of the reasons:

- * Pebble Beach/Ka'ohe Bay in South Kona will become an FRA where aquarium collectors can no longer come.
- * Spearfishing using scuba gear will be illegal along the west coast of our island.
- * There will be a 'white list' of 40 fish which commercial collectors can take but all others (and invertebrates) will be illegal to take. There are also some size and bag limits included.
- * Many rays, sharks, and Triton Trumpet & Helmets will be protected.

As a citizen of Hawaii, I cannot think of any reason NOT to support this!

Gilbert A. Robinson

~~~~~  
**From:** daiva  
**Sent:** Tuesday, November 06, 2012 10:14 AM  
**To:** darkona@hawaiiantel.net  
**Subject:** SUPPORT of Amendment

Good Morning,  
I support the Rule Amendment Chapter 13-60.4 which will help to protect our ocean resources. I live in South Kona and am pleased that Ka'ohe Bay will be protected from commercial aquarium collecting when this Rule passes through the Public Hearing.  
I support the other parts of this Package, too. Please make sure that DLNR knows that we have worked for many years to get more protection for our reefs in West Hawai'i. Please pass this Package so that aquarium collectors will have some kind of rules to follow, so that spearfishing on scuba will be no more, and that Pebble Beach will be added to the Fish Replenishment Areas.

Mahalo,  
Daiva Rimkus

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**From:** Ruta Ducinskaite  
**Sent:** Friday, November 30, 2012 10:54 AM  
**To:** darkona@hawaiiintel.net  
**Subject:** in support of WHRFMA Amendments

Aloha,  
I support the Rule Amendment Chapter 13-60.4 which will help to protect our ocean resources. I visited South Kona and am pleased that Ka'ohe Bay will be protected from commercial aquarium collecting when this Rule passes through the Public Hearing.  
I support the other parts of this Package, too. Please make sure that DLNR knows that we have worked for many years to get more protection for our reefs in West Hawai'i.  
Please pass this Package so that aquarium collectors will have some kind of rules to follow, so that spearfishing on scuba will be no more, and that Pebble Beach will be added to the Fish Replenishment Areas.

Ruta Ducinskaite,

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Aloha!

November 2nd, 2012

Please pass along my complete support for Ka'ohe Bay being made a Fish Replenishment Area. As a full-time resident of South Kona, I often go to the bay where I enjoy swimming, snorkeling, diving, and just relaxing. It is a relief to know that it will finally be off-limits to fish collectors. I sometimes see spearfisherman using scuba in the bay, and the fact that this form of spearfishing will be illegal is also a positive change. I fully endorse the proposed rule package which passed through the WHFC. In case I cannot attend the public hearing, I would like to make sure that my support is heard.

Dulice Redden

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**From:** Bertha  
**Sent:** Tuesday, December 04, 2012 8:38 PM  
**To:** darkona@hawaiiintel.net  
**Subject:** West Hawaii Public Hearing Testimony

December 4, 2012

I support the West Hawaii Fisheries Council rules package. I also support the proposed no spearing on SCUBA rule, and the proposed rules to protect sharks and rays.

I do not support the Limited Entry/ new West Hawaii license, as this proposed plan has never been discussed before being added to these rules. I also don't support the rule of no spear on a boat with SCUBA gear. I personally don't spear fish while collecting, but use one as a probe, you feel a bit braver when the tax collectors (shark) show up.  
Thank you for your work to manage this fishery.

Bertha F. Basabe  
BIAAF Member

~~~~~  
From: Marianne Bickett [
Sent: Sunday, November 04, 2012 6:18 PM
To: darkona@hawaiiantel.net
Subject: Save Pebble Beach fish and environment

Hello:

I live in California but visit Hawaii often. I have a dear friend who has been a teacher in Kona for many years. Everytime I see aquariums full of tropical fish, I feel so sad. What do we teach our children? As a retired public school teacher, I hope you will consider the ban on the collection of fish at Pebble Beach and continue with preservation of this beautiful beach.

Perhaps we can't save the world but we can take care of one beach at a time and make a huge difference. Education is the key as is taking bold steps in the right direction.

Thank you!

Sincerely,

MBickett

~~~~~  
To: Division of Aquatic Resources

Aloha,

November 25, 2012

I support all provisions as proposed in the following rules package:

Chapter 13-60.4, West Hawaii Regional Fishery Management Area, Hawaii (WHRFMA) and amend regulations of the following Hawaii Administrative Rules (HAR): Chapter 13-54, Puako Bay and Puako Reef Fisheries Management Area, Chapter 13-57, Keauhou Bay Fisheries Management Area and Chapter 13-75-12.4, Lay nets.

My income has been from a mixture of aquarium fish collection and the packing of aquarium fish for export in Hawaii. I do not believe the above regulations will adversely affect me. I believe the proposed changes will provide into the future many benefits for both aquarium and non- aquarium fish.

Sincerely,  
Ulla Carmiencke

~~~~~  
From: August Rimkus
Sent: Tuesday, November 06, 2012 10:03 AM
To: darkona@hawaiiantel.net
Subject: SUPPORT of Amendment

Aloha,
I am writing to show support for the DLNR Rule Proposals (Chapter 13-60.4). I strongly support all the proposals, especially Ka'ohe Bay becoming an FRA. As a resident of South Kona and frequent user of Pebble Beach, I am very happy that it is finally going to be a protected area. I also support no spearfishing using scuba gear and some kind of limit for aquarium collectors. Personally, I don't understand why the restrictions aren't stricter but some rules are better than none!
If we do not protect our reefs and our environment now what will we have in the future?!

Thank you,
August Rimkus

~~~~~  
**From:** Michelle Mennis  
**Sent:** Monday, November 05, 2012 5:38 PM  
**To:** 'adrkona@hawaiiantel.net'  
**Subject:** rules proposal, Chapter 13-60.4

I have had the incredible opportunity to visit Pebble Beach, Hawaii several times and experience the uniqueness of it's gifts. I support the Rule Proposals, Chapter 13-60.4 along with the other parts of this package that will add to the current Fish Replenishment Areas. Too often, Marine preserves are established after catastrophic depletions of these unique kinds of habitats. I urge you to be proactive NOW and pass this proposal for the protection for such an amazing habitat. It will enable future growth, education, habitat studies and protections while this environment is still viable and not after it is beyond repair.

Respectfully,  
Michelle Mennis

~~~~~  
From: donald geier
Sent: Thursday, December 06, 2012 5:19 AM
To: darkona@hawaiiantel.net
Subject: Proposed rules and amendments for the West Hawaii Regional Management Area

Donald Geyer

I fully support the proposed rules and amendments for the West Hawaii Regional Fishery Management Area. I have been a fisherman for over fifty years and have seen first hand, the damage done by targeting the large fish in a population. The breeding success is reduced, and the size of the fish diminishes over time, because of the removal of the genes to produce large fish. That said, to make any progress a compromise must be reached. If the opponents in this issue refuse, nothing will be accomplished. There will be no restrictions and the fish will be lost.

From: Paul Litz
Sent: Wednesday, October 24, 2012 3:44 AM
To: darkona@hawaiiantel.net
Subject: Support Rule Chapter 13-60.4

To whom it may concern:

Please count me to support the Rule Package which is going to a Public Hearing on December 5. I support Pebble Beach becoming an FRA, no spear fishing on SCUBA, and the creation of a 'white list.' I love the Big Island, and it's great to know that DLNR is moving in the right direction in protecting some of its important resources.

Yours truly,
Paul Litz

From: Dick Dresie
Sent: Wednesday, November 07, 2012 11:06 AM
To: darkona@hawaiiantel.net
Subject: Rules Amendment Package

November 7, 2012

To all at DAR:

When Act 306 passed, way back in 1999, I was somewhat disappointed that only 35% of the West Hawaii coastline was made FRA areas. But, I was pleased that some action was being taken to protect our valuable resources for decades to come.

Now we have the opportunity to protect a wonderful, peaceful, and interesting spot, called Pebble Beach, so let's DO IT! This Rules Amendment Package

should get passed as soon as possible, because every day we allow overfishing, anywhere, we lose valuable marine life.

Thanks for the chance to speak up, again, on this issue.

Aloha,

Dick Dresie

From: rshall
Sent: Tuesday, December 18, 2012 2:05 PM
To: darkona@hawaiiantel.net
Subject: West Hawaii Fishery Management Rule

Dear Sirs: I am writing in SUPPORT of new provisions which have been proposed for the West Hawaii Regional Fishery Management Area. I also support the adoption of additional amendments to other marine-related rules. Together these actions will contribute substantively to the conservation of marine resources in West Hawaii.

I participated in the evolution of this rules package as a former member of the West Hawaii Fishery Council. I'm sorry that I was not able to testify in support of the rules package during the December 5 hearing. I was traveling at the time.

Aloha, Robert Shallenberger, Ph.D.
Conservation Biologist.

From: Tanya
Sent: Sunday, November 11, 2012 7:09 PM
To: darkona@hawaiiantel.net
Subject: In support of WHFRMA Amendment

To Whom It May Concern,

I am writing you in support the West Hawaii Fishery Regional Management Area (WHFRMA) Amendment.

I have been a frequent visitor to the Big Island for over a decade and have been proud to introduce a number of friends to the Big Island as well. In this time, I have come to deeply appreciate the variety and beauty of the sea life in Ka'ohe Bay. The actions in this amendment - among them limiting aquarium collection and prohibiting spearfishing - are a small concession to maintain this beautiful place.

Sincerely,

Tanya Kellam

~~~~~  
**From:** Max Lachance  
**Sent:** Tuesday, December 04, 2012 12:26 PM  
**To:** Donna Goodale  
**Subject:** Re: Testimony

Department of Land and Natural Resources Testimony.

Max Lachance

Dear Department of Land and Natural Resources I agree with all of the proposed ideas. I have only lived here a short while (1.5 years) but I have seen the fish and sharks and it would be a shame if we where to lose them. I truly want to help save the aquatic world in its natural form so that generations to come can enjoy it as much as we have.

Thank you, and I hope that we can pass these new rules quickly, effectively and efficiently.

Max Lachance  
~~~~~

From: Dave Shoup
Sent: Wednesday, December 19, 2012 4:05 PM
To: darkona@hawaiiantel.net
Subject: WHRFMA Rule Proposals

Dear Chairman Aila and DAR,

We were unable to attend the public meetings, but we strongly support the West Hawaii Regional Fishery Management Area Rule Proposals by DLNR. While no proposals will totally please everyone, these have been carefully researched and discussed by many interested parties. We urge that these proposals be adopted as soon as possible.

Hawaii has many natural treasures, but surely our coral reefs are at the top. We have spent countless happy hours exploring them and volunteer our time to educate vivitors on reef etiquette and protection.

Mahalo,

David Shoup
Carol Trowbridge
~~~~~

**From:** Tammy Rouleau  
**Sent:** Monday, November 12, 2012 7:38 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** In support of WHFRMA Amendment

darkona@hawaiiintel.net

"I support the WHFRMA Amendment."

Please, consider that the choices we make for the GOOD OF ALL, are much more important than the PROFIT OF A FEW.

The priority is what we choose it to be. There are many ways to earn an income that provide positive outcomes to the greater good of the whole community.

I feel that this is clearly an opportunity to support a higher thought. That thought being a beautiful inspired natural unaltered coastal waters off the pristine shores of Hawaii.

Thank you for your consideration.

Tammy Rouleau

~~~~~  
From: Betsy Morrigan
Sent: Saturday, November 24, 2012 3:55 PM
To: darkona@hawaiiintel.net
Subject: Re: In support of WHFRMA Amendments

TO THE DLNR DAR:

I support the full WHFRMA Amendment package. I am in favor of all the amendments presented here. I live in Kona Paradise and I think the exclusion on aquarium fishing for this area is a very good idea. I am in the water a great deal and I see the number of fish declining. Therefore I would like to see as much of the coast as possible protected by similar rules against aquarium fishing.

I thank the DAR for their efforts in protecting our fishery.

Thank you,
Betsy Morrigan
University of Hawaii professor

~~~~~  
**From:** Steven Colbert  
**Sent:** Tuesday, November 06, 2012 12:28 PM  
**To:** darkona@hawaiiintel.net  
**Subject:** Support for West Hawaii DLNR Rules

November 6, 2012

Aloha Mr. Aila,

I will not be able to attend the meeting on December 5, 2012, to discuss the DLNR rules package for West Hawai'i. However, I wanted to lend my support to these rule changes. In the absence of these regulations, we have already seen the deterioration of the reef ecosystem. The proposed rule changes are a step forward that will help reduce anthropogenic stress on our reef ecosystem. By reducing the top-down pressures on reef organisms, I hope that a balanced ecosystem will prevail.

Mahalo,

Steven Colbert

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Steven Colbert  
Marine Science Department  
University of Hawai'i at Hilo  
200 W. Kawili St., Hilo, HI 96720

Creativity is our greatest natural resource.  
~~~~~

Aloha,

I am writing to you about Rule Package (chapter 13-60.4) to protect Pebble Beach as a protected FRA. This is a wonderful swimming, snorkeling and diving area. We have wonderful reef fish here and they are slowly disappearing. It hurts to see a once beautiful octopus that has been killed by a spear gun being taken from our bay. They are scarce and we need them to breed.

Please help us retain the beauty of our shores and protect those species that are left.

Sincerely,

Richard Gordon
~~~~~

To Whom it may concern,

I am a resident of Kona Paradise, and enjoy the ocean along South Kona. I have noticed a decline in the amount of reef fish, over the past several years. I think that if we don't protect our fish now, there won't be any left to enjoy. I am in full support of tougher regulations regarding the taking of reef fish throughout Hawaii. I fully support the WHRFMA Amendments which are being proposed and will face a Public Hearing on Wed., December 5th.

Thank you,  
Velvet Johnson

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**From:** Doug herkes  
**Sent:** Wednesday, December 05, 2012 11:23 AM  
**To:** darkona@hawaiiantel.net  
**Subject:** Rules Package and Public testimony

Aloha I am a 4th generation native of the Big Island and 7 year member of the West Hawaii Fisheries Council representing the visitor industry. I am **in favor** of the rules package currently under consideration and up for public testimony regarding a ban on scuba spearfishing, a white list for tropical fish collecting, the Kaohe bay addition, and other clarifications. Although the coastline of West Hawaii is one of the best protected anywhere, more is need to insure it's sustainability.

Doug Herkes

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Aloha,

We are contacting you to express our support for the adoption of the proposed rule changes affecting the West Hawai'i Regional Fishery Management Area, DLNR Rule Proposals (Chapter 13-60.4). While we strongly support all of the proposed changes, we specifically want to encourage the establishment of Ka'ohe Bay (Pebble Beach) as a Fish Replenishment Area (FRA). As residents of South Kona and users of Pebble Beach, we consider the designation of Ka'ohe Bay as a protected area to be long overdue.

Regards,

John and Victoria Helgeson

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**From:** Rosanne Shank  
**Sent:** Sunday, November 04, 2012 5:39 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** In support of DLNR rule Chapter 13-60.4

I support the closing of Pebble Beach to commercial aquarium fish collectors. I love scuba diving at this bay and I want to see fish, octopus, manta rays and any other ocean creatures who want to swim my way for many years to come. Please support this rule in order to put more conservation programs in place. We need to work together to help keep the ocean a wonderful place to visit.

Thank you for your consideration in this effort.

Rosanne Shank

~~~~~

From: Fox, Helen
Sent: Saturday, December 01, 2012 9:35 AM
To: darkona@hawaiiantel.net
Subject: RE: Support for WHI coral reef management

Aloha Bill,

I am absolutely happy to provide this written testimony in support of approval of the rules package. As you know I have worked on the coral reefs of West Hawai'i and maintain a strong interest in actively supporting effective management of its unique reef resources. Congratulations to you and WHFC on a giant step forward for enlightened fisheries management in West Hawai'i. I hope the public hearing goes well and let me know if there's more you'd need from me.

Mahalo for all you do,
Helen

Helen E. Fox, Ph.D.

Director, Marine Science | Conservation Science Program | World Wildlife Fund
1250 24th Street NW | Washington, DC 20037 USA | skype: fox.robison |
+1.202.495.4793 (w) | +1.202.640.3070 (bb) | +1.202.293.9211 (fax) | helen.fox@wwfus.org
www.worldwildlife.org/science

~~~~~

**From:** John Hoover  
**Sent:** Monday, November 12, 2012 1:26 PM  
**To:** William j. Walsh  
**Subject:** In support of WHFRMA Amendment

To whom it may concern:

I support the WHFRMA Amendment (Chapter 13-60.4). Prohibiting spearfishing with scuba is a small but important start toward restore some of the larger fish to our reef ecosystems. Establishing a white list for aquarium collectors is a good start toward controlling animals taken for the aquarium trade. Finally, "Pebble Beach" is one of the closest good dive sites to my home in Volcano and I would love to see it protected in some measure.

Sincerely yours,  
John P Hoover

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**From:** Ken Obenski  
**Sent:** Tuesday, November 06, 2012 9:13 AM  
**To:** darkona@hawaiiintel.net  
**Subject:** In support of WHFRMA Amendment.

November 6, 2012

"I support the WHFRMA Amendment."

Ken Obenski

Kaohe

**From:** Ken Obenski **Sent:** Wednesday, December 05, 2012 10:59 PM  
**To:** darkona@hawaiiintel.net; John Sue Kellam  
**Subject:** Administrative hearing 12/5 2012

I attended the hearing at Kealakehe High School about the proposed administrative rules.

The speakers had two basic points of view.

One: The rule are reasonable and should be implemented.

or

Two: I do not approve of the process by which they were determined.

Number two was basically "You didn't do it my way"

Everything I heard convinced me that the proposed rules are as good as we have right to expect and should be implumented.

Ken Obenski .

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**From:** Eric Cohen  
**Sent:** Sunday, November 04, 2012 12:32 PM  
**To:** darkona@hawaiiintel.net  
**Subject:** Support of West Hawaii Council Package

Dr. Walsh,

"I vote to support the West Hawaii Rules Package that supports managing fisheries, not closing them down".

"I support the West Hawaii Rules Package, but don't agree that we need a 4 1/2" size limit on yellow tang since DAR surveys have show that there are as many large breeding populations of yellow tang in the open areas as there are in the FRA's".

"I am in favor of the West Hawaii Rules Package".

Have a Great Day!

Eric Cohen

Sea Dwelling Creatures, Inc - Los Angeles

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**From:** lucinda olsen  
**Sent:** Thursday, November 08, 2012 11:56 AM  
**To:** darkona@hawaiitel.net  
**Subject:** (WHFRMA) Amendment

Aloha!

Please write me down as completely supporting the Rule Amendment that will make Ka'ohe Bay an FRA, outlaw spearfishing using scuba, and create a list of fish that the collectors can take. It's my understanding that all other fish and critters will be off limits if this passes. It's also good that the predators of the crown of thorns will be protected. Thank you for your involvement in this important issue.

Lucinda Olsen

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**EcoEZ Inc.**

December 19, 2012

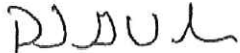
Division of Aquatic Resources  
74-380B Kealakhe Pkwy  
Kailua-Kona, HI 96740  
Email: darkona@hawaiitel.net



Re: West Hawaii Regional Fishery Management Area WHRFMA Administrative Rules Package

EcoEZ Inc. and our SEASmart program, support the proposed administrative rules package put forth for the West Hawaii Regional Fishery Management Area. The marine aquarium trade has been moving in the direction towards sustainable management since the time of the Marine aquarium Council. This action by Hawaii will bring us all closer to a sustainable trade and healthier ecosystems, and will help guide other countries towards improved management. Thank you.

All the best,



David G. Vosseler  
President

~~~~~  
From: Janice Abreu
Sent: Tuesday, November 13, 2012 5:34 PM
To: darkona@hawaiiintel.net
Subject: IN SUPPORT OF RULE AMENDMENTS Ch.13-60.4

To Whom It May Concern:

We have recently become aware of the diminishing biological diversity at Ka'ohe Bay. We have had the pleasure of visiting friends in the area and snorkeling at Pebble Beach and think that it is a priceless asset of the Kona coast, one that needs and deserves protection. We fully support any actions including Rule Amendments Ch. 13-60.4, that would help restore the marine life in Ka'ohe Bay to historical levels.

Respectfully,

Janice Abreu and Phil Kay



December 14, 2012

Division of Aquatic Resources
74-380B Kealakehe Parkway
Kailua-Kona, HI 96740

Subject: West Hawaii Regional Fisheries Management Area Rule Amendments

Mr. William Aila, Jr., Chairperson
Board of Natural Resources:

Thank you for the opportunity to review the subject rule amendments and provide comments.

The Puako Community Association (PCA) recommends the adoption of the proposed rule amendments. We particularly favor the elimination of SCUBA/Rebreather spearfishing in the WHRFMA.

Furthermore, the PCA favors the new detailed map of the Puako Reef FMA and clarification regarding barrier nets and hand nets prohibition.

Respectfully submitted,

Peter Hackstedde
President
Puako Community Association

Puako Community Association, P.O. Box 47345, Kawaihae, HI 96743

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(Note: The following tables are based on individual form testimonies sent to DAR)

To Department of Land & Natural Resources, Division of Aquatic Resources:

**I fully support the West Hawai'i Regional Fishery Management Area Amendments including:**

1. Pebble Beach will become an FRA where commercial aquarium fish collectors cannot collect fish.
2. Spearfishing using scuba gear will be illegal along the west coast of the Big Island.
3. There will be a 'White List' of 40 species of fish which commercial collectors can take, but all others (and invertebrates) will be illegal to take. There are also some size & bag limits included.
4. The taking of most rays & sharks will be banned.
5. Two large mollusks which eat the Crown-of-Thorns sea star (which devours coral) will be protected.

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|--|------------------------|
| <b>Bob Gladden</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 11/13/2012 |  | Kailua-Kona, HI 96740  |
| <b>Duane Erway</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 11/13/2012 |  | Kailua-Kona, HI 96745  |
| <b>Marjorie Erway</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 11/13/2012 |  | Kailua-Kona, HI 96745  |
| <b>Donald Erway</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 11/13/2012 |  | Kailua-Kona, HI 96740  |
| <p>As a long time, avid snorkeler, scuba diver, and underwater photographer, I can plainly see the difference in behavior, in areas where spear fishing is allowed, and areas where it is not.<br/>                     All the large fish, especially large parrot fish, are very hard to photograph, underwater, in areas where spear fishing is allowed. And much easier to approach, in areas where it is not, such as old airport.<br/>                     I feel this ammendment is just the first step. Next, we need to continue to protect fisheries to make them truly sustainable, and we need completely disallow spearfishing in some of our most accessible and popular tourist snorkel spots, such as Kahalu'u, Two Step, and 4 mile bay.<br/>                     I support the ammendment, as a great first step.</p>                                                                                                                                    |            |  |                        |
| <b>Don Beatty</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 11/13/2012 |  | Kailua-Kona, HI 96740  |
| <b>Connie Monell</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 11/13/2012 |  | Kailua-Kona, HI 96740  |
| <b>Hugh Baker</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 11/13/2012 |  | Kailua-Kona, HI 96740  |
| <b>Bruce Miller</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 11/13/2012 |  | Kamuela, HI            |
| <b>Phyllis Connors</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 11/13/2012 |  | Kailua-Kona, HI 96740  |
| <p>I support the White List as a beginning step in protecting our reef fish. I also support the regulations on banning Scuba spear fishing and the taking of sharks, rays, and Triton Trumpet shells. Also, I would like to see more FRAs including Pebble Beach.<br/>                     I feel we need many more restrictions on collectors and fishing. I think collectors should be paying hefty fees and no new permits should be issued. I would like to see fish collecting "phased" out. I would like to see more information for local people catching and eating reef fish. The waters at Manini sometimes have hardly any manini! Even the elders agree that sometimes people are taking too much.<br/>                     I just came back from a vacation on Maui and saw all of 2 yellow tang - very sad. I would also like to see more regulations controlling run off from golf courses and developments. Both water shed and ocean need protection.</p> |            |  |                        |
| <b>Cindi Baker</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 11/13/2012 |  | Kailua-Kona, HI 96740  |
| <b>Judy Volquardsen</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 11/13/2012 |  | Kailua-Kona, HI 96740  |
| <b>Betty Baker</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 11/13/2012 |  | Kailua-Kona, HI 96740  |
| <b>Elly Mothoch</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 11/13/2012 |  | Kona                   |
| <b>Arin White</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 11/13/2012 |  | Kailua-Kona, HI 96740  |
| <b>Heather Howard</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 11/13/2012 |  | Kailua-Kona, HI 96740  |
| <b>Kristen Dowling</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 11/13/2012 |  | Kailua-Kona, HI 96740  |
| <b>Kat Nikolich</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 11/13/2012 |  | Kailua-Kona, HI 96740  |
| <b>Audrey Archer</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 11/13/2012 |  | Kailua-Kona, HI 96740  |
| <b>Allison Gordon</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 11/13/2012 |  | Kailua-Kona, HI 96740  |
| <b>Carol Holmboe</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 11/13/2012 |  | Kailua-Kona, HI 96740  |
| <b>Susan Scott</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 11/13/2012 |  | Captain Cook, HI 96704 |
| <b>David Miller</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 11/13/2012 |  | Captain Cook, HI 96704 |
| <b>Alexia Benrezkellani</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 11/13/2012 |  | Kailua-Kona, HI 96740  |

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|---------------------|------------|--|--------------------------|
| BG Johnson          | 11/13/2012 |  | Kailua-Kona, HI 96740    |
| Mariel Doeschale    | 11/13/2012 |  | Puiflyk, The Netherlands |
| Stacy Siegel        | 11/13/2012 |  | Captain Cook, HI 96704   |
| Russell Orr         | 11/14/2012 |  | Kailua-Kona, HI 96740    |
| Dave Booth          | 11/15/2012 |  | Captain Cook, HI 96704   |
| Jennifer Booth      | 11/15/2012 |  | Captain Cook, HI 96704   |
| Michael Bennett     | 11/15/2012 |  | Captain Cook, HI 96704   |
| Emelyn Rivera       | 11/15/2012 |  | Captain Cook, HI 96704   |
| Larry Rivera        | 11/15/2012 |  | Captain Cook, HI 96704   |
| Steve Preston       | 11/15/2012 |  | Captain Cook, HI         |
| Cliff Walters       | 11/15/2012 |  | Captain Cook, HI         |
| Deborah Walters     | 11/15/2012 |  | Captain Cook, HI         |
| Bernard Mayer       | 11/15/2012 |  | Honaunau Hi 96726        |
| Anne Long           | 11/15/2012 |  | Ocean View, HI 96737     |
| Holly Screen        | 11/15/2012 |  | Captain Cook, HI         |
| Dan Malette         | 11/16/2012 |  | Jackson, WY 83002        |
| Robin Maggard       | 11/16/2012 |  | Ocean View, HI 96737     |
| Bandi Maxwell       | 11/16/2012 |  | Chico, CA 95973          |
| Kristopher Haverton | 11/16/2012 |  | Ocean View, HI 96737     |
| Jason Hollingsworth | 11/16/2012 |  | Chico, CA 95973          |
| Phillip Sharkey     | 11/16/2012 |  | Ocean View, HI 96737     |
| Mala Hislger        | 11/16/2012 |  | Ocean View, HI 96737     |
| Ramona Gaspar       | 11/16/2012 |  | Ocean View, HI 96737     |
| Heidi Johansen      | 11/16/2012 |  | Captain Cook, HI 96704   |
| David Malette       | 11/16/2012 |  | Ocean View HI 96737      |
| Liz Brown           | 11/16/2012 |  | Kailua-Kona, HI 96740    |
| Erin Heidrich       | 11/16/2012 |  | Keauhou, HI 96739        |
| Zack Hoffman        | 11/16/2012 |  | Keauhou, HI 96739        |
| James Gordon        | 11/16/2012 |  | Kailua-Kona, HI 96740    |
| Angela Woerner      | 11/16/2012 |  | Kailua-Kona, HI 96740    |
| Sven Lindemann      | 11/16/2012 |  | Holualoa, HI 96725       |
| Philip Bogdanovitch | 11/16/2012 |  | Kailua-Kona, HI 96740    |
| Ian Costello        | 11/16/2012 |  | Kailua-Kona, HI 96740    |
| Nahiku Phillips     | 11/16/2012 |  | Kailua-Kona, HI 96740    |
| Robert Jensen       | 11/16/2012 |  | Kailua-Kona, HI 96740    |
| Kila Quam           | 11/16/2012 |  | Kailua-Kona, HI 96740    |
| Jeremy Wilkins      | 11/16/2012 |  | Kailua-Kona, HI 96740    |
| Laura Roberts       | 11/16/2012 |  | Kailua-Kona, HI 96740    |
| Susan Oliver        | 11/16/2012 |  | Ocean View, HI 96737     |
| Lynn Gordon         | 11/16/2012 |  |                          |
| Christine Gallagher | 11/16/2012 |  | Ocean View, HI 96737     |
| Leigh Mitchell      | 11/16/2012 |  | Ocean View, HI 96737     |
| Enoch Wiseman       | 11/16/2012 |  | Ocean View, HI 96737     |
| Allan Humble        | 11/16/2012 |  | Ocean View, HI 96737     |
| Ted Sanchez         | 11/16/2012 |  | Ocean View, HI 96737     |
| Amanda Andrews      | 11/16/2012 |  | Ocean View, HI 96737     |
| Kirk Shurte         | 11/16/2012 |  | Kailua-Kona, HI 96740    |
| Christine Dupuis    | 11/16/2012 |  | Kailua-Kona, HI 96740    |
| Mark Schroeder      | 11/16/2012 |  | Kailua-Kona, HI 96740    |
| Les Hawger          | 11/17/2012 |  | Hilo, HI 96721           |
| Emily Harvell       | 11/17/2012 |  | Hilo, HI 96721           |

|                       |            |  |                        |
|-----------------------|------------|--|------------------------|
| Anthony Yates         | 11/17/2012 |  | Kurtistown, HI 96760   |
| Ryan Holmboe          | 11/17/2012 |  | Kailua-Kona, HI 96740  |
| Peter Miller          | 11/17/2012 |  | Kailua-Kona, HI 96740  |
| Michael Bernstone     | 11/17/2012 |  | Waikoloa, HI 96738     |
| Michael Hazard        | 11/17/2012 |  | Keauhou, HI 96739      |
| Mark Devenot          | 11/17/2012 |  | Kamuela, HI 96743      |
| Aaron Hale            | 11/17/2012 |  | Ocean View, HI 96737   |
| Jeff Dickerson        | 11/17/2012 |  | Ocean View, HI 96737   |
| Dennis James          | 11/17/2012 |  | Ocean View, HI 96737   |
| Richard Popper        | 11/15/2012 |  | Kailua-Kona, HI        |
| Donna Werk            | 11/17/2012 |  | Captain Cook, HI 96740 |
| Hal McDougal          | 11/17/2012 |  | Captain Cook, HI 96704 |
| Leslie Bennett        | 11/17/2012 |  | Kailua-Kona, HI 96740  |
| Kupono Clark          | 11/17/2012 |  | Ocean View, HI 96737   |
| Larry Bock            | 11/17/2012 |  | Ocean View, HI 96737   |
| Makayla Green         | 11/17/2012 |  | Ocean View, HI 96737   |
| Floyd Lester          | 11/17/2012 |  | Ocean View, HI 96737   |
| Jerry Wegwessel       | 11/17/2012 |  | Ocean View, HI 96737   |
| Evelyn Crapser        | 11/17/2012 |  | Ocean View, HI 96737   |
| Russell Kaetsu        | 11/17/2012 |  | Kailua-Kona, HI 96740  |
| Gary Golding          | 11/17/2012 |  | Naalehu, HI 96772      |
| Michael Pusuh         | 11/17/2012 |  | Ocean View, HI 96737   |
| Patricia McEldowney   | 11/17/2012 |  | Captain Cook, HI 96704 |
| Eva Zamorano          | 11/17/2012 |  | Naalehu, HI 96772      |
| Greg Bland            | 11/17/2012 |  | Naalehu, HI 96772      |
| Mona Himell           | 11/17/2012 |  | Ocean View, HI 96737   |
| Paul Santos           | 11/17/2012 |  | Ocean View, HI 96737   |
| Ann McLemore          | 11/17/2012 |  | Naalehu, HI 96772      |
| Randy Elton           | 11/17/2012 |  | Captain Cook, HI 96704 |
| Jene Green            | 11/17/2012 |  | Ocean View, HI 96737   |
| Tessa Wirtz           | 11/17/2012 |  | Ocean View, HI 96737   |
| Chuck Green           | 11/17/2012 |  | Ocean View, HI 96737   |
| Flo Adams             | 11/17/2012 |  | Pr. Rupert, B.C.       |
| Berta Miraiedo        | 11/17/2012 |  | Naalehu, HI 96772      |
| Carol Lyelo           | 11/17/2012 |  | Pr. Rupert, B.C.       |
| Joseph Moring         | 11/17/2012 |  | Naalehu, HI 96772      |
| Lory Miller           | 11/17/2012 |  | Pahala, HI 96777       |
| Chris Jacobsen        | 11/17/2012 |  | Ocean View, HI 96737   |
| Donna Goering         | 11/17/2012 |  | Ocean View, HI 96737   |
| Susan Martin          | 11/17/2012 |  | Naalehu, HI            |
| Thomas Ramirez        | 11/17/2012 |  | Ocean View, HI 96737   |
| Edward Wirtz          | 11/17/2012 |  | Ocean View, HI 96737   |
| Andrew Green          | 11/17/2012 |  | Ocean View, HI 96737   |
| Lenda Hand            | 11/17/2012 |  | Honaunau, HI 96726     |
| Gary Adkinson         | 11/17/2012 |  | Ocean View, HI 96737   |
| Jeremich Bullfrog     | 11/17/2012 |  | Ocean View, HI 96737   |
| Vickie West           | 11/17/2012 |  | Ocean View, HI 96737   |
| William Radtkc        | 11/17/2012 |  | Keauhou, HI 96739      |
| Jeffrey Grossenbacher | 11/17/2012 |  | Ocean View, HI 96737   |
| Ed Wirtz III          | 11/18/2012 |  | Ocean View, HI 96737   |
| Marci Oah             | 11/18/2012 |  | Wasilla, AK 99623      |

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|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|--|---------------------------|
| Chris Hunter                                                                                                                                                                                                                                        | 11/18/2012 |  | Kealakekua, HI 96750      |
| Jeff Sharp                                                                                                                                                                                                                                          | 11/18/2012 |  | Keauhou, HI 96739         |
| Jeanne White                                                                                                                                                                                                                                        | 11/18/2012 |  | Kailua-Kona, HI 96740     |
| Max Hunchion                                                                                                                                                                                                                                        | 11/18/2012 |  | Kailua-Kona, HI 96740     |
| Sterling Dorje                                                                                                                                                                                                                                      | 11/18/2012 |  | Kailua-Kona, HI 96740     |
| Cathy Swedelins                                                                                                                                                                                                                                     | 11/18/2012 |  | Kailua-Kona, HI 96740     |
| Paul Regan                                                                                                                                                                                                                                          | 11/18/2012 |  | Kailua-Kona, HI 96745     |
| Nancy Regan                                                                                                                                                                                                                                         | 11/18/2012 |  | Kailua-Kona, HI 96740     |
| Liz Swan                                                                                                                                                                                                                                            | 11/18/2012 |  | Honaunau, HI 96726        |
| Dean Towle                                                                                                                                                                                                                                          | 11/18/2012 |  | Kailua-Kona, HI 96740     |
| Christopher Ivey                                                                                                                                                                                                                                    | 11/18/2012 |  | Holualoa, HI 96725        |
| Trisha Hansen                                                                                                                                                                                                                                       | 11/18/2012 |  | Kailua-Kona, HI 96740     |
| Jeanne Borugois                                                                                                                                                                                                                                     | 11/18/2012 |  | Kamuela, HI 96743         |
| Roberto Agre                                                                                                                                                                                                                                        | 11/18/2012 |  | San Francisco, CA 94131   |
| Claire Grant                                                                                                                                                                                                                                        | 11/18/2012 |  | Kamuela, HI 96743         |
| Shigeko Jackson                                                                                                                                                                                                                                     | 11/18/2012 |  | Captain Cook, HI 96704    |
| Allen Slin                                                                                                                                                                                                                                          | 11/18/2012 |  | San Francisco, CA 94131   |
| Stefanie Delmont                                                                                                                                                                                                                                    | 11/18/2012 |  | Holualoa, HI              |
| Nancy Hitzemann                                                                                                                                                                                                                                     | 11/18/2012 |  | Kailua-Kona, HI 96740     |
| JE Hitger                                                                                                                                                                                                                                           | 11/18/2012 |  | Kailua-Kona, HI 96740     |
| Nathaniel Jackson                                                                                                                                                                                                                                   | 11/18/2012 |  | Captain Cook, HI 96704    |
| Kristoffer Haugen                                                                                                                                                                                                                                   | 11/18/2012 |  | Sandnes, Norway 4308      |
| Marie Haugen                                                                                                                                                                                                                                        | 11/18/2012 |  | Sandnes, Norway 4308      |
| Michael Talerico                                                                                                                                                                                                                                    | 11/20/2012 |  | Captain Cook, HI 96704    |
| Martha Stephens                                                                                                                                                                                                                                     | 11/20/2012 |  | Kailua-Kona, HI 96740     |
| Stacey Himmel                                                                                                                                                                                                                                       | 11/20/2012 |  | Kealakekua, HI 96750      |
| Heather Laurson                                                                                                                                                                                                                                     | 11/20/2012 |  | Kealakekua, HI 96750      |
| Kathy Brinton                                                                                                                                                                                                                                       | 11/20/2012 |  | Captain Cook, HI 96704    |
| Roslyn Ramsey                                                                                                                                                                                                                                       | 11/20/2012 |  | Captain Cook, HI 96704    |
| Please support the ocean's right to survive!                                                                                                                                                                                                        |            |  |                           |
| Joan Prater                                                                                                                                                                                                                                         | 11/20/2012 |  | Captain Cook, HI 96704    |
| I have been involved in counting fish at a site at Manini Beach, Kealakekua Bay since 2001. Many species of reef fish have greatly increased in numbers during this 11-year time since the FRA's have been in existence, particularly yellow tangs. |            |  |                           |
| Russell Laros                                                                                                                                                                                                                                       | 11/21/2012 |  | Kailua-Kona, HI 96740     |
| Neil Soicher                                                                                                                                                                                                                                        | 11/22/2012 |  | Honokaa, HI 96727         |
| Richard Maletic                                                                                                                                                                                                                                     | 11/25/2012 |  | Captain Cook, HI 96704    |
| Whitney Uldricks                                                                                                                                                                                                                                    | 11/26/2012 |  | Holualoa, HI 96725        |
| Nicholas Bahrdunn                                                                                                                                                                                                                                   | 11/27/2012 |  | Boise, ID 83702           |
| Laina Bahrdunn                                                                                                                                                                                                                                      | 11/27/2012 |  | Boise, ID 83702           |
| Meagan Selvig                                                                                                                                                                                                                                       | 11/27/2012 |  | Kea'au, HI 96749          |
| George Wilson                                                                                                                                                                                                                                       | 11/27/2012 |  | Kailua Kona, Hawaii 96740 |
| Richard Ednie                                                                                                                                                                                                                                       | 11/27/2012 |  | Kamuela, HI 96743         |
| Amanda Ault                                                                                                                                                                                                                                         | 11/28/2012 |  | Kailua-Kona, HI 96740     |
| Robert Stevens                                                                                                                                                                                                                                      | 11/28/2012 |  | Kamuela, HI 96743         |
| Jim Medeiros                                                                                                                                                                                                                                        | 11/28/2012 |  | Honaunau, HI 96726        |
| Teresa Leicher                                                                                                                                                                                                                                      | 11/28/2012 |  | Kailua-Kona, HI 96740     |
| Howell Nagatori                                                                                                                                                                                                                                     | 11/29/2012 |  | Captain Cook, HI 96704    |
| Nick Greenwell                                                                                                                                                                                                                                      | 11/29/2012 |  | Captain Cook, HI 96704    |
| Jean Trueman                                                                                                                                                                                                                                        | 11/29/2012 |  | Honaunau, HI 96726        |
| Jacob Hesterly                                                                                                                                                                                                                                      | 11/29/2012 |  | Ocean View 96737          |

|                      |            |                        |
|----------------------|------------|------------------------|
| Jacob Gomes          | 11/29/2012 | Captain Cook, HI 96704 |
| Robert Dahlager      | 11/29/2012 | Captain Cook, HI 96704 |
| Stephen Lucido       | 11/29/2012 | Calgary, AB T2S OY2    |
| Mary Kahlager        | 11/29/2012 | Captain Cook, HI 96704 |
| Susani German        | 11/29/2012 | Honaunau, HI 96726     |
| Basia Lucido         | 11/29/2012 | Calgary, AB T2S OY2    |
| Yarden Dankner       | 11/29/2012 | Honolulu, HI           |
| Alice Morris         | 11/29/2012 | Kealakekua, HI 96750   |
| Sohrab Dorabji       | 11/29/2012 | Holualoa, HI 96725     |
| Annie Spicer         | 11/29/2012 | Kailua-Kona, HI 96740  |
| Sandra Ednie         | 11/29/2012 | Kamuela, HI 96743      |
| Heather Marlow       | 11/30/2012 | Auke Bay, AK 99821     |
| Rebecca Reed         | 11/30/2012 | Smallsville, CA 95977  |
| Elizabeth Kotowski   | 11/30/2012 | Nottingham, NH 03290   |
| Edward Kotowski      | 11/30/2012 | Nottingham, NH 03290   |
| Elizabeth Kilpatrick | 11/30/2012 | Captain Cook, HI 96704 |

I am a landowner of a home at Manini Beach in Captain Cook as well as an owner of a Kamehameha Schools Land Lease, in Captain Cook, being operated as an organic farm by my husband and me.

We moved to South Kona on the Big Island in 2000; previously I was a schoolteacher and served in our public schools, and my husband was an attorney.

Especially in the past 2-3 years, we have noticed the severe depletion of reef fish. My husband and I swim at least three times per week at Honaunau Bay and at Kealakekua Bay. Both places were severely negatively affected by the tsunami and have been slow to recover their fish populations due to the detrimental affect of the tsunami on the coral, especially at Kealakekua Bay. Why this destruction of coral reefs and fish population have not been taken into account in stopping commercial aquarium reef fish collection along the leeward side of the Big Island is a surprise to us!

Following are my hopes, that when setting limits and laws, that the following are taken into account:

Spear fishing should not be allowed. No one should be able to spear fish in popular swim, snorkel and dive areas on the Big island and spear fishing should be severely limited by commercial companies. With so many tourists and locals enjoying Big island swimming areas, it is very disheartening to see the fish before your eyes being killed for sport and it is dangerous for swimmers to be in the same area as spear fishermen who are killing beautiful fish as well as adding to the destruction of the fish population.

**TOURISM IS THE #1 BUSINESS FOR HAWAII'S INCOME:** Tourists visit the Big Island to see and swim with the beautiful coral reef fish and shoreline fish. It is to Hawaii's financial and ecological advantage to stop commercial reef fish collection on the Big Island, on the West side of the Big Island, in Kealakekua Bay and Honaunau Bay and Pebble Bay, and any other popular area on West Hawaii because tourists swim, snorkel and dive and site see, and bring income into Hawaii.

Commercial Collection of our reef fish must be stopped! They are not "aquarium" fish. They are coral reef fish. Hawaii's tourist industry is being severely negatively affected by allowing commercial fish collection by other countries and other Hawaiian islands' operators. We are seeing our coral reefs decimated by the greedy businessmen who do not care about nor are affected by a decline in our Big Island's tourist industry through their operations. We have been told this quite often recently by travel groups, travel agents and visiting friends and family.

We have swum in areas in Baja California where coral reefs and ocean shorelines were cleaned of all life by aquarium fish collectors and Japanese fisheries; and it is a devastating scene.

In conclusion, I have looked over your "white list" of acceptable fish for collecting for aquariums. IT IS VERY MINIMAL! I would like to see it illegal to collect these fish by commercial aquarium companies and expand the ban to the entire leeward side of the Big Island, in particular, from Kailua Kona, South along the coastline, through Kealakekua Bay, Honaunau Bay, Milolii, through Ocean View and Pebble Beach. That includes all rays and sharks.

The above proposal is a start, and I am in support of it. However, I believe the stricter measures that I've suggested should be put in place IMMEDIATELY.

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |            |  |                          |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|--|--------------------------|
| <b>Sherry Good</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 11/30/2012 |  | Lakewood, CO 80228       |
| <b>Katharine T. McLeod</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 11/30/2012 |  | Waikoloa, HI 96738       |
| <b>Star Lockwood</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 11/30/2012 |  | Kamuela, HI 96743        |
| <b>Brad Moran</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 11/30/2012 |  | Captain Cook, HI 96704+  |
| <b>James Donovan</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 11/30/2012 |  | Captain Cook, HI 96704   |
| <b>Samuel Giese</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 11/30/2012 |  | Captain Cook, HI 96704   |
| <b>Marc R. Rice</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 11/30/2012 |  | Kamuela, HI 96743        |
| <p>I have dived and worked along the West Hawaii coast for 42 years and have witnessed the decline of fish and invertebrate species over those years. I have also witnessed the positive effect of protecting a species (the green turtle (honu), <i>Chelonia mydas</i>) over the last 34 years. We can return our reef biota to a reasonable level but only through strict regulation of fishing practices (personal and commercial). Rules must be set and enforcement supported with money as well as rhetoric.</p> <p>I fully support all of the provisions of amendments as stated and hope that we will be able to continue to refine them to better protect our reefs.</p> <p>Director, HPA/NOAA Sea Turtle Research Program<br/>Hawaii Preparatory Academy</p> |            |  |                          |
| <b>Sydney A. Kraul Jr.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 11/30/2012 |  | Kailua-Kona, HI 96740    |
| <p>6. FURTHER: I object to testimony from uniformed commercial snorkeling interests who try to deceive the public with misinformation that has no scientific basis: especially Maui based commercial tour companies that pretend they know what we need, and that use inflammatory language to scare Hawaii's people. Coercing the vote from a misled public is not a good way to protect Hawaii.</p> <p>7. I am a scientist, and I support the scientific studies done by DAR/DLNR over the past many years, and I support the use of those studies as a basis for determining who to manage our reefs.</p>                                                                                                                                                           |            |  |                          |
| <b>Denni Gaeth</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 12/01/2012 |  | Keaau, HI 96749          |
| <p>5. I do not support the 'White list'.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |            |  |                          |
| <b>Jeff Gaeth</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 12/01/2012 |  | Keaau, HI 96749          |
| <p>5. I do not support the 'White list'.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |            |  |                          |
| <b>Bob Smith</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 12/01/2012 |  |                          |
| <p>Even though I feel that coral reef fish collecting should be banned completely, I think the proposed rule is an excellent step forward in the right direction.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |            |  |                          |
| <b>Emily E. Burt</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 12/01/2012 |  | Honaunau, HI 96726       |
| <b>Mary Ellen Smith</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 12/01/2012 |  |                          |
| <p>Although I feel that coral reef fish collecting should be banned completely, I think the proposed rule is an excellent step forward in the right direction.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |            |  |                          |
| <b>Susan Rickards</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 12/02/2012 |  | Kamuela, HI 96743        |
| <p>Please support this detailed protection for our reefs. I am so in favor of keeping our reefs alive with color and maybe this will appease those who make a trade of selling the delicate beauty at the expense of our tourist trade here and live.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |            |  |                          |
| <b>Margaret Arbo</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 12/01/2012 |  | Captain Cook, HI 96704   |
| <b>Thomas Hartman</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 12/01/2012 |  | Walnut, CA 91789         |
| <b>Susan Friesen</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 12/01/2012 |  | Vernon, BC V1H1C1        |
| <b>Kevin Pittman</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 12/01/2012 |  | Honaunau, HI 96726       |
| <b>Darlene Barrett</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 12/01/2012 |  | Ocean View, HI 96737     |
| <b>Rod Friesen</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 12/01/2012 |  | Vernon, BC V1H1C1        |
| <b>Bruce Corker</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 12/01/2012 |  | Holualoa, HI 96725       |
| <b>Gail Smith</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 12/01/2012 |  | Ocean View HI 96737      |
| <b>Donald MacDougal</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 12/01/2012 |  | Port Charlotte, FL 33953 |
| <b>Carol MacDougal</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 12/01/2012 |  | Port Charlotte, FL 33953 |
| <b>Courtney Lewis</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 12/01/2012 |  | Kerhonkson, NY 12446     |
| <b>Gregory Smith</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 12/01/2012 |  | Ocean View               |
| <b>Bacci Prala</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 12/01/2012 |  | Honaunau, HI 96726       |
| <b>Donna Lettner</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 12/01/2012 |  | Miss.,Canada             |



|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |            |  |                         |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|--|-------------------------|
| <b>Bill Culluna</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 12/01/2012 |  | Holualoa, HI            |
| <b>Roger Kloeping</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 12/01/2012 |  | Kailua-Kona, HI 96740   |
| <b>Steve Johnson</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 12/01/2012 |  | Kailua-Kona, HI 96740   |
| <b>Tim Murray</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 12/01/2012 |  | Laguna Niguel, CA 92637 |
| <b>Florencia Murray</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 12/01/2012 |  | Laguna Niguel, CA 92637 |
| <b>Rowena Vaca</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 12/01/2012 |  | Kailua-Kona, HI 96740   |
| <b>Howie Simon</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 12/01/2012 |  | Kailua-Kona, HI 96740   |
| <b>Colin Gould</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 12/01/2012 |  | Kailua-Kona, HI 96745   |
| <b>Sabine Anoliesen</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 12/01/2012 |  | Kailua-Kona, HI 96745   |
| <b>Selina Rodriguez</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 12/01/2012 |  | Kailua-Kona, HI 96740   |
| <b>Betsy Solis</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 12/02/2012 |  | Kailua-Kona, HI 96740   |
| I do not support the taking of any Fish!                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |            |  |                         |
| <b>J Conlon</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 12/02/2012 |  | Kailua-Kona, HI         |
| <b>Debbie Anderson</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 12/02/2012 |  | Anchorage, AK 99501     |
| <b>William Murray</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 12/02/2012 |  | Kailua-Kona, HI 96740   |
| <b>Christin Walsh</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 12/02/2012 |  | Captain Cook, HI 96704  |
| <p>It is gratifying to note that after better than 20 years' communal effort, a rules package that will do much to protect our near shore resources has been hammered out. It may not be as stringent as I'd personally like to see in the long run, but it sure gives a great jumping off point.</p> <p>I know of no other place where such a varied group of people have taken so much time and put in so much effort to overcome their differences as the West Hawaii Fisheries Council has done.</p> <p>Please support their continuing efforts to balance so many disparate agendas and pass this rule package in its entirety.</p> <p>Me ka ha`aha`a...</p> |            |  |                         |
| <b>Shinji Inaba</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 12/03/2012 |  | Kamuela, HI             |
| <b>Garrett Webb</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 12/03/2012 |  | Kailua-Kona, HI 96745   |
| <b>James South</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 12/03/2012 |  | Captain Cook, HI 96704  |
| <b>Kathy Lysorgorski</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 12/03/2012 |  | Anchorage, AK 99516     |
| <b>Julie Webb</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 12/03/2012 |  | Kailua-Kona, HI 96745   |
| <b>Joan Gannon</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 12/03/2012 |  | Kealahou, HI 96750      |
| <b>Terry Tokuda</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 12/03/2012 |  | Kailua Kona, HI 96740   |
| <b>Gudrun Deetjen</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 12/03/2012 |  | Kailua Kona, HI 96740   |
| <b>Dennis Whistler</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 12/03/2012 |  | Captain Cook, HI 96704  |
| <p>I have lived here in Kona Paradise above Pebble Beach for 10 years. Pebble Beach is special because of the overwhelming number of KP residents that actually care for and use our own bay. My life has always been water sports and protecting local waters.</p> <p>I know many neighbors who snorkel, scuba and swim in our own bay, all who are aware of diminishing fish populations and a need for protection of our small bay.</p> <p>I fully support the above proposal which also provides protection for sea life far beyond juts Pebble Beach.</p>                                                                                                    |            |  |                         |
| <b>Andrew Meislin</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 12/03/2012 |  | Kahaluu-Kona, HI 96740  |
| <b>Arianna Villegas</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 12/04/2012 |  | Kailua-Kona, HI 96740   |
| <b>Danielle Tuscher</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 12/04/2012 |  | Kailua-Kona, HI 96740   |
| <b>Ann Murray</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 12/04/2012 |  | Kailua-Kona, HI 96740   |
| <b>Jessica Begma</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 12/04/2012 |  | Kailua-Kona, HI 96740   |
| <b>Malosi Abraham</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 12/04/2012 |  | Kailua-Kona, HI 96740   |
| <b>Michal Pataroy</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 12/04/2012 |  | Kailua-Kona, HI 96740   |
| <b>Ka'ea Pa'akonia</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 12/04/2012 |  | Kailua-Kona, HI 96740   |
| <b>Danielle Ray</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 12/04/2012 |  | Captain Cook, HI 96704  |
| <b>Deiven Grace</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 12/04/2012 |  | Kailua-Kona, HI 96740   |
| <b>Abel Pacatang</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 12/04/2012 |  | Kailua-Kona, HI 96740   |
| <b>Connor McGuire</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 12/04/2012 |  | Kailua-Kona, HI 96740   |
| <b>Kalai Lincoln</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 12/04/2012 |  | Kailua-Kona, HI 96740   |

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|--|--------------------------|
| <b>Esaias Furtado</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 12/04/2012 |  | Kailua-Kona, HI 96740    |
| <b>Jon Kim</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 12/04/2012 |  | Kailua-Kona, HI 96740    |
| <b>Lisa Diaz</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 12/04/2012 |  | Kailua-Kona, HI 96740    |
| <b>S Ack</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 12/04/2012 |  | Kailua-Kona, HI 96740    |
| <b>Noelle Ray</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 12/04/2012 |  | Captain Cook, HI 96704   |
| <b>Keoki Yamane</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 12/04/2012 |  | Kailua-Kona, HI 96740    |
| <b>Revis Pettit</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 12/04/2012 |  | Kailua-Kona, HI 96740    |
| <b>Jane Burton</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 12/04/2012 |  | Kailua-Kona, HI 96740    |
| <b>Jacob Agard</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 12/04/2012 |  | Kailua-Kona, HI 96740    |
| <b>Richard Stead</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 12/04/2012 |  | Honolulu, HI 96822       |
| <b>Carla Trott Lejade</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 12/04/2012 |  | Malibu, California 90264 |
| <b>Diane Ware</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 12/04/2012 |  | Volcano HI 96785-0698    |
| <b>Guinevere Dawyes</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 12/05/2012 |  | Kailua-Kona, HI          |
| <b>Zack Liddiard</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 12/05/2012 |  | Kailua-Kona, HI 96740    |
| <b>Waileamaikalani Abraham</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 12/05/2012 |  | Kailua-Kona, HI 96740    |
| <b>McKale Hill</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 12/05/2012 |  | Kailua-Kona, HI 96740    |
| <b>DeMarques Ballesteros</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 12/05/2012 |  | Kailua-Kona, HI 96745    |
| <b>Joellamae Corpuz</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 12/05/2012 |  | Kailua-Kona, HI 96740    |
| <b>Tehina Slade</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 12/05/2012 |  | Kailua-Kona, HI 96745    |
| <b>Joie Agar</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 12/05/2012 |  | Kailua-Kona, HI 96740    |
| <b>Kelsey Saplan</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 12/05/2012 |  | Kailua-Kona, HI 96740    |
| <b>Courtney Lloyd</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 12/05/2012 |  | Kailua-Kona, HI 96740    |
| <b>George Shattauer Jr.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 12/05/2012 |  | Kealahou, HI 96750       |
| <p>I am in support of all the rule amendments being proposed.<br/> This is a good start, I also have other thoughts about how we can protect our reef fish. I think spearing fish at night should be talked about. I also think the market for lobster should be discussed.<br/> I like to go night diving w/ a few good friends, maybe 2-3 times a year (even less the last few years) we DON'T take any spears, just flashlights, gloves a bag, and try to grab a few lobsters to eat. It's getting harder &amp; harder to find them, I have seen a real decline in lobsters, uhu and other reef fish over the years. too many people are spearing fish while they sleep and grabbing too many lobsters. I think the problem is, there is a market and MONEY to be made from spearing at night. If the market was taken away for awhile or the seasons shortened, that would help. just a thought...</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |            |  |                          |
| <b>John Jenkins</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 12/05/2012 |  | Kamuela, HI. 96743       |
| <b>Camille Barnett</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 12/05/2012 |  | Honaunau, HI 96726       |
| <p>1) The community at Ka'ohē has been asking for this for a long time, and should not be denied the opportunity for conserving marine resources in their "front yard".<br/> 2) This method of fishing has been banned throughout the world because <u>the practice guarantees an irreversible decline in fish stocks</u>. We are one of the last places in the world still allowing this type of fishing extraction, and need to stop it before our reefs are damaged beyond repair and there are no fish left to feed our children.<br/> 3) This is a big step toward sustainable conservation of Hawaii's rare marine life, helping to continue the attraction for our coast's highly economic tourist industry, yet will allow for those whose livelihood is the aquarium fishery to continue to provide for their families. Bag and size limits will also help ensure continual species reproduction, <u>thereby protecting the future of both ecosystem and fishermen</u>.<br/> 4) Healthy ecosystems require top predators such as sharks, which can be mistaken for competitors by fishermen. Protecting these animals will not only help the marine environment, but may help educate those who would otherwise not understand their importance in Hawaiian waters.<br/> 5) Predators are an important part of our coral reef ecosystem. Ensuring the protection of Triton's Trumpets and Horned Helmets will allow for the food web to continue naturally, without human intervention in the population management of the Crown of Thorns sea star, which could prove very costly for the government if an outbreak occurs.</p> |            |  |                          |
| <b>Heraldo Farrington</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 12/05/2012 |  | Volcano, HI 96785        |

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| <b>Linda Preskitt</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 12/05/2012 |  | Kamuela, HI           |
| <p>I support these rules for these reasons:</p> <ul style="list-style-type: none"> <li>- SCUBA spearfishing is a highly immoral way to fish. Many fish, like the important indicator parrot fish, sleep at night. You can literally go up and poke them. Most the SCUBA spearfishing is done at night when so many fish are extremely vulnerable.</li> <li>- Tritons and helmets are important predators of Crown-of-Thorns se stars (COTS). Yet they are over harvested for shells and for food. We had a COTS outbreak with over 500 animals just 2 months ago on the Kona Coast. With continuing land base pollution, etc. we are expecting to see more of these types of outbreaks. We need these important predators on the reef for natural control.</li> <li>- The proposed FMA/FRA area rules provide protection from collecting at another area in Kona and better define the boundaries of other areas in question.</li> <li>- The white list is a beginning to limit what the collectors can take. Hopefully more stringent rules, such as bag limits for all collectable fish will be put in place.</li> </ul> <p>But these rules are only a beginning. We need a limit to the number of aquarium fish collectors allowed on our reefs, or these aquarium rules will have no effect as the number of fish taken will continue to grow. In addition, we need fishing licenses and limits for all fish. We are seeing large areas of healthy reefs become depauperate of all fish because of indiscriminate taking of all fishes off reefs by immigrant groups and indifferent fishermen. We need to start managing these resources before it is too late!</p> <p>Lastly, without proper enforcement, no rules are effective. DOCARE needs an immediate restructuring, starting with officers who care about the resources and are truly interested in enforcing the rules in place. The current DOCARE is inept, ineffective, and alienate community members. Please address the DOCARE issue!</p> <p>Hawaii Island Coordinator, Eyes of the Reef Network.</p> |            |  |                       |
| <b>Chyenne Book</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 12/05/2012 |  | Kailua-Kona, HI 96740 |
| <b>Rosanne Shank</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 12/05/2012 |  | Kailua-Kona, HI 96740 |
| <p>I have been living and scuba diving in Hawaii since 1906. I love the fact that we still have some live coral and fish on the Big Island. I would like to see more conservation efforts in place and feel that this amendment would be a start.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |            |  |                       |
| <b>Maya Racine</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 12/05/2012 |  | Kailua-Kona, HI 96740 |
| <b>Charles Benson</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 12/07/2012 |  | Honolulu HI 96815     |
| <p>Over the years I've logged more than 20,000 dives in hawaiian waters.. I have see depletion of juvenile fish &amp; adult! I have see over fishing take a toll on fish stocks, an corals !this along with polutions, hawaii will not have much to offer visitors except under water land scapes baren of life &amp; nice hotels! The time has come to act, in truth it has to happen soon or like Hanauma bay on oahu corals will be gone &amp; few fish left will be seeking a hand out ! Frustration is under statement, many divers have expressed there views on this dating back to early 70's .. yes those who dive &amp; no longer do, have see first hand ! unfortunate that those who are in charge do not get wet nor have desire to, yet make the rules-I saw this when on Hawaii state advisory board late 70's .. its time to do right thing !</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |            |  |                       |
| <b>Lindsey Kramer</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 12/23/2012 |  | Kailua-Kona, HI 96745 |

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Good Morning!

I am very pleased that after so many years this group of rules is finally approaching a public hearing. I fully support all aspects of this amendment. As a family member of Big Island residents who greatly enjoy Ka'ohē Bay, I am especially glad that Pebble Beach is finally becoming an FRA.

You have my full support for all other elements of this package including the ban on spear fishing using SCUBA and a limited list of fish that commercial collectors can remove from our reefs. I hope that this gets through the public hearing process smoothly.

Sincerely,
Pam Litz

To Department of Land & Natural Resources, Division of Aquatic Resources:

As a land owner in South Kona, I fully support the West Hawai'i Regional Fishery Management Area Amendments including:

1. Pebble Beach will become an FRA where commercial aquarium fish collectors cannot collect fish.
2. Spear fishing using scuba gear will be illegal along the west coast of the Big Island.
3. There will be a 'White List' of 40 species of fish which commercial collectors can take, but all others (and invertebrates) will be illegal to take. There are also some size & bag limits included.
4. The taking of most rays & sharks will be banned.
5. 2 large mollusks which eat the Crown-of-Thorns sea star (which devours coral) will be protected.

Mahalo,

Elizabeth Armstrong	11/17/2012		Captain Cook, HI, 96704
William Armstrong	11/17/2012		Captain Cook, HI, 96704
Mary Tanaka	11/17/2012		Honolulu, HI 96817
Don Taylor	11/17/2012		Captain Cook, HI, 96704
Oli Winther	11/18/2012		Captain Cook, HI, 96704
Leroy Victorine	11/19/2012		Hilo, HI 96720
Elvine Victorine	11/19/2012		Hilo, HI 96720
Vicki Philipps	11/19/2012		Grass Valley, CA 95949
Jeremy Rich	11/20/2012		Captain Cook, HI 96704
Vincent Graham	11/20/2012		San Ramon CA. 94582
Minh Nguyen	11/20/2012		San Ramon CA. 94582
Philip M. Yoo	11/20/2012		Chantilly, VA 20151
Included is a copy of the form signed and dated by me in supporting of the proposed activities by the friends of Pebble Beach at Kona Paradise property Owners. I am interested in being informed of the future hearing process and its result as a property owner in Kona Paradise. I strongly support all the activities regarding the WHRFMA Proposed Rule Amendment.			
Monika Watts	11/21/2012		Phoenix, AZ 85023
Ben Watts	11/21/2012		Phoenix, AZ 85023
Richard Puente	11/23/2012		Captain Cook, HI 96704
<u>Please</u> save "ili-ili" Beach. As a Vietnam veteran, disabled I have spent nearly <u>25</u> years enjoying the beach and snorkeling the reefs. Lots of the previous fish have been stolen by the greedy. <u>Please</u> stop them. I will and my grandkids will be forever grateful?			
John Thompson	11/24/2012		Captain Cook, HI 96704
John Seymour	11/25/2012		Temple City, CA 91780
Rich Vogler	11/29/2012		Captain Cook, HI 96704
This should be expanded to all east facing shore lines south of Volcano NP and all west facing shores. Our coasts only expand out from shore 100 yards for the majority of our sea life, it's a very fragile environment.			
Caroline Barbeau	11/30/2012		Kailua Kona HI 96740
I also support establishing a West Hawai'i aquarium collecting permit as step toward the development of a limited entry fishery and the three amendments to other rules (Puako FMA, Keauhou FMA & lay gill nets) which strengthen and clarify the rules.			
George Goodrich	12/04/2012		Kona Paradise, HI
Margaret Gracely	12/05/2012		Captain Cook, HI 96704

I have family and friends that often come to Kona Paradise to snorkel and enjoy the beautiful fish & coral. As a landowner in Kona Paradise, I strongly support WHRFMA proposed Rule Chapter 13-60.4			
Mary Slingerland	12/11/2012		Captain Cook, HI 96704
Lana Loomis	12/12/2012		Kamuela, HI 96743
Carol Poole	12/14/2012		Solana Beach, CA 92075
Patricia Hansen	12/18/2012		Captain Cook, HI 96704

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**From:** Ron Shepard **Sent:** Wednesday, December 05, 2012 12:09 PM  
**To:** darkona@hawaiiintel.net  
**Subject:** In support of WHRFMA Amendments

I fully support the WHRFMA Amendments which include Ka'ohe Bay becoming an FRA this ia a beautiful area and it's obvious by so few fish there, that collecting is taking place . please protect this area from fish collectors ,fish should be viewed in their natural environments, where they belong  
Thanks , Ron Shepard 2731 Piantio Cir. San Diego Ca. 92108

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From: Pat [mailto:pprice519@yahoo.com]
Sent: Wednesday, December 05, 2012 9:51 AM
To: darkona@hawaiiintel.net
Subject: Pebble Beach protection

Please designate Pebble Beach a Fish Replenishment Area. This is such a precious and finite natural resource that saving it seems in the best interest of all.

Thank you,
Patricia Price

~~~~~

**I fully support the West Hawai'i Regional Fishery Management Area (WHRFMA) Amendment.**

This Amendment will do 4 important things, among others.

1. Pebble Beach/Ka'ohe Bay will become an FRA where aquarium collectors can no longer come.
2. Spearfishing using scuba gear will be illegal along the west coast of our island.
3. There will be a 'white list' of 40 fish which commercial collectors can take, but all others (and invertebrates) will be illegal to take. There are also some size & bag limits included.
4. Many rays, sharks and Triton Trumpet & Helmets will be protected.

More regulation of our reefs is a good thing.

|                          |            |  |                        |
|--------------------------|------------|--|------------------------|
| <b>Phil Smith</b>        | 11/06/2012 |  | Keauhou, HI 96739      |
| <b>Levinio Velasquez</b> |            |  | Captain Cook, HI 96704 |
| <b>Kurt Black`</b>       | 11/14/2012 |  | Captain Cook, HI 96704 |
| <b>Tom Benton</b>        |            |  | Captain Cook, HI 96704 |
| <b>Malina Briggs</b>     |            |  | Keauhou, HI 96739      |
| <b>Carolynn Martin</b>   |            |  | Ocean View, HI 96737   |
| <b>Erin Halpin</b>       |            |  | Ocean View, HI 96737   |

|                                                                                                                                                                                                                                                                                                                                                                                                                                    |            |  |                        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|--|------------------------|
| Jennifer Olson                                                                                                                                                                                                                                                                                                                                                                                                                     |            |  | Ocean View, HI 96737   |
| Jude Lynch                                                                                                                                                                                                                                                                                                                                                                                                                         |            |  | Ocean View, HI 96737   |
| Joseph Sugiura                                                                                                                                                                                                                                                                                                                                                                                                                     |            |  | Honaunau, HI 96726     |
| Jack Briggs                                                                                                                                                                                                                                                                                                                                                                                                                        |            |  | Keauhou, HI 96739      |
| Greg Asbell                                                                                                                                                                                                                                                                                                                                                                                                                        |            |  | Kailua-Kona, HI 96740  |
| Robert Critchfield                                                                                                                                                                                                                                                                                                                                                                                                                 |            |  | Captain Cook, HI 96704 |
| Linda Velasquez                                                                                                                                                                                                                                                                                                                                                                                                                    |            |  | Captain Cook, HI 96704 |
| Alice Sherer                                                                                                                                                                                                                                                                                                                                                                                                                       |            |  | Kealakekua, HI 96750   |
| Kelly Asbell                                                                                                                                                                                                                                                                                                                                                                                                                       |            |  | Kailua-Kona, HI 96740  |
| Miles Mucahy                                                                                                                                                                                                                                                                                                                                                                                                                       |            |  | Captain Cook, HI 96704 |
| David Dye                                                                                                                                                                                                                                                                                                                                                                                                                          |            |  | Captain Cook, HI 96704 |
| Edward Brueau                                                                                                                                                                                                                                                                                                                                                                                                                      | 11/26/2012 |  | Naalehu, HI 96772      |
| Jeff Crowe                                                                                                                                                                                                                                                                                                                                                                                                                         | 12/03/2012 |  | Ocean View, HI 96737   |
| Jennifer Mirsepasy                                                                                                                                                                                                                                                                                                                                                                                                                 | 12/03/2012 |  | Ocean View, HI 96737   |
| Damaris Wescott                                                                                                                                                                                                                                                                                                                                                                                                                    | 12/05/2012 |  | Waikoloa, HI 96738     |
| Wells Wescott                                                                                                                                                                                                                                                                                                                                                                                                                      | 12/05/2012 |  | Waikoloa, HI 96738     |
| David Zimmerman                                                                                                                                                                                                                                                                                                                                                                                                                    | 12/05/2012 |  | Captain Cook, HI 96704 |
| Gary Jacob                                                                                                                                                                                                                                                                                                                                                                                                                         | 12/06/2012 |  | Anchorage, AK 99511    |
| Melanie Duchin                                                                                                                                                                                                                                                                                                                                                                                                                     | 12/06/2012 |  | Anchorage, AK 99511    |
| Merrin Dickson                                                                                                                                                                                                                                                                                                                                                                                                                     |            |  | Kamuela, HI 96743      |
| Shane Quigg                                                                                                                                                                                                                                                                                                                                                                                                                        |            |  | Captain Cook, HI 96704 |
| Pearl Dickson                                                                                                                                                                                                                                                                                                                                                                                                                      |            |  | Kamuela, HI 96743      |
| Annabel Edwards                                                                                                                                                                                                                                                                                                                                                                                                                    |            |  | Captain Cook, HI 96704 |
| Rick Gordon                                                                                                                                                                                                                                                                                                                                                                                                                        |            |  | Captain Cook, HI 96704 |
| Robert DeFazio                                                                                                                                                                                                                                                                                                                                                                                                                     |            |  | Hawi, HI 96719         |
| Robin Barnett                                                                                                                                                                                                                                                                                                                                                                                                                      |            |  | Captain Cook, HI 96704 |
| Charles Saveu                                                                                                                                                                                                                                                                                                                                                                                                                      |            |  | Captain Cook, HI 96704 |
| Sharon Shields                                                                                                                                                                                                                                                                                                                                                                                                                     |            |  | Captain Cook, HI 96704 |
| Tim Woods                                                                                                                                                                                                                                                                                                                                                                                                                          |            |  | Captain Cook, HI 96704 |
| Cindy Walsh                                                                                                                                                                                                                                                                                                                                                                                                                        |            |  | Honaunau, HI 96726     |
| Carol DeFazio                                                                                                                                                                                                                                                                                                                                                                                                                      |            |  | Hawi, HI 96719         |
| Fred Dickson                                                                                                                                                                                                                                                                                                                                                                                                                       |            |  | Kamuela, HI 96743      |
| Travis Gordon                                                                                                                                                                                                                                                                                                                                                                                                                      |            |  | Captain Cook, HI 96704 |
| Heather Manley                                                                                                                                                                                                                                                                                                                                                                                                                     |            |  | Kamuela, HI 96743      |
| Verna Chang                                                                                                                                                                                                                                                                                                                                                                                                                        |            |  | Captain Cook, HI 96704 |
| Lori Benton                                                                                                                                                                                                                                                                                                                                                                                                                        |            |  | Captain Cook, HI 96704 |
| Toni Reynolds                                                                                                                                                                                                                                                                                                                                                                                                                      |            |  | Kailua-Kona, 96740     |
| Kristina Browne                                                                                                                                                                                                                                                                                                                                                                                                                    |            |  | Captain Cook, HI 96704 |
| Karen MacIssac                                                                                                                                                                                                                                                                                                                                                                                                                     |            |  | Kamuela, HI 96743      |
| Nicole Tachibana                                                                                                                                                                                                                                                                                                                                                                                                                   | 12/18/2012 |  | Holualoa, HI 96725     |
| I believe that these amendments are a great step in the right direction to manage our coastline. I feel most strongly about making the use of scuba gear illegal. Many local people claim subsistence fishing but the same fish can be caught on a more even playing field by free diving. Also if you have enough money to buy scuba gear you should be able to help provide for your family by buying food at the grocery store. |            |  |                        |

From: jay Cantor  
Sent: Wednesday, November 21, 2012 10:36 AM

To: darkona@hawaiiantel.net  
Subject: In support of WHRFMA Proposed Rule Amendments

I have owned land a few hundred feet from Pebble Beach and have lived there part time for over thirty years. During that time I have seen increased aquarium fish collection coupled with a substantial reduction in the reef fish population.

I respectfully urge you to adopt the proposed rules.

Jay Cantor

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**From:** Mark Deakos  
**Sent:** Saturday, November 24, 2012 11:55 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** Testimony in support of proposed rule package

To Whom it May Concern,

I am a marine biologist on Maui and a doctoral graduate from the University of Hawaii.

This testimony is in support of the West Hawaii Regional Fishery Management Area (WHRFMA) Rule Proposal.

Sincerely,

Mark Deakos, Ph.D.  
Executive Director  
Hawaii Association for Marine Education and Research, Inc.

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**From:** Matt Playter  
**Sent:** Tuesday, November 27, 2012 5:34 AM  
**To:** darkona@hawaiiantel.net  
**Subject:** In support of WHFRMA Amendment.

"I support the WHFRMA Amendment . It has become obvious that fish stocks have been reduced since 1983 when I first enjoyed the Kona coast waters . I believe that this amendment is a first good step to help insure that future generations might be able to experience the diversity that makes Hawaii waters special .

Matt Playter

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To whom it may concern,

I support the WHRFMA Amendment package that will have a Public Hearing on December 5th. I hope that this Package passes. Every part of this Package helps to preserve the reef ecosystem. Adding more area to the current Fish Replenishment Areas is especially encouraging.

Thank you,

JoAnn Tattersall

---

From: William Bellessis  
Sent: Friday, November 16, 2012 4:54 AM  
To: darkona@hawaiiantel.net  
Subject: Ka'ohe Bay

Please keep the commercial fisherman OUT of the bay! It's a beautiful Hawaiian site that should be protected.

**Subject:** Full Support of Rule Amendments proposals for WHRFMA

Dear Sir:

I would like to ammend my testimony to include all parts of the WHRFMA Amendments package. Please count me as fully supporting all aspects of this Rule Package-- protecting Pebble Beach as an FRA, the protection for rays & sharks, the white list, netting adjustments, boundary guidelines, and everything else

Thank you,  
William Bellessis

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From: Gary and Wanda Jerrit Sent: Sunday, November 18, 2012 12:11 PM  
To: darkona@hawaiiantel.net  
Subject: IN SUPPORT OF RULE AMENDMENTS CH.13-60.4

DEAR SIR: WE HAVE ENJOYED SWIMMING AND SNORKELING AT PEBBLE BEACH AND ARE SHOCKED THAT IT IS NOT PROTECTED. PLEASE REALIZE THE IMPORTANCE OF THIS WONDERFUL AREA BEING PROTECTED. WE ARE IN FULL SUPPORT OF RULE AMENDMENTS CH.13-60.4.

WANDA AND GARY JERRIT

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TO WHOM IT MAY CONCERN



I am writing to express my very strong support for the proposed ammendments to the West Hawaii Regional Fisheries Management Area Rule.

All of the proposed ammendments are important and necessary, and will help to maintain and restore the coral reefs of West Hawaii.

Sincerely  
Ivor Williams

---

We were shocked to learn Ka'oheBay/Pebble Beach is not protected!  
We have spent years on The Big Island and love it.  
We support all of the Rule Amendments.

Richard & Diane Behrle

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To whom it may concern,  
I support the WHRFMA Amendment package that will have a Public Hearing on December 5th. I hope that this Package passes. Every part of this Package helps to preserve the reef ecosystem. Adding more area to the current Fish Replenishment Areas is especially encouraging.

Thank you,  
Jennifer Smith

---

Hello. DAR  
I am supporting the rules package that is up for discussion this coming December. I believe that this will help keep the tropical fish industry in particular, healthy and sustainable.  
Thank you  
Todd Shiraki  
Hawaii Tropical Fish Co.

---

To whom it may concern,  
I support the WHRFMA Amendment package that will have a Public Hearing on December 5th. I hope that this Package passes. Every part of this Package helps to preserve the reef ecosystem. Adding more area to the current Fish Replenishment Areas is especially encouraging.

Thank you,  
leigha smith

---

I fully support the proposed rule and amendments for the West Hawai'i Regional Fishery Management Area Administrative Rules.

Thank you to those who participated in the long and complicated process that resulted in these changes.

Julia Simmons  
Kamuela, HI

---

I want to express my support of the amendment package. I am pleased to see more protection for our Kona Coast reef biota.

Bryce Decker, PhD.

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I Walter Burola Support the WHFRMA Amendment (Chapter 13-60.4) I am a resident and property owner of Kona Paradise and for the past 10 years seen many of the fish at Pebble Beach decreasing at alarming numbers.

---

**From:** Marcia Stone  
**Sent:** Saturday, November 10, 2012 11:23 AM  
**To:** darkona@hawaiiantel.net  
**Subject:** Support for the WHFRMA Amendment

I support the WHFRMA Amendment (Chapter 13-60.4) in order to stabilize and enrich our reef environment. The first step towards that is to put a halt to indiscriminate taking of reef fish. We need to support the wildlife which supports us.

Sincerely,  
Marcia Stone

---

**From:** Leilani Clark  
**Sent:** Saturday, November 10, 2012 3:02 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** In Support of the WHFRMA Amendment

I fully support the WHFRMA Amendment. The sustainability of our reefs for the fish and other marine life for the next generation depend on this amendment.

Thank you.

*Leilani Clark*

---

To Whom It May Concern, I am in support of the WHFRMA Amendment. I would love to have my children enjoy the natural aquatic life of the West Hawaiian coastline.

Mark Springs

---

**From:** John Arnold  
**Sent:** Monday, November 12, 2012 1:17 PM  
**To:** darkona@hawaiiintel.net  
**Subject:** IN SUPPORT OF Rule Amendment CH.13-60.4

My family loves swimming and snorkeling at Pebble Beach when we stay in Hawaii. We just found out that the bay isn't protected. We support the proposed Rule Amendments.

John Arnold

---

**From:** dave and lindsay  
**Sent:** Wednesday, November 14, 2012 6:05 AM  
**To:** darkona@hawaiiintel.net  
**Subject:** IN SUPPORT OF RULE AMENDMENTS CH. 13-60.4

I HAVE GREATLY ENJOYED SWIMMING AND SNORKELING AT PEBBLE BEACH WHILE VISITING FRIENDS IN HAWAII.  
I DID NOT REALISH THE BAY WAS NOT PROTECTED FROM FISH COLLECTERS. ON MY LAST VISIT I HAD NOTISHED LESS FISH WHILE SNORKELING.  
I HAVE TO SAY I FULLY SUPPORT ALL THE PROPOSED RULE AMENDMENTS.  
REGUARDS,  
LINDSY WHITE

---

**From:** Kathy Malasky  
**Sent:** Wednesday, November 14, 2012 2:52 PM  
**To:** darkona@hawaiiintel.net  
**Cc:** Bruce Malasky  
**Subject:** In support of WHFRMA Amendment

I support the WHFRMA Amendment. We need to protect and regulate our reef life or we will lose it. Those of us who frequent these waters have noticed the decline in populations of certain beautiful species. If we can effectively maintain the reef life, it will still be there for tourists and future generations to enjoy.

Sincerely,

Kathleen Malasky

---

From: Jerry Kane  
Sent: Thursday, November 15, 2012 7:28 AM  
To: darkona@hawaiiantel.net  
Subject: IN SUPPORT OF WHRFMA Rule Amendments

I am in full support of all of the proposed new rules.

Hawaii in general, and West Hawaii in particular, are long overdue for these protections. They should be implemented as soon as possible.

Thank you.

Jerry Kane  
~~~~~

From: Janice Meyer
Sent: Friday, November 30, 2012 7:25 AM
To: darkona@hawaiiantel.net
Subject: ammendments
Dear Sir;

Please give me 2 yes votes for me and my daughter to support the entire rule amendments package coming to public hearing on December 5th. Closing Ka'ohē Bay to commercial fish collectors will help preserve our bay and in conflicts.

Thank you.
Summer and Janice Meyer.
~~~~~

**From:** Robert  
**Sent:** Friday, November 30, 2012 9:33 AM  
**To:** darkona@hawaiiantel.net  
**Subject:** Support of Amendment

I am in support of the proposed rules for reef management. As a Kona resident, I feel it is very important above all to keep our fish and coral free from commercial exploitation.

I believe these proposed rules strike a good balance between the needs of the few (collectors), and the needs of the many (everyone else), to preserve the fishery resources for the future.

Robert Chung  
~~~~~

From: judy carr
Sent: Thursday, November 08, 2012 12:28 AM
To: darkona@hawaiiantel.net
Subject: In Support of WHFRMA Amendment

I support the West Hawaii Fishery Regional Management Area (WHFRMA Amendment.

This amendment will do many important things, not the least of which is protecting Pebble Beach/Ka'ohe Bay. In addition, many species of marine life will be protected, including many rays, sharks, and Triton Trumpet & Helmets. Please, please consider my opinion more important than any commercial reasons to continue the destruction of one of Hawaii's most important assets.

Mahalo,

Judy L. Carr
~~~~~

**From:** Leilani  
**Sent:** Thursday, November 08, 2012 5:39 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** I support the WHFRMA Amendment

Hello,

I'm writing in support of the WHFRMA Amendment. Pebble Beach/Kaohe Bay is a special place to anyone who lives near it or who has visited it. As a high school student, it was one of the few recreational areas I had access to. Such a place that serves community value and is a home for fish and other animals should be protected and conserved.

Thanks very much,

Leilani Rapaport  
~~~~~

From: Clifford Cooter
Sent: Thursday, November 08, 2012 7:29 PM
To: darkona@hawaiiantel.net
Subject: I Support the WHFRMA Amendment

I am writing in support of the WHFRMA Amendment (Chapter 13-60.4) and would like my vote counted in my hope that this amendment will pass. The passage of this amendment will be a big step in the protection of West Hawaii's resources. Let's not wait any longer to do the right thing.

Clifford Cooter
~~~~~

**From:** Lynn Holman  
**Sent:** Friday, November 09, 2012 7:01 AM  
**To:** darkona@hawaiiantel.net  
**Subject:** Reef Management Proposal

To Whom It May Concern:

I am a concerned resident of the island of Hawaii and I support the Reef Management Proposals Developed by the West Hawai'i Fisheries Council (WHFC).

Evelynn Holman  
~~~~~

From: Jack Hoyt
Sent: Friday, November 09, 2012 7:39 AM
To: darkona@hawaiiantel.net
Subject: In support of WHRFMA

Aloha,

I definitely support the WHRFMA and more regulation of our marine resources. I am an avid open water swimmer along the west coast and I regularly keep tabs on monk seals in North Kohala.

Some of the places I swim have improved a bit over recent years due to increased regulation but most still have not come close to recovering what was there just a couple of decades ago. Each new generations will adjust to even lower standards if we do 'protect' our marine resources for the future.

mahalo,

John D. (Jack)Hoyt
~~~~~

To Whom It May Concern,

I am in support of the WHFRMA Amendment. We must protect the coral reefs in Hawai'i, to keep our oceans healthy and therefore keep the planet healthy. In the end, humans are affected - if our planet is not healthy then we will ultimately be affected.

Sincerely,  
Julie W. Henig  
~~~~~

From: Scooter
Sent: Saturday, November 10, 2012 7:23 AM
To: darkona@hawaiiantel.net
Subject: I Support the WHFRMA Amendment

I support the WHFRMA Amendment (Chapter 13-60.4) and have written several times and attended more than one council meeting to give testimony of my feelings that this is an important step we must take in West Hawaii to protect our resources.

Suzanne Cooter

~~~~~

**From:** Star Lockwood  
**Sent:** Friday, November 30, 2012 4:26 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** In support of WHRFMA Proposed Rule Chapter 13-60.4

Please support this detailed protection for our reefs. I am so in favor of keeping our reefs alive with color and maybe this will appease those who make a trade of selling the delicate beauty at the expense of our tourist trade here and live.

~~~~~

From: Robert Stephens
Sent: Wednesday, December 05, 2012 1:07 PM
To: darkona@hawaiiantel.net
Subject: limiting the take of reef fish for aquarium - STRONGLY SUPPORT

Hello. I strongly support the proposed rule which limits collection of reef fish for aquariums. Please help this rule get passed.

Robert Stephens
Project Coordinator
Mauna Kea Forest Restoration Project

~~~~~

**From:** Kevin ' cindy Gilbride  
**Sent:** Wednesday, December 05, 2012 6:45 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** WHRFMA Amendments

I am in full support of the WHRFMA Amendments which are being proposed and will face a Public Hearing on Wed., December 5th. Thank you,  
Kevin Gilbride

~~~~~

From: David Dart
Sent: Sunday, December 09, 2012 1:35 PM
To: darkona@hawaiiintel.net
Subject: WHRP for

My family has worked in the West Hawaii aquarium business for over 20 years. I support the WHRP that will help to ensure sustainability. Wes Dart

Having worked in the aquarium trade for over twenty years I support the West Hawaii Rules Package that will add another layer of protection for sustainability. Janet Dart

From: Jim Adelberg
Sent: Tuesday, December 18, 2012 2:14 PM
To: darkona@hawaiiintel.net
Subject:

Hello, I'm writing to express my support of the passage of the West Hawaii Regional Fishery Management Area Rules Package. I believe a properly managed fishery can enhance both the educational and monetary value of Hawaii's reefs. Thank You. Jim Adelberg-Executive Editor, Reef Hobbyist Magazine

From: mike mickey
Sent: Tuesday, December 04, 2012 7:39 AM
To: darkona@hawaiiintel.net
Subject:

I am in full support of the WHRFMA Amendments which are being proposed and will face a Public Hearing on Wed., December 5th.
Thank you, Mike Mickey

From: Lori Kane [
Sent: Tuesday, November 06, 2012 7:57 AM
To: darkona@hawaiiintel.net
Subject: In support of WHFRMA Amendment.

I SUPPORT the WHFRMA Amendment (Chapter 13-60.4),
The health and continued life in our oceans, the sustainability for future generations is at stake. I support the WHFRMA Amendment.

Velora Kane

From: Virginia Shy
Sent: Tuesday, November 06, 2012 9:17 AM
To: darkona@hawaiiantel.net
Subject: In support of WHFRMA Amendment

Please help save our reef's along the Kona Coast. Our economy thrives on tourism and without the draw of beautiful underwater life we will all suffer. Protect what we have so future generations will be able to enjoy it as well. Also, once passed please make sure that there is funding for it to be enforced.

--
Mahalo,

Virginia Armstrong
~~~~~

**From:** Mikalee Shaffer  
**Sent:** Tuesday, November 06, 2012 9:37 AM  
**To:** darkona@hawaiiantel.net  
**Subject:** WHFRMA Amendment

Aloha,  
I support the WHFRMA Amendment that will be having a Public Hearing on December 5th in Kona and plan. I also plan on attending the hearing.

Thank you.

Mikalee Shaffer  
~~~~~

From: John Nunn
Sent: Tuesday, November 06, 2012 9:41 AM
To: darkona@hawaiiantel.net
Subject: WHFRMA Amendment

Aloha,
I support the WHFRMA Amendment that will be having a Public Hearing on December 5th in Kona and plan. I also plan on attending the hearing.

JohnD. Nunn
~~~~~

**From:** TOM CAREY  
**Sent:** Tuesday, November 06, 2012 2:28 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** In support of WHFRMA Amendment.

Aloha,

I support the WHFRMA Amendment.

I want to support the WHFRMA Amendment (Chapter 13-60.4),

Thank you, Thomas Carey

Ocean planet Images <http://oceanplanetimages.smugmug.com/>

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**From:** Terry McVay (rr)  
**Sent:** Tuesday, November 06, 2012 7:11 PM  
**To:** darkona@hawaiiintel.net  
**Subject:** In SUPPORT of the WHFRMA Amendment

Legislators;

I strongly support the WHFRMA Amendment to Chapter 13-60.4.

Having been an avid diver and snorkler in Hawaii since 1964, particularly and most recently in West Hawaii since 1984, I find this most recent approach to ocean management a very hopeful sign.

Terrence E. McVay

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**From:** Horace Heck  
**Sent:** Wednesday, November 07, 2012 4:59 PM  
**To:** darkona@hawaiiintel.net  
**Subject:** WHFRMA

Respectfully, I wanted to add my strong support for the WHFRMA Amendment that will be having a Public Hearing on December 5th in Kona. It would be a shame to destroy this tremendous resource we have on our coast.

Thanks very much,  
Horace Heck

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**From:** Judy Robinson  
**Sent:** Thursday, November 08, 2012 12:17 AM  
**To:** darkona@hawaiiintel.net  
**Subject:** In Support of WHFRMA Amendment

I strongly support the WHFRMA Amendment. I consider it an important amendment in order to help keep our native marine species intact and thriving.

Judy Robinson

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**On Behalf Of** Judy Perino

**I strongly support the West Hawaii Rules Package. It is an important step in continuing sustainability of our ocean resources.**

**Luciano Perino**

Judith Smith Perino

---

**From:** Johnathon Bicknel  
**Sent:** Tuesday, December 04, 2012 12:21 PM  
**Subject:** department of land and natural resources testimony.

Johnathon Bicknell

Dear department of land natural resources, I agree with all of the rules proposed. I lived here all my life and love the fish I see when i go swimming, but I believe that spear fishing on scuba is truly unfair and gives no chance for the fishes to escape. If this is all that happens the fish population can be decimated and there will be no more beautiful fish to see

---

**From:** R Royer  
**Sent:** Tuesday, December 04, 2012 6:10 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** IN SUPPORT OF Rule Amendments Ch.13-60.4

We really enjoy our vacations at Pebble Beach we were surprised to learn that the bay wasn't yet protected. We fully support all of the proposed Rule Amendments.

Sincerely,  
Rebecca and Richard Turner

---

**From:** Jean Bevanmarquez  
**Sent:** Tuesday, December 04, 2012 9:20 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** Testimony

I am in full support of the proposed regulation changes. As the Manager of the Kahalu'u Bay Education Center, I speak with visitors daily about the conditions in Hawaiian waters. Many snorkelers who have

been to other parts of the world express surprise that reef fish may be collected on our waters, and shocked that enforcement of current regulations is so lax.

Please implement the new regulations, and secure the future of our reefs

Jean BevanMarquez  
Manager, Kahalu'u Bay Education Center

---

**From:** George Robertson  
**Sent:** Tuesday, December 04, 2012 12:33 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** DAR West Hawaii Rule changes

Aloha,

I can't make the meeting tomorrow night but here is my testimony:

1. I want to go on record that I am in favor of the proposed rule changes.
2. I particularly favor the elimination of SCUBA spearfishing and the amendment to the Puako and Puako FMA boundaries.

Mahalo,

George Robertson

Native Hawaiian resident of Waialea Bay, Lalamilo, for 38 years

---

**Sent:** Tuesday, December 04, 2012 4:59 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** Collecting of fish

I strongly agree with the proposal to limit the collecting of fish! I hope it gets voted in. aloha,  
roger knoblauch

---

**From:** George Wilson  
**Sent:** Wednesday, December 05, 2012 5:27 AM  
**To:** darkona@hawaiiantel.net  
**Cc:** Ruby Tzimeas  
**Subject:** proposed rules to limit aquarium fish take, scuba spearfishing, etc.,

I am totally in favor of protecting our marine resources and feel this is only the first step in trying to reverse the inevitable decline in our ocean resources. The Florida Keys, multiple islands in the Pacific, and the entire East Coast of the US give us sad examples of what happens to the ocean environment with uncontrolled economic exploitation of the marine resources. Please support the proposal fully.

George and Ellen Wilson

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**From:** Dermalskin  
**Sent:** Wednesday, December 05, 2012 9:20 AM  
**To:** darkona@hawaiiantel.net  
**Subject:**

I am in full support of the WHRFMA Amendments which are being proposed and will face a Public Hearing on Wed., December 5th. Thank you,

Tanya Mickey

---

**From:** Robert O'Conner  
**Sent:** Wednesday, December 05, 2012 9:25 AM  
**To:** darkona@hawaiiantel.net  
**Subject:** Chapter 13-60.4 Rule

Mr. Chairperson,

I support the proposed rule (Chapter 13-60.4). I do not believe SCUBA spearing is a sustainable fishing practice. SCUBA spearing is partly to blame for our decline in reef fish species (especially uhu and menpachi). Please end SCUBA spearing.

Thank You for considering my comment.

Sincerely,  
Robert O'Conner

---

**From:** Tim Adelman  
**Sent:** Wednesday, October 24, 2012 6:26 AM  
**To:** darkona@hawaiiantel.net  
**Subject:** Supporting West Hawai'i Amendment

To DLNR:

I am writing to say, "YES!" to the long-awaited Rule Proposals that are heading for this Public Hearing. As I cannot attend the Hearing in early December, I wanted to be

sure to write to show my support for the complete Amendment, especially Pebble Beach becoming an FRA.

Mahalo.

Tim Adelman

---

**From:** Cheri Adelman  
**Sent:** Wednesday, October 24, 2012 6:29 AM  
**To:** darkona@hawaiiintel.net  
**Subject:** darkona@hawaiiintel.net

To DLNR:

I am writing to say, "YES!" to the long-awaited Rule Proposals that are heading for this Public Hearing. As I cannot attend the Hearing in early December, I wanted to be sure to write to show my support for the complete Amendment, especially Pebble Beach becoming an FRA.

Mahalo.

Cheri Adelman

---

**From:** Cory Pittman  
**Sent:** Saturday, October 27, 2012 7:53 PM  
**To:** darkona@hawaiiintel.net  
**Subject:** regarding the proposed DLNR rule change, Chapter 13-60.4

Dear sir,

As a long-time marine biologist working in Hawaii (primarily on Maui though I've visited the Big Island), I'd like to express my support for the proposed DLNR rule change (Chapter 13-60.4) and, particularly, designation of Pebble Beach as a Fish Replenishment Area.

Sincerely,

Cory Pittman

---

**Sent:** Monday, November 05, 2012 6:10 PM  
**To:** darkona@hawaiiintel.net  
**Subject:** West Hawaii public hearing 10-5-12

I'm writing this in support of the rules package for AQ management. I'm sure your aware of all the time and hard work that has been spent on this rules package, it may not include or exclude everyone's wishes but It's a good step forward.

Aloha

Scott Brien

Sent from my HTC Inspire™ 4G on AT&T.

---

**From:** Glenn Anderson

**Sent:** Tuesday, November 06, 2012 5:12 AM

**To:** darkona@hawaiiantel.net

**Subject:** In support of WHFRMA Amendment.

I, Glenn Anderson, **SUPPORT the WHFRMA Amendment (Chapter 13-60.4),  
Protecting our reefs and ocean life is important for our state to conduct.**

--

Glenn Anderson

President

Kona Honu Divers, Inc.

[www.konahonudivers.com](http://www.konahonudivers.com)

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2012 Nov.6

Dear Sir,

This is to inform you that I fully support the WHRFMA amendment.

As resident of the Big Island I hop for continued protection of our reefs.

Mahalo, Marcia May

---

**From:** Wanda.John Hodson

**Sent:** Tuesday, November 06, 2012 6:49 AM

**To:** Bill Walsh

**Subject:** In SUPPORT of the WHFRMA Amendment (Chapter 13-60.4)

DAR,

I support the WHFRMA Amendment.

The provisions outlined in this amendment only make sense for the future of West Hawaii. If boundaries are not set, commercial fishers will continue to take until there is nothing left. Mother Nature can provide only so much.

Mahalo for your efforts in pushing this amendment through to success,

Wanda Rowan

---

**From:** Jim Welsh  
**Sent:** Wednesday, December 19, 2012 1:43 PM  
**To:** darkona@hawaiiintel.net  
**Subject:** Strong Support for DAR Proposed West Hawaii Rules Package

December 19, 2012

Dear Board Members,  
I am writing today to express my strong support of the West Hawaii rules package proposed by the Division of Aquatic Resources.

Jim Welsh

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**From:** Bruce Malasky]  
**Sent:** Saturday, December 01, 2012 7:37 AM  
**To:** darkona@hawaiiintel.net  
**Subject:** Support for WHI coral reef management

I'm writing in support of the WHRFMA Rules coming to the public hearing next week. This set of rules codifies many needed changes. My one request would be a scientific review and update of the white list within one year.

Bruce Malasky

---

**From:** Sarah Fogelstrom  
**Sent:** Saturday, December 01, 2012 8:55 AM  
**To:** darkona@hawaiiintel.net  
**Subject:** fish collecting

I am in support for the West Hawaii Regional Fishery Management area ammendment. I think there should be a ban on fish collecting but think this ammendment is a good start.

Sincerely,  
Sarah Fogelstrom  
West Hawaii resident

---



**From:** Jerry Halverson  
**Sent:** Saturday, December 01, 2012 12:31 PM  
**To:** DLNR Division of Aquatic Resources  
**Subject:** Proposed Rule Amendments Protecting Reef Fish

Aloha, Members, Division of Aquatic Resources:

This is to state that my wife and I strongly support the proposed rule amendments intended to protect some of our reef fish.

We would support a complete ban on collecting, but, if that is not possible, please adopt the amendments.

Thank you,

Jerry F. and Estela Halverson  
~~~~~

From: Joan Sudec
Sent: Sunday, December 02, 2012 3:46 AM
To: darkona@hawaiiantel.net
Subject: In full support of WHRFMA Amendments

I FULLY SUPPORT THE WHRFMA AMENDMENTS PROPOSAL which includes Ka'ohē Bay becoming an FRA, a white list, protections for sharks & rays, netting regulations and boundary verifications for some FRAs, and the rest of the package.

Thank you,

Joan Sudec
~~~~~

**From:** Shauna Banta  
**Sent:** Sunday, December 02, 2012 2:33 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** WHRFMA

I FULLY SUPPORT THE WHRFMA AMENDMENTS PROPOSAL which includes Ka'ohē Bay becoming an FRA, a white list, protections for sharks & rays, netting regulations and boundary verifications for some FRAs, and the rest of the package. Thank you, Shauna Banta  
~~~~~

Susan M Scott
Coral Reef Educator &
Calif licenced Tax Preparer

12/17/12

This letter is to support ALL of the WHRMFA Amendments.
Let's raise-up the world opinion of Hawaii with these Amendments
(not to mention the fish who won't be hunted while sleeping).

Sincerely,

Susan M Scott

~~~~~  
**From:** Lisa Fox  
**Sent:** Sunday, December 02, 2012 7:56 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** In full support of WHRFMA Amendments

I am in full support the West Hawaii Regional Fisheries Management Area Rule Amendments package.

Lisa Fox

--

Lisa Fox  
Early Childhood Education Specialist  
Shadow Teacher/Family Support

~~~~~  
From: Rebecca Giovannetti
Sent: Sunday, December 02, 2012 12:06 PM
To: darkona@hawaiiantel.net
Subject: Support The WHRFMA AMENDMENYS PROPOSAL

I FULLY SUPPORT THE WHRFMA AMENDMENTS PROPOSAL which includes Ka'ohe Bay becoming an FRA, a white list, protections for sharks & rays, netting regulations and boundary verifications for some FRAs, and the rest of the package.

Thank you,
Rebecca Giovannetti

~~~~~  
**From:** Vilnius  
**Sent:** Monday, December 03, 2012 9:47 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** In support of WHRFMA Amendments  
**Importance:** High

Dear Sir/Madam,

I am in full support of the WHRFMA Amendments which are being proposed and will face a Public Hearing on Wed., December 5th.

Thank you!  
With best regards from Lithuania,

Rustam Achmedov

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**From:** Rytlangis  
**Sent:** Monday, December 03, 2012 9:48 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** In support of WHRFMA Amendments  
**Importance:** High

Dear Sir/Madam,

I am in full support of the WHRFMA Amendments which are being proposed and will face a Public Hearing on Wed., December 5th.

Thank you!

With best regards from Lithuania,

Rytis Davidonis

---

**From:** Darrell Post  
**Sent:** Monday, December 03, 2012 1:28 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** December 5 Hearing

Dear Sir or Madam:

We are in full support of the WHRFMA Amendments which are being proposed and will face a Public Hearing on Wed., December 5th. We would appear in person, but we have to work.

Thank you,  
Patrea Post  
Darrell Post

---

**Sent:** Monday, December 03, 2012 9:32 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** In support of WHRFMA Amendments

Hey!

I am in full support of the WHRFMA Amendments which are being proposed and will face a Public Hearing on Wed. , December 5th.

I am visiting this island an the beech, I want to protect it.

Thank you,

Yours faithfully,

IGNAS DUCINSKAS

~~~~~  
From: Chris Perritt
Sent: Wednesday, November 07, 2012 2:15 PM
To: darkona@hawaiiantel.net
Subject: In support of WHFRMA Amendment

I support the **West Hawaii Fishery Regional Management Area (WHFRMA) Amendment (Chapter 13-60.4)**

Chris Perritt
~~~~~

**From:** marg love  
**Sent:** Tuesday, November 06, 2012 11:44 AM  
**To:** darkona@hawaiiantel.net  
**Subject:** support for amendment

I SUPPORT the WHFRMA Amendment (Chapter 13-60.4), Marg Love Capt. Cook, HI 96704  
~~~~~

From: Larry Chang
Sent: Tuesday, November 06, 2012 7:52 AM
To: darkona@hawaiiantel.net
Subject:

I fully support the WHFRMA amendment (**Chapter 13-60.4**),

Paulette Chang

\

~~~~~  
**From:** Anna Gentzel  
**Sent:** Monday, November 05, 2012 6:05 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** West Hawaii Fishery Management

I am in support of the WHFRMA amendment because it will minimize commercial fish collecting.

Signed, Judith A. Gentzel

---

**From:** Ann Hansen  
**Sent:** Thursday, November 08, 2012 8:17 AM  
**To:** darkona@hawaiiintel.net  
**Subject:** WHFRMA

**Aloha,**  
**I support the WHFRMA Amendment that will be having a Public Hearing on December 5th in Kona.**

Thank you for your attention.

Ann Hansen

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**From:** jivan collins  
**Sent:** Saturday, November 17, 2012 11:20 AM  
**To:** darkona@hawaiiintel.net  
**Subject:** WHFRMA

**I support the WHFRMA Amendment that will be having a Public Hearing on December 5th in Kona**

**Jivan Collins**

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**From:** Anne Kennard  
**Sent:** Wednesday, November 07, 2012 4:13 AM  
**To:** darkona@hawaiiintel.net  
**Subject:** In support of the WHFRMA Amendment (Chapter 13-60.4)

I, Dr Anne Kennard, SUPPORT the WHFRMA Amendment (Chapter 13-60.4).

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**From:** Caroline Killeen  
**Sent:** Wednesday, November 07, 2012 5:47 AM  
**To:** darkona@hawaiiintel.net  
**Subject:** WHFRMA

I support the WHFRMA amendment that will be held in a public hearing on December 5th 2012 in Kona.  
Caroline Killeen

~~~~~  
From: Sushmita Sen
Sent: Sunday, November 18, 2012 5:08 AM
To: darkona@hawaiiantel.net
Subject: In support of WHRFMA Amendments

I fully support the WHRFMA Amendments which include Ka'ohe Bay becoming an FRA.

Thanks for the great work!

Regards,
Sushmita Sen and Mark Mason
Philadelphia, PA
~~~~~

**Sent:** Tuesday, November 20, 2012 2:50 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** WHRFMA

As a homeowner in Kona Paradise, I fully support the West Hawaii Regional Fishery Management area amendments.

Linda Koo  
~~~~~

From: Wild Dolphin Foundation
Sent: Sunday, December 16, 2012 8:15 PM
To: darkona@hawaiiantel.net
Subject: In support of WHRFMA Amendments

We strongly support the WHRFMA Amendments which are being proposed.

Thank you,

Victoria D. Cullins

Wild Dolphin Foundation
~~~~~

**From:** David Dart  
**Sent:** Sunday, December 09, 2012 1:22 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** WHRP (for)

I support the WHRP. Like my father I believe in managing fisheries not closing fisheries. Neil Dart  
~~~~~

From: Alex Mevs
Sent: Wednesday, December 05, 2012 6:57 PM
To: darkona@hawaiiantel.net
Subject: Support the WHRFMA Amendments

I support the WHRFMA amendments (Chapter 13-60.4) Thanks!

From: Sam Giese
Sent: Thursday, November 08, 2012 8:25 AM
To: darkona@hawaiiantel.net; nene@diversparadisecove.com
Subject: WHFRMA Amendment

Aloha,
I support the WHFRMA Amendment that will be having a Public Hearing on December 5th in Kona.

Thank you.

Aloha,
Samuel Giese

From: Mary Kay Slingerland
Sent: Saturday, November 10, 2012 9:00 PM
To: darkona@hawaiiantel.net
Subject: WHFRMA

I support the WHFRMA Amendment that will be having a Public Hearing on December 5th in Kona.

MK Slingerland

From: Terry Schuller
Sent: Monday, December 17, 2012 5:26 PM
To: darkona@hawaiiantel.net
Subject: In support of WHRFMA Amendments

I am in full support of the WHRFMA Amendments which are being proposed

Thank you,

Terry Schuller

Dave Reid

From: Victoria Newman
Sent: Tuesday, December 18, 2012 3:38 PM

To: Bill Walsh, Ph.D.
Subject: In support of WHRFMA Amendments

I am in full support of all of the WHRFMA Amendments which are being proposed.

Thank you,

Victoria G Newman

From: Laury Scott
Sent: Wednesday, November 28, 2012 11:22 AM
To: darkona@hawaiiantel.net
Subject: In support of WHRFMA Amendments

I fully support the WHRFMA Amendments which include Ka'ohe Bay becoming an FRA!

Laurence Scott

From: Marie Sorce
Sent: Monday, November 12, 2012 4:29 AM
To: darkona@hawaiiantel.net
Subject: I SUPPORT the WHFRMA Amendment (Chapter 13-60.4)

To whom it may concern,
I SUPPORT the WHFRMA Amendment (Chapter 13-60.4)
Mahalo,
Marie Sorce

From: Margot Bogdonavich
Sent: Tuesday, November 06, 2012 3:02 PM
To: darkona@hawaiiantel.net
Subject:
"I support the WHFRMA Amendment."

Susie Jenkins

From: Mark Johnston
Sent: Wednesday, November 07, 2012 5:53 AM
To: darkona@hawaiiantel.net
Subject: In support of WHFRMA Amendment.

I support the WHFRMA Amendment.

MarkJohnston
EPIC Press

~~~~~  
**From:** Bonsangue, Martin  
**Sent:** Wednesday, November 07, 2012 7:03 PM  
**To:** darkona@hawaiiantel.net  
**Cc:** Annie \_ Kennard; Ryan Kennard;Martin Bonsangue  
**Subject:** In support of WHFRMA Amendment

Dear All:

I support the WHFRMA Amendment.

Yours,

Dr. Martin V. Bonsangue  
Professor of Mathematics  
California State University  
Fullerton, CA 92834

~~~~~  
I am in full support of the WHRFMA Amendments which are being proposed.

Chuck Babbitt	12/14/2012		Kaneohe HI 96744
Dr. David Delaney	12/14/2012		
Tim Levin	12/14/2012		Kailua Kona, HI 96745
Ryan Cox	12/14/2012		Nederland, CO 80466
Bryce Groark	12/14/2012		Kailua Kona, HI 976740
Very important to our reefs and community. Please don't pass this opportunity up.			
Scott Johnson	12/14/2012		Murfreesboro, TN 37130
I am a photojournalist, a Field Editor for Asian Geographic/Scuba Diver Austral Asia and on staff with Dive Training in the U.S. I am writing to confirm that I am in full support of the WHRFMA Amendments which are being proposed. The protective measures are desperately needed.			
Janice McLaughlin	12/14/2012		Bellingham, WA 98229
Michael Stretton	12/14/2012		Kailua Kona, HI 976740
Russell Keller Laros	12/14/2012		Kailua-Kona, HI 96740
Rachel Silverman	12/14/2012		Kailua-Kona, HI 96740
Patrice Heller	12/14/2012		Kailua Kona, HI 96745
Roger Roth	12/15/2012		Cincinnati, OH
Julian Tyne	12/15/2012		
Lala Aliyeva	12/16/2012		

From: Amy Hart
Sent: Tuesday, December 04, 2012 5:22 AM
To: darkona@hawaiiantel.net
Subject: WHRFMA

Hello,

I support the WHRFMA Rule Amendments package.

Amy Hart

Love Is The Answer

~~~~~

## Testimony In Partial Support of West Hawai'i Rules and Amendments



### CONSERVATION COUNCIL FOR HAWAII'I

December 19, 2012

Division of Aquatic Resources  
Hawai'i Department of Land and Natural Resources  
74-380B Kealahou Parkway  
Kailua-Kona, HI 96740

Via Email Transmittal: darkona@hawaiiantel.net

Comments on Proposed New Rule – Chapter 13-60.4 for the West Hawai'i Regional Fishery Management Area, Hawai'i and Proposed Amendments of Hawai'i Administrative Rules Chapter 13-54 and Chapter 13-75-12.4

Aloha. The Conservation Council for Hawai'i supports the prohibition of SCUBA spearfishing and possession of SCUBA gear and a spear or speared aquatic life in the West Hawai'i Regional Fishery Management Area; the establishment of a 1,500-foot section of Pebble Beach, South Kona, as a Fish Replenishment Area where aquarium collecting or recreational fish feeding will not be allowed; and the prohibition of taking or possessing nine species of inshore shark and ray and two species of invertebrate crown-of-thorns. We also support technical non-substantive rule changes, as well as boundary amendments for the Keauhou Bay Fisheries Management Area and inclusion of a more detailed and accurate map of the Puako Reef Fisheries Management Area if they facilitate better management and enforcement of the resource.

We oppose proposed rules relating to aquarium collection and offer the following comments:

1. The Department of Land and Natural Resources has not conducted a comprehensive environmental review to examine the effects of issuing such regulations, or of aquarium collection permitting in the state. It is making determinations on these rules without the necessary information or adequate public input.
2. There are currently no limits on the number of statewide aquarium collection permits that DLNR can issue, and the proposed rule does not put a limit on the number of West Hawai'i-specific aquarium collection permits that DLNR can issue. While DLNR has spoken out in favor of a limited entry system in West Hawai'i for aquarium collection, that is not included in this rulemaking, nor have we seen any timeline for implementation of such a system.
3. DLNR proposes to regulate aquarium collection only on O'ahu and in West Hawai'i, which means that anyone collecting outside these areas would not fall within the coverage of these regulations. Because the DLNR's aquarium collection permits allow collection statewide, it is not clear what DLNR's justification is for restricting its rulemaking to only these two areas.
4. Adequate analyses of the statewide impacts of aquarium collection to populations of endemic species are lacking, including analyses of cumulative impacts.
5. An analysis of the impacts of aquarium collection to reef ecosystems is lacking, including cumulative impacts.

Such an analysis should supplement information on populations and individual species for management purposes.

6. DLNR's background document on the proposed rule does not explain how DLNR determined the limits on fish collection that are included in the rules, nor does it provide justification for why certain species have been included on the "White List." For example, one of the species that the agency considers a "species of special concern" because it is relatively rare, is Tinker's butterflyfish, but DLNR included it on the "White List" without any bag limits. There is no explanation in the background document about what justification DLNR has for including it on the list as such.

7. In DLNR's Small Business Impact Statement, it discusses the proposed "White List" and the potential adverse impacts to aquarium collectors from the implementation of the list, stating that "[a]dverse revenue impacts should be minimal, given that these 'white list' species comprised 99% of the total fish catch and monetary value of the West Hawai'i aquarium fishery (2007-2011). The size limits for the highly targeted species have been tailored to prevent the taking of fish that are already considered less suitable for the aquarium trade (due to higher mortality rates or lower retail prices). . ." The statement goes on to say a few pages later that "[t]here was considerable negotiation between involved parties on the final species listing in the 'white list' and the specifics of the size and bag limits. The number of species on the "White List" was ultimately increased from 25 to 40 in response to input from Big Island aquarium collectors. The background document on the proposed rules states the same thing without any explanation of the scientific reasoning behind why an additional 15 species were added to the "White List" in August/September 2010, DLNR expanded the list to 40 species in response to negotiations with the Big Island Association of Aquarium Fishers.

8. Regarding the species that are currently on the "White List," the Division of Aquatic Resources 2010 Long-Term Monitoring of the Main Hawaiian Islands Final Report states that in areas open to collection in West Hawai'i, there is "clear evidence of collecting impact" on five of the most-collected species. DLNR has proposed bag/size limits for two of these most-collected species – the yellow tang and the goldring surgeonfish. The proposed size limits for yellow tang in the West Hawai'i rule puts bag limits (five fish per collector per day) on yellow tang that are <2" and > 4.5". However, it places no collection limits on yellow tang that are between 2-4" long, despite the fact that these are the size that are targeted by collectors (according to one study this is because, "[s]maller and younger fish have low survivorship in holding tanks, and older and larger fish are less desired by the trade"). There is no scientific information in the rule or associated documents that discusses the rationale for the other bag and size limits set forth.

9. According to the same monitoring report, there are seven species that are included on the "White List" for which DLNR was unable to obtain any population density estimates because of the particular species' distributions or behaviors (blacklip butterflyfish, bluestripe snapper, Fisher's angelfish, Tinker's butterflyfish, flame wrasse, Hawaiian longfin anthias, and eyestripe surgeonfish), so at the very least, aquarium collection's effects on these particular species are unknown. There are no proposed bag limits for any of these species.

10. There are four species on the "White List" with no proposed bag limits for which DLNR has documented population problems in West Hawai'i:

➤ DLNR stated that it has "population concerns" and notes problems with "survivability in captivity" for the psychedelic wrasse.

➤ In its 2010 Long-Term Monitoring of the Main Hawaiian Islands Final Report, DAR stated that lei triggerfish populations "have not responded to the increase in protected areas and have actually decreased in West Hawai'i since 1999."

➤ Tinker's butterflyfish has been identified by DLNR as a species that is "particularly vulnerable to depletion" because it is "naturally uncommon or rare" and "command[s] high prices in the aquarium trade" in its 2010 Report to the State Legislature on the West Hawai'i Regional Fishery Management Area.

➤ The same report to the Legislature also states that "there should be concern for the sustained abundance of [Achilles tang]" in West Hawai'i. The 2010 long-term monitoring report states that "aquarium collecting is having a major impact on Achilles [tang]." There are proposed bag limits for Achilles tang of 10 fish per person per day in the rules, but there is no

explanation of how DLNR came up with this limit.

11. The Hawaiian dascyllus is also on the "White List" with no bag limits, and it is an endemic species that the Center for Biological Diversity has petitioned for listing as an endangered species due to adverse effects on its habitat caused by climate change, among other things.

Mahalo nui loa for the opportunity to comment.

Marjorie Ziegler

**Hawai'i's Voice for Wildlife – *Ko Leo Hawai'i no na holoholona lohiu***

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Directors: Rick Barboza \* Lida Pigott Burney \* Maka'ala Ka'aumoana \* Koalani Kaulukukui \* Robin Kaye  
Executive Director: Marjorie Ziegler

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12/10/2012

**Testimony for the "West Hawaii Regional Fishery Management Area Rules Package"**

To whom it may concern:

Aloha,

As a resident and full time fisherman of West Hawaii, I would like to support most of the rules package. Let me be clear, I fully support certain aspects and other parts I do not.

I will start with what I do not support:

1. Spearfish on Scuba Ban. I don't support bans on any established fishery especially in a management area. Having heard both the supporters and detractors I must go with my conscience on this one and side with the detractors. This rule very well may have merit, but the process was not inclusive enough and it needs to be thoroughly vetted with active participants and other interested parties. Personally, I don't see much spearing on scuba taking place and I am on, or in the water more often than just about anyone.
2. Possessing a spear and scuba gear at anytime. I think that a person should be allowed to have both on their boat at anytime. I also believe that a spear is a practical defense against sharks while diving and this does not mean the person intends on shooting fish. Some of the supporters of this think this is silly but I think they base their opinion on theory and not facts of life. A spear can be the difference between life and death and that should be taken seriously. I

have kept sharks at bay with a spear and I was not shooting fish....just diving so I cannot deny reality.

Most everything else in this package I support. I will go over the major rules with my opinion and history on each.

1. Slot limit on Yellow Tang (*Zebrasoma flavescens*). This rule has the most benefit in this entire package. First it protects the undersize (less than 2") fish which are more sensitive to hold and ship. Allowing the fish to grow to a more robust size eliminates wastage, which is not a tangible number but it does help. The rule also protects the larger fish (larger than 4.5"). This size fish will certainly enter the breeding population and this has been confirmed through scientific research by Jeremy Claisse. This ensures a healthy number of individuals will enter the breeding population in the open areas. Overall the breeding population will not only remain at capacity but will remain vigorous and full of vitality. The allowed size is the appropriate size for capture but for the sake of brevity I will move on.
2. Pebble Beach FRA. I am not keen on giving up fishing grounds for no good reason but in this particular situation a more moderate solution needed to prevail. The history on this is long and it needed to be put to rest. The Friends of Pebble Beach led by John and Sue Kellum have been very cordial and reasonable. Having two user groups finding common ground is a good thing and that is what has happened here.
3. White List. This list was vetted with the BIAFF and I took part in the final version of it and at this point I support it.
4. Bag limit of five per diver per day on over/under sized yellow tang, oversized kole. Bag limit of ten Achilles per diver per day. I support this.
5. West Hawaii Aquarium Permit. I support this under the context it was explained and the assurances made. I have had email communications and face to face meetings with Kona DAR and they said this permit will not be used to kick out active participants with the archaic control date of 2005. They said that date was left there because it has yet to be changed but it will. It was explained that this permit is the initial step towards limited entry and that active fishers, earning income and keeping their nose clean will be ensured participation. All of this was also confirmed in writing by the chair of the Limited Entry Committee of the WHFC .

There are other aspects I support but they are small and don't need mentioning. I would like to address a possible set of issues that should be changed. Aquarium fishermen will be required to notify DAR if and when they do overnight or two day trips. If the trip is two days, than two days worth of bag limits should be allowed. This was discussed with Kona DAR with various stakeholders in attendance and everyone agreed. Dr. Walsh agreed and said he would check with the Attorney General. He did, and the AG said it needed to be mentioned at Public hearing through testimony. Well here it is. I believe

another stakeholder (John Kellum) who was in on the meeting has sent his support for these changes to Dr. Bill and Rob Pacheko of the Land Board.

Overall, the rules making process is complex and a lot of work. Nobody is ever 100% happy with the outcome but in the end something good is accomplished. I am still unsure if this package is all or nothing as I have heard conflicting statements but I do support the vast majority of it.

Thank You

Eric Koch

Kailua-Kona

~~~~~  
Dec. 05, 2012

My name is David Zimmerman, University of Colorado, and I have been living here for about seven years now. And I can feel the tension, I can feel the animosity, and I can understand it. And this diving and taking fish, especially the parrot fish that are sleeping at night, I don't think that that's acceptable. I will support the ban, but I hope that the fishermen and the other people can get together and come back and say, hey, wait a minute, maybe there is something better that we're missing. How about not spearing at night. This would be acceptable to me. But for right now I have to support that.

I don't believe in the correctness, the Ph.D. syndrome, there is too many people doing bad science with Ph.Ds. I'll just say that. I know that in northern California where I'm from as a commercial fisherman, I can tell you that our rock fish we had to completely ban the catch of all rock fish because they got wiped out and that wiped out almost every fisherman from Monterey to who knows where. It wiped out in Preston, and we couldn't catch anything.

The abalone, if you put a tank -- two tanks on my back, abalone wouldn't stand a damn chance in hell, and that's why we don't do it. I'd like to see everybody with their fair share of abalone and also with their fair share of fish.

I have a lot of free divers, friends, who can dive down to 100, 150, 200 feet, but they're young. When we get old, I can't do that anymore, so I can understand the importance of having a tank on your back but not at the parrot fish and not at night diving. That's just too much.

Kole and yellow tang, I have no problems with that issue. I have no problems with Bill. He came up with this new title called charismatic. I do have a problem with people taking the dragon Moray eel out of the ocean.

They're rare. I asked Doug Perrine when is the last time he saw one. I think he said three or five years ago. I saw one about three years ago. It's on the White List. I hope that the White List is a dynamic list. I hope that we can come back and say, hey, wait a minute, let's not allow the dragon Moray eel.

There are other fish which Bill Walsh calls, I think, charismatic fish. You can tell when fish are getting rare. It's simple. If somebody is offering you 2 to 3 grand for a fish, it's getting frickin' rare, okay. And so these fish that are getting rare, the Achilles tang, he gets beat up. The Hawaiians love to eat the Achilles tang, the collectors like to collect them, two front, poor fish. I believe the one collector who I've had some words with before said, hey, let's ban it for about two, three years, give them a chance to come back. Now we're going to have to figure out how to convince the people that are eating it and plus the collectors.

Let's see, saddle wrasse, that's another that's got some issues, but crown-of-thorns, my God, if I hear another issue about crown-of-thorns, they're not out of control here in Hawaii, folks. I'd like to see -- anyone take me down and show me where we can count 30 or 40 crown-of-thorns. You might see one here, one there. This isn't Australia, folks. This is Hawaii. The crown-of-thorns are not out of control, they're not wiping out the reefs.

I would like to see a complete ban on taking of tiger sharks and people that think it's fun to catch an 18-foot tiger shark and sit there for 13 hours toying with it and then cut the damn thing loose. That's not humane, that's not fishing, that's not helping the locals, that's not helping a damn soul. And if somebody does that, I'm their enemy.

Anyway, bless you all -- one more thing; the DLNR, they're underpaid, they can't enforce this stuff, they need to get some enforcement capabilities. They cannot enforce. They can't even enforce the canoes over at K Bay, Captain Cook. Good grief, they need some back up, they need some money, they need to be able to enforce these regulations. Bless you all.

Thank you.

Dear Sirs;
The Big Island Association Of Aquarium Fishers would like to offer testimony on the following;

WE SUPPORT that 1500 ft fronting Pebble Beach will be made in to an FRA.
WE SUPPORT a "white list" that would allow aquarium collectors to catch only 40 species.
WE SUPPORT the proposed size and bag limits on yellow tangs, koles and achilles.
WE DO NOT SUPPORT a WHFMA special license that may be used in the future to form a limited entry program.
WE DO NOT SUPPORT making it illegal to have aquarium gears before sunrise or after sunset without notification of DLNR.

WE DO NOT SUPPORT having to "label" fishing gears with "CML".
WE DO NOT SUPPORT a ban on spearfishing.

The items we do not support may be good candidates for management. Our concern is that none of these ideas were vetted by the stakeholders who they will affect. The BIAAF is more than willing to discuss these concepts. We feel that our input should be critical to future management initiatives as we are the one's on the front lines with the day to day experience.

Aloha and thank you for your time,
Pete Basabe/BIAAF

Dec. 05, 2012
MR. BASABE:

Maybe next time we have a meeting this large, we can ask them to have two separate lists for testifiers. We can have a seniors' list and then we can have people that are not seniors, so we won't have a mass exodus before people can testify.

I represent Big Island Association of Aquarium Fishermen. The Big Island Aquarium Fish Association supports the following, making Pebble Beach an FRA, adopting a White List of aquarium fish that can be caught, setting of a yellow tang slot size and bag limit for that slot size, kole size and bag limit, Achilles bag limit.

These are the items that we worked long and hard with the DAR to come up with this. And as it was said once before, the yellow tang slot size was not put upon us. We offered that up because we realized that those are the sizes that need to be looked at for having the breeder stock not be affected and having the baby stock not going on the market when they're not strong enough.

These proposed rules have been discussed by stakeholders in depth, and the BIAF wants to thank all the people that were involved with these rules that were set up.

The BIAF does not support the following rules, a ban on spearfishing, the West Hawaii special aquarium permit, possession of collecting gear on vessel before or after dark, labeling of gears. It's not that these are not good ideas, but these items were not vetted in the public forum. They were talked about at the West Hawaii Fishery Council, but the Big Island Association of Aquarium Fishermen were never allowed to make comments on this. So we would like to see the process come back where these items can be discussed and they can, hopefully, maybe be improved.

The one that's very scary for the fishermen is the special permit for the West Hawaii Fishery Management Area, and the reason that's scary is because there is no format to it. It's just an idea. And then it can be taken and

be done anything with it. We would like to see the blood and guts of what this is going to look like and have comment on it and then we can go forward with that.

On the spearfishing, and I also am representing myself on the spearfishing and not the BIAAF, our association is against it, but only in the sense that a lot of the fishermen, aquarium collectors carry a spear for protection, and we also use it to move our fish.

There have been occasions when we've had to use it to defend ourselves under water. And if we can be given a supplement to something that would work just as well, we would be glad to take it, but so far there is nothing that has been presented to us so that's a concern that we have. And that's the end of the BIAAF statement.



Hui Aloha Kiholo
P.O. Box 1868
Kamuela, HI 96743

December 19, 2012

Division of Aquatic Resources
74-380B Kealakehe Parkway
Kailua Kona, HI 96740
darkona@hawaiiintel.net

RE: Written testimony regarding Chapter 13-60.4, West Hawai'i Regional Fishery Management Area

Aloha,

Hui Aloha Kiholo is pleased to have the opportunity to provide comments on the above-mentioned Chapter and proposed rule amendments. As a non-profit community-based organization in West Hawai'i, Hui Aloha is deeply committed to perpetuating the cultural and natural resources of the kekaha region of Hawai'i Island, and has been directly engaged in fisheries resources work within our area of concern, Kiholo Bay. The Hui Aloha Kiholo Board of Directors met on December 10, 2012 and discussed the proposed rules as an agenda item. As a group that will be directly affected by these rule changes, the Board offers the following comments to the proposed rule amendments:

- **Prohibition of SCUBA spearfishing:** Hui Aloha Kīhōlo is concerned with the implementation of this rule as it impacts so many recreational divers who aren't all trying to fill up their "T-Bars." For most of them, taking a few fish home for their family's dinner is the culmination of a great day of diving. If the abuse of this practice is definitely harming the resources sustainability, are there other measures we can take first before this blanket closure is implemented? Maybe limiting commercial spearfishing could be one of them. We would only support the blanket closure if these other measures were tried first.
- **Establishment of FRA in Ka`ohe Bay:** This area is beyond the kuleana of Hui Aloha, and therefore have no substantive comment beyond that we support community-based management of fisheries resources, as they have the best knowledge of the area.
- **Establishment of a "White List" of 40 fish species:** This measure is wholly inadequate to protect marine fisheries in Kīhōlo and West Hawai`i in general against the impacts of aquarium take. Unfortunately, it is superior to the rules that are currently in place. Bag limits, catch size and approved species does little to increase the accountability of aquarium collectors and the almost complete lack of enforceability of any AQ related rules. If DOCARE officers have not the right to inspect catch holding containers, how can anyone, lawful or otherwise, be considered compliant? While the rules need fixing, so does the system. Therefore, Hui Aloha Kīhōlo supports this measure with qualifications, particularly that a lot more work needs to be done.
- **Prohibition of take or possession of nine species of sharks and rays, two crown-of- thorns predators:** Hui Aloha Kīhōlo supports this rule, particularly with the provision of cultural take.
- **Establishment of a West Hawai`i Aquarium Permit:** Hui Aloha Kīhōlo supports this rule with the same caveat as the third item, that there is much more work to be done on these subjects.
- **Other AQ Collecting Provisions:** Hui Aloha Kīhōlo supports these rule changes.
- **Clarifications of the boundaries of the Puakō Bay and Puako Reef FMA:** As in item 2, this is beyond the kuleana of Hui Aloha, and therefore have not substantive comment beyond that we support community-based management of fisheries resources.
- **Clarification of no-netting boundaries within the Keauhou FMA:** This is beyond the kuleana of Hui Aloha, and therefore have not substantive comment beyond that we support community-based management of fisheries resources.
- **Technical amendments to the department's statewide lay net rule:** Hui Aloha Kīhōlo supports this rule with the caveat that Kīhōlo is a FMA within West Hawai`i that explicitly prohibits lay nets between Nawaikulua Point and Hou Point.

Hui Aloha Kīholo appreciates the time and effort that was invested into the protection of our fisheries resources in West Hawai`i and statewide. While we support these improvements to the existing rules, we still do not consider them to be adequate to meet the needs of the resource. Hui Aloha Kīholo and its partners are actively collecting fishery resource data in our ahupua`a with the intended result of a community-based fisheries management plan to support the enhancement of all marine resources while protecting pono fishing practices.

Mahalo again for the opportunity to provide comment on the proposed rules.

Aloha,



Jenny H. Mitchell, President
Hui Aloha Kīholo



Mike Donoho, Executive Director
Hui Aloha Kīholo

From: KIM KOCH
Sent: Sunday, December 09, 2012 4:05 PM
To: darkona@hawaiiantel.net
Subject: testimony

Hey Dr Bill,
Testimony is attached, Please let me know if you have any questions.

Testimony for the West Hawaii Regional Fishery Management Area
If I had to make a decision that is all or nothing, I would support this. If sections can be removed, I would be in a better situation to support this package.

1. I support the White List
2. I support the Pebble Beach FRA
3. I support the size and bag limits
4. I support calling in for an overnight trip, pending the language WILL BE CLARIFIED and will allow for two days worth of bag limits. As written, you are calling or emailing in to inform DAR of an overnight trip(Dr Bill has agreed that he would allow "double bag limits") but the rule says "you may not possess more than the daily bag limits". This would be left to interpretation of DOCAR or other agencies and with stiffen penalties within this rules package someone coming into port with two days of bag limits could get fined \$1000.00 per fish(violation).
 - a. In 13-60.4-7(B) needs to have "such notifications will allow for two days worth of bag limits" added.

- b. In 13-60.4-7(B) (1),(2), and (3) needs to have clarification on the portion that states, “or possessed at any time” . This need to have the two days worth of bag limits mentioned as it reads currently, you will be in violation pulling into the harbor.
5. I would like clarification on calling in on “overnight” trips. As it is written you would need to notify DAR, if you will be on the water from sun up to sun down. Most fisherman, leave early(4-6am) would this require notification? I think clarification is needed. Also, I would like to recommend that an auto reply type of email system be setup so DAR-Kona has the email, and the fisherman has documentation as well. Or some other type of verification system that is a quick reply and all parties are notified.
6. I support the remainder of the aquarium related portions, and hope that even though not clearly stated much of the future plans such as the “West Hawaii Aquarium Permit” will not put my family out of business. We have been assured(via various DAR Kona employees and members of the WHFC) that this is not the case and that all active participants within the fishery will be allowed to continued fishing and a new “effective” date will be issued through the actions of the WHFC subcommittee and this work has yet to be completed. Basically, my understanding is that this is the initial step in forming a limited entry program and if that is the correct case, I support this.
7. I am not in favor of ANY FISHING BAN. I am in favor of management. I am not a spear fisherwoman, so I cannot honestly give an opinion on the matter, but I am opposed to bans in general.

To summarize, I support the package as a whole BUT clarification need to be made. I would recommend that the spear fishing ban be removed, ONLY if it will not affect the package as a whole because I truly believe this management plan should be moved forward and passed into law.(pending minor verbiage and clarifications are made).

Kim Koch

Kona Hawaii

Dr. William Walsh
Department of Land & Natural Resources
Division of Aquatic Resources
Tuesday, Dec. 18, 2012

Testimony in support of the proposed West Hawaii aquarium collecting rules

I work as a full time commercial fisherman on Oahu, with the majority of my income coming from saltwater aquarium fish. I do not fish on the Big Island, nor do I intend to do so in the future.

However, it is in the best interests of the state that all of our fisheries are properly managed, and I feel that the proposed amendments concerning the West Hawaii aquarium fishery are an important step in the right direction.

As such, I believe it is in the best interest of the state to pass the rule amendments concerning the Kaohe Bay FRA extension, the 40 species white list, the Yellow Tang, Kole, and Pakuikui size and bag limits, the West Hawaii Aquarium Permit, and all other amendments specifically concerned with the aquarium fishery. In my opinion, the most important of these are the Yellow Tang and Kole size limits, the Achilles Tang bag limit, and the Kaohe Bay FRA. These amendments will have the most immediate benefits in terms of conservation and limiting user conflict.

I do not have an opinion on the proposal to prohibit the take of sharks, rays, Triton's Trumpet, or helmet shells. Nor do I have an opinion on the Puako FMA rules or the lay net amendments.

Regarding the proposed ban on spearfishing with SCUBA, I believe that this issue requires more community involvement before it should be enacted into law. Spearfishing, by whatever means, is a highly selective method of fishing that is important to local people statewide, including those who cannot fish for themselves and must purchase their fish at the market. Hawaii is unique among most Pacific islands in its ability to monitor and regulate nearshore fisheries, and it ought to be possible to manage this fishery without prohibiting it entirely. At this stage, imposing a ban appears to imply a failure of community based management, which sets a dangerous precedent for the future of our marine resources statewide. If it is at all possible to do so without obstructing the rest of the rules proposal, I hope that this section can be held back and returned to the West Hawaii Fisheries Council for further discussion.

It's important to state that these regulations are only a first step. They do not preclude more management in future, and it is very likely that, in the future, more regulations will be needed to deal with issues that these rules do not address. When that time comes, I hope that the Department will be willing to consult with the fishing community to decide what is best.

Please approve the aquarium fish related portions of this draft. Thank

you for the opportunity to testify,



Matthew Ross

From: Adam Snodgass
Sent: Tuesday, December 18, 2012 6:44 PM
To: darkona@hawaiiintel.net
Subject: Testimony

Testimony for the west Hawaii Regional fishery management area rules package.

I am a resident of the west Hawaii and a full time fishermen . i would like to state that i do not support the spear fish on scuba ban i feel that there is not enough evidence to support such a ban. i would like to say that i am in support of the rules placed for the aquarium fishery. i would like to see that the wording in a particular part of the rules be addressed properly the rule states that the limit of 10 Achilles tangs are allowed per diver per day if one was to do a two day trip and came back with 20 for the two days of fishing even if DAR was notified of this trip i feel that this should be implicated in the writing of this rule i can see trouble of this. so what I'm saying is if i was to get checked at the ramp by Dlnr and their understanding is 10 Achilles per day because the rule is 10 not 20 and the DAR office says by some misunderstanding they were not informed of a two day trip i see trouble also the slot limit applies the same for the rule states 5 over and 5 under sized fish of yellow tangs and kole tangs if i or any one else comes in with double for two days i see a problem. i feel it would be better in writing than an agreement with one office and Dr bill Walsh. for the rule states at any time no more than 10 should be allowed in possession. i would also like to see that the possession of collective gear from sunset to sunrise be revised as well because of the two day trips that are taken we sleep on the boat with are gear its an impossible rule.

Sincerely Adam K Snodgass

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## Testimony In Opposition to West Hawai'i Rules and Amendments



**EARTHJUSTICE**

ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES  
NORTH WEST ROCKY MOUNTAIN WASHINGTON, D.C. INTERNATIONAL

December 19, 2012

SUBMITTED VIA EMAIL AND U.S. MAIL TO:

Hawai'i Division of Aquatic Resources (DAR Kona Office)  
74-380B Kealakehe Parkway  
Kailua-Kona, HI 96740  
[darkona@hawaiiantel.net](mailto:darkona@hawaiiantel.net)

**Re: State of Hawai'i, Department of Land and Natural Resources, Division of Aquatic Resources Proposed Adoption of Hawai'i Administrative Rules Chapter 13-60.4 and Repeal of Chapter 13-60.3**

These comments are submitted on behalf of Earthjustice, the Humane Society of the United States, the Center for Biological Diversity, and Mike Nakachi in response to the State of Hawai'i, Department of Land and Natural Resources (DLNR), Division of Aquatic Resources (DAR) public comment notice regarding adoption of Hawai'i Administrative Rules Chapter 13-60.4 and Repeal of Chapter 13-60.3. Earthjustice is a non-profit public interest law firm dedicated to protecting natural resources, wildlife, and the right of all people to a healthy environment. Earthjustice's Mid-Pacific office is located in Honolulu, Hawai'i.

### I. OVERVIEW

We welcome this opportunity to provide comments on these proposed rules ("Proposed Rules").<sup>1</sup> We have serious concerns about the Proposed Rules because they fail to provide adequate protection for West Hawai'i's coral reef ecosystems from the effects of aquarium collection. We have identified several ways in which the Proposed Rules are inadequate, including the rulemaking process itself, the fact that the Proposed Rules are not accompanied by any explanation of the science supporting the bag/size limits or the "White List," nor have they been reviewed under the Hawai'i Environmental Policy Act (HEPA) to determine whether they "may have a significant effect on the environment." Haw. Rev. Stat. § 343-5(e)(3). Additionally, though DLNR has recommended establishment of a limited entry system of permitting for aquarium collection in West Hawai'i on multiple occasions,<sup>2</sup> the Proposed Rules do not impose

<sup>1</sup> Our comments are restricted to the rules proposed in Hawai'i Administrative Rules Chapter 13-60.4 and the repeal of Chapter 13-60.3 that relate to the White List and aquarium collection bag and size limits in West Hawai'i. We recognize that there are several other new rule

provisions and rule amendments that are being proposed by DAR along with the Proposed Rules, including amendments to chapters 13-54, 13-57, and 13-75 of the Hawai‘i Administrative Rules, and that there are provisions of Chapter 13-60.4 that do not relate to aquarium collection—this comment letter does not express a position on these other provisions or rules.

<sup>2</sup>DLNR, Rep. to the Twenty-Fifth Legislature, Report on the Findings and Recommendations of Effectiveness of the West Hawai‘i Regional Fishery Management Area,

any limit on the number of aquarium collection permits that DLNR can issue. Without limiting the number of people who can collect aquarium species, the bag limits are meaningless. The Proposed Rules also ignore some of DLNR’s own data and information about the adverse effects of the aquarium trade on fish populations and West Hawai‘i’s coastal ecosystems.

DLNR needs to conduct a HEPA review of its aquarium collection rulemaking, or, at the very least, should develop rules on aquarium collection that are based on sound science after a careful examination of aquarium collection’s effects on Hawai‘i’s reef ecosystems and the species that inhabit them.

## **II. ISSUES WITH THE RULEMAKING PROCESS**

Several people who submitted public comments or expressed their opinions on the Proposed Rules received emails from DAR in response, prior to the close of the comment period on December 19. These emails from DAR expressed the view that a person submitting comments was obligated to take an “all or nothing” position on the West Hawai‘i rulemaking package, claiming essentially that a person had to support all of the rules or it would be the equivalent of supporting none of them. The reason given was that if a person failed to support the entire rulemaking package, the package would be sent back to the starting point by the Attorney General’s office, which would result in another ten years of drafting before the agency would be able to introduce new rules. There was no explanation provided for why new rules would take ten years to draft, or why parts of the rulemaking package could not move forward without all of the others. There is no reason, legal or otherwise, why a member of the public cannot support part of the rulemaking package, and oppose, or take no position on, the other parts. DAR’s assertion that a person must either be “for” or “against” the rules, rather than allowing the public to review each part to determine its merit was not only improper, but may have affected many of the comments that DAR ultimately received on the rulemaking package.

DLNR has an obligation under Haw. Rev. Stat. § 91-3 to “[a]fford all interested persons opportunity to submit data, views, or arguments, orally or in writing” and to “fully consider all written and oral submissions respecting [a] proposed rule,” meaning that regardless of whether the agency agrees with the opinions expressed in comments on a proposed rule, the agency must review and consider them. DLNR’s attempts to control the opinions expressed in public comments subverts the purpose of public participation in agency rulemaking, and taints the process. We ask that BLNR consider these process issues when it reviews the West Hawai‘i rulemaking package, particularly given the fact that it is unclear how many comments were affected, and we reserve the right to challenge the rulemaking process on the grounds that DAR’s attempts to influence the substance of public comments were legally improper.

## **III. THE BAG AND SIZE LIMITS IN THE PROPOSED RULES ARE NOT ACCOMPANIED BY SCIENTIFIC INFORMATION OR CATCH DATA**

DLNR fails to provide any scientific justification for the bag and size limits in the Proposed Rules, and fails to acknowledge how these rules will remedy the significant problems it has identified with West Hawai'i aquarium collection, including the decline in yellow tang

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January 2010, at 31; Walsh et al., Long-Term Monitoring of Coral Reefs of the Main Hawaiian Islands, December 2010, at 98.

populations in the areas that are open to collection, and the lack of available data regarding several species on the proposed White List. As a result, the Proposed Rules fail to offer many protections for collected species and West Hawai'i's coral reefs.

A. DLNR's Small Business Impact Statement's Discussion of the White List Reveals Significant Flaws

In the Small Business Impact Statement (SBIS) that accompanies the Proposed Rules, the agency discusses the White List, which can be found in Proposed Haw. Code R. § 13-60.4-7(b), and the potential adverse impacts to aquarium collectors from agency adoption of the list.<sup>3</sup> The SBIS states that,

“[a]dverse revenue impacts of [the Proposed Rules] should be minimal, given that these “white list” species comprised 99% of the total fish catch and monetary value of the West Hawaii aquarium fishery (FY 2007-2011). The size limits for the highly targeted species have been tailored to prevent the taking of fish that are already considered less suitable for the aquarium trade (due to higher mortality or lower retail prices); the bag and size limits will also support the commercial sustainability of the fishery by ensuring greater breeding opportunities for existing fish stocks.”<sup>4</sup>

The SBIS also notes that the Big Island Association of Aquarium Fishers (BIAAF) supports the White List and bag and size limits.<sup>5</sup> Given the fact that the species on the White List represent 99% of the value of aquarium collection take in West Hawai'i, it is hard to imagine how including all of these species on the list, most of them without bag limits, will result in any meaningful restriction of aquarium collection in West Hawai'i. Unfortunately, DLNR provides no information to shed any light on how it expects these Proposed Rules to protect the coastal environment or quantifying the ways in which it expects the rules to provide better regulation of aquarium collection.

The SBIS also notes that “[t]here was considerable negotiation between involved parties on the final species listing in the ‘white list’ and the specifics of the size and bag limits. The number of species on the ‘white list’ was ultimately increased from 25 to 40 in response to input from Big Island aquarium collectors.”<sup>6</sup> It appears from this statement that it was “input from Big

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<sup>3</sup> DLNR, Small Business Impact Statement on Proposed Amendments to Chapters 13-54 and 13-57,

Repeal of Chapter 13-60.3, Adoption of Chapter 13-60.4, and Amendments to Chapter 13-75, Hawai'i Administrative Rules.

<sup>4</sup> Id. at 1-2 (emphasis added). While the White List would prohibit take of all invertebrates in West Hawai'i, according to DLNR's comments in the SBIS, invertebrates comprise 1% or less of the West Hawai'i aquarium trade.

<sup>5</sup> Id. at 2.

<sup>6</sup> Id. at 4.

Island aquarium collectors," rather than scientific data, that resulted in the addition of fifteen fish species to the White List that had previously been excluded.<sup>7</sup>

B. DLNR Provides No Scientific Justification for Frequently-Collected Species' Bag and Size Limits

There is a notable lack of DLNR analysis regarding the effects of the bag and size limits in the Proposed Rules on populations of yellow tang, kole, and Achilles tang in the West Hawai'i coastal environment. This is concerning since DLNR studies have shown that there is "clear evidence of collecting impact" for four of the most heavily-collected aquarium species in West Hawai'i, which include yellow tang and kole.<sup>8</sup>

The Proposed Rules' bag and size limits for collection of yellow tang prohibit a person with a commercial aquarium collection permit from taking more than five yellow tang that are less than 2 inches in length and five yellow tang that are greater than 4.5 inches in length. Proposed Haw. Code R. § 13-60.4-4(2).<sup>9</sup> Studies on the yellow tang aquarium fishery in Hawai'i reveal that juvenile yellow tang between 2-4 inches in length are targeted by the aquarium trade because "[s]maller and younger fish, i.e. very recent settlers, have low survivorship in holding tanks, and older and larger fish are less desired by the trade."<sup>10</sup> The aforementioned bag and size provisions in the Rules would only place limits on the take of yellow tang that are already not desirable to the trade, which, as noted in Part III.A above, DLNR acknowledges in its SBIS on the Proposed Rules.<sup>11</sup>

There is no analysis of the anticipated effect of these bag and size limits on yellow tang populations or on Hawai'i's reef ecosystems in the Proposed Rules, in any background document on the rules, or in any of the documents DLNR prepared for the SBRRB. This is particularly surprising, given that DLNR's own studies have found that in areas open to collection in West

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<sup>7</sup> The background document on the Proposed Rules also reveals that in August 2010 through January 2011, DAR engaged in negotiations with the BIAFF "regarding white list, size and bag limits," which resulted in the presentation and approval of an "[e]xpanded white list of 40 species" by the West Hawai'i Fisheries Council and the adoption of a BIAAF resolution approving the White List in September 2010. DLNR, Background on Proposed Hawai'i Administrative Rule § 13-60.4, West Hawai'i Regional Fishery Management Area, Hawai'i, at 30-31.

<sup>8</sup> Walsh et al., supra note 2, at 105.

<sup>9</sup> The Proposed Rules fail to specify whether this is a daily limit, but given that the other bag and size limits in the Proposed Rule are daily limits, it seems likely that DLNR would interpret this provision as such. See Proposed Haw. Code R. § 13-60.4(b)(2)-(3).

<sup>10</sup> Williams et al., Impacts of a Hawaiian Marine Protected Area Network on the

Abundance and Fishery Sustainability of the Yellow Tang, *Zebrasoma flavescens*, 142 Biol. Cons. 1066, 1067 (2009); see also Stevenson et al., Fisher Behavior Influences Catch Productivity and Selectivity in West Hawaii's Aquarium Fishery, 68 International Council for the Exploration of the Sea Journal of Marine Science 813, 817 (2011) (stating that the mean yellow tang length caught by aquarium collectors during the course of the study was 6.1 centimeters, which is approximately 2.4 inches).

<sup>11</sup> Supra note 4.

Hawai'i, yellow tang populations have experienced a substantial decline.<sup>12</sup> In 2010, DLNR attributed this decline to both low yellow tang recruitment and "an increase in the number of aquarium collectors and collected animals relative to the period when the FRAs were established."<sup>13</sup> A 2011 study in West Hawai'i found that, "[t]he significant decline in abundance of yellow tang over the past 12 years in areas open to fishing despite closing ~35% of the coastline to fish harvesting, and the +75% greater abundance of yellow tang inside MPAs vs. outside underscores the fact that the fishery is having a strong effect on its resource."<sup>14</sup> While DLNR has stated that "[t]he continuing decline of yellow tang in areas open to collecting has prompted several additional proposed management actions," the Proposed Rules and accompanying documents do not address how and to what extent these bag and size limits are expected to affect yellow tang populations in West Hawai'i.<sup>15</sup>

There is a similar lack of data on the rationale behind the bag limits for kole and Achilles tang. DLNR has acknowledged that it has concerns regarding Achilles tang populations, finding that "[i]nitial results from [DAR monitoring] and other ancillary longer term[] studies suggest there should be concern for the sustained abundance of this species."<sup>16</sup> The bag limits for Achilles tang in the Proposed Rules would limit collectors to no more than ten fish per day, Proposed Haw. Code R. § 13-60.4-7(b)(3), however, it is not clear how DLNR expects this to affect Achilles tang populations in West Hawai'i. This is a relevant question given that, according to DLNR's data, between 2006 and 2010 collectors took approximately 80% of the population of Achilles tang in the open areas surveyed in West Hawai'i.<sup>17</sup> Regarding the kole limits, without data that provide information on the size of kole that are actually collected by the trade, it is impossible to assess what effect the bag limits will have on kole populations in West Hawai'i. DLNR needs to analyze the effects of these rules on the environment, including on fish populations, before finalizing them.

C. DLNR Has Conservation Concerns Regarding Several Species Included on the White List

According to DLNR, the White List is being proposed to "help protect populations of species that are rare, potentially overfished and/or are not suitable for home aquariums" and "will reduce the threat of population decline of rare species, a major concern for stakeholders interested in the long term health and biodiversity of our coral reefs."<sup>18</sup> However, there are several species that are on the White List for which DLNR has documented population concerns,

<sup>12</sup> Supra note 7, at 1070. The study noted that between 1999 and 2007, yellow tang density decreased by 45% in areas open to collection in West Hawai'i.

<sup>13</sup> DLNR, Rep. to the Legislature, supra note 2, at 14.

<sup>14</sup> Stevenson et al., supra note 10, at 820. The study also states that "[u]nfortunately,

despite the increase in fish abundance inside the MPAs, the MPAs may in part be responsible for the decline in the resource because they concentrate fishers into fewer areas, while increasing (or at least maintaining) pre-MPA fishing pressure by allowing the numbers of fishers to increase over time.” *Id.*

<sup>15</sup> Walsh et al., *supra* note 2, at 98.

<sup>16</sup> DLNR, Rep. to the Legislature, *supra* note 2, at 16.

<sup>17</sup> Walsh et al., *supra* note 2, at 112.

<sup>18</sup> DLNR, West Hawai‘i Regional Fishery Management Area (WHRFMA) Rule Proposals, October 12, 2012, at 2.

or for which it does not have population information, so it seems highly likely that inclusion on the White List will continue to perpetuate the population problems for these species.

DLNR has stated that it has “population concerns” and notes problems with “survivability in captivity” for the psychedelic wrasse.<sup>19</sup> DLNR has also identified Tinker’s butterflyfish as a species that is “particularly vulnerable to depletion because [it] may be naturally uncommon or rare but command high prices in the aquarium trade and [is] thus highly sought after by collectors.”<sup>20</sup> Both of these species, along with Fisher’s angelfish, are included on DLNR’s list of Species of Greatest Conservation Need, an integral part of Hawai‘i’s Comprehensive Wildlife Conservation Strategy (HCWCS), which was created because of “the uniqueness of Hawaii’s natural environment” and is intended to “ensure[] that [] information gaps and conservation needs regarding these species are addressed.”<sup>21</sup> All three of these species are included on the White List without bag limits. See Proposed Haw. Code R. § 13-60.4-7(b). In 2011, according to DLNR’s catch data, 418 psychedelic wrasse, 213 Tinker’s butterflyfish, and 60 Fisher’s angelfish were removed from West Hawai‘i reefs, and there is no explanation anywhere in the Proposed Rules or in the accompanying documents that explains what effects these species’ inclusion on the White List will have on their populations or the environment.

In HCWCS, DLNR specifically discusses the psychedelic wrasse, stating that it is a species that is “prized by aquarists” and “[t]he goals of conservation actions are to not only protect current populations, but to also establish further populations to reduce the risk of extinction.”<sup>22</sup> Furthermore, the HCWCS emphasizes that the psychedelic wrasse has “different color phases for each sex and also juveniles, and in particular the juvenile color phases are often targeted by collectors.”<sup>23</sup> There is a noticeable lack of DLNR data on the effect of removal of certain ages or sexes of individual fish based on their coloring, but there seems an unexplored risk that fish age and sex ratios could be skewed on Hawai‘i’s reefs because certain members of a species are targeted by the trade for aesthetic reasons.<sup>24</sup>

In addition to these species of documented conservation concern, there are seven species on the White List “which had distributions and/or behaviors which precluded obtaining accurate

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<sup>19</sup> *Supra* note 7, at 27.

<sup>20</sup> DLNR, Rep. to the Legislature, *supra* note 2, at 21.

<sup>21</sup> DLNR, Hawaii’s Comprehensive Wildlife Conservation Strategy, Appendix A: Wildlife (Fauna) Species of Greatest Conservation Need, available at: [http://www.state.hi.us/dlnr/dofaw/cwcs/Conservation\\_need.htm](http://www.state.hi.us/dlnr/dofaw/cwcs/Conservation_need.htm).

<sup>22</sup> Hawaii’s Comprehensive Wildlife Conservation Strategy, available at: [http://www.state.hi.us/dlnr/dofaw/cwcs/process\\_strategy.htm](http://www.state.hi.us/dlnr/dofaw/cwcs/process_strategy.htm).

<sup>23</sup> *Id.*

<sup>24</sup> DLNR has also failed to explore the effects of aquarium collector’s selection of certain

fish and discard of others. A 2011 study of aquarium collector behavior in West Hawai'i found that collectors discarded fish that "were either commercially unimportant (e.g., *C. agilis*), blemished (e.g. natural discoloration and deformation, or laden with parasites), or injured (e.g. fin damage)." Stevenson et al., Fisher Behavior Influences Catch Productivity and Selectivity in West Hawaii's Aquarium Fishery, 68 International Council for the Exploration of the Sea Journal of Marine Science 813, 817 (2011). DLNR has not looked at whether this removal of only healthy, robust individuals from the ecosystem is having any effects on the health of aquarium fish populations.

density estimates in the survey areas," and thus it appears that DLNR does not have data on the effect of aquarium collection on their populations.<sup>25</sup> These species are the blacklip butterflyfish, bluestripe snapper, Fisher's angelfish, Tinker's butterflyfish, flame wrasse, Hawaiian longfin anthias, and eyestripe surgeonfish.<sup>26</sup> Fisher's angelfish and Tinker's butterflyfish, as discussed above, are both on DLNR's list of Species of Greatest Conservation Need.

Furthermore, the Hawaiian dascyllus is included on the White List without bag limits, but it has been petitioned for listing as an endangered species. See Proposed Haw. Code R. § 13-60.4-7(b). On September 13, 2012, the Center for Biological Diversity filed a petition with the National Marine Fisheries Service (NMFS) "to list eight pomacentrid reef fish and to designate critical habitat to ensure their survival."<sup>27</sup> One of the fish named in the petition is the Hawaiian damsselfish (*Dascyllus albisella*), otherwise known as the Hawaiian dascyllus or Hawaiian domino, because it is "threatened by the loss and degradation of its coral reef habitat due to temperature-induced mass bleaching events and ocean acidification, as well as direct harms to essential functions due to ocean warming and acidification."<sup>28</sup> According to DLNR's 2011 catch data, 200 Hawaiian damsselfish were taken from West Hawai'i's reefs last year.<sup>29</sup> A 2011 study on collectors' behavior in West Hawai'i found that the Hawaiian damsselfish had a "high[] value of electivity," meaning that the "taxon was overrepresented in the catch composition in relation to its availability in the environment."<sup>30</sup>

A study on the effects of coral bleaching and aquarium collection on anemonefish and damsselfish in Australia stated that "[t]he results of this study suggest that bleaching has reduced the occurrence of anemone and anemonefish on the reefs around Keppel Island and also that management status may have an effect."<sup>31</sup> As a result, the study suggested "[a] suspension of commercial harvest [to] relieve the additional pressure that collecting places on these species."<sup>32</sup> The study concluded that "[t]he compounding effects of climate change-driven bleaching and continued industry self-regulation without consideration for localized depletion of heavily targeted species could be devastating for local reefs in the [Keppel Island] region without fisheries management intervention."<sup>33</sup> The aquarium trade's preference for the Hawaiian damsselfish and the growing threats to its habitat present strong evidence that DLNR should be studying this species and implementing stricter restrictions on its collection—yet DLNR fails to provide any protections for this species in the Proposed Rules.

<sup>25</sup> Walsh et al., supra note 2, at 104.

<sup>26</sup> Id.

<sup>27</sup> Center for Biological Diversity, Petition to List Eight Species of Pomacentrid Reef Fish, Including the Orange Clownfish and Seven Damsselfish, as Threatened or Endangered Under the U.S. Endangered Species Act, filed September 13, 2012, available at: [http://www.biologicaldiversity.org/campaigns/reef\\_fish\\_in\\_peril/pdfs/Clownfish-and-damsselfish-](http://www.biologicaldiversity.org/campaigns/reef_fish_in_peril/pdfs/Clownfish-and-damsselfish-)

[petition-2012.pdf](#).

<sup>28</sup> *Id.* at 19.

<sup>29</sup> DLNR Hawai‘i Aquarium Harvest Data 2011.

<sup>30</sup> Stevenson et al., *supra* note 10, at 815, 817.

<sup>31</sup> Jones et al., Losing “Nemo”: Bleaching and Collection Appear to Reduce Inshore Populations of Anemonefish, 73 *Journal of Fish Biology* 753, 759 (2008).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 760.

#### IV. PROPOSED LISTING OF ENDANGERED CORAL SPECIES

On November 30, 2012, NMFS announced that it is proposing to list 66 coral species as either threatened or endangered under the Endangered Species Act, including *Montipora dilatata*, a species of coral thought to be endemic to the Hawaiian Islands that has its primary site at Kāne‘ohe Bay, O‘ahu.<sup>34</sup> NMFS is proposing to list two other coral species that are found in Hawai‘i as threatened, as well.<sup>35</sup> It is of utmost importance that DLNR consider these global factors when it makes rules, like these, that affect the health of Hawai‘i’s marine ecosystems, because we are at a point where reef resilience and biodiversity may determine whether or not our reefs survive the next century.

#### V. DLNR DOES NOT ADDRESS THE ENVIRONMENTAL EFFECTS OF AQUARIUM COLLECTION WITH THESE RULES

These proposed rules fail to address any effects of aquarium collection on the coastal, coral reef environment. DLNR has described animals collected by the aquarium trade as serving “fundamental biodiversity and ecosystem functions.”<sup>36</sup> In DLNR’s 1998 State of the Reefs report, it stated that aquarium fish collection was having a major, degrading effect on the coral reefs around the island of Hawai‘i, that “many coral reef fish and invertebrates have complicated relationships to the overall ecology or the reef” and “[t]heir removal may [a]ffect the long-term stability of these ecosystems.”<sup>37</sup> A study conducted in the Kona area in the late 1990’s determined that aquarium collection was having a significant effect on seven of the ten species of aquarium fish surveyed, and also concluded that since the study focused on species that were heavily-collected by the trade, it was possible that “uncommon or rare species could also be threatened by overexploitation.”<sup>38</sup>

In Hawai‘i’s Statewide Aquatic Wildlife Conservation Strategy, “excessive extractive use,” which includes reef fish harvest for the aquarium trade, is listed as one of the major threats affecting aquatic species statewide.<sup>39</sup> The document expresses ongoing “concerns about aquarium species” despite acknowledging the existence of the Fish Replenishment Areas in West

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<sup>34</sup> Center for Biological Diversity, *Petition to List 83 Coral Species Under the Endangered Species Act*, filed October 20, 2009, [http://www.nmfs.noaa.gov/pr/pdfs/species/coral\\_petition\\_cbd.pdf](http://www.nmfs.noaa.gov/pr/pdfs/species/coral_petition_cbd.pdf).

<sup>35</sup> The two other coral species that are proposed for listing are *Acropora paniculata* and *Montipora patula/verilli*. *Montipora dilatata* is actually proposed for listing as a “species complex” along with *Montipora flabellata* (endemic to Hawai‘i) and *Montipora turgescens*, which is also found in Hawai‘i. NMFS, Status Review Report of 82 Candidate Coral Species Petitioned under the



U.S. Endangered Species Act, October 2011, at 306-10, available at:  
[http://www.nmfs.noaa.gov/stories/2012/05/07\\_coral\\_documents\\_page.html](http://www.nmfs.noaa.gov/stories/2012/05/07_coral_documents_page.html).

<sup>36</sup> Walsh et al., Long-Term Monitoring of Coral Reefs of the Main Hawaiian Islands, December 2010, at 103.

<sup>37</sup> DLNR, Hawaii's State of the Reefs, 1998, at 15, 21.

<sup>38</sup> Brian N. Tissot and Leon E. Hallacher, Effects of Aquarium Collectors on Coral Reef Fishes in Kona, Hawaii, 17 Cons. Bio. 1759, 1762, 1767 (2003).

<sup>39</sup> Meadows et al., Pacific Cooperative Studies Unit, Hawaii's Statewide Aquatic Wildlife Conservation Strategy, December 2005, at 3-13, available at:  
<http://manoa.hawaii.edu/hpicesu/techr/142/v142.pdf>.

Hawai'i.<sup>40</sup> Despite DLNR's statement in 1998 that "studies to characterize the effects of removal of reef fish on the coral reef ecosystem are necessary if this activity is to continue,"<sup>41</sup> DLNR has not provided any evidence as to how the bag and size limits, or other parts of the Proposed Rules, will affect the nearshore environment. In the Background document describing the timeline for the Proposed Rules, it states that "[b]ased on ecological concerns, population trends and/or catch data DAR recommended that 3 species be removed from the proposed 'white list'. These included bandit angelfish, HI Cleaner wrasse and Dragon Moray."<sup>42</sup> The agency does not provide any details regarding the ecological and other concerns that led to the removal of these species from the list, and fails to discuss or analyze any of the environmental effects of the inclusion of the 40 species on the White List. Furthermore, though DLNR used to submit a yearly status report to BLNR regarding the aquarium fish trade in the State of Hawai'i in the 1990s, the last report that DLNR submitted on the statewide trade, which included information on collection trends on the island of Hawai'i, contained data only through 1999.<sup>43</sup> Before DLNR enacts any rules on West Hawai'i aquarium collection, it needs to look at the scientific data it has, as well as collect new data, and craft rules that are protective of Hawai'i's coastal coral reef environment.

For the foregoing reasons, we urge DLNR to re-evaluate these Proposed Rules to make them more protective of Hawai'i's coral reef ecosystems and unique and endemic species. We believe that the Hawai'i Environmental Policy Act is applicable to this rulemaking, and, at the very least, that DLNR should develop rules on aquarium collection that are based on sound science after a careful examination of aquarium collection's effects on Hawai'i's reef ecosystems and the species that inhabit them.

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<sup>40</sup> Id. at 4-4.

<sup>41</sup> Supra note 37, at 23.

<sup>42</sup> Supra note 7, at 28.

<sup>43</sup> Status Report Aquarium Fish Collecting Statistics Fiscal Year 1995-99, March 2000



Robert Hajek

To dlnr.aquatics@hawaii.gov

12/19/2012 02:37PM

bcc  
Subject Testimony for rules package proposal - HAR Title 13, Ch. 54,  
57, 60.3, 60.4 & 75.

To the Board of Land and Natural Resources,

I am Robert S. Hajek, President of the, 30+ member, Big Island Association of Aquarium Fishermen (BIAAF), and I would like to submit testimony today with regards to:

The proposed amending of HAR Title 13, Chapter 54, "Puako Bay and Puako Reef Fisheries Management Area," and 57, "Keauhou Bay Fisheries Management Area;" to repeal HAR Title 13, Chapter 60.3, "West Hawaii Regional Fisheries Management Area, Hawaii;" to adopt a new Chapter 60.4, "West Hawaii Regional Fisheries Management Area, Hawaii;" and to amend Title 13, Chapter 75, "Rules Regulating the Possession and Use of Certain Gear"

There is a very valid argument to be made about how this entire proposed rules package should stop right here, right now. With all the misinformation, intimidation, manipulation and blatant disregard for established procedure and protocols, by the West Hawaii Fisheries Council (WHFC) and West Hawaii's Division of Aquatic Resources department (DAR), frankly, I don't know where to start. I'm afraid a single written testimony is an insufficient method of informing the Board of all the issues we face. I hope you will take the time to contact me, personally, over the next few weeks, to get a more thorough and detailed picture of the situation at hand.

In a nutshell, this rules package is the product of a small group of corrupt and arrogant individuals who feels they know better than anyone else about what's good for West Hawaii, and frankly, they do not.

West Hawaii DAR is William Walsh. WHFC is William Walsh. Let's make no mistake about this. He has successfully surrounded himself with minions that will not deviate from his well established anti aquarium fishery party line. WHFC does not, nor has it for many, many years, if ever, represented the community. While the concept of a community based input forum and council is great in theory, the WHFC is very much not an example of this. The WHFC is nothing more than a special interest group lobby, disguised as community interest representatives, with a set agenda and where not even facts and science will derail them from attempting to accomplish their goals.

There is also no immediate or direct oversight, no accountability. And the fox is guarding the hen house here, a house rife with conflict of interest, manipulation, intimidation and abuse of power. They are not a public opinion driven vehicle. They do not have the public's interest or the fishery's well being in mind when they act. While they claim to, their actions and conduct regularly betray them.

DAR is supposed to be the agency that protects our fishery and fisherman, not the one trying to destroy

it. We have no one fighting for our rights. We're 35 guys, and frankly don't have a chance against all the anti-aquarium fishing lobbies, the media and especially, our alleged protectors, DAR. We need you to help us. We need you to step up and take a good hard look at the corruption and make them accountable for their actions. There is no accountability, no system of checks and balances, no transparency.

The problem isn't the fishery or the resource; it's healthier and more robust than it's even been (up 13% in 2012, according to DAR) The problem is, and always has been, user conflict. And until we address the real problem, our fishery will continue to be the easy target for all the dive and snorkel operations looking to deflect all the problems they create, on to us, letting them fly under the radar.

The problem is not regulation; the problem is corruption at West Hawaii DAR.

The problem is William Walsh and his seemingly total disregard for the process, the fishery and his abuse of science to justify his own goals.

We are, and continue to be, the most regulated fishery in the state. We simply do not need more rules!

There are, however, 4 specific issues I have been asked to address, by my Association (BIAAF), on their behalf.

Specifically, there are the 4 non-vetted aquarium fishery related late-additions to the rules package, that are completely unacceptable, and they include:

1. 1.Fixed AQ letters on the fishing vessel.
2. 2. Identifying all fishing gear with names and license numbers.
3. 3. Notifying DAR by phone anytime we are out after sunset or before sunrise.
4. 4. and The West Hawaii permit.

1. Fixed AQ letters only perpetuate the animosity against us when we are out on the ocean on our boats not fishing. Thanks to years of negative media coverage and pressure from anti aquarium fishery groups, we are sadly often perceived as pariahs in our own community by fellow boaters and ocean lovers. Misinformed as many of them are, they report us as illegally fishing in a closed area because they see the AQ letters on the boat, even when we are just out on a fun day with our families, they expose our families to the obscenities people will hurl at us and just plain general harassment of us as we scuba dive, or snorkel or cruise along the shoreline.

2. Tagging all our nets, baskets and fishing gear amounts to nothing more than more needless harassment. It serves no purpose and does nothing to protect or benefit the aquarium fishery. Because this proposed modification was again unvetted, there was no opportunity to discuss the numerous issues and details necessary it creating any solid rule that will stand up to the test of integrity. This vague and general concept addresses none of the possible questions and problems that might arise from the implementation of such an ineffective idea.

3. Having to notify the DAR every time we are on the water, either after sunset or before sunrise is nothing more a waste of everyone's time and another way to try and make criminals out of honest, hard working fishermen. There is no reason for this at all and serves no purpose whatsoever. Again, being totally unvetted, this attempt at rule making is vague, porous and in no way protects or benefits our fishery.

Think about this for a second . . .they actually want us to call in to the DAR every time we are on the water, at night, with fishing gear on our boats?! During the winter months especially, we launch in the dark, in the morning, and come home in the dark at night almost every day, since we have to go so far to our open fishing areas (since they closed off 85% of the central 1/3 of West Hawaii, to us, to please the scuba and snorkel industries –again user conflict, not a resource issue). Pardon me, but honestly, what's next: Are we going need a note from our mothers? This is ridiculous.

4. Of all these elements, by far the most egregious part of this entire attempt at subterfuge, by DAR, is the request for a West Hawaii permit. Aside from the fact that this was, again, not vetted, at all, in any way, it is vague, superfluous and completely unnecessary. This is nothing more, than a badly veiled attempt, at a power grab by DAR, as it is quite possibly the most important component for them, in this entire rules package. It would give them the power over the fishery they have so long and desperately desired. It would appear that after having been rightfully denied, by the State's Attorney General, in earlier attempts to acquire outright autonomy over the WHRFMA, this would be a back-door-way for DAR in achieving the same goal: more independent control over the WHRFMA. It would be easy to believe that the reason DAR never had any intention of vetting this was because they knew it wouldn't have had a chance, so their only option was to try and sneak it through.

DAR continues to claim, right up to the night of the public hearing, that this is an ali-or-nothing rules package, not subject to any changes, other than perhaps some minor language-type adjustments.

I have talked to multiple members on the BLNR, and all of them, without exception, confirmed that this is not an "ali-or-nothing" rules package, as DAR continues to claim. Rather, any or all of its parts, can be deleted from the rules package, or let to continue on in the process. This is, after all, what the public hearing process is all about; to get feedback from the public, in whatever form. As a matter of fact, at the May 25th BLNR meeting in Honolulu this year, BLNR Chairman William Aila, in response to the question asked by Tina Owens of the WHFC, stated quite clearly, that any single, or number of parts of the rules package, could be eliminated from the body of the package, at the discretion of the Board. William Walsh of DAR, who was present at that statement, chose to ignore this fact, as it appears making public this very important piece of information would not help DAR with their own agenda. The BLNR needs to be aware of DAR's fairly overt attempt at stacking the deck by misinforming the public.

Tell people it's an ali-or-nothing rule, and you'll be able to persuade many people, who would have preferred to approve certain parts, but not others, to accept the whole package. It makes the selling of the West Hawaii permit element easier. Since it's so important for DAR to pass this component, by not letting people know that they have the option to reject it, they can better manipulate the "support for"

vs. "support against" numbers in their favor.

Initially, the request for the addition of a West Hawaii permit was described as nothing more than "housekeeping", a minor addition, with respect to its weight and importance in the package. Bury it in "housekeeping" was their best chance at success. But, since they found out that this was a very unacceptable element for us, and potentially a deal-breaker for them, they have increased its profile and is now included as one of the 5 most important sections, in some of their most recent information packages calling for support of the package. Interesting how it went from a minor housekeeping element to, now, a major component in the package. DAR has exposed themselves and their own true intentions here at this late hour. And now, since it is no longer a minor part but rather a major component of the rules package, how can they justify not vetting it? They can't, but they sure are going to try! You just can't have it both ways, DAR!

Either way, this was never vetted so it shouldn't exist, at all, in this package.

Also, let's not forget, Act 306 created the WHRFMA for the very reason we are all here today: so that within the framework of the state, special regulations could be developed for specific areas, like the WHRFMA, if necessary. Anything wanting to be passed in the WHRFMA already has an avenue to resolution, and that is with the state, and the WHRFMA within Act 306. DAR's request for an extra West Hawaii permit, in addition to the State license, is being justified by the alleged future need, development and implementation of a limited entry program. Why does DAR need an extra West Hawaii permit to attempt to accomplish this goal when the mechanism for rule making in the WHRFMA already exists, and has been the accepted procedure for the 13 years now? Do we really need yet another level of bureaucracy, and a potentially partial, special interest group driven one at that? As with DAR's unsuccessful attempt at acquiring autonomy for this region, and its aquarium fishery, could it be that the resistance they may have received, towards initial limited entry proposals with the state, made them feel the need to, yet again, try this back-door, surreptitious way in fulfilling their agenda?

All the specific rules already made for the West Hawaii aquarium fishery since 1999, through the creation of Act 306, have established the most regulated fishery in Hawaii. Any new rules should be processed, as always, through the regular channels, and those channels are via the state and the WHRFMA, already in place and effective for the past 13 years.

Essentially, any and all of the elements contained here, within this rules package, that have not been properly vetted, should be summarily deleted from this package.

This despicable abuse of power and influence and obvious desire to acquire more of the aforementioned, by DAR, needs to be addressed and considered when coming to a final decision. A West Hawaii permit is not needed with what Act 306 represents.

Please feel free to contact me if you require more details.

Thank you for your time ...

Robert S. Hajek

President -Big Island Association of Aquarium Fishermen

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Dec. 05, 2012

Aloha, kakou. I'm Teresa Nakama, a former member of the West Hawaii Fishery Council. I left the West Hawaii Fishery Council and formed my own Big Island Fishery Alliance to be a resource center to send information out into the community, around the island, on the other islands, and into the worldwide web.

I speak also for locals and the Hawaiian ohanas. I am troubled by this proposed rule package. There has been so many misconceptions of what really happened, and I was there. If they had only listened to the South Kona fisherman when the scoping meeting went out, instead of closing the meeting down at the Konawaena Elementary School when the Graces, the Choys, the Medeiros all stood up and said we are scientists, we are the professionals. But instead of listening, they shut the meeting down, they were not heard.

We started off with only 25 species for the fish collectors to collect, and all of a sudden, we weren't totally informed we were voting on 40 species. Where the 15 other species come from.

My son is 14th generation of Hawaiians. I am the 4th generation, I'm his mother. His name means come from Leiloa [ph], from Leiloa came Kamehameha. Those of you who come from afar who've lived here 20, 40 years, you are not generational.

Science did not listen to the local fisherman.

I oppose this package only because it was not consensual scoping with the fishermen. Our true fishermen who are generational in knowledge far exceeds any of the Ph.D.s that was called to say I support this. They are not generational.

I go fishing, I'm a shoreline fisherman. You going tell me I can only catch five. I feed my neighborhood, not only my ohana, I feed my neighborhood. I know when the mountains tell me to go fish. I read the Hawaiian moon calendar, I read the phases of the moon. It takes science to do that which was taught to me by our kupunas.

To say I favor this package, you don't have science. We don't have science along this mile of stretch from Opelo Point to Ka lae. We have past science. We have other people's science, but not current science.

I sat on the West Hawaii Fishery Council. I've been there since 1983 and I listened. I didn't say much because I was condescending by the others on the fishery council because I'm a local girl. You know what it is to feel

condescending. You know what it is to call the Hawaiian brothers come to the meeting and they cannot speak; to a scoping meeting in Kohala maybe about two to four people. I called for a meeting of the fishermen over there, I got 45.

How is it that the West Hawaii Fishery Council could not speak to our local fishermen. What is it? What is it when they come and say I'm a professional scientist and listen to me instead of a scoping meeting of listening to the local fishermen.

I hurt, and for this and the rest of the minutes I have, I olelo this. [Chanting]. You hurt us. You hurt us with a rule that you did not give us our chance for answer because you would not hear us.

Mahalo.

December 17, 2012

Teresa L. Nakama
Kailua-Kona, HI 96740

Mr. William Tam
Division of Aquatic Resources
1151 Punchbowl St, Room 330
Honolulu HI 96813

Re: West Hawaii Fisheries Management Area Proposed Rules Package

Dear Mr. Tam,

Please accept this testimony with regard to the amendments to the West Hawaii Fisheries Management Area administrative rules. While I believe that parts of the package should be adopted, a very large portion of the package is fatally flawed because of the dysfunction that exists in the West Hawaii Fisheries Council (WHFC). The proposed West Hawaii administrative rules package was created by the WHFC over a number of years, however, in the process the Council became an organization that no longer represented the community and stakeholders, and the Council became a "mouthpiece" of a small, but vocal, group of members.

This small group of members hijacked the, originally, well intended Council, and turned it into a vehicle to pursue their own agenda.

Because of the dysfunctional nature of the Council, very little outreach and interaction occurred with the fishing community in West Hawaii including shoreline fishers, net fishers and spear fishers.

Also, while aquarium collection fishers were represented on the Council, it is my opinion that they were misled in many occasions.

Below I cite a number of gross and egregious violations that occurred during the last few years that ultimately caused to the organization to become grossly biased.

The guiding document of the Council is the WHFC Operational Practices & Procedures (OP&P) document. This document, originally came in force on October 11, 2000, and revised in 2003 2004, and finally on June 16, 2005. A copy of this document is attached to this letter.

The first and most important violation is the make-up of the Council. The OP&P states that "The Council shall consist of members representing a broad spectrum of community interests, user groups and geographic locale. Numbers and orientation of members should fairly represent the stakeholder community."¹

¹ OP&P Page 1, "Council Composition" Para. (A) Voting Members

I am a former WHFC member for the past 12 or more years. I observed in recent years that the Council make up does not fairly represent the stakeholders of the community. I observed that there has been no representation of the broad spectrum of the community interests, user groups and geographic locale. There are no current members nor has the Council not had members for several years from the Kohala-Kawaihae-Waikoloa and South Kona to Kalae (South Point) areas. Currently there are only 12 voting members on the Council that represent a narrow set of special interests.

According to the OP&P, "Council members must recognize that the success of community-based management lies in the exchange of information between stakeholders and decision-makers. All members are expected to act as liaisons with the community and bring pertinent concerns and matters to the Council and to the Community."² Egregious acts to prevent the expression of pertinent concerns have occurred.

The WHFC members have not delivered on their responsibilities to act as liaisons and to bring pertinent concerns and matters to the council and to the community. As a former member of the WHFC I have witnessed incidents when pertinent concerns of the stakeholders were suppressed and ignored. For example at the proposed role package public input meeting at Konawaena Elementary School, the meeting was shut down, before the stakeholders had a chance to give their input. The stated objective of the meeting was to receive public input. There were approximately 35 stakeholders that represented South Kona, including the ohana of the Graces', Cho's, Mederios' and more, and they wanted to be heard, but the DAR marine biologist closed the meeting not wanting to hear what the generational fisherman had to say.

Another incident happen at an informational meeting in the Fall of this year, at the Christ Church at the corner entrance at Konawaena High School, when again a Council Member told the stakeholders to shut-up, and that they were not there to listen to stakeholders' concerns. The secretary of the WHFC that was there that night went as far as to shut the lights off as a stakeholder wanted to be heard to delivery his message. The stakeholder, a Native Hawaiian and a gatherer for subsistence to feed his Ohana was denied his chance to speak.

The current Council membership is biased toward conservation and preservationist interests and do not fairly represent the community, from Upolu Point to South Point, and do not fairly represent stakeholders with interest in harvest use of the shoreline and inshore waters. The Council has violated its OP&P for recruitment of new Council members. The OP&P says: "Notices of invitation to apply for WHFC membership will be widely disseminated (advertised in local newspapers)."³

Through the many years that I sat on the WHFC, the Council has not widely disseminated notices of invitation for new WHFC membership in the local newspapers, instead they kept voting in the same members. They did not follow their own procedures and membership was hardly ever decided by written ballots.

² OP&P Page 2, "Council Membership", Para. (A), Responsibility

³ OP&P, "Council Membership", Para.(B) Application

A current member had to apply 3 times before she was accepted into the council, was it because she was Hawaiian? Another most current stakeholder member maybe the shortest term member when statements made at three meetings were not recorded in the minutes, and therefore he resigned after being there for not more than four months!

The Council also violated its term limitation. This allowed certain members to dominate the council. The OP&P states: "Term of membership shall be two years with a two-term limit or four years. A member may continue for another two-year term upon affirmation of their intent to do so and by vote of the Council, beginning on the date of the adoption of these revisions, July 15, 2004."⁴

The WHFC has not adhered to this part of their procedures, and I sat on the Council past my 6 year maximum term. So have many others who have been on the Council that kept being voted in time and time again after their terms should have expired.

The effect of the violation of term limits is that, not only did the Council miss out on fresh ideas from new members, but entrenched members continually participated in ex parte communications and made numerous "side deals" prior to official Council meetings.

Finally of the list of serious violation, I include the lack of adherence of the member removal rule: "Failure to attend or provide an alternate or proxy for three meetings during a term is grounds for removal."⁵

The WHFC has failed to exercise this part of the policy procedure and not removed members that failed to attend or provide an alternate or proxy for three or more meetings during a term.

While violating one or two rules may be ignored, but when a pattern of abuse is shown over a number of years it must be concluded that the Council is dysfunctional and no longer credible.

This gross and egregious violation underlies the West Hawaii administrative rules amendment package. In my opinion, these dysfunctional actions caused the SCUBA spear fishing and aquarium collection (the so-called "white list" and collector permitting proposals) portions of the package to be flawed. Therefore, I ask that the DLNR remove these portions from the amendment package and sent it back to the community for proper evaluation by the community.

Furthermore, I ask that the DLNR immediately disband the WHFC as it currently stands, then reconstitute a new Council that reflects the original intent of the WHFC. Membership should be assigned seats, such as representatives from each moku (district, i.e. Kau, South Kona, North Kona, South Kohala, and North Kohala), and known stakeholder groups, and members at large. Initial appointments to these seats should be reviewed by DLNR as part of the reconstitution of a new Council. In the future there should be periodic oversight of the Council by DLNR. Finally, the Council should enforce its own Operational Practices & Procedures. If the DLNR concludes that the department does not have powers to disband WHFC, DLNR should sever ties with the WHFC and formally deny WHFC's advisory role to the DLNR.

⁴ OP&P, "Council Membership", Para (b), Term.

⁵ OP&P, "Council Membership" Para. (E) Removal

Sincerely,

Teresa L. Nakama
Former Member WHFC

Cc: Mr. William Aila Jr., Chairman
Board of Land and Natural Resources
1551 Punchbowl Street, Room 130
Honolulu, Hi 96813

Honorable Governor Neil Abercrombie
1151 Punchbowl Street, Room 110
Honolulu, HI 96813

December 19, 2012

Aloha DLNR:

RE: Oppose the West Hawaii Rules Package.

My name is Wilfred Kaupiko, community leader from the last Hawaiian fishing village; Milolii. I oppose the rules package and this is why. I am here to tell you my experience with the tropical divers and the collection of tropical fish. I have been working with West Hawaii Fisheries Council and other conservation groups before my son was born and one of our main goals was to stop this foreign practice of aquarium fish taking. Miloli'i is unique because it is a FMA protected area from Kauna to Kealae, Hookena, the only one in the state of Hawaii. A law was passed in 1924 to ban the use of fish chumming in this area; because of this law we further requested the ban on tropical diving because of the villagers concern of tropical diving and over harvesting. The tropical divers however requested that our area be open for collecting, and the council and DLNR sided with the divers. We got nowhere with the council. Now the reason why I am here again is because we have no fish left, our reefs are small and short, and a lot of these fish rely of the reef for food and there is no baby fish around because these divers have taken them all. The divers have no respect for our place, and also they have no respect for the traditional practices of my people. They come with boat after boats from Kona and they have pounded the reefs for hours collecting everything in sight. We have only closed a small section of Milolii only a mile long.

The near shore coastline of Kona is the most sought after area in the state. I have tried my best to stop these rippers from taking all the reef fish. I have brought this up many times, with the West Hawaii Fisheries Council & DLNR to help Milolii, Kaohe, Hookena & Honaunau and have received no help. These divers don't understand and don't care that we eat the fish for self subsistence, and by the over harvesting of the fish it will only deplete this precious resource and kill our marine ecosystem.

It has been 10 years since we created these no take zones, I have witnessed firsthand the state's failure to enforce the rules. It had to take many request by the community for DLNR to take any action and they finally caught some of these divers take in the no take zone. However, we have many other divers in Kona who are still coming in the South Kona and Milolii area. I recently have requested and talked to the DLNR to take action and they have told me they are "working on it." Recently another diver was able to receive his license back and I have seen him pounding the reef. The DLNR needs to take action on this matter imagine the other communities in Kona and in the state. My life work has been on

preserving the way of life in Milolii. I have gone to the federal government in Washington D.C. to protect our reefs, our fish, and our oceans.

Mahalo,

Wilfred Kaupiko

Dec. 05, 2012

Willy Kaupiko

I guess a lot of people know me out there. I've been in the paper quite a bit. I'm with the Earthjustice. We took the state to the court.

Well, I'm just trying to say, you know, it's amazing how much people showing up. Just tells me you all concerned about what's going on in Hawaii. We malama Hawaii. We malama the ocean. That's why we all over here.

I've been in this meeting so many -- we can go back with Mike Nakachi, 20, 30 years when we had this SOUR PACK. We had tons of people come in and bring up all these issues, these concerns. And me, I come from Miloli'i. Miloli'i is a small village. My father was a chief down there, and I happen to take over his position because I love where I come from.

I had everything in the ocean. I never used to worry about nothing, food, I never starve because the ocean supplies my table, believe me. That's why all us people, we got to malama the ocean. The ocean will malama you. It's your guardian, and that's what I was told. That's my icebox so you malama that.

But what I'm hearing -- trying to say that all these rules and regulations, how many meetings I gone to, that's why I'm taking the state to court because they're not doing what they supposed to do. All this rules and regulations, who's going to enforce it. That's the problem. You making rules today, Bill, and who's going to enforce the rule. You going to close up Paradise -- what's that place down there, Ka'ohu Bay. Who's going down there to regulate it? That's my question.

You cannot make rules if DLNR not going to go out there and enforce it. They don't have the manpower, they don't have the man or funds to go out there, no can. It's no sense. This is a waste of time. We getting problem with them. The best thing to do is, like I spoken of before, have volunteer enforcement DOCARE in your own community. Let your people go out there like we have some funds from Nature Conservancies and we had enforcement with our fishermen to go watch people, where they're fishing. And I will tell you, there's a lot of people that was diving, the tropical divers in the no-take zone.

What is that, what's going on? You make rules, you go out there and make sure everybody is following the rules. All this rules is -- I tell you, it's a joke. I've been in this meeting so many times, and I tell you it's the same thing I hear. This is the same thing. It's a waste of time.

The state got to get their shit together. That's what I'm trying to say. They want to regulate something, let's regulate them, enforce them, get down there, jump on the boat and go out there and see what they're catching, not only talk or hear the report. That's bullshit. Everybody come back with the report and tell you. And Bill take the report. Oh, it sustains them. It's bullshit.

My place is all wipe out, to tell you the truth. I grew up over there when I used to throw for paku'iku'i, kole and everything with throw net. Now I don't see nothing. What that tells me. I go dive from my place to South Point, I don't see baby fishes. It hurts me. It really hurts me to be one Hawaiian, to know that there is no future for my kids, my generation.

Just what I see, I don't know who's to blame, but I'm just saying if you cannot enforce it, don't allow it. I've been three times in the state - the DLNR telling them if they -- I wish William Aila was here. He should have been here tonight to see everybody talking.

MR. TAM: He's on Oahu.

MR. KAUPIKO: There is no problem in Oahu. Kona has the problem. He should be here to listen to everybody. Look how much people show up. But I'm just saying this is -- I cannot -- I've been to this how many times and nobody is going to enforce this. You guys make the regulation, I'm going to guarantee you nobody going down there to check the boats, check all the people. It's a waste of time.

If you cannot enforce it, don't do it. That's what I want to say. That's what I want to leave you guys with because this is just a waste of time. But anyway, thank you very much, you guys.

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Date: Monday, December 17, 2012

To: Hawaii Division of Aquatic Resources, DLNR – State of Hawaii  
Re: West Hawaii Regional Fishery Management Area rule proposals (WHRFMA)  
From: Tony Costa,

#### Testimony

My name is Tony Costa and I am testifying on behalf of Hawaii Nearshore Fishermen, a loosely organized yet tight knit group of nearshore fishermen.

Hawaii Nearshore Fishermen and other commercial nearshore fishermen provide Hawaii markets with on average 60,000 to 125,000 pounds of fresh nearshore caught food fish species each month.

Hawaii nearshore fishermen feel the proposed rule package will inhibit their ability to continue to provide markets and communities with this very important food source and as such,

HNF are in opposition to the proposed administrative rules for West Hawaii. The proposed rule package is a “kitchen sink” of rule changes which pose major concerns for Hawaii’s nearshore fishermen throughout the state. .

The proposal to ban scuba and spear is dangerous and compromises the community’s ability to gather food, threatens the livelihood of small businesses and the safety of food providers. The proposal to ban scuba-spearfishing is irresponsible and redundant. With bag and size limit regulations already established, there is no need to restrict gear type or method of fishing. All this does is make it unsafe and difficult for people to fish for food.

HNF use of scuba is essential in our operations.

The use of scuba is essential for safety, essential for selectivity, essential to the way we operate.

HNF use scuba and spear in almost everything we do.

The use of scuba and spear is the nature of our gathering style. We have been sustainably gathering/harvesting in this manner for the last 50 years.

Our own abundant catches confirm that stocks are healthy and fishermen continue to bring in and observe strong biomass in various species of food fish.

Fishermen are already limited under existing regulations (bag/size limit, gear restriction, seasonal closures). The impetus of this rule, driven by opinions of shoreline observers and failed attempt to pass legislation this past legislative session is now being proposed in a rule change, supported by the DLNR.

Thoughts/opinion, concerns, historical background:

Act 306, passed in 1998, created the West Hawaii Fishery Management Area to “improve the management of **consumptive and non-consumptive** uses of aquatic resources encompassing the regional ocean area on the west coast of Hawaii Island from Ka Lau, Kau (South Point) to Upolu point, North Kohala, but not including Kawaihae commercial harbor.”

This Act provides directives to manage an area to ensure sustainability of the State’s nearshore ocean resources; identify areas with resource and use conflicts; provide a management plan and implementing regulations for **minimizing user conflicts and resource depletion** by designating closed areas to fishing and other areas restricting anchoring and ocean recreation activities.

This Act did not have any funding mechanisms in place to conduct a comprehensive study of the waters surrounding the Big Island and determine if any potential adverse impacts or consequences would result from allowing community opinions to weigh in on closed areas and resource management. Act 306 also assumes that closed areas (called fish replenishment areas) is the proper management tool and cites Kaneohe Bay and Hanauma Bay as models for a comprehensive integrated ocean management plan. When Act 306 was heard as HB 3547 in the Legislature, fishermen did not testify in support. This shows that user groups and those who have a vested interest in the health of the resource did not support the position and directives of this Act. The verdict is not out on the effectiveness of closed area such as Hanauma Bay and many users and studies on areas closed to fishing only find this method to be inconclusive. Nonetheless, the DLNR has cited their efforts in working with **one** community group, the West Hawaii Fisheries Council, a non-mandated, self-created advisory group to put forth regulations for the area without the expertise of consumptive users.

Act 306 states the DLNR shall identify specific areas and restrictions to be managed “after close consultation and facilitated dialogue with working groups of community members and resource users.” Working with one community group created with a bias and agenda, who has the ability to pick and choose its membership, and has specifically not allowed the membership of fishermen with contrasting views and experiences to sit on their council, is alarming and questionable. How can the DLNR support a biased and arbitrary council to dictate resource management proposals which would pose a threat to the health and safety of the resource and ultimately, the people of Hawaii?

Prior to Act 306, the Division of Aquatic Resources (DAR) established a community working group to mitigate user conflicts and difference on resource management and allocation between aquarium collectors, dive tour charter operations, hotels and others. The working group consisted of dive charter representatives, hotel representatives and aquarium collectors. The working group collectively identified “conflict areas” where they felt needed to be addressed, which totaled approximately 30% of the West Hawaii area. With this, the group was disbanded.

Subsequently, certain aquarium collectors, went to West Hawaii Representative David Tarnas, expressing their frustration with NGOs trying to put them out of business, and suggested the management of the “conflict areas” identified by the working group with the understanding and agreement that no additional, non-agreed upon aquarium restrictions would follow to exceed the 30% managed area. Representative Tarnas then introduced legislation, HB 3547 which became Act 306 and passed with language mandating a “minimum of 30%” of the area to be managed.

At about that same time,  
Some of the members of the disbanded working group formed the West Hawaii Fisheries Council and provided recommendations to expand the managed area to 35% and worked on administrative rules which were adopted.

Our opinion is this is an example of Administrative rule change that departed or exceeded the intent of the law (30% to 35%) even though language in the law allowed for it. This rule change clearly caused more conflict everlasting than it helped to mitigate – as seen by today’s vehement opposition and concern by various fishing communities.

The aquarium collectors who were working with Representative Tarnas felt betrayed and upset and no longer participated in any group as the WHFC continues to advocate for further fishing and aquarium collection closures while supporting dive charter and scuba operations which bring thousands of tourists to scuba and snorkel to view the colorful reef fish.

WHFC’s Mission Statement:

*“To effectively manage fishery activities to ensure sustainability; enhance nearshore resources; develop and implement management plans for minimizing resource depletion and conflicts of use; per legislative mandate to the Department of Land and Natural Resources to provide for substantive involvement of the community in resource management decisions; and encourage scientific research and monitoring of the nearshore resources and environment from Upolu Point to Ka Lae.”*

This group is Narrow-focused against extractive use, in support of tourist operations to “see the fish.” Therefore any rules passed/promoted by this group will have a strong bias.

By definition, a group with a narrow mission and focus could only conceivably offer recommendations and suggestions that support their mission. For this reason, the department should not restrict their collection of "community input" to that collected by the WHFMC but should also sincerely collect and apply the input from other community participants such as fishermen and other food gatherers with equal weight.

Although the WHFMC represent a particular community, the dive charter community, they certainly DO NOT represent a broad cross section of the West Hawaii community and total community sentiment on this issue. . I believe the Department of aquatic resources has an obligation to listen to others besides the WHFMC.

Based on the comments from fishermen and residents of the area, I testify with great concern and opposition to these proposed rule changes – most specifically, the ban on scuba spear fishing.

Respectfully submitted,  
Tony Costa

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**For the Fishes
Kihei, HI**

December 19, 2012

DLNR
Div. of Aquatic Resources
74-381 Kealakehe
Pkwy. Kailua-Kona, HI
96740

Re: Comments on Proposed New Administrative Rules, Chapter 13-60.4; Specifically White List and Bag Limits

For the Fishes has a number of concerns regarding the proposed rules. Of utmost concern are the facts that the rules do not ensure the health and survival of targeted fish populations nor of the reefs that depend on them; and, they do not address the cultural and ethical concerns the community has with the commercial use of marine life for aquarium purposes.

We believe the rules are destructive to Hawaii's reefs and wildlife because they would allow unlimited take of 40 fish species -- all of which are shrouded in controversy because they are a combination of the following points: 1) they are endemic; 2) they are depleted and/or threatened by the trade; and 3) they die within a month in captivity.

The rules are being promoted as a solution to make the trade more sustainable, but that claim cannot be substantiated as they are not based on sound science. Though legally required, the environmental impact of the trade has never been assessed.

In effect, the proposed rules give the trade the appearance of sustainability (i.e. greenwashing), per the following examples:

- If applied to 2011 collection reports, the rules would reduce take by 4,000 fish, about 1.1% of the 349,000 fish reported. Total trade revenue would come down \$13,000 or .009 of reported sales.
- Impacts of the proposed size limits cannot be determined: commercial data does not capture fish sizes.
- Unlimited take of the 40 species on the White List would apply to an unlimited number of collectors. There are no limits on the number of commercial permits issued -- available to all Hawaii residents for \$50/year.
- The number of animals reported is likely very different from what is taken: there is no mandatory mechanism to verify the species and numbers of animals taken/sold and therefore keep the reporting honest. It is well known within the division that there are wholesalers operating illegally and “underground”, purchasing and selling unreported catch.
- The rules are 100% unenforceable: enforcement officers are unable to check containers without probable cause. The result: unlimited species and fish leaving Hawaii reefs for mainland aquariums. Compare to Australia which takes the aquarium trade threat seriously:
- The Great Barrier Reef is massive with species diversity and abundance far outpacing Hawaii, but tropical fish collectors are allowed just a tiny fraction of available fish.
- Hawaii is reversed: aquarium take is massive -- overall several times higher than Australia’s, with 60 - 80% of some populations taken by the trade -- and our reefs are comparatively tiny.
- The **Great Barrier Reef** aquarium trade took **134,000 fish** in 2010.
- Compare to **West Hawaii** trade’s recent report of **349,000**.

White List Species:

- Per DLNR documentation, at least twenty of the forty species on the list already show serious population problems or are otherwise threatened by the trade. See attached detailed list.
 - An additional species with documented population problems, the longnose butterflyfish, is not on the white list but would experience continued collecting pressure since it is collected and sold along with its near twin, the forcepsfish, a white list species.
 - An additional white list species, the **Hawaiian dascyllus** (*Dascyllus albisella*), was proposed in September for listing under the U.S. Endangered Species Act because of threats to its habitat caused by coral bleaching and ocean acidification.
- As wild coral reef animals, hobbyists are unable to meet their complex needs, and the vast majority will die within a month of leaving Hawaii’s reefs. Even the yellow tang, described as a “hardy” fish by trade journals and online sales sites, suffers the same fate and, per 40 year industry veteran and author, Bob Fenner, “most are likely ‘killed off’ in the first month of care (from hobbyist mistakes, inappropriate tankmates, starvation...)”

Bag Limits:






















All proposed bag limits are useless in restoring or protecting populations because they are available to an unlimited number of collectors and therefore allow an unlimited number of animals to be taken from the reefs.





















Conclusion:

These are just some of the concerns we have with these regulations that fail to restore and protect fish populations and coral reef ecosystems. Because of the numerous environmental, culture and ethical problems and community concerns, we ask that DLNR put an immediate moratorium on commercial aquarium collecting until and unless the problems and concerns are addressed.

Rene Umberger
 Director, For the
 Fishes

**Summary of Concerns
 Proposed Rule for West Hawaii Aquarium Trade:
 40 Species 'White List'**

	Common Name		Documented Depleted Populations	Endemic Species	DLNR's Species w/Greatest Conservation Need	Majority Die Within One Month in Captivity	Acknowledged by Trade as High Mortality / Unsuitable for Average Hobbyist
1	Yellow Tang (<i>Zebrasoma flavescens</i>)		X			X	X
2	Chevron Tang (<i>Ctenochaetus hawaiiensis</i>)		X			X	X
3	Goldring Surgeon (<i>Ctenochaetus strigosus</i>)		X			X	X
4	Achilles Tang (<i>Acanthurus achilles</i>)		X			X	X
5	Tinker's Butterfly (<i>Chaetodon tinkerii</i>)				X	X	X
6	Orangespine Unicorn (<i>Naso solitarius</i>)		X			X	X
7	Forcepsfish (<i>Parcipiger flavissimus</i>)		X			X	X
8	Goldrim Surgeon (<i>Acanthurus nigricans</i>)		X			X	X
9	Potter's Angel (<i>Centropyge potteri</i>)			X		X	X
10	Fourspot Butterfly (<i>C. quadriculatus</i>)		X			X	X
11	Yellowtail Coris (<i>Coxis gairdneri</i>)					X	X
12	Ornate Wrasse (<i>Talichthys ornaticornis</i>)			X		X	X
13	Orangeband Surgeon (<i>A. clivaceus</i>)					X	X
14	Bird Wrasse (<i>Amphispus varius</i>)		X			X	X
15	Eye stripe Surgeon (<i>A. dussumieri</i>)					X	X
16	Multiband Butterfly (<i>C. multinctus</i>)		X	X		X	X
17	Saddle Wrasse (<i>Thalassoma duperrey</i>)		X	X		X	X
18	Brown Surgeon (<i>Acanthurus nigrofasciatus</i>)					X	X
19	Flame Wrasse (<i>Amblylabrus jordanii</i>)			X		X	X
20	Thompson's Surgeon (<i>A. thompsoni</i>)		X			X	X

21	Peacock Grouper (<i>Cephalopholis argus</i>)					X	
22	Bluestripe Snapper (<i>Lutjanus kasmira</i>)					X	X
23	Redbarred Hawkfish (<i>Cirrihitops fasciatus</i>)			X		X	
24	Psychedelic Wrasse (<i>A. chrysocephalus</i>)			X	X	X	X
25	HI Whitespotted Toby (c. <i>jaconator</i>)		X	X		X	X
26	Fisher's Angel (<i>Centropyge fisheri</i>)			X	X	X	X
27	Hawaiian Dascyllus (<i>Dascyllus albigella</i>)		X*	X		X	
28	Milletseed Butterfly (<i>Chaetodon milioris</i>)			X		X	X
29	Blacklip Butterfly (<i>Chaetodon leinii</i>)					X	X
30	Pyramid Butterfly (<i>H. polyplepis</i>)					X	X
31	Shortnose Wrasse (<i>M. geoffroy</i>)			X		X	X
32	Black Durgon (<i>Melichthys niger</i>)		X			X	
33	Spotted Boxfish (<i>Ostracion meleagris</i>)					X	X
34	Blackside Hawkfish (<i>P. forsteri</i>)		X			X	
35	HI Longfin Anthias (<i>P. anthias hawaiiensis</i>)			X		X	X
36	Eightstripe Wrasse (<i>P. octotaenia</i>)		X			X	X
37	Fourstripe Wrasse (<i>P. tetraoena</i>)					X	X
38	Smalltail Wrasse (<i>P. cerasinus</i>)					X	X
39	Lei Triggerfish (<i>Sufflamen bursa</i>)		X			X	
40	Gilded Trigger (<i>X. oaromarginatus</i>)					X	

* Pending Endangered Species Listing

FortheFishes.org, Dec. 2012

Dec. 05, 2012

Rene Umberger:

Now I'll read comments from Lynn Allen who is also from Kihei.

I am opposed to the White List and bogus bag limits because they are destructive to Hawaii's reefs and wildlife; and without limits on the number of collectors, they would still allow unlimited take of 40 fish species, all

of which are shrouded in controversy because they are a combination of the following points. They are endemic, they are depleted, and/or threatened by the trade, and they die within a month in captivity. In addition, the claim that these rules make the aquarium trade more sustainable cannot be substantiated as they are not based on sound science, meaning there is no scientific basis for unlimited take of species crucial to coral reef ecosystem health. And though legally required, the environmental impact of the trade has never been assessed. Without meaningful limits and enforcement provisions, these rules are nothing more than greenwashing. At 10 Achilles tang bag limit per day, last year's total catch could be met in just ten days if all 70 of the current collectors decided to cash in on their skyrocketing price. In 2007 collectors got \$6 per Achilles tang. Last year it was nearly 20. Who knows what they get today. But what we do know is this, that these fish are in trouble and this is an example of just one fish that should be pulled off that list.

If applied to 2011 collection reports, the White List would have reduced take by just 4,000 fish or about 1 percent of the total. Their revenue would have come down by just \$13,000 or .009 of reported sales. Impacts of the proposed size limits cannot be determined. Commercial data does not capture fish sizes. Take is unverifiable and the rules are 100 percent unenforceable because enforcement officers are unable to check containers without probable cause. The result, unlimited species and fish leaving Hawaii reefs for mainland aquariums. Compared to Australia which takes the aquarium trade threat very seriously; the Great Barrier Reef is massive with species diversity and abundance far outpacing Hawaii. It's the largest coral reef in the world. But tropical fish collectors are allowed to take just a tiny fraction of available fish. Hawaii is reversed. Aquarium take here is massive while our reefs are tiny. The take is overall several times higher than Australia's with 60 to 80 percent of some populations taken by the aquarium collectors. Compare it; West Hawaii's trade report recently was 349,000. It could have been double that. The Great Barrier Reef, the largest reef in the world, allowed just 134,000 fish to be taken in 2010. So what makes Kona DAR think that these reefs can sustain that level of collection when the Great 6 Barrier Reef can't. Thank you.

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Dec. 05, 2012

Hello, everyone. My name is Sean Jacobs, and I'm a waterman. My life is the water and my children's life is the water. My children are Hawaiian, I am not, but I learn from the Kanuhas and from the old man named Calvin Antai [ph] how to fish sustainably, how to take care of the reef.

I spend about six to eight hours of bottom time three days a week under the ocean, and I see all year long what happens to the fish. I see how they speak to each other like one of the scientists mentioned. I see how they react to the temperature of the water, to the currents, to the makani. When the wind comes, things change.

At what times was the research done and where is this research done, on which reefs, at what time of year, what kind of polyps were in the water, were there small crabs in the water, was it during the time of the lobster marches. They know nothing about any of this because they don't spend the time with the animals.

Where I dive it looks like a Cousteau movie, there is fish everywhere, billions of them. I never, ever spear fish that are too large, on the other hand.

The people that buy the fish from me, that eat the fish from me, they want it a certain size. They don't want it too big, and they don't want it too small.

There is a lot about fishing here in Hawaii and about the fish, about the reefs, about the corals, about the limu that people don't understand because they don't spend their time listening to the Hawaiians.

The Hawaiians understand because they want to keep living on their island.

This is not Easter Island. This is not someplace that got decimated by the stupid ass witnesses of people of that took no account of what they were doing. This is a place where the people for thousands of years have maintained their reefs. But when you start to see the people who are opposing and the people who are for this ban, it starts to look like a Republican and a Democratic convention. It really does.

Now, I'm hapa, I'm half white, and I'm half black, but I've learned to appreciate something here. And it has to do with color, it has to do with the attitude of people's color inside them. You folks need to understand that these people here are not brown, green, black, blue, or orange, they're Hawaiians. They're people who have studied and lived on these reefs forever.

Now, where I dive is mostly in Ka'u. Why, because yes, I used to dive here on this side, on the west side, I used to shoot 700 to 800 pounds of uhu a night. And my conscious told me stop that, along with Junior Kanuha, so I learned to listen.

And the word listen is an interesting word, isn't it. To truly listen, really listen, you're taking into account the spirit of a word of a people. What they really mean about their fish -- I almost died from diverticulitis about four years ago. I'm 52, and I hope I can make it to 92. But I'm thankful for the fish that I eat that I'm still alive.

I don't barely eat red fish, at least -- why, because the red fish that I give to other people seems to be the fish that leaves my house the fastest. I love my red fish, but I'm always giving it away to people, because people love their fish here so much; not only because it's tradition, but because it's healthy and because it's right.

So to tell people that they can't go into the ocean and use a tank, that's intelligence, that's modern world just like we use our cell phones and our smart phones and our GPS, you're telling a people that because they want to use modern equipment to do something efficiently and effectively and sustainably [sic] that they can't do it is wrong, completely wrong.

Let's take these rules, modify them, make them so they work for everybody especially, especially the Hawaiians. This is their land, this is their water, let's respect and listen to them. Listen to, like people say, the old fishermen who know, because they understand far more than just where fish are, in a certain spot.

Remember it's the currents, it's the wind, it's what's coming in the water from other places, and I'll say this one last thing. I dove the west side for years, and now I barely ever dive it. Why, because there is less fish, and I felt as though maybe I should dive down someplace where there is. And that's what I do, and I do it sustainably.

I took a small ride in my boat on the west side from Kiholo Bay all the way down to Miloli'i, and there is a huge difference. There's mosses growing on the reefs that were never there before. I've been here 27 years, and I've seen things change. And what has changed definitely is the climate of the people and the people less and less seem to want to be interested in what's going on with the nature of the people that were here before us.

Let's sustain their life-style. That way you folks that want to wear the aloha shirts, you'll have a Hawaii to look at fish, and you'll have Hawaiians in it because there is no such thing as Hawaii without Hawaiians and their ways.

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Dec. 05, 2012

My name is Tracy Kubota, and this is my testimony.

Listening to the comments tonight -- I'm from Oahu, but I fish in this area of West Hawaii. I watched legislation many years and rules and regulations over time with respect to fishing and fisheries management. And you know, I know I have to state, I oppose this rule package as a whole. A lot of times we have people who are passionate, and I give the credit to everybody who has had time and energies put into this whole effort to be able to create something that they feel is right for, not just the environment but the users and the takers and everybody as a whole.

But listening to everybody here tonight, I feel that it should be a more fair and comprehensive approach to resource management. Act 306 was put together at a time -- of course you have a lot of user conflict, and it was put together to manage user conflict for one of the reasons. A lot of it that was stated in there, as far as other management responsibilities was interpreted.

Setting a 30 percent minimum closed area - I think the verdict is still not out yet on closures of fishing areas and the way it's managed and how it works. Some people say that it doesn't work because it places an unfair burden on other resources. Some say it works, like Hanauma Bay. Now, people have all their different opinions of Hanauma Bay. So setting a 30 percent minimum is an arbitrary number. It could, couldn't work, but I don't feel it's been vetted enough. I don't feel the science has been proven to show anything that requires that.

So when you look at other proposals like the SCUBA spearfishing. Current regulations on the book already state that there is bag limits, size limits that restrict fishermen in many ways, season of closures and everything else they testified to that said how fishing is restricted. This regulation makes something illegal more illegal. I mean if you are going to take 15 fish and that's your limit, that's your limit. Whether you put on a SCUBA tank and go and take 15 fish or you spear it without a SCUBA tank, all it does is makes it harder for a person to take their 15 fish so it's already a restriction in the books.

The possession issue of the SCUBA spear makes it difficult to enforce. It makes anybody who has a SCUBA and a spear on their boat automatically illegal. It's automatically a violation. It doesn't matter what you use it for if you didn't use it, and I think it's a really poorly written regulation if it's passed in such way.

You know, to force an aquarium industry to compromise something because of fear, they fear being banned outright, they fear being restricted beyond what they can handle as a business. It's a dangerous thing.

These are all emotional things, these are all passions, but I think as a whole the problems here that everybody is talking about is the result of the fact that it's opinion based and really not science based, empirical-knowledge based. It's input that's not given as a whole to be able to vet the rules properly.

If you're a farmer and somebody tells you how to manage your farming area because they don't like pesticides so they go to the department and say, okay, we got to ban pesticides. And this one group just vehemently opposes it. Farmers are now going to be restricted from using pesticides to manage their crops, just because one group of people feel that. Is that right? Did they consult the farmers?

Does it affect the livelihood? What does it do? We can go on and on with examples, but I just feel that if you don't allow for the process to be vetted properly and you don't have the department play the proper role and use the resource managers hired to manage the resource, the biologists who are hired specifically to do their job to be able to determine, first, if there is a problem. We don't even know. Everybody thinks there might be a problem. If there is a problem, there is a problem. It has never been stated that there is a problem. If you don't have that problem stated outright by the resource managers, then why we do have a need to have to

find ways to restrict and further restrict if we don't even have the problem stated.

So I think we need to go back to the responsibility of the department for them to do their due diligence to serve the State as a whole and to get the input from the people as a whole because you're managing state waters and state waters observe all.

Thank you.

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Dec. 05, 2012

To Whom It May Concern,

I am writing this letter out of concern for the Proposed Hawai'i Administrative Rule §13-60.4. While it seems to be a valiant attempt to protect the rights and interests of stakeholders it is lacking a realistic view of the impact it will have upon our reef and other marine resources along our fragile Kona Coast.

Being involved with marine conservation for the past 20 years I learned from a lecture by Dr. Bill Walsh that because Hawaii Island is the youngest in the archipelago the reef shelves are narrow and are able to support a limited amount of fish and other marine life. Even novice snorkelers can see that there is a steep drop-off after swimming out only a short distance from shore. A testament to that were recent reports that fishermen were catching mahimahi from the shoreline.

As a fisherman I have dived along the South Kona Coast for miles and can attest to the fact that the reef shelves are narrow and subsequently support a very limited amount of fish. I have seen pelagic fish from the shoreline and trolled for ono (wahoo) sometimes only 30 yards from land. The point I am trying to make is that our reef ecosystem is fragile and without proper monitoring and management the large scale harvesting of any marine life will have a strong negative impact on our fisheries, economy, and culture.

I am sure that people are tired of hearing of how the Hawaiians sustainably managed their fisheries for hundreds of years. They understood the meaning of limiting harvest to ensure that the resource would be able to replenish itself every spawning season. Punishment for violations at that time are considered to be extreme today but then a deterrent to irresponsible harvesting should be severe enough to be effective, otherwise any rules or regulations are a waste of time and effort.

From the time that the FRA's were established the AQ collectors have been violating the law starting with then president, Pete Basabee. Occasional sightings of collectors in the FRA's day and in the night have not been investigated. The recent prosecution of collectors who were apprehended fishing in the Hookena FRA was bungled by legal authorities and sends a message to

collectors that punishment and fines for violating our laws "has no teeth" thereby encouraging continued illegal and disrespectful practices by the Aquarium Fish trade. It also sends a message to our local communities that government is not looking after their best interests due to ignorance, personal reasons, or that they are being purposely biased in favor of commercial interests because it generates revenue for taxes.

Why is DOCARE so underfunded? Why are there only two officers to monitor and respond to violations for hundreds of miles of forests and ocean? Why keep making laws that are impossible to monitor and enforce? How will DOCARE check for violations and regulate this industry? It is better to ban the practice that has very little or no benefit to the majority of the people who live here. Better to leave the fish for the thousands of subsistence fishers who feed their families and for the tour companies who bring thousands of visitors here to look at and not extract the resource that makes Hawaii an important tourist destination.

Proposed Hawai'i Administrative Rule §13-60.4 will create the false sense of security that there are rules in place to protect our resources but it will be business as usual, collectors taking hundreds of thousands of fish from our narrow shelved fragile Kona Coast until one day the resource is so depleted that they will be forced to move to another fragile ecosystem to ply their trade. What about us?

The "white list" does not protect the fish that Hawaiians and other local people eat. Pakuikui, manini, kole, nenu, u'u, aholehole, aweoweo, upapalu, mamu, etc. Also, scientist say that every specie plays a critical role in reef health. Is it ok to remove hundreds of thousands of fish that have evolved in the Kona reef habitat for hundreds of years? Man always tries to find remedies for irresponsible activity that ultimately changes nature in a negative way. The mongoose and taape, are just two examples.

Stop tropical fish collecting until they can prove to us that there is no negative impact. Why try to please a few at the expense of thousands of other people who have lived here for generations and call Hawaii home.

Sincerely,

Damien Kenison Sr  
Hookena Beach, South Kona, Hawaii

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Dec. 05, 2012

Aloha, my name is Joy Keawepuakokawehiku Mills. I was born on the island of Oahu. I moved here several years ago, but my family is from here. I am and

my family have always been dependent on the ocean. We are ocean people. And I applaud those of you who have come to speak.

As my father would say, Joe Mills, he would say if you don't say or write down your piece, then you cannot grumble. Whether you say it in perfect English or you say it in da kine, I don't like, main thing you say something.

And I got to tell you this whole bill in my heart of hearts is not pono. There is a lot of things about it that, yeah, maybe is good, but in other ways, auwe, a'ole. It does impede a lot of our Hawaiian collection for our families to eat. We are reliant, my father was a fisherman, as I said, and I have a little bit of that skill, but not as much. But I appreciate my brothers and sisters who fish and rely on the ocean to feed their family. So in that respect, you need to relook at how this bill is written.

I also have observed a lot of ocean activities in my life. And yeah, a lot of our visitors come to look at the fish and appreciate our aquatic beauty here, and for that we need to take care of that as well. But to say that one is better than others is a'ole, that's not right.

You know, I also observe what DLNR does. I appreciate what they do. However, with our budgets nowadays, and a lot of us have gotten cuts and stuff, can we honestly say that DLNR can really uphold these laws and these regulations.

As far as the gentleman that says the crown-of-thorns, I picked up over 20 within a quarter mile of Kahalu'u, so I do protect the shells that I know very few, actually, consume those.

What I do want to see is more protection of our rays and our mano. I think that those are beautiful creatures that we need to really take care of because they rely on us, they all rely on us, and we're doing them a bad justice. We really are.

What I really want to see is less rois on our reef. Those don't belong here. I don't know why they brought them in. They're okay to look at, but they're useless and they take over our reef. And I see more and more of those.

You need to clarify more of what you are protecting in your aquarium. My fellow reef teachers here told me that they are protecting our puhi. I believe our snowflake eel is one of them that's on the protected list, and I'd like to see that because I think those are worth several thousand on the market.

You not going to eat those. Those need to stay in the ocean. I see more of those in the tanks, but I'd rather see them in the ocean because that's really where our -- we all want to be. We all want to be enjoying it, either surfing on it and looking underneath and seeing the yellow tang and seeing all the ulua once in a while, maybe a honu, that's why I came here.

I want to see that, but also I like my uhu, with the bok choy. It's really good.

So I'm going to tell you in my heart of hearts you need to really relook at it. I'm against it. It needs to be reworked, and you need to talk to others besides the people who have all the degrees. Because we're Hawaiian, we have it in our blood, we protect, no matter what, it's in our koko, we take care of it, we don't need to be told yes or no. We know better. It's the people that come here need to learn. That's the ones you guys got to educate.

Mahalo.

From:
Ramona & Tony Amoguis
Kailua Kona, HI 96740

December 6, 2012

To Whom It May Concern:

I cannot support the recent WHRFMA Rule Proposals on the basis that it heavily favors aquarium fish collecting over traditional (free diving) spearfishing.

- **If one group cannot use SCUBA because it has been shown to deplete the reefs of fish then this rule should be applied to all groups.** Why is it proposed that aquarium fish collectors are allowed to remove fish from the reef using SCUBA yet local spearfisherman are not? I have looked over a lot of research and it does show that reefs tend to get overfished when populations start using SCUBA instead of traditional fishing methods. There is also research that shows reefs are overfished by aquarium fish collectors as well (see enclosed paper "Effects of Aquarium Collectors on Coral Reef Fishes in Kona"). **Therefore the rule should be that no aquarium collection/spearfishing can be done with SCUBA (or SNUBA).** This would allow the local spearfisherman to continue their traditional methods of spearfishing (free diving) which for centuries have been proven to be sustainable.
- **The rule proposal for the white list and size/bag limits mostly reiterates what the aquarium fish collectors are already doing and doesn't seem to limit the practice of collecting significantly even though "aquarium collectors have a significant effect on the abundance of targeted fishes" (Effects of Aquarium Collectors on Coral Reef Fishes in Kona, Hawaii).** These proposals may be a step in the right direction (any regulation is better than no regulation) but this is bordering on no regulation.
 - o The white list proposed includes 99% of the fish aquarium collectors catch already (as mentioned in the Small Business Impact Statement by DLNR) so there is basically no difference there. I find it interesting that the list was increased from 25-40 because of "response to input from Big Island aquarium collectors". Isn't that like letting the fox guard the henhouse? Although I do support that it does (at least on paper but not enforceable) keep collectors from taking the more rare and higher priced species.
 - o The size limits for yellow tang are the ideal size that collectors want (2-4 inch) and collectors can take

an unlimited amount of this size. The only change in this rule is that they may not be able to collect larger fish which are not as desirable to a majority of collectors as the medium size fish or collect small fish which have a higher mortality rate and don't fetch as good a price as medium sized fish.

- o Kole also have no bag limits under 4 inches (which is the preferable size for collectors) to preserve the adult breeders but how can you increase a population by allowing unlimited capture of the babies? Who replaces the older breeders if the immature fish are captured before they get to that size?
- o Pakakui are limited to 10/person/day. Many collectors have between 2-4 people on board (some more) and dive 5-6 days/week. And with 70 collectors (as sited in the Small Business Impact Statement by DLNR) that would be about 16,800 Pakakui potentially collected each week in West Hawaii. Does that sound sustainable? Do you think spearfisherman using traditional methods (free diving) would be able to spear that many fish in a week?

I agree with the majority from a recent Humane Society of the United States poll that showed two-thirds of Hawaii residents say they support banning aquarium fish collecting. That's the only enforceable settlement to this problem.

- **How will these proposals be enforced?** Maybe this is not the forum for this but it has to be asked. No budget for enforcement? Do like other places have done and require fishing permits that pay for staff to enforce these laws.
- **Finally, when thinking of this issue we need to think of what groups we want to perpetuate: traditional (freediving) spearfishing and the "\$35 million" ocean recreation business (and more if you add the whole tourism industry that depends on Hawaii's beautiful ocean flora/fauna) that benefits from having an abundant fish population. Not the aquarium fish collectors or the SCUBA spearfisherman.**

Mahalo Nui Loa,



Ramona Amoguis

Dec 05, 2012

I normally do not sit down when I preach. I preach for two hours so are you ready for me tonight. Not really.

I'm Kahu Akahai, seventh generation of King Kamehameha I. This is my islands of Hawaii. When I say this is my islands of Hawaii, na ka po'e Hawai'i Nei. We are the people of Hawaii.

I am an ambassador of peace, and I do travel the world. I speak with a 194 nations and hold conferences where politicians dare not to go. I've been in and out of Korea. I love the people. I love everybody. But when they do wrong, we need to make right. Make the wrong right.

I'm not in favor of the DLNR. They have dragged me through court, and I got the document over here. I'm just going to read the last, what it's saying here.

The judges of the appellate court; we vacate the final judgment filed by the district court of September 30, 2011. We remand the case which instructions that it be dismissed for lack of jurisdiction.

DLNR now do not have jurisdiction in Hawaii and neither does the State of Hawaii. I want you folks to understand that we have rules. Our Hawaiian rules supersedes the state rules. And my people of Hawaii has all the rights to speak out for what is pono and/or you're not listening, but I am not in favor of the rules that is being made. I want to modify those rules, and I think I need to have all of my Hawaiian people who are fishermen who need to have this modified to come together and to speak to these people who tries to close your life-style in Hawaii.

It's not easy to travel as an ambassador. I represent everyone here in Hawaii, from the Island of Hawaii to the Island of Ni'ihau. I am the only ambassador for peace in Hawaii Nei. And I want to bring peace with this fishing piliki'a that we have.

The problem, we have too many people who don't understand what the Hawaiian people need to do. All of you who think that you have the upper hand because you have gone to college or you have gone to different states of education -- I am retired from the Board of Education, Konawaena High School, but I don't use that for what I love here in Hawaii.

I love my fish, and now even though if I cannot go down and throw my net or walk into the ocean, I have my kamali'i, my children, do that for me. And I want them to have that freedom that I had and dare you to try and take it away.

I walk with my God, and when I am angry, He's going to do something drastic. So I want the DLNR to sit down and get their act together and to know the jurisdiction that they have, not the jurisdiction that they assume that they have because they carry a belt with their guns and rifles to come onto my property.

No, no, no, no, they're not going to go down to the beaches and do that to my Hawaiian people. That is what we need to look at. They don't need guns to go down there, but they do.

So I'm going to let you folks know that what I'm saying here comes from the appellate court, that they don't have jurisdiction, and Alapai kanaka will not give you the jurisdiction. We should not give you our rights.

So I say mahalo nui loa for giving me the opportunity to be here tonight, nau Ke Akua, ehopo [ph] maika'i, aloha.

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Dec. 05, 2012

Hi, my name is Robert Duerr. I'm a 25-year writer for Hawaii Fishing News. I've been following this issue, and I'd like to read into the record that there are a number of problems and serious problems.

The first problem in looking at the Act 306 is that the West Hawaii Fishing Council has perhaps not been abiding by its bylaws. The bylaws state that directors need to have a two-year term, and then they can have another term. The chairman is to have a three-year term with rotation. It's my understanding, talking to Mr. Gingo that he's, in fact, been a chairperson for eleven years.

I'd also like to say in getting the information on what science is available, and specifically I'm talking about the spearfishing ban but there may be other issues, and what science is available, but quite frankly on a spearfishing ban, I can say that there is very little.

I have a background in proposed Hawaii Administration Rules which was given to me, and I have a NOAA paper that was written in March 2012. Neither of them support with science the fact that there is a spearfishing SCUBA problem or that there should be a ban. The ban was, in fact, only one of seven proposals that were mentioned since the year 2001.

I'd like to bring a further problem up, and I think this gets to the heart of the matter. And this is a small business impact statement, Department of Land and Natural Resources proposed amendment to Chapter 13. In it, it states, this is the piece of paper that goes about economic impact on regulations in the State of Hawaii. It says that 16 commercial fishermen engage in SCUBA spearfishing. Those 16 commercial fishermen, in fact, generated in the years 2007-2011, \$35,000. I talked to Chairman Gingo at the beginning of this meeting who told me that's foolish, we know that number is wrong, if we know the number is wrong why is it in this paper.

I think I'm speaking here for a man who's mentioned in this background of proposed land administrations, Mike Sakamoto. Mike Sakamoto was a fisherman, activist, and loves resources. In this he says he does not support a ban of sportfishing. He supports regulations, limits, and bag limits and size limits. And quite frankly, I think you need to go back.

If this is, in fact, a package going to the land board, this package needs to be filled. I think what we have to understand is in this past election the County of Hawaii has put in the county charter that resource management and game management was supported by 60 percent of the people.

Unless you are dealing with resource management with science and with plans, a ban is not a plan. A ban is not science. It is the easiest way and it is stated in the background in proposed Hawaii Administration Rules.

I think the other question of vetting and not being -- fishermen have told me, and quite frankly, I did not believe them because I did not have the support that they had been, in fact, not wanted at the West Hawaii Fishery

Council. I think tonight we're seeing more evidence that perhaps that is, in fact, the case.

The mayor of this county needs to understand that, as well as the people in the land board need to understand this. I make one suggestion, to fishermen and people who are supportive with resources here.

When you come to your next meeting, come with an attorney.

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STATE OF HAWAII
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711 KAPI'OLANI BOULEVARD, SUITE 500
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December 19, 2012

William J. Walsh, Ph.D. Division of
Aquatic Resources Department of Land
& Natural Resources
74-380B Kealakehe Parkway
Kona, HI 96740

RE: Testimony for Proposed Rules for the West Hawai'i Regional Fishery Management Area

Aloha mai Dr. Walsh,

The Office of Hawaiian Affairs (OHA) offers the following comments on the proposed repeal of chapter 13-60.3, the adoption of chapter 13-60.4, and amendments to chapters 13-54, 13-57, and 13-75, Hawai'i Administrative Rules (HAR), for management of the marine resources within the West Hawai'i Regional Fisheries Management Area.

OHA commends the Department of Land and Natural Resources (DLNR) and the Division of Aquatic Resources (DAR) for its initiative in managing the marine resources of West Hawai'i. The sustainable conservation of nearshore aquatic resources is an important component of the state's public trust responsibilities, and OHA recognizes the importance of these resources to Native Hawaiian cultural and subsistence concepts and practices. OHA also expresses its appreciation of the extensive, multi-stakeholder discussion and consensus building facilitated over the past ten years by the West Hawai'i Fisheries Council (WHFC) to develop the instant rule proposal. Finally, OHA appreciates the broad range of background information, including

the ongoing research focused on West Hawai'i specifically, and research relevant to Pacific coral reef ecosystems generally, that is provided or referenced in the documents accompanying the West Hawai'i rule proposal.

With respect to the SCUBA spearfishing prohibition contained within the proposed rule package, OHA respectfully requests that some further consideration be given to those who have a bona fide need to utilize SCUBA gear to harvest marine resources for subsistence purposes. Such consideration may be made in the form of an expressly recognized affirmative defense to enforcement actions for bona fide subsistence practices, the imposition of subsistence-level marine life take and possession limits for those utilizing SCUBA gear and spears, and/or an optional permitting or registry structure that may recognize individuals' subsistence practices in advance, and outside of the criminal defense context.

OHA notes that much testimony has been submitted in regards to the possible impact of a blanket SCUBA-spearfishing prohibition on the subsistence practices of local families in the West Hawai'i region. OHA also notes that representatives from beneficiary communities in certain areas, such as Miloli'i, have voiced contrasting concerns regarding SCUBA spearfishing, and spearfishing at night, as detrimental to their subsistence lifestyle and the resources they depend upon. OHA is aware that the regulation of SCUBA spearfishing and spearfishing at night, have been topics of discussion within the WHFC and West Hawai'i communities since as early as 2003, and commends the WHFC in their efforts to find a community-based consensus on this sensitive issue.

OHA believes that the constitutional responsibilities of the state with respect to protecting and enforcing the traditional and customary gathering rights of Native Hawaiians requires the affirmative recognition and protection of bona fide cultural and subsistence practices. Such affirmative protection may also require the regulation of such practices to the extent that they may impact the availability of cultural and subsistence resources for future generations. However, to the extent that harvesting resources using SCUBA gear and spears may be necessary for the present subsistence needs of certain individuals, OHA believes that a more narrowly-tailored approach may accommodate the needs of these individuals, while respecting the resource and practical enforceability measures that are reflected in the proposed prohibition.

Mahalo nui for the opportunity to comment on these rules. For any questions or concerns, please contact Wayne Tanaka, Public Policy Advocate, at 594-1945 or via email at waynet@oha.org.

'Owau iho nō,

Kamana'opono M. Crabbe, Ph.D.
Ka Pouhana, Chief Executive Officer
Office of Hawaiian Affairs

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Dec. 05, 2012

My name is Sherron Bull. And I hadn't planned on this, but I came here to talk about the aquarium collection, and I hadn't really paid a lot of attention to the SCUBA because I didn't really know about it before I got the notice in the mail. I really came here about the aquarium collection.

I don't think sustenance fishing should even be part of this, and it's become the main part of it. And I understand why, but, you know, I don't think these two things really should be in this together.

I mean people that have to fish for a living should be able to fish, and I think that the aquarium collection should be banned, totally. I mean all these fish are going -- and there may be a few of them that go here in Hawaii, but most of them are not going to Hawaii. They're going back to the mainland, a lot of them. And like the kole that you eat, there is a lot of them going there. Especially for something that you eat, I don't think they should be allowed to collect them.

And I don't like this bill. Now that I know all about the SCUBA thing, I'm not real fond of that either but I didn't like it because of the White List. I didn't think that a lot of the fish on there should be on there, besides the fact that I just think it should be banned all together.

And I don't like the way they collect them. I don't like what they do to the fish. I don't think the fizzing, puncturing their bladder, trimming their fins.

I just don't like the way they treat the fish. I don't think it's right. And I don't think they should -- these fish, most of them, die. They don't live very long. They don't live like they do on the reef.

And we do vacation rentals and people come here because they love the fish. They want to see the fish. That's what really drives them here and they love it. And we've been coming here for 36 years, I mean until we moved here. We're not native either. And we've seen a decline in the fish on the reefs. I think it's obvious if anybody, actually, looks around. There is a lot less fish on the reef, there is a lot less tang on the reef.

I know everybody keeps saying that they're all around, and if you go to the FRA, yeah, they are. And you know why, because they don't let them collect them. Gee, surprise. But if you go someplace else, there is not as many. And I just don't see why we should cater to commercial entities, and I'm talking about commercial entities that come and collect the fish and take them offshore and make all this money and we get nothing from it, and we lose because we lose the tourism.

And I really think that it needs to be - the bill needs to be -- or the proposal needs to be changed to split this thing with the sustenance fishing because that's really something different, but I do really believe that we should just totally ban commercial aquarium fishing. That's it.

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Dec. 05, 2012

Aloha, kakou, everyone. My name is Mike Nakachi, kanaka maoli to the land, originally from the ahupua'a of Waimanalo on Oahu, malihini here to Moku O' Keawe. Real quick, everyone talks about all this stuff. This is all

bunched in and we've got kerosene, we got gas, and we just threw the match on this whole thing. And it's real obvious to me because DLNR, the Board of Natural Land and Resources, and DAR has first and foremost a responsibility to who, the public, number 1; number 2, cultural; number 3, commercial interests, okay. That's tropical fish collectors should be on the bottom. So who's on the top, huh. So now here we go. We're breaking out all this stuff, we're throwing it all in one thing, and we're saying here, here you go, West Hawaii, do we accept it like this. There are certain things, yeah, that are pono, and there are other things that are not.

Item 1, spearfishing on SCUBA, hmmm, 1993, a provisional fish working group, I was a part of that. Somehow it morphed in 1999 that I became a part of the West Hawaii Fishery Council. I never had to fill out any palapala. I never had to do any application, but boom, I was in. Uncle Junior Kanuha, we're in, Frank Ota, we're in, we going. So now, why we going support this. I know braddahs in this room that manuahi, they catch and they give to the kupuna that cannot go. Some of them might be on SCUBA. So now, what, we're going to penalize them. I understand that, hey, this is the right thing, but it hasn't been vetted properly. Our illustrious leader from West Hawaii Fisheries Council, Glennon Gingo, said, hey, braddah, come join me. I don't think that's too good. They're not there anymore. We're out of fishermen on that West Hawaii Fisheries Council. They're not there. Some have passed away. Some have moved on. So going to point by point, I cannot support the spearfishing on SCUBA.

When it comes to the respect of the species White List, I think it's a direct violation of the Hawaii Environmental Protection Act, allowing a commercial interest to supersede all the public interest. So collecting of tropical fish, is it a pono thing, is it a Hawaiian thing, is it a kanaka thing.

THE AUDIENCE: You used to do it.

MR. NAKACHI: Who used to do it?

THE AUDIENCE: You.

MR. NAKACHI: No, I never did, never. I never owned a permit. So whoever is waha nui back there, shut it. So I never did tropical fish collection. And for a fact I know people that used to collect that do not support the tropical fish industry anymore. Furthermore, when it comes to respecting our 'aumakua and the hi'i mano, why isn't the manta rays on this list. You know why, they knew it was going to take so long. When I was a part of this original thing, here we are 14 years later, 12 years later, and we're discussing this now. Shouldn't have taken that long. Something is wrong with the process, something is wrong there.

But to make it real short I cannot support this entire thing in its package. But with regards to mano and hi'i mano, I want to see those protected.

Mahalo for your time. Thank you.

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Dec. 05, 2012

Good evening. Aloha, everyone. My name is Rick Wilson, and actually, when I came in here tonight, I wasn't planning on saying anything but talk with the gentleman at the door prompted me to do so.

I first came to the islands in 1967. I had a dive business in Honolulu in the late '60s, early '70s, I saw what -- that's when commercial aquarium fish catching first began. I saw it happen, had guys coming in my shop that did that. I thought it was kind of a passing fancy. It was like I just couldn't believe that that was happening. And now to look and see where commercial fish catching has gone and the amount of fish that's taken off of our reefs just really kind of blows me away.

With respect to the rules, regulations that are being formulated here, first of all, I do commend everyone that's participated in this process over the last 10 or 12 years. I, actually, was involved back in the mid to late '80s in setting up the anchoring systems for the boats to help restrict the amount of destruction of corals. So I've been around the ocean a long time. I was a commercial diver myself in both the North Sea and the Middle East, been around the water quite a bit.

However, I am against this spearfishing ban. As many have said here very recently in their presentations, I don't think it's right to ban the taking of fish on SCUBA. I do agree that nighttime taking of fish on SCUBA, it shouldn't be done. And I've always kind of felt that the people that did that weren't very qualified to be out doing it. I mean if you're going to take fish, put some sport into it. It's pretty easy to shoot an uhu that's sleeping under a rock in the evening. But a lot of us do take fish from the ocean. As one gentleman just mentioned here recently, as we get older, our lung capacity is not what it used to be. I can't dive nearly as deep as I used to free diving, but I would like to at least some kind of modification, if not an outright -- I don't want to see a ban on SCUBA spearfishing. If you want to modify the regulations, modify them in such a way that you can limit nighttime taking of fish on SCUBA, at least make it all right for recreational home consumption users to be able to take fish.

I don't know how many of you out there dive, but no, you can't go out to 30, 40, or 50 feet free diving and poke fish. It's real hard to do, and it's dangerous. I've had friends here in the islands that have died from shallow water blackout because they were trying to dive too deep and it doesn't work. So whereas I do support some aspects of the regulations here tonight, I do request a modification of the ban on SCUBA and certainly allow us that use the ocean for our own food consumption to be able to go out and do that. That's only right. Thank you.

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Subject dec.5 meeting

From: david brown

Date: Wednesday, December 5, 2012 1:38 PM

Good evening....

My name is Puna Brown and I am a tropical fish collector and commercial spear fisherman. I have been one for over 20 years. As for the total ban of scuba spearfishing, I am opposed to it. It is my living and the way I feed my family and help feed many other families.

One of the main fish I target is the Roi peacock grouper since I have a market for them. As we all know, the Roi bass is an introduced problem here. I am sure you have heard of the many "Roi Roundups" on most of the islands. The Roi inhabits the shallows all the way to the deep.....beyond free diving or scuba diving depths. Any fisherman diver that understands the make-up of our reefs here knows that you will find the Roi Bass at any given fish house. The Roi eats all the "house" fish including Koles, wekes, upapalu, and pretty much just about anything. This is why some of the locals have taken it upon themselves to regulate the Roi bass through these non profit round ups and tournaments. This is one species that needs to be kept in check!

Overall, scuba spearing is an important part of the sustenance and lifestyle here. What a lot of people don't realize is that a lot of the fried fish we eat at luaus and parties and reef fish that we like to buy in the stores is provided by us local scuba fisherman. We as local fisherman have been taught to regulate and not to over harvest. The total ban of scuba spearfishing is ridiculos and unfair. But I do believe that all of our resources have to be regulated if not by law but at least at a personal level. There was little that I know of as far as communication with the fisherman on this topic of scuba spearfishing..... The experts in the ocean are the fisherman. They see and know things that the scientists and doctors don't see only because they are there everyday. I have heard it put out that it was a conflict of interest. There needs to be more cooperation between all parties involved ninstead of one sided statistics. I believe and KNOW that all sides could learn a lot from each other.

A fisherman is like a farmer. I don't think one choses to be one. I believe one is born to be a fisherman, a farmer. Its hard work but its honest work. I don't know any rich fishermen or farmers!!!! Also, I mean, I don't wish for any of my children to be what I am, a fisherman. I want them to know how to catch fish to feed them and their families but I hope for them to have an easier life than me. There are a lot more scuba fishermen here in the Big Island but you will probably never see them or hear from them. Most of them are terrified to come in front of a croud and speak. So in ending, please take into consideration us local fisherman and our life.....aloha!

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Dec. 05, 2012

Aloha. My name is Wesley Murakami. I'm a member of the Pacific Island Fisheries Group throughout the State of Hawaii. They're right, they put, roughly, in 2000 WESTPAC with Sea Grant along with the West Hawaii Fishery Council.

At first when I came in, I was thinking about, oh, what I want to say with all this buildup through the years and whatnot. But the bottom line is, for the record, I don't support the rule package, not all of it anyway.

Some of you folks out here touched on really important, I guess, issues. Issues is like the change of --- living in Hawaii for us people born and raised five, six generations. It's not only coming to this type of meetings because everybody has knowledge that they want to share. And believe it or

not through all the years in the meetings that we've gone to, this is the biggest turnout I've seen yet in Kona.

Whether you're for it or not, but anytime in rule packaging what I've seen is there is a lot of unbalance, and it's with not enough knowledge from the correct people or misinterpretation. And when I say misinterpretation is -- for the Hawaiian people, my family is from Kaloko, I'm born and raised in Hamakua, listened to many of what you call stories about Kaloko fish pond and things that a lot of you folks been here 20 years, 40 years don't know. But you can be here 20 years, 40 years living on Oahu with family in Kona and know exactly what was and what is now.

And by looking at everything, what I mean is collaboratively working together, not a one-sided type of entity because when we look at rule packages, you look for what's the greater good of everybody, not only one side of the island.

Yes, the West Hawaii Fishery Council, I can speak for, about 12 years ago when I was doing the HMRFS project had a lot of people and members at the time, and it was definitely more malihini than locals. Eventually, through the years the thing kind of dissipated and became what it is now. But through the years what I've learned is by able to talk to everyone by getting all the information to the people who was willing to give it and making the correct decisions within the state when it goes to the board, that's what's important.

And everybody needs to participate. Everybody in this room needs to be a participant because our life-style is changing, and when it comes to the ocean, like I tell everybody, go and read, what you call, the Hawaii Constitution. It's 187A-21, public fishing grounds and what rights we have being born and raised here in Hawaii.

We're not here to sway anybody. All we want is the state to hear us, and that's everything that they did is wrong, but they need to go there and make the corrections and make the rule package to where it can serve everybody, thank you.

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Dec. 05, 2012

Aloha, my name is Tate Marks. And I'm no marine biologist, I'm not one scientist. I'm Hawaiian. What you guys doing is not pono. That's not how we do it here in Hawaii. You guys don't just come go over here and all of a sudden you making decisions that affect only the local people. Only the local people, not you guys. You guys don't eat that fish. You guys don't survive off this type of life-style. We do.

We've been here since 3000 AD. We survive off that, okay. I am Hawaiian, I have koko, I have that right as a native. You guys don't. You moved here, okay. It's absolutely not right that you guys are trying to take away everything that Hawaiians have been working for thousands of years. Okay.

And I don't really care about the tropical fish. You do what you want. But I'm a commercial fisherman, I'm a Hawaii practitioner, and I feed my family with the ocean. My family has fished for over a hundred years. I'm the fifth generation fisherman, so is my brother, so is my kids, so will my grandkids be. My father is 75 years old. He never did nothing but fish, never had a secular job, never did nothing but fish.

Everybody thinks Bill Walsh is a scientist, he has a degree. I get more sea time in the water than him and everybody here put together. My father is 75 years old. How much time sea time do you think he has? He can tell you everything you guys trying to learn from Bill plus more.

Now, I'm relying on what I know as a Hawaiian practitioner and a diver and a fisherman. And where the fish stay, I know how to get them. All you guys' stories is bullshit. I know that for a fact because I see it every day. All you guys saying all this stuff about this scientist and that scientist said, I see it every day with my own eyes. I don't read it off the Internet. Okay. All my information is fact, not hearsay, and I can prove my facts. All you guys stuff is just read off the Internet or you read somebody else's paper. And as a practitioner and a Hawaiian, I volunteer my time, my boat, and my money. I show you where the fish is. I take anybody here. You guys want to see the fish, you tell me what kind of fish you want to see, I'll show it to you, okay.

I am deadly opposed to the spearfishing ban. That's how we survive for hundreds of years, okay. Now, you guys only making bills that affect only us. That's why you guys don't give a shit about this bill because you guys don't eat reef fish, okay. Think about it. We didn't move to America and screw with your life-style. Don't come to Hawaii and screw with ours. Leave the Hawaiians alone.

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Dec. 05, 2012

My name is Randy Clark. I live up in Waimea, and I'm a longtime ocean man. I see a lot of familiar faces out here and some friends that I haven't seen in a long time.

I've listened to all the testimony of everybody. You know, we're here because we want to preserve what we have, whether we're visitors, kamaainas, fishermen, aquarium fishermen, we all use the ocean so what is the best way to do it. You know, the public forum is designed to do that, but in the end we don't make the decisions because it belongs to these guys on the board taking in all the information.

Presently, I'm an interpretive ranger down in Kiholo Bay, and I've had the opportunity to work with a lot of marine conservationists from federal, state, and county agencies, as well as the UH EPSCOR group and a bunch of non-profit groups. And we're all working hard to preserve that one bay that's just part of the whole West Hawaii marine area, but it's such a big challenge because you have to start with the water quality that produces the

limu that the small fish feed on, that the larger fish feed on them, and then of course, the bigger predator fish like the uluas and everything that come in.

So it's a difficult challenge for all of us. And so, you know, we're all trying to work together, but at the same time these proposals that are being made I cannot support them in its entirety. There is need for a fishing management in the different areas that are mentioned, but what's the best way to do that, you know.

Aquarium fishermen and the fishermen, I sit at Kiholo Bay, and I document when they come in Thursday. They camp overnight Thursday night. They fish all day Friday. They camp overnight Friday. They fish all day Saturday. They camp overnight Saturday, and then they leave Sunday at noon. So that's three nights and almost four full days of aquarium fishing in the zone. You know, I document that, and I send it to the enforcement agencies, and we all know that the enforcement agency is bone bare. They can't cover everything. Half the time they're up in the mountain taking care of the hunting stuff. Occasionally, they have the opportunity to come down to the ocean and consider enforcement things like that.

So you need to see the big picture of everything. And it's a hard decision, and the information that's provided, like I mentioned, I can't support it in its entirety. We need fishing management because we need conservation. If not, all of these resources are not going to be here for our grandkids, our great grandkids, and our great-great grandkids. And that's what we're trying to do, we're trying to preserve it for them. Thank you.

Dec. 05, 2012

Aloha. My name is Makani Christiansen. I'm of Keawe. I went to the naval academy, Kamehameha Schools, I studied in oceanography, I'm a commercial fisherman, a throw netter, a fly fisherman, a light tackle fisherman, and a spear fisherman, we surround fish, and I depend on the ocean for a living.

I've heard testimony here tonight from many different individuals, testimony from individuals from afar, Cornell, Occidental, Washington University with what I feel is limited knowledge in our ocean resources. I do not support the ban on spearfishing because we as Hawaiians, we as people of Hawaii have evolved over the years. When taxes came to Hawaii, Kamehameha the III, we had to pay for our land. We had to pay taxes. We had to survive. And a lot of Hawaiians went on canoes and caught fish. Different times of the year they caught fish, opelu, ahi, aku, weke, uhu, and they sold that to different members of the community and provided for their families.

Now, our technology, it's advanced itself, and as Hawaiians and as people of Hawaii, we've evolved. And we are limited by the depth of the water. We're limited by God himself. God protects a lot of the environment around us. When you go to a ko'a, fishing hole, there is many, sometimes you catch fish from that ko'a, you take it, but you manage your resources. It's very

important for fishermen who is surviving off the resources to manage what they have. Otherwise, you could overdo it. And we don't want to do it. No fisherman wants to overdo what they catch.

I've seen ko'as, actually, be dismantled by -- everybody has an impact, okay, on koa's. I've seen koa's be dismantled by dive operators, diving in the morning, diving in the afternoon, diving in the evening with flashlights same spot every single day. The ecosystem of that ko'a is ruined. I've seen weke populations not come back to that ko'a, mamao not come back to their ko'a.

I'm very concerned about the fish we eat, very important. Everyone in this room has ties to the ocean and feels a responsibility to take care of it. We all do. That's why we're here. But we need to work together to ensure the safety of our ecosystem. And doing that, listen to those fisherman because we have a wealth of knowledge that far exceeds that of any Ph.D. that I've met thus far. If we can do that, we can bridge a gap that has been plaguing this and basically -- it's been plaguing our social, economic life-style. So I just ask each and every one of you to really reach out to the fishermen and don't accuse them of being the enemy because we're not. We're here to preserve the environment just like you.

Thank you.

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December 19, 2012

Aloha DLNR:

RE: Oppose rules package for West Hawaii.

My name is Kaimi Kaupiko, I am a native Hawaiian, and I am also from the last Hawaiian fishing village of Milolii. I am opposed the West Hawaii rules package. I am honored to be here and to let the board know of my concerns. I have been fishing these grounds all my life. I am here with my dad to protect and to do what is right. He has been fighting collector's way before I was born. Milolii is a Fishing Managed Area and we are stewards of our area. Recently I went to the Hawaii County Council as a expert witness on fishing and Opelu fishing and to talk about the laws that protect me as a native Hawaiian and more so as a cultural practitioner and that as native Hawaiian we have rights to collect and gather because it is a part of our way of life. My Kupuna Walter Keli'iokekai Paulo taught me many valuable lessons, like him I carry on their teaching so that we can preserve and perpetuate our unique lifestyle in Milolii.

I have dive the coastline; I have noticed all the fish gone. I have seen with my own eye's these intruders pound and rake our reefs to extinction. These divers have no connection or respect to the 'aina, the people, and the ocean. They have destroyed our reefs, killed our fish, and is taking away a cultural practice that we Kanaka maoli have practiced since we inhabited the Hawaiian Islands.

If there is measurement regulations placed upon fishing and spear-diving we need to have more strict guidelines but more so we need to ban the collection for good. The tropical fish collectors can do as they please, they take the small baby reef fish, they cut the fish fins, they starve the fish, they even shoot bleach from a bottle into the reef to stun the fish, and by doing so they are smothering our coral and disrupting the delicate balance of marine life.

We have remained true to the traditional practices of fishing on these grounds; we take only for the table. Finally, as a result of my work on the big island and on speaking as an expert witness we were able to pass a resolution that the Big Island is in full support of a statewide ban. But the legislature won't act. They say it's your authority to end this wasteful practice – not theirs. This is why we're asking you to please send those rules back and redraft as a statewide ban. We raised and elevated our cause to now protect the rights of the native Hawaiian people. We realize that the environment and the culture are equally impacted by this industry and a ban is needed today.

mahalo

Kaimi Kaupiko

Dec. 05, 2012

Hi, my name is Leonard Torricer. I am against the 40 species White List for the following reasons. I waited several years since the last time DAR came down here and explained to the general public that L50 should be in place for all of the fish in that blue regulation book. L50 is where the fish have grown to the size where 50 percent of the population can reproduce. They were telling us back then that we as food fishers were catching too much so we needed to have the fisheries management tools in place so that there would be fish for the future.

What I would like to see on the 40 species list fish because close to 25 percent that's being proposed are food fish also, that they should be in L50 for those food fishes because that's what I've asked them to do back then, was to have an L50 for paku'iku'i, kole, and for black kole. I was told back then that there was going to be a Second go-around, looking at new fishes that we were catching as food and doing proposals on L50 for those. So I would like to see all of the fish on the White List have L50 minimum sizes, and I'd also like to see the fish that are endemic or found only in the State of Hawaii also have L50 rules. We're looking at a fisheries management tool that DAR has told us works and will work to ensure that there is fish in the future. This is a commercial fishery. The fish on that commercial fishery should be managed. It shouldn't be just put out there and say, okay, 3 out of the 40 will have these rules. The rest of them there is no rules.

In terms of banning spearfishing with SCUBA, the West Hawaii Fisheries Council has never put forth the ban before. Before we looked at lay net fishing. We didn't say we were going to ban lay net fishing. We said we

were going to work with the fishermen and see what length of net would work so that the people who are catching fish to feed their families could still be using lay net. What I'm proposing for that measure is FRAs work for the tropical fish collectors, then set up something like that for the SCUBA spearfishing guys so that there is fish for the future. Maybe even look at the fact that before there used to be no commercial sale of speared fish. If you guys looking at uhus, put that on the no-sale list, but don't ban and stop local people from feeding their families.

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Division of Aquatic Resources  
Attn: Mr. William Tam  
1151 Punchbowl St, Rm 330  
Honolulu HI 96813

Via FAX on December 19, 2012 (With copy emailed to DAR-Kona)

Re: Proposed Rules Package for West Hawaii Fisheries Management Area

Dear Sir:

I am a fisherman that regularly fishes the area from Keauhou to Mahukona on the Big Island. While I am a hook and line fisherman, I would like to make comment on the SCUBA spearfishing portion of the rules package. I am in OPPOSITION of the ban on SCUBA spearfishing.

While SCUBA spearfishing ban at night may be acceptable, a blanket ban is not a good idea. I give the following reasons why a total ban on SCUBA spearfishing is NOT A GOOD IDEA:

- 1) SCUBA divers tend to use the 60-ft to 100-ft depth area, an area not used by snorkel or free divers, therefore it spreads the fishing effort to a wider area. By banning SCUBA, the divers will simply concentrate on areas where they can free dive, thus take more fish from shallower areas. Banning SCUBA gear for spearfishing will not reduce the total take of fish, it will simply move the harvest to different locations.
- 2) Spearfishing is a very selective fishing method. Divers can pick species and size of what they harvest, therefore size and species bag limits should be used to manage this fishery rather than a total ban.
- 3) Before a management method is put into place, there should be scientific evidence, not hearsay and speculation on the amount, type, and impact of SCUBA spearfishing on popular spearfishing areas in West Hawaii. To my knowledge, the rationale on why a ban was proposed was based on speculation, not science.
- 4) If the amount of current harvest by SCUBA spearfishers is not known, there will be no possible measure of success or failure of a management method utilizing a complete ban.
- 5) If SCUBA spearfishing is a problem to the nearshore ecosystem, then it should be looked at for the entire state, not just West Hawaii. The proposed ban in West Hawaii will create a hodge-podge of

regulations.

The proposers of this amendment have not shown adequate justification for a ban. This is a bad proposal and should be deleted from the proposed rules package.

I recommend that DLNR initiate a statewide data collection of types and amounts of fish harvested by spearfishers and work with spearfishers to manage this fishery. Involving the stakeholders from the very beginning of the management process will improve the outcome of any fishery management plan.

Most fish harvesters, regardless of method of harvest, desire sustainable harvest and an abundant fishery in future years. Please work with the fishermen BEFORE AND DURING the management process.

Sincerely,

Phil Fernandez  
Holualoa HI 96725

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Dec. 05, 2012

My name is Janet Marie, and I live in town, in Kona. And I have no credentials and you can tell I'm white, so I will always look like I came from the mainland which I did, no matter how long I've been here.

I came to Hawaii to care for my family, and while I was here God saw me fit to have me lose everything I own on the mainland so I guess you're stuck with me. And so I am here and I will live and I will die supporting this Hawaiian nation.

We all have a moral obligation to love and protect this island and make decisions that honor the ancestors and that support seven generations. And I think it's important to fix this bill before we pass it because there is something important that's been left out and several people have mentioned it, but I will as well.

It's not pono and no one has a right to take away Hawaiian's rights to provide food for their families and their villages. So I oppose this package because it needs to clearly protect the people who feed their families and villages and to be able to do that forever.

It's important, I think, to follow the money. And I'm very simple, but when I follow the money, I see that it's not the people who feed their families who are in the money trail, but the aquariums are in the money trail. And when I go on the dock at Honokohau and I see six mahimahi on the dock, and I'm not very educated but two seem big enough, four don't seem big enough, I think that's a problem.

So the old ways as Teresa eloquently explained to us, the old ways of harvesting and using the lunar calendar, according to the seasons, protected the fish population. I agree that spearfishing at night does not feel honoring and pono to me.

So when I think about aquariums, what happens if all this scientific bag limit thing doesn't work or we miscalculate in some way, and so perhaps it would be better to ban all aquarium people from harvesting until the fish populations are healthy and replenished. I don't know.

The boats on the harbor, they bother me. Some may be pono, maybe not, but we have an obligation to look and to do the right thing.

Thank you for listening and letting me share my opinion.

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Dec. 05, 2012

My name is Carl Jellings. I come from Waianae, Oahu, and we left this morning at 2:00 so I'm not too sharp right now, and I swam in from the boat to be on a plane to be here tonight to listen to all of you, especially my friends back there.

I've been an advocate for fishing since the late '80s, especially the future of fishing. And today, it just so happened that I left my son in charge, my son is 23 years old, I left my son in charge of a sailing operation right at the most important, critical time. And he called me and they were successful, and I trained him. He's 23 years old. I trained him since he was 3 years old. He didn't know how to talk, but he knew how to drive the boat.

What I've heard all night is we saving these resources for future generations. It's what I've been hearing from everybody, future generations. You cannot -- what are you saving it for, future generations. If you don't train your child, you don't train your children where the fish is, how to catch the fish or what different arts it takes to catch each species, each different species of fish -- one-third of all my son's training was conservation, how to be diverse in the different tactics and the different techniques. It's all part of conservation, doing one species, doing another species, doing another species with different types of techniques. It's how you fish sustainably.

So if we ban something like spearfishing with SCUBA, I know a lot of -- I know a lot of people who have been teaching their kids where to go, what kind of things to look for, how to find the fish, where the fish is. There is a hundred things involved. The knowledge doesn't fall out of the sky. You're trained. You do it over and over and over and over again until you master it. So I don't know how you can say we saving this for future generations. If you cannot train a child so that he can, actually, train his child, and his child can train his child, you know. That's what

Hawaiians been doing forever. That's how I know how to do what I do because my dad taught me how to do it.

So that's all I have to say, thanks.

Oh, by the way, I oppose the spearfishing.

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Dec. 05, 2012

Hi, everybody. My name is Steven Mahelona. I live right across the street, Hawaiian Homes. I am a Hawaiian. I love the ocean. I'm against the rule.

I feel that a lot of people, a lot of the Hawaiian people in here is against the rule, has said enough already, and I think they understand because if you don't, I mean, obviously, you're not listening.

However, I did attend this class today, and it was about problem solving; and that every problem, there is a solution and that us together, got to come together and find that solution. And by pointing fingers at one person, you have three fingers pointing back at you.

So what I'm trying to say is that nobody here is right, nobody is ever right every single time. We all make mistakes, but we do need to know what is right.

As far as the tropical fish collecting, I mean I've done tropical fish collecting. My dad owns his house today because of tropical fish collecting. It was part of my family since I was a little kid. And I just think the problem with the tropical fish collecting is that we got to look at how much Hawaiians are, actually, really doing tropical fish collecting and how much people from the mainland coming over here and doing the collecting.

And the Hawaiians here are educated about the ocean. We know. We told you guys already. We ain't stupid. So what we got to do, I think, is educate the guys that is coming in from the mainland over here and diving in spots four, five days. We all know that's not right. We have spots all over the place we can go to, why just target one area.

And as far as closing down any beaches, I think that's wrong like why we want to close down anything.

I mean we should all be able to enjoy everything out there.

So I mean as far as all of that, I just hope that we can come to agreement and make everybody happy. And I know sometimes not everybody can be happy and say it's fair, but I think if we can all come together and really speak our own perspectives on things and listen, we can really go far with this one.

Thank you.

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**From:** patty mctighe  
**Sent:** Friday, December 07, 2012  
**To:** darkona@hawaiiintel.net  
**Subject:** Scuba spraefishing

Aloha I would like to let you know I am against the new law that would not permit spearfishing while using a scuba tank. I am an old man with 1 lung and have been diving these island all my life. I am 70 now and this is the recreation I choose and cannot do it without a scuba tank. I go after tako and some kaukau fish from time to time and please do not pass this law. I agree the reefs are getting depleted but actually the night diving and the tropical fish collecting are the main reasons. I'm sure you are aware that an astounding number of tropical fish collected die before or shortly after they are collected and few ever reach an aquarium. Why are we letting outside people take our natural resources for profit. Why did Maui banish fish collecting? We do not need to allow fish collecting it does nothing for our island economy . There is no way a responsible diver with a spear can wipe out a reef. The way they get wiped out is the divers that gas the holes and there is no policing of this practice here on the big island you folks do not have the boats or the man power to take care of this. I have seen bleached holes everywhere and even reported the persons involved with no satisfaction. Please do not punish the spear fisher man with scuba as this will not solve the problem. I do think an area where all the charter dive boats can go and let the tourists take a look is a good idea sp lets make a reserve but not the entire calm coastline of the big island. Its time to take action on the real culprits and not let big money and business lobbies rule our resources. This is the only way there will be anything left for the future. Businesses are here as long as there is something to sell and they brake as much as they can get and leave when they have used everything up. I say no to the proposed Chapter 13-60-4 Scuba Spearfishing. Let the people fish Mahalo for the chance to vote Drake S.Fujimoto Naalehu Hawaii 96772

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Dec. 05, 2012:

Aloha. My name is Sam (Varron?). I've been a fisherman for about 25 years here on the island, and I'm against this bill because I don't think it's right, you know.

A real fisherman knows his respect about the water and the reef and the ocean, you know. We don't just go out there and terrorize fish at night. We have respect. By the time we go back to a spot that we've dove takes about a year, so we're not just a terror out there at night.

We're, actually, not the problem. Why don't you guys look at the roi or the tilapia. Those, actually, are the problem at night. If anything, you guys should be paying us for killing the roi. I kill at least maybe 3 to 400 roi a month. And thank God there is people that eat them, like the Polynesian, Samoan, Micronesian, so I can, actually, kill a roi and feed them to the people.

Like the brother said, we're Hawaiians, I may be not Hawaiian, but I've been injected many times. I'm just kind of really sad to hear all the testimony of these scientists and doctors. They're not here. Come on, realistically, to be a night diver with tank, you got to be an elite diver, and that's what we are.

We're not just an anybody. We're a professional just like you, and that's all I can say.

I ban this law, I don't think it's right.

Thank you.

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Dec. 05, 2012

My name is Jerome Marks. I'm speaking on behalf of Puna Brown. He has his testimony here. He had to leave because his house was on fire.

He's against this bill. I, Jerome Marks, am against this bill for one thing, one thing only. This is not the Hawaiian way. The Hawaiian way is to be Hawaiian. Hai comes from here. I don't need to sit over here and I don't need olelo to you like some people did. Olelo is nothing. Hawaiian comes from over here. The way we were born and raised, that's the way we want to go. The kapu system worked for the Hawaiians. If the gentleman earlier who said that this is the best you can come up with, brah, then I sorry, brah, that's not the best. The best is still out there. You guys got to go ask the right people. Nobody went ask the right people. Ask the right people. Ask all the people down the beaches that does this regularly. Ask them, ask them. You want to know the truth, ask the right people. Go talk to Billy Kenoi. He's asked the right people. That's why he's mayor. And that's why we backed him up because he's the mayor. He asked the right people. He put the right people in the right jobs. I'm totally against this ban. Fix it. If you don't fix it, come down and talk to the right people.

Thank you.

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Dec. 05, 2012

Tracy Kubota:

I'm not Lei Kihoi, but she gave me her testimony to read on her way out the door.

She writes: I am in opposition to the proposed rule package for the following reasons.

One is that according to Article VII of the State Constitution, it is imperative that the State acknowledge and recognize Native Hawaiian rights.

Section VII states: The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

Number two, as a consequence, it is incumbent on this body to acknowledge the rights of Native Hawaiians, by assuring that Native Hawaiian fishermen, especially those individuals who depend on the ocean for their sustenance, be actively involved in the management plan/decision-making process of their marine life habitat.

Three, historically, families like Mr. William Kaupiko, Mr. Kuahuia of Miloli'i, Max Poe Poe, Wade Lee of Mo'omomi on Moloka'i and the like, have supported their families, their life-style, because of their close connection to the ocean.

In summary, I oppose the proposed rule package because I feel that the current proposed rules do not reflect the mana'o of Native Hawaiians who have a right to be consulted as reflected in Article VII, Section 7 of the Hawaii Constitution.

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Dec. 05, 2012

My name is Bradley Kanoa, born and raised here, 43 years now.

I'm totally against this bill. A lot of us Hawaiians depend on diving. Some of us are older now. We cannot hold our breath as long as possible like we used to. We depend on providing fish and food for our family members. We give other people food when we provide it for ourselves also. If you're going to take that away from us, yeah, it's like you're asking the wrong people. We're not scientists like you folks. We don't got the answers for everything like you guys think you guys do. You're not asking the right people like braddah said. A lot of us depend on food source.

First you guys take away a lot of our fish out of the reefs and you guys giving it to the mainland when we survive off of that, like the yellow kole. You guys taking all that for provide them for aquarium and stuff like that. We, as the people of Hawaii, we eat that. We were born here, that's our right. You guys taking away our rights. You guys not asking the right people. That's all I got to say, but I'm totally against this bill.

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Dec. 05, 2012

Aloha, everybody. My name is Matt Kakalia. I live Hawaiian Homes up here. I'm 23 years old, and I'm a keiki o' ka aina. I'm from Hawaii, and my family, no more much of a background. I was hanai into Hawaii. Started off in Hilo, raised in the rivers, came out to Waimea. The family up there taught me how to hunt, catch food for my family. Came to Kona, started

diving, and that's how I was raised to live. So if you ban this, you taking my life away.

I am 50 percent Hawaiian. I don't know my Hawaiian side of the family. As far as my other side of the family, they live in Hilo, but what I learned taking care from these other local families around the island, I can catch fish and I can take fish to my Hilo family. And every time I take fish to them it's like having Thanksgiving, every time I go to their house. When I bring the fish, they appreciate it so much because they can't go do it.

And I just want to say that I do not support this, what they're doing.

Thank you.

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Dec. 05, 2012

Fred Huihui:

Aloha, all you Hawaiians. I'm here because of the ban of the spearfishing. I live off the ocean for a long time. I come from Miloli'i. I was born down there. I dive all the way to Pebble Beach, and I notice a lot of them are gone already. I want my word to go down on the piece of paper.

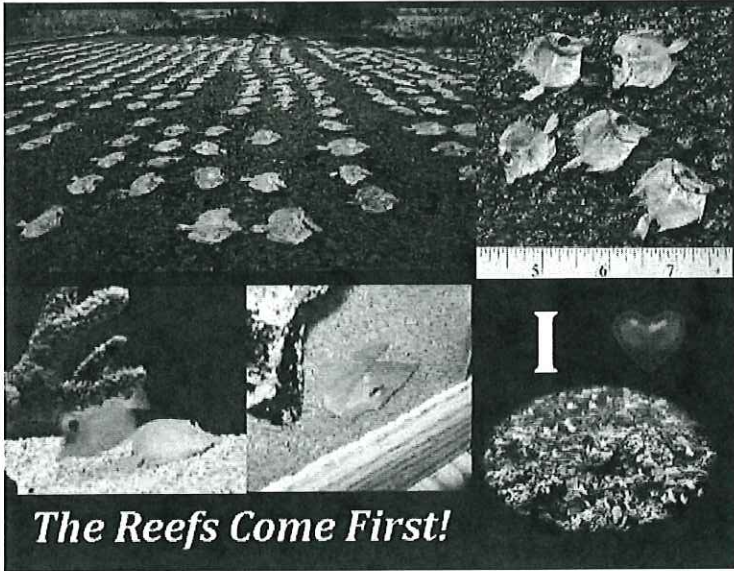
You take my spear away, I'm going to eat out of the rubbish cans down Kailua-Kona, because I live off my ocean. You give me five fish, that's not enough to feed me. And you know what, I'm not going to listen, I'm going to spear my fish, and I'm going to feed my family whether you like it or not.

And I will dive from Miloli'i to Kailua-Kona, Pebble Beach, I'm going to keep diving there. And that's all I got to say.

~~~~~  
From: Rene Umberger | For the Fishes [mailto:info@forthefishes.org]
To: darkona@hawaiiantel.net
Subject: Testimony - OPPOSE Aquarium Take Rules

Aloha,

I oppose the Aquarium take rules and beg you to put an immediate moratorium on all aquarium collecting until a full evaluation is concluded.



The rules are not based on sound science.
 A thorough environmental & impact review has not been conducted.
 Rules would not reduce the degradation caused by fish collecting.
 Unlimited commercial take of reef fish for aquariums should stop.

The rules conflict with cultural values and the values we teach our keiki.
 The rules are meaningless because they are not enforceable.

or:

Aloha, I OPPOSE the Aquarium Take Rules because they allow for ongoing:

- ___ Coral reef degradation
- ___ Species depletion & Threat to survival
- ___ Conflicts w/fishers who see fewer fish like pakuikui and kole to share with their ohana
- ___ Waste and needless death to wildlife
- ___ And:

Sent on behalf of:

James Haskins	11/17/2012		Kailua, HI 96734
Mary Ann Kern	11/20/2012		Honolulu, HI
Courtney Nichols	11/27/2012		Kailua, HI 96734
Wanda Nichols	11/29/2012		Kailua, HI 96734
Sandy Shimmon	11/29/2012		Kailua, HI 96734
Jaclyn Van Bourgondien	11/29/2012		Lahaina, HI
Rules would not stop ongoing degradation. Protect Hawai'i's environmental and economic future by keeping our reefs healthy & alive by keeping our fish here on our reefs!!			
Deborah Driscoll	11/29/2012		Kihei, HI
We are destroying our reef ecosystem to the point where it may not recover. Please be an advocate for change. For the world.			
Mike Moran	11/29/2012		Kihei, HI
Rules would not stop ongoing degradation. Unlimited take should stop. How long will our State government allow the plunder and rape of our coral reef system?			
Mark Schacht	11/29/2012		Albany, CA 94706
These proposed rules are a transparent effort to deceive the public and stay the hand of the court in the lawsuit just filed against DLNR. This is happening on the Governor's watch--it's his agency and these are HIS proposed greenwashing rules. What an outrageous abuse of the regulatory process!			
Lora Chamberlain	11/29/2012		Chicago, IL
Protect our Reefs, human beings should not be allowed to just do anything they want to do, Mother Nature must win or we all lose!!! Tourism will suffer if you kill the reefs!!!			
Pamela Polland	11/29/2012		Kula, HI
The health of our reefs is PARAMOUNT to keeping the tourist trade coming to our islands. When you demolish the reef eco system, the islands become less appealing to visitors, and then our whole economy fails.			

Sustaining colorful marine life in HI is not just good for the environment, it's good for our economy as well. Taking reef fish for the aquarium trade has NO LASTING VALUE. It's just a short term money gain for that one industry. It does NOTHING to help our island culture, economy or eco systems overall - and in fact, is quite HARMFUL to all of the above. Please don't let this happen. Mahalo		
Cindy Texeira	11/29/2012	Wailuku, HI
I would like to see Hawaii's aquarium fish trade be banned from all of Hawaii's waters. Our fish should be left alone so they can be enjoyed by the people of Hawaii and be the reason people come to Hawaii. WE need to protect these fish, the reefs and all of their habitat.		
Sylvia Masella	11/29/2012	Kihei, HI
SAVE OUR REEFS!		
Jeannette Heidrich	11/29/2012	Kailua, Kona, HI
I love looking at the fish in the salt water, not behind glass!!!! Our native fish are dwindling in the reefs around Hawaii.		
Joan Lloyd	11/29/2012	Kihei, HI
The proposed rules for the Big Island are a smokescreen for continued, unlimited reef wildlife extraction and decimation. It must STOP.		
Donita Sparks	11/29/2012	Los Angeles, CA.
Keep the tourists coming and protect your reefs and fish!!		
Phyllis Tavares	11/29/2012	Makawao, HI 96768
SAVE OUR OCEANS. OUR PLANET DEPENDS UPON A HEALTHY OCEAN. WE ARE ALL INTER-CONNECTED. HEALTHY OCEANS TAKE IN CARBON-DIOXIDE AND RELEASE OXYGEN. WE NEED HEALTHY OCEANS.		
Anita Wintner	11/29/2012	Kihei, HI
Ban aquarium collecting. DLNR has no way of enforcing changes, and it is ridiculous to make rules for one island and not the other. If this is the best DLNR can come up with, fire the director, an aquarium collector.		
Caroline Azelski	11/30/2012	Kapaau, HI 96755
Thank you for making it possible for me to help.		
Ann Goody	12/01/2012	Kailua-Kona, HI
Grant Heidrich	12/01/2012	Kailua Kona, HI
All collection of ornamental fish should stop immediately as the state is in flagrant violation of its own laws requiring an environmental impact study that scientifically proves the sustainability of any fish collection. Regardless of the scientific evidence requires, this practice violates the Hawaiian cultural heritage and respect for the oceans and land.		
Lynn Allen	12/01/2012	Kihei, HI
I believe that it is essential to protect Hawaii's reef ecosystems in ANY way possible. Banning a needless and senseless trade such as the aquarium trade is such a mechanism. It is needed for the posterity of all.		
Pat Cadiz	12/01/2012	Paia, HI
Bernadett Mansell	12/01/2012	Kula, HI
Please consider the long term damage...we may not live to see it, but our keiki surely will.		
Patrice McDonald	12/01/2012	Kealakekua, HI
There has been no consequences or scientific sturdy to your rules . They are designed for profit to foreign money, no scientific studies on the negative consequences of rules since the 1960's . Even tourists would rather see our native fish in the ocean .		
Bob Babson	12/01/2012	Kihei, HI
Please stop the aquarium trade. I have lived in Kihei since 1991 and have witnessed the depletion of reef fish. I only see Tangs now in the Ahihi Natural Area Reserve. When I first moved here, they were on all the reefs here in Kihei. Mahalo		
Cassandra Wylie	12/01/2012	Pahoa, HI
Why are the fish for sale? Too much has already been taken from these islands. Leave the fish alone where they were meant to be, not as a for profit enterprise. Just be pono.		
Tina	12/01/2012	Kahului, HI
Please HELP save them!		
Lynn Spina	12/01/2012	Ventura, CA

This impacts so many aspects of the reefs and surrounding area.		
Nancy Shah	12/01/2012	Hilo, HI 96720
It seems in Hawaii government and business allows regulations without fully researching the far reaching impact. Please be sure to insure our island environment is protected. Thank You,		
Deb Shields	12/01/2012	Nashville, TN
i recently went diving for a week on maui and big island. i had not been for 2 years and i noticed a considerable decrease in the numbers of all the species of the "pretty yellow fishes". please stop collecting...they all die in aquariums		
Lesley Thompson	12/01/2012	Loveland, CO
I oppose the Aquarium Take rules and request an immediate moratorium on aquarium collecting.		
Linda Block-Gandy	12/01/2012	Lafayette, CO 80026
As a scuba diver that has explored the reefs of the Caribbean and Hawaii I can say that I have seen a decline in the number of fishes in the Hawaiian islands over the past 12 years.		
Dionne Miller	12/01/2012	Kailua Kona, HI
I snorkel daily and am disgusted at the lack of caring for the environment shown by fish collectors and DLNR. It is time to protect Hawaii's precious underwater areas instead of selling them off for pennies. Wake Up!		
Terry Thompson	12/01/2012	Loveland, CO
I love coming to HI and diving and snorkeling. I have noticed a marked decline in several fish species over the years.		
Deborah Telesmanic	12/01/2012	Santa Rosa, CA
I OPPOSE the Aquarium Take rules and request an immediate moratorium!		
Leslie Wingate	12/01/2012	Pahoa, Hawai'i
Watch Finding Nemo! I would like to see all aquarium fish being bred in aquariums and not taken from the ocean, many of them die that way! I really love the reefs and fish here, this is my home, as well as the fishes home, and I do not think it is right for anyone, even fish to be taken from their homes!		
Nadine Ornborg	12/01/2012	Santa Fe, NM
Please stop the depletion of marine life in Hawaiian waters.		
Val Kimbrough	12/01/2012	Keaau, HI
The legally required environmental impact must be performed. Please conform to the laws that are in place.		
Douglas Miller	12/01/2012	Kailua Kona, Hawaii
Keep the reef inhabitants on the reef and not in someone's aquarium.		
D. Paul Yeuell	12/01/2012	Malibu, CA
The ornamental fish collection industry is in the process of liquidating it's assets like a business conducting a fire sale. When they've killed the reefs, we will have lost one of the planet's greatest treasures. It's time for a moratorium on all collecting in HI's coral reefs while a thorough environmental impact study can be conducted. The stakes are too high to let the destruction of the coral reefs continue.		
Bradley Jones	12/01/2012	Los Angeles, CA
The reefs of Hawaii are already severely degraded from overdevelopment and pollution. Taking fish off the reefs is only making them decline faster.		
Kara Amundson	12/01/2012	Louisville, KY
If these creatures cannot be bred in captivity, then you should surely not remove them from the wild and further diminish stocks.		
Deirdra Rogers	12/01/2012	Fairfax, CA 94930
I want to see Hawaii's aquatic wildlife on the reefs where they thrive...not in aquarium tanks where they die.		
D. Friedman	12/01/2012	St. Louis, MO
Aquariums discourage tourist trade: if you can look at a tank with fish no need to go to Hawaii.		
Lois Crozer	12/01/2012	Kailua, HI
If people want fish in an aquarium, why don't we learn to breed them? I don't think it's fair OR smart to take fish from the reef. That is so archaic and just plain dumb. The fish don't belong to the collectors!		
Doug Fetterly	12/01/2012	Honolulu, HI

I would hope that DLNR will finally do the right thing and ban this trade until such time as it can proven to be sustainable.			
Rob Simonsen	12/01/2012		Everett, WA
Boot the aquarium trade off the Hawaiian islands!			
Lori Grace	12/01/2012		Tiburon, CA 94920
SAVE THE REEFS!! SAVE THE FISH!!			
Amy Venema	12/01/2012		Kihei, HI
Please stop the aquarium trade all together.			
Martin Beauprez	12/01/2012		Colorado
I have been visiting Hawaii for many years now and have noticed a significant decline in the reef fish. This has been snorkeling and diving activities. These fish need to be living in the natural environment not fish tanks!!!			
Pamela Kottwitz	12/01/2012		Pahoa, Hawaii
This is hurting the environment to line the pockets of a select few. It's not fair.			
Cathy Goeggel	12/01/2012		Honolulu, HI
It is beyond time that DLNR provide real protection for marine animals- and that any staff/board members who have a financial interest in the aquarium trade recuse themselves.			
Wanda Woody	12/01/2012		Kailua-Kona, HI
This is part of the beauty we like to share with vacationers. Let's protect it			
Robert Stahl	12/01/2012		Santa Cruz, CA 95062
Our oceans are being stripped down to nothing worldwide, Hawaii depends on tourism each year, how can we possibly strip our reefs and damage our most prized resource the wild life in our ocean. Can you imagine if tourist come to Hawaii and ask where are all the fish, and the local government would respond, "We Sold them" only to die months later, its insane, please create a solution NOW! Thank You			
Paul Kohman	12/03/2012		Oakland, CA
As a former resident of Maui I have witnessed the decrease in reef fish populations and the effects on the ecosystem. We as concerned citizens must express our outrage that fish collectors are allowed to damage this valuable ecosystem as they are now doing.			
Linda Willaby	12/04/2012		Pahoa HI
Stop our beautiful fish from disappearing!			
Nancy Mawson			Wailuku, HI
Barbara Noel			Kihei, HI
Diane Kornell			Kihei, HI
Gordon Gillis			Kihei, HI
Judy Mertens			Makawao, HI 96760
Lois Gillis			Hershey, PA
Lynn Turnbull	12/19/2012		Lafayette, CA
Comment: : Save the reef fish! Please			
Nadine Robertson	12/19/2012		Mountain View, HI
Stop the abuse of over-taking and the killing of Hawai`i's wildlife of which includes coral and fishes. Over-fishing, a big concern and problem, added to the problem of unregulated taking of our exotic fishes for the sheer pleasure to beautify restaurants, hotels, bars, and homes the world over is abusive. Our wildlife to be enjoyed by ALL and enjoyed in their natural habitat, not displayed in unnatural habitats (to solicit tourism!). An act of murder and wastefulness to collect from the wild knowing their lives are slight in captivity, or die enroute. fun to watch that its worth it! Sick mentality! Collectors of exotic wildlife for aquariums should collectively build on raising for the selling, exporting, and showing of exotic fishes and coral. Australia does. Please kokua and save our precious endemic or indigenous wildlife, on land or sea. Mahalo			
Frank	12/19/2012		Atherton , CA
I have a house on the Big Island and feel this aquarium fishing terrible and hurting the tourism.			
Dave Studeman	12/19/2012		Lafayette, CA
Protect your reefs. Your culture boasts of respect for the lands and sea...start living up to that belief!!			
Jay Watkins	12/19/2012		Portola, CA

I am witness to the heartbreaking devastation that has occurred to these reefs during my lifetime. I want the fish to be there for my children to enjoy - not in a tank somewhere outside of Hawaii		
Christine Wolf	12/19/2012	Kihei, HI
The aquatic life in Hawaiian waters is Hawaiian, why would we allow it to be taken away and a large majority killed in the process?		
Angela Huntemer	12/19/2012	Kahuku, HI
With the other factors stressing reefs such as acidification and other climate change related problems, it is high time there was a complete ban on the Aquarium Trade. It is a disgrace that the rampant pillaging of the reefs has been allowed to continue for so long.		
Bobby Bounds	12/19/2012	Pahoa, HI
This is a disgusting practice and someone should write the Animal Planet to protest the airing of Tanked!!!		
Vivian Toellner	12/19/2012	Hilo, HI
Aloha, Stop selling everything that makes Hawaii what the special place it is. So your love for this beautiful unique place now before it is too late. With love and respect for Hawaii. Mahalo		
Laurel Whillock	12/19/2012	Kamuela, HI
As someone who has been SCUBA diving off the Kona coast since 1990, I don't agree that fish collecting hasn't had any impact on our coral reef fish populations. It's time to do a current EI and determine whether or not fish collectors are more valuable than the SCUBA divers, snorkelers, and both tourists and locals who want to enjoy the beauty and economic benefits provided by a healthy, vibrant coral reef system.		
Gregg Gruwell	12/19/2012	Gleneden Beach, OR
Having just moved from Hawaii to OR after 13 years, I am saddened to see this corrupt practice supported by DLNR.		
Cheryl Zarbaugh	12/19/2012	Honolulu, HI
I have had the opportunity to work in a few businesses that maintained salt water aquariums....in ALL of these instances ALL of the fish had to be replaced every two weeks because they died. This is unacceptable raping of the oceans of our precious resources and marine life! The only right		
Shayla Middleton	12/19/2012	Kihei, HI
Please see that unlimited collection has depleted our current population, where will the more and more and more come from if we already have less?		
Shawn Mackenzie	12/19/2012	Palo Alto, CA
Aloha, I oppose the Aquarium Take rules and request an immediate morritorium on aquarium collecting until the trade's environmental, cultural and ethical impacts have been met.		
Leslie McMorrow	12/19/2012	Kona, HI
Hawaii's fish belong in the ocean-not tanks - - didn't you watch "Finding Nemo!		
Sally Hartman	12/19/2012	Kona, HI
The West Hawaii rules package includes a 40 species Hit List (aka White List), with all other species off limits. If applied to the 2011 catch, it would have reduced the take by about 1% or 4,000		
Jeff Schwartz	12/19/2012	Kula, HI 96790
Please adopt effective rules to protect our reefs and reef fish from the aquarium trade.		
Christine	12/19/2012	Kihei, HI
The only way to ensure sustainability is to establish moratoriums on all areas for a period of time so that stocks replenish themselves and then ONLY when the numbers exceed measurable impact should stocks be allowed to be tapped into. However, I cannot, in my experience in Hawaii see that ANY species is ready to be taken.		
Aly	12/19/2012	New York, NY
Save the fish!!		
David Bagshaw	12/19/2012	Atherton, CA
Please make an effort to save the fish before they all gone. By then it will be too late. Thank You.		
Lynne Olson	12/19/2012	Atherton, CA
This is your chance to make a real difference in our world.		
Cory Harden	12/19/2012	Hilo, HI
Don't send our sea life to die in stateside aquariums!		
Tom Wright	12/19/2012	Hilo, HI

It's time to stop thinking of profit.			
Lynn Nakkim	12/19/2012		Pepeekeo, HI
We need to move in the direction of conservation zones where NO spearing and no collecting are allowed. Richardson's bay can continue as a swim spot, but NO COLLECTING of fish or objects should be allowed there, and in other sheltered spots where fish reproduce for the entire coast.			
Paul Kuykendall	12/19/2012		Pahoa, HI
Please protect our reefs			
Kristin Olson	12/19/2012		Woodside, CA
This is your chance to make a real difference in the world, and stop aquarium trade.			
Kip Sheeline	12/19/2012		Hillsborough, CA
This is imperative. It's a unique resource of the islands and can't be squandered.			
Daniel Kanahele	12/19/2012		Kihei, HI
The impact of the aquarium collection trade on Hawaiian Cultural Resources has not been adequately assessed or addressed. Their needs to be consultation with the ahu moku representatives of each moku on each island by the state of Hawaii through DLNR. The input from the ahu moku representatives and community members who are knowledgeable in the moku about traditional resource management should be a part of administrative rules developed to manage the aquarium collection trade and should be a vital part of this process of developing regulations that will protect our vital cultural resources.			
Eve Short	12/19/2012		Kailua-Kona, HI
I oppose the Aquarium Take rules and request an immediate moratorium on aquarium collecting until the trade's environmental, cultural and ethical impacts have been addressed.			
Ellis Short	12/19/2012		Kailua-Kona, HI
I oppose the Aquarium Take rules and request an immediate moratorium on aquarium collecting until the trade's environmental, cultural and ethical impacts have been addressed.			
Robert Fagan	12/19/2012		Los Angeles, CA
I oppose the AQ Take rules!			
Shannon Shea	12/19/2012		Waikoloa, HI
Leaving fish on the reef is a much greater economic and cultural benefit to Hawaii than the morally reprehensible aquarium collection trade could ever be.			
Miranda Kawaiola	12/19/2012		Kihei, HI
Aloha, I now have to find spots to snorkel to see fish, before they were abundant no matter where I snorkeled or went diving. It's really sad, a travesty really, best experience is in the water not in your living room. I OPPOSE the Aquarium Take rules and request an immediate moratorium on aquarium collecting until the trade's environmental, cultural and ethical impacts have been addressed.			
Wendy Harvey	12/19/2012		Kihei, HI
I am a scuba diver and have seen the schools decline over the years. We MUST do something now before it's too late.			
Mary Trotto	12/19/2012		Kihei, HI
We are the keepers of teh land and the sea, it is up to us to make sure that commercial use of the sea does not cause a harmful change in its function and beauty. We are the keepers of the land and the sea if we do not protect the sea, who will?			
Kerri Ballard	12/19/2012		Kula, HI
The difference in the number and variety of fish in the areas that are protected such as Ahihi Bay is indisputable. The need to immediately do everything in our power to protect this fragile sliver of life around us is imperative.			
Bradley Jones	12/19/2012		Oceanside, CA
I have visited Hawaii a few times, and I have had the good fortune to do some skin diving and enjoy the natural beauty of fishes swimming in their native environment. I would like to preserve this wonderful experience for future generations. I oppose the Aquarium Take rules. Please consider putting an immediate moratorium on aquarium collecting until all of the issues have been fairly and impartially addressed.			
Richard Reed	12/19/2012		Hakalau, HI

Laureen Evans	12/10/2012		Dickinson, ND
Jenny Desaulniers	12/10/2012		San Antonio, TX 78236
Jacque Gregory	12/10/2012		Victoria, BC Can
Cathy Miles	12/10/2012		Portland, OR 97229
Mark Loretan	12/10/2012		Menlo Park, CA
Danuta Blum	12/10/2012		Kailua-Kona, HI
Lynoa Wallach	12/10/2012		Kapaaau, HI
Michael Stroschein	12/10/2012		Kailua-Kona, HI
The economic impact of this practice jeopardizes the important tourist and eco industry			
Christopher Mooney	12/10/2012		Kailua-Kona, HI
Just because they are a bunch of sick fuckers.			
Motlock	12/10/2012		Kailua-Kona, HI
Julie Bezzant	12/10/2012		Honolulu, HI
Ashley VanJetzer	12/10/2012		Kailua-Kona, HI
Chris Lautenberger	12/12/2012		Martinez, CA
Shirley Conty	12/12/2012		Winnipeg, Can
Kelsea Wells	12/12/2012		Kailua-Kona, HI
M. Druce	12/12/2012		Vancouver, BC Can
Stephen Grayt	12/12/2012		Santa Cruz, CA
Bill Radke	12/12/2012		Tinley Pkwy, IL 64477
Hiroko Smith	12/12/2012		Honolulu, HI
Lorraine Chow	12/12/2012		Redwood City, CA 94962
Andrea Zuckerman	12/12/2012		Mt. Kisco, NY
Kenny Banks	12/12/2012		Kamuela, HI
Cheryl Kutzborg	12/12/2012		Seattle, WA 98006
Nicole Krydz	12/12/2012		Martinez, CA
Jeannie Bartz	12/12/2012		Tucson, AZ
Erik Smith	12/12/2012		Honolulu, HI
Peter Banks	12/12/2012		Kamuela, HI 96745
George Fulop	12/12/2012		Mt. Kisco, NY
Ben Hoang	12/12/2012		Santa Clara, CA
Virpi Kangas	12/12/2012		Vancouver, BC Can
Annette Clawson	12/12/2012		Lakewood, OH 94107
would like the natural world to be here for Grandkids!!			
Jane Sullivan	12/12/2012		Pacific Grove, CA 93950
continual promotion of sustainable fishing practices			
Desiree McGowan	12/12/2012		Port Townsend, WA 98368
Pat Beatty	12/12/2012		Palo Alto, CA 94306
Cynthia Brock	12/12/2012		Amboy, WA
Mark Yuen	12/12/2012		Waikoloa, HI
Rocco Lojac	12/12/2012		Southampton, NY 11968
S. Love	12/12/2012		Waipahu, HI
Steve Meyer	12/12/2012		Austin, TX 78713
DJ Druce	12/12/2012		Vancouver, BC Can
Teri Hall	12/12/2012		St. Croix, VI
Barbara Costello	12/12/2012		Aurora, CO
Stephen Fujii	12/12/2012		Reedley, CA
George McIntosh	12/12/2012		Calgary, Alberta, CA
Grace Baker	12/12/2012		Waikoloa, HI
Sarah Costello	12/12/2012		Denver, CO
Doug Fenwick	12/12/2012		Amboy, WA

Ocean Acidification			
Micheal Bartz	12/12/2012		Tucson, AZ
Ken Barnes	12/12/2012		Fremont, CA
Alan Johanson	12/12/2012		Port Townsend, WA
Judy Stewart	12/12/2012		Vancouver, WA
You are wonderful to make us all aware! Peace & Love			
Joyce Davis	12/12/2012		Pahoa, HI 96778
Every resource require limits to assure the fish for the next generation			
Pamela Clark	12/12/2012		Pleasant Hill, CA
Every resource require limits to assure the fish for the future generation			
Anna Wyszynski	12/12/2012		Anchorage, AK 99507
Tom Sullivan	12/12/2012		Pacific Grove, CA 95950
Fishing methods that result in by catch			
Laura Meyers	12/12/2012		Austin, TX 78731
April Gonzales	12/12/2012		Southampton, NY
Ward Conley	12/12/2012		Delta, BC
Phil Nishida	12/12/2012		Fresno, CA
Theresa Gushaulis	12/12/2012		Mountain Top, PA 18707
Selvy Thirurengadam	12/12/2012		Kailua-Kona, HI
Tory Trisch	12/12/2012		Davis, CA 95616
Betty Bridgewater	12/12/2012		Arlington, TX 76002
Mike Doph	12/13/2012		Kailua-Kona, HI
Siobhun Price	12/13/2012		El Mirage, AZ 85335
Joan Gannon	12/13/2012		Kealahou, HI
Tami Asars	12/13/2012		North Bend, WA
John Noonan	12/13/2012		Brampton, Ontario, Can
Logan Noonan	12/13/2012		Brampton, Ontario, Can
Denise McCabe	12/13/2012		Adelaide, S. Australia
Bob Newton	12/13/2012		Belfield, ND
Mary Englestead	12/13/2012		Las Vegas, NV
Skye McCabe	12/13/2012		Adelaide, S. Australia
Holly Lindstrom	12/13/2012		Kailua-Kona, HI 96740
Krystyna Krzywdzinski	12/13/2012		Conifer, CO 80433
I like to snorkel, see fish			
Stan Krzywdzinski	12/13/2012		Conifer, CO
Nancy Newton	12/13/2012		Belfield, ND
Cheryl Nesler	12/13/2012		Kailua-Kona, HI
John Gatewood	12/13/2012		Kailua-Kona, HI
Tanya Sinclair	12/13/2012		Brisbane, Australia
Chuck Sullivan	12/13/2012		Agawam, MA 01001
Pat Sands	12/13/2012		Kailua-Kona, HI 96740
Lucy Olsen	12/13/2012		Captain Cook, HI 96704
Nigel McCabe	12/13/2012		Adelaide, South Australia
Petria Moncada	12/13/2012		NSW, Australia
Grace Noble	12/13/2012		Waddell, AZ 85355
Callum McCabe	12/13/2012		South Australia
Kelly Okoji	12/15/2012		Kailua-Kona, HI
Rebecca VanJetzer	12/15/2012		Kailua-Kona, HI
Roger Osmuy	12/15/2012		Pottstown, PA 19465
Shemy Schliufer	12/15/2012		Longview, WA 98639
Caden Rutter	12/15/2012		Lindon, VT

Andrea Goldthorpe	12/15/2012		Victoria, BC
Randi Dyer	12/15/2012		Julesburg, CO
Dion Mulhause	12/15/2012		
Jon Mason	12/15/2012		Pottstown, PA
Save our Fish!			
Karen Boriem	12/15/2012		Port Angeles, WA 98363
Shikeyah Rutter	12/15/2012		Lindon, UT
Vanessa Jenks	12/15/2012		Kamuela, HI
John Reasoner	12/15/2012		Aurora, CO
Yulia Troussora	12/15/2012		Aurora, CO
Cheryl Cournoyere	12/15/2012		Cave Creek, AZ
Jacqueline Suitt	12/15/2012		Palm Springs, CA 92264
Amy Reisenauer	12/21/2012		Kihei, HI 96753

Dec. 05, 2012

Aloha, kakou. My name is Jason Ng, resident of West Hawaii, opposed to the spearfishing ban of making people provide food for their family, making them criminals when a lot of people can't afford or are not capable of collecting fish for consumption. And some of us provide fish for those and feel it's unfair to categorize people who provide food in the same bill as fish collectors and strongly oppose that and suggest to maybe close off areas like how they do the collection of fishers and maybe have it closed off for a year or a couple years at a time in areas to let it rebuild, but not to totally ban spearfishing; and hope that everybody feels compassion for the ones that just want to feed their families. Thank you.

Dec. 05, 2012

My name is Don Inaba. I was born and raised here, been diving probably for the past 42 years. I'm against this ban because it needs to be modified. I think that like the brother just said earlier that he shot how much fish in one night so that just goes to show you that how -- what do you call it, efficient it is at night, fish are sleeping, they don't have a chance.

If you do it during the day, it may not be sporting like the guy says because the fish have a chance. They see you coming, and they can get away. So the only thing I'd like to say is they should modify that fishing ban, as far as spearfishing on this next meeting.

Thank you.

From: Bob Flatt
Sent: Friday, November 30, 2012 11:43 AM
To: darkona@hawaiiantel.net
Subject: WHI coral reef management - Testimony

I OPPOSE the new regulations.

I oppose because the white list is too permissive as there is no actual measurement of most of the populations of the 40 species. If you can't measure it you can't manage it.

It is tempting to claim a sampling approach is sufficient, say 16 species. However this assumes a 'Natural System', but the reef is harvested by commercial entities whose incentive is to harvest species based on price. So this is not a Natural System, it is in part a Commercial System. A 50¢ Yellow Tang compared to a \$50 Anthias illustrate the varying incentives ignored by the management model.

The management model ignores price, and so does not model the reef. A misleading situation.

Robert Flatt

Captain Cook
HI 96704

~~~~~  
November 13, 2012

TO;DLNR

FROM; COLLEEN WALLIS (CONCERNED CITIZEN) Dear

DLNR;

I read in WHT about the white list of tropical fish collecting. I also read Syd Kraul's statement that yellow tangs do not breed in captivity. If I recall correctly, was it not a collection of yellow tangs that was left to die on Honokohau harbor the other year? Whoever was responsible for that waste of precious sea life showed no concern for our beautiful reef creatures. I strongly oppose the white listing of the Yellow Tang and all other fish. Fish collectors are just stealing from nature. You are enabling these predators who have no regard for our reef and it's natural inhabitants. Please do not white list the yellow Tang.

Sincerely,

Colleen Wallis  
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PETITION IN OPPOSITION OF BAN ON SCUBA SPEARFISHING AND IMPLEMENTATION OF THE "WHITE LIST" OF REEF DUE TO IMPACT ON SUSTAINABLE HARVEST OF KAU-KAU FISH.

We, the undersigned, are stakeholders of the West Hawaii shoreline and marine environment. We are local residents who have utilized the shoreline and ocean. Many of us are multigenerational, and for many years we have utilized the ocean, for subsistence and supplemental income when necessary. We utilize the ocean and its resources in a sustainable way with long-term conservation of resources in mind. Our input into the West Hawaii Fishery Council public input process was suppressed and ignored.

NOW THEREFORE, we ask that the Department of Land and Natural Resources remove the ban on scuba spearfishing and the implementation of the "white list" from the proposed West Hawaii Regional Fisheries Management Area Rules Package.

Name	Address	Date
Robert Henriques	Holualoa, HI	12/13/12
Donella Gipson	Kailua-Kona, HI 96740	12/12/12
Tina Masciocchi	Felton, CA 95018	12/14/12
Richard Masciocchi	Felton, CA 95018	12/14/12
Edith Williams	CA	12/15/12
Aka DeMesa	HI	12/15/12
Chery DeMesa	TX	12/15/12
Maurice Kahawaii	HI	12/15/12
Beatrice Ravenscraft	Kealakekua, HI 96750	12/15/12
Shawn DeMello	Captain Cook, HI 96704	12/15/12
Jane DeMello	Captain Cook, HI 96704	12/15/12
Raymond Genegabuas	Kailua-Kona, HI 96740	12/15/12
A. Cobb Adams	Kailua-Kona, HI	12/15/12
Nainoa Murtagh	Kailua-Kona, HI	12/15/12
Adam Snodgrass	Kailua-Kona, HI	12/15/12
George Berd	Kailua-Kona, HI	12/15/12
Casey Berd	Kailua-Kona, HI	12/15/12
Chase Alexander	Kailua-Kona, HI	12/15/12
Mige Byrne	Keauhou, HI	12/19/12
Ash Berringer	Kailua-Kona, HI	12/19/12
Katherine Conlon	Keauhou, HI 96739	12/19/12
Craig Hawkins	Keauhou, HI 96739	12/15/12
Teresa Nakama	Kailua-Kona, HI 96740	12/12/12
Tate Marks	Kailua-Kona, HI 96740	12/12/12
Jonah Marks	Kailua-Kona, HI 9674	12/12/12
John Meyers	Clearwater, BC CAN	12/13/12
Nalani Kukua	Holualoa, HI 96725	12/13/12
Lloyd Leong	Kailua-Kona, HI	12/12/12
James Garrigan	Kailua-Kona, HI	12/15/12
Melissa Dunigan	Kailua-Kona, HI	12/16/12

William Talley	Kailua-Kona, HI	12/16/12
Shaloma Marks	Kailua-Kona, HI	12/16/12
Peter Lindsey	Kailua-Kona, HI	12/17/12
Leonard Hussey	Kailua-Kona, HI	12/17/12

Aloha,

I am against the spear with scuba ban and against the ban of sale of speared fish to retail or wholesale markets.

Print: Nicole R Marks

Signature:  Date: 12-5-12

Print: Veronica Marks

Signature:  Date: 12-5-12

Print: James Garrigan

Signature:  Date: Dec. 5

Print: Melissa Duignan

Signature:  Date: 12.18.2012

Comments: I enjoy eating fish and have my whole life as I was born & raised on Big Island and I dont dive. I hope to see a modification on this over combersome ban!

Print: Kalino Raposo

Signature:  Date: 12-14-12

Comments: With this we are able to go down to deeper waters & supply our family w/ food.

Print: Nainoa Moutagh

Signature: Nainoa Moutagh Date: 12/14/12

Comments: Going up and down
50 ft is bullshit without a tank.
One kope per drop "Fock DAI"! GO
BIG OR GO HOME!!!!

Print: Keoki Rivera

Signature: [Signature] Date: 12-14-12

Comments: I Spear fish for a
living. There's no jobs this is
how I Live and support myself.

Print: Albert Jansoncker

Signature: [Signature] Date: 12-13-12

Comments: Do these people think it's
easy to dive 30'-40' feet on a
single breath of air to spear one (1) fish
These people don't need to eat fish
because they're away from here!

From: Charles Andres
Sent: Wednesday, November 28, 2012 2:57 PM
To: darkona@hawaiiantel.net
Subject: Fish protection

I oppose any law that allows people to take tropical fish from anywhere on the big island.

There should be attempts to increase tropical fish stocks to at least their 1980 levels.
Which is true-

- there are no laws in existence being effect in Hawaii to stop or regulate removing tropical fish from Hawaiian waters.
- laws exist but there is no enforcement
- if we create laws to regulate the tropical fish industry, we "legitimize" it.

- if there is one person in Hawaii who claims to make \$1 on a type of business, "the business gets to live forever "

From: Pononui
Sent: Friday, December 14, 2012 10:11 PM
To: darkona@hawaiiintel.net
Subject: I am against and DO NOT support the WHRFMA amendments rules package

I am against and do not support the WHRFMA Amendments which are being proposed.

Pononui Lealao
Kailua-Kona, Hawaii
96745

From: Mare Grace
Sent: Thursday, November 22, 2012 1:46 PM
To: darkona@hawaiiintel.net
Subject: Aquarium fish collecting testimony

Oppose!!

Mare Grace

Kamuela, HI 96743

COMMENTS on West Hawai'i Rules and Amendments

Note: Three Email-Blasts were widely disseminated in response to the December 5, 2012 West Hawai'i public hearing. The one below was sent by the Center for Biological Diversity, a Tucson, AZ environmental NGO. Note that the Email-Blasts themselves were *not* submitted to DLNR as testimony.



CENTER for BIOLOGICAL DIVERSITY

Because life is good.

Tell the Hawaiian Government to Protect Fish in Coral Reefs on Dec. 5

Dear William,

With no limits on reef fish collection for the aquarium trade in Hawaii, overharvesting of reef fish is stripping our reefs of their health and beauty.

On Dec. 5, attend a public meeting and let Hawaii's government know that overharvesting of coral reef fish for export to aquariums must be halted.

Each year hundreds of thousands of Hawaii's wild reef animals are collected for the aquarium trade. Many of those caught die in transit or after only a few short days or weeks in a fish tank. Millions of reef fish have been harvested and exported to fish tanks across the world; this plunder of Hawaiian reefs is devastating the state's coral reef biodiversity.

Right now Hawaii is considering new rules to place limits on aquarium collection, but they are far too lax to protect our coral reefs.

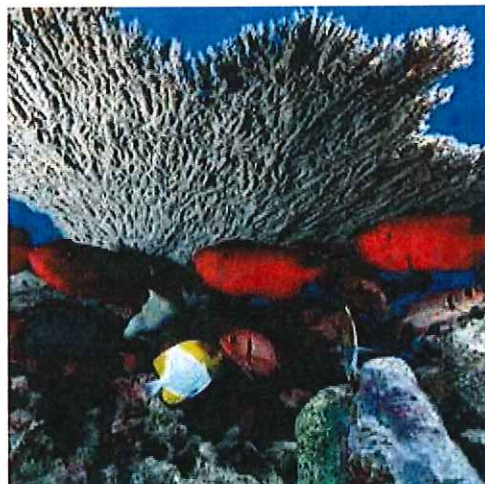
Your voice is needed to urge the Hawaiian government to adopt meaningful limits on reef fish collection so that our beautiful coral reefs -- already under tremendous stress from global warming and ocean acidification -- will not be stripped bare.

Please attend a public meeting near you to urge Hawaii to adopt strict rules to protect our reefs and their diversity.

Event details below.

What: public meeting on coral reef fish harvesting

When: Wednesday, Dec. 5 at 6 p.m.



Where: Oahu --Waimalu Elementary School cafeteria, 98-825 Moanalua Road, Pearl City
Big Island -- Kealahou High School cafeteria, 74-5000 Puohuluhuli St., Kailua-Kona

For more information, including talking points for the meeting, contact Miyoko Sakashita. If you cannot attend either meeting, please click here to send a message to the Department of Land and Natural Resources.

Donate now to support the Center's work.

Photo of Hawaiian coral reef fish courtesy Flickr/NOAA.

This message was sent to darkona@hawaiiantel.net.

The Center for Biological Diversity sends out newsletters and action alerts through DemocracyinAction.org. Click here if you'd like to check your profile and preferences. Let us know if you'd like to stop receiving action alerts and newsletters from us.

Center for Biological Diversity

P.O. Box 710

Tucson, AZ 85702

1-866-357-3349

A total of 1923 email comments were received. All were essentially identical to the following:

From: Wolfpaw Hasenfus
Sent: Thursday, December 13, 2012 1:36 PM
To: darkona@hawaiiantel.net
Subject: Comment on Proposed Rules for Aquarium Collection

I'm writing to urge the Department of Land and Natural Resources to strengthen the proposed rules for aquarium collection of Hawaii's reef fish. Coral reef fish are an essential part of Hawaii's natural heritage; overharvesting these fish and invertebrates reduces coral reef diversity and health. I urge you to adopt much stronger protections for our coral reef ecosystems.

First, Hawaii should reduce the bag limits for reef fish, which would continue to allow overharvesting of popular fish. The rule should also be amended to include limits on collection of many other reef fish and animals that have currently been omitted. Second, aquarium collection permits should be limited, because with an unlimited number of potential collectors harvest limits are meaningless.

Finally, Hawaii should conduct a review of the environmental impacts of the aquarium collection program to fully inform the public and decision-makers about what limits are needed to fully protect Hawaii's reefs and biological diversity.

Thank you for the opportunity to comment.

Wolfpaw Hasenfus

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A second Email-Blast (below) was a 'Kokua Alert' sent out by the executive director of the Conservation Council for Hawai'i.

**From:** Marjorie Ziegler

**Sent:** Wednesday, November 28, 2012 6:03 PM

**Subject:** Kokua Alert -Aquarium Fish Collecting Draft Rules & Hearings!

**Importance:** High

Aloha, everyone. Please help protect our reefs and precious marine resources by testifying in person or submitting written testimony on the Department of Land and Natural Resources draft administrative rules for aquarium fish collecting on O'ahu and in West Hawai'i. The draft rules and other information can be found at <<http://hawaii.gov/dlnr/dar/announcements.html>>. We find these rules inadequate in protecting our reef species, and they are not based on scientific or other reliable data.

In October 2012, Earthjustice filed a lawsuit against the State of Hawai'i DLNR on behalf of the Conservation Council for Hawai'i, Center for Biological Diversity, Humane Society of the United States, and others for failing to examine the environmental effects of aquarium collection permitting in Hawai'i pursuant to the Hawai'i Environmental Policy Act, HRS Chapter 343. The DLNR is making determinations on these rules without the necessary information, or adequate public input.

Sound environmental policy must be based on adequate scientific or other reliable data so that our precious marine resources are protected and properly managed. No environmental assessment or environmental impact statement has been prepared for aquarium collecting in Hawai'i. This is your opportunity to testify on this important issue; please do so either in person next Wednesday or in writing before December 19. Apologies for any duplicate postings. **Mahalo nui loa!**

### **O'ahu Public Hearing**

When: Wednesday, December 5, 2012, 6 pm

Where: Waimalu Elementary School cafeteria at 98-825 Moanalua Road, 'Aiea

Persons unable to attend the O'ahu hearing or wishing to present additional comments may mail written testimony by Wednesday, December 19, 2012, to the Division of Aquatic Resources, 1151 Punchbowl Street, Room 330, Honolulu, Hawai'i 96813.

### **West Hawai'i Public Hearing**

When: Wednesday, December 5, 2012, 6 p.m.

Where: Kealakehe High School cafeteria at 74-5000 Puohuluhuli Street, Kailua-Kona.

Persons unable to attend the West Hawai'i hearing or wishing to present additional comments may mail written testimony by Wednesday, December 19, 2012, to the Division of Aquatic Resources (DAR Kona office) at 74-380B Kealakehe Parkway, Kailua-Kona, HI 96740.

### **Suggested Talking Points**

1. Urge DLNR to strengthen limits on reef collection activities because proposed limits inadequately protect fish and omit other important reef animals.
2. Urge DLNR to adopt a limit on the number of aquarium collection permits that may be approved.
3. Urge DLNR to conduct a review of the environmental impacts of reef collection activities

**Additional Concerns from For the Fishes** <<http://www.forthefishes.org>>

1. The draft rules would allow for continued wildlife depletion and degradation of Hawaii's coral reefs. The rules do not address cultural and ethical conflicts that exist within the aquarium trade.
2. A different set of rules was drafted for O'ahu and West Hawai'i, and the disconnect between the two underscores the greed and lack of concern for wildlife and reefs driving this trade. Collecting species like the Hawaiian cleaner wrasse, considered critical for coral reef health, would be prohibited in West Hawai'i but allowed on O'ahu. Collecting the moorish idol, known to die quickly in captivity, would be prohibited in West Hawai'i but allowed on O'ahu. And both islands would prohibit the collection of some coral eating butterflyfishes because of their restricted diets, but allow others.
3. The draft rules are ineffective and harmful because they:
  - Are not science based, but are designed to give the appearance of sustainability
  - Propose meaningless bag limits that do not reduce take because they apply to an unlimited number of collectors
  - Do not include a catch verification system or address rampant underreporting
  - Are unenforceable because enforcement officers have no rights of inspection without probable cause
  - Keep intact Hawai'i's position as the world's third largest supplier of wildlife for U.S. household aquariums, with several times more fish taken from our reefs than from Australia's Great Barrier Reef, the largest coral reef on the planet.
4. For the Oahu rules, DLNR provides no information about how the agency arrived at the limits and regulations imposed in them. There is no way for the public to know what information, if any, DLNR looked at when it created the regulations, which is a huge problem from a public information standpoint.
5. For the West Hawai'i rules DLNR does not explain how it determined the limits on fish collection that are included in the rules, nor does it provide justification for why certain species have been included on the "White List" of species that may be collected. For example, one of the species that the agency considers a "species of special concern" because it is relatively rare, is Tinker's butterflyfish, but DLNR included it on the White List without any bag limits and there is no explanation in the background document about what justification the agency has for including it on the list as such.
6. The rules regulate aquarium collection in O'ahu and West Hawai'i only, which means that anyone collecting outside those areas would not fall

within the coverage of these regulations. Because the agency's aquarium collection permits allow collection statewide, it's not clear what

DLNR's justification is for restricting its rulemaking to only these two areas.

**Fact Sheets Prepared by For the Fishes**

O'ahu Draft Rule Fact

Sheet: <[http://www.forthefishes.org/uploads/Oahu\\_Rule\\_Fact\\_Sheet.pdf](http://www.forthefishes.org/uploads/Oahu_Rule_Fact_Sheet.pdf)>

West Hawaii/Big Island Fact

Sheet: <[http://www.forthefishes.org/uploads/West\\_Hawaii\\_Rule\\_Fact\\_Sheet.pdf](http://www.forthefishes.org/uploads/West_Hawaii_Rule_Fact_Sheet.pdf)>

From: Earthjustice [mailto:[action@earthjustice.org](mailto:action@earthjustice.org)] On Behalf Of Heather Peach

Sent: Thursday, November 29, 2012 9:03 PM

To: [darkona@hawaiiantel.net](mailto:darkona@hawaiiantel.net)

Subject: Re: Comments on DLNR's Proposed Aquarium Collection Rules

It is unknown how many comments or testimonies were received in response to this blast.

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A Third Email-Blast followed shortly by Earthjustice:

From: Earthjustice Alerts <action@earthjustice.org>

Date: November 29, 2012, 7:00:47 AM HST

Subject: TAKE ACTION: Speak Out For Hawai'i's Coral Reef Ecosystems

Reply-To: Earthjustice Alerts <action@earthjustice.org>



TAKE ACTION! Speak Out For Hawai'i's Coral Reef Ecosystems



Hundreds of thousands of bright coral reef fish and fragile invertebrates are removed from Hawai'i's reefs each year without a proper environmental review.

Take Action Today!

Dear...

Hawai'i's famous coral reefs are known to contain a kaleidoscope of colorful species like the Tinker's butterflyfish, dragon eel and harlequin shrimp. Unfortunately, if we don't act soon, Hawai'i could lose these vibrant sea creatures and the reef ecosystems that depend on them.

Voice your support for protecting Hawai'i's corals now.

Hundreds of thousands of bright coral reef fish and fragile invertebrates—many that play a vital role in protecting these corals—are removed from Hawai'i's reefs each year.

Alarmingly, the state is trying to move forward with administrative rulemaking on aquarium collection without doing a proper environmental review. **Demand that the state of Hawai'i examine the environmental effects of aquarium collection based on good science before finalizing its proposed administrative rules.**

Attend a Hearing

O'AHU

Wednesday, December 5 at 6:00 pm
Waimalu Elementary School cafeteria
98-825 Moanalua Rd
Pearl City, HI 96701

WEST HAWAI'I

Wednesday, December 5 at 6:00 pm
Kealakehe High School cafeteria
74-5000 Puohulihuli St
Kailua-Kona, HI 96740

Submit a Comment

O'AHU

Division of Aquatic Resources
1151 Punchbowl Street, Room 330
Honolulu, HI 96813
Alton.K.Miyasaka@hawaii.gov

WEST HAWAI'I

Division of Aquatic Resources
74-380B Kealakehe Parkway
Kailua-Kona, HI 96740
darkona@hawaiiantel.net

Coral reefs across the world are already at risk of ecological collapse—faced with serious threats from climate change, ocean acidification and pollution. And, studies have determined that herbivorous fish and invertebrates on coral reefs—the primary targets of the commercial aquarium industry—are extremely important to reef health.

Earthjustice attorneys recently filed suit to require the Department of Land and Natural Resources (DLNR) to comply with the environmental review procedures that are mandated by the Hawai'i Environmental Policy Act before issuing state-wide permits allowing aquarium collection. **But, despite the lawsuit, DLNR is now trying to move forward with administrative rules on aquarium collection without having conducted an environmental review.**

Thanks for standing up for coral reefs and all of the marine wildlife that depend on them.

Sincerely,

Caroline Ishida

Associate Attorney
Earthjustice, Mid-Pacific Office

Take Action 

P.S. If you can't attend either of the above hearings, [send your comments online today!](#)



©2012 Earthjustice | 50 California Street, Suite 500, San Francisco, CA 94111 | 415-217-2000 | action@earthjustice.org

ALERT TOOLS

PHOTO CREDITS: *Top:* Yellow tang being collected for shipment (Brooke Everett) *Bottom:* A school of yellow tang (Chris Wilson / Flickr)

VIEW ONLINE: Having trouble viewing this email? [View it in a browser.](#)

LINKS: If you cannot click on the links in this email, copy this link to your browser:

<https://secure.earthjustice.org/site/Advocacy?cmd=display&page=UserAction&id=1391>

This email was delivered to you by Earthjustice. [Update your personal information](#) or [remove your email address](#) from Earthjustice's email list through your profile page.

A total of 379 comments were received directly from Earthjustice. They were all essentially the same as the following:

From: Earthjustice [<mailto:action@earthjustice.org>] On Behalf Of Heather Peach
Sent: Thursday, November 29, 2012 9:03 PM
To: darkona@hawaiiantel.net
Subject: Re: Comments on DLNR's Proposed Aquarium Collection Rules

Nov 30, 2012

Hawai`i DLNR Division of Aquatic Resources (Kona Office) 74-380B Kealakehe Parkway
Kailua-Kona, HI 96740

Dear Division of Aquatic Resources (Kona Office),
I strongly urge the Hawai'i Department of Land and Natural Resources (DLNR) to comply with the environmental review procedures mandated by the Hawai`i Environmental Policy Act before issuing administrative rules regarding marine aquarium collection on the state's lands. Any rules that DLNR enacts should be based on sound science

and allow for meaningful public input, and should be geared towards the protection of our reefs, particularly because of the global threats they face, like climate change and ocean acidification.

DLNR's proposed rules would only apply to individual areas--if the agency approves them, there still will not be any statewide rules to regulate aquarium collection outside of O'ahu and West Hawai'i. Coral reefs are among Hawai'i's most precious resources and DLNR should have as much scientific information as possible about aquarium collection before finalizing any administrative rules.

DLNR should only approve rules that value the health of our reefs and that are based on good, scientific information after a thorough environmental review.

Comments on the Proposed O'ahu Rules:

The proposed O'ahu rules do not limit the number of aquarium collection permits that DLNR can issue. The rules propose no limits on the collection of invertebrates, and the "bag limits" for the most frequently-collected fish species, the yellow tang, would still allow a single collector to take tens of thousands of yellow tang off of the reefs every year. There are also no proposed collection restrictions for many heavily-targeted species, like the multiband, fourspot, and teardrop butterflyfishes. DLNR has provided no summary or background on these rule proposals to explain the rationale or scientific basis for them, and despite public input asking the agency to re-examine the rules based on scientific information over the past year, there has been no such review.

Comments on the Proposed West Hawai'i Rules:

The proposed West Hawai'i rules do not limit the number of aquarium collection permits that DLNR can issue. It is impossible to determine the impacts of the proposed size limits in the rules because DLNR's aquarium collection data does not capture what sizes of fish are currently being collected. There are species on the proposed "White List" that DLNR would continue to allow to be collected in unlimited numbers under these rules even though it has stated that these species are "particularly vulnerable to depletion," like Tinker's butterflyfish. The rules would also still allow unlimited collection of species that are endemic to Hawai'i, including the Hawaiian dascyllus and multiband butterflyfish, without any explanation of the scientific basis for permitting unlimited collection.

Sincerely,

Heather Peach

~~~~~

Robert Duerr

12/18/12

DAR

C/O WHFC Proposals

1151 Punchbowl St  
Honolulu, Hawaii 96813

Dear DAR,

As a member of Outdoor Writers of America Association I enclose an article written after attending the WHFC Hearing in Kona on December 5, 12012.

I would hope that the Land Board does not pass the SCUBA Spearfishing ban. The lack of science and attention to detail is not befitting DAR. Further effort needs to be made to engage the stakeholders to understand the problem and its management options.

Mahalo,



Robert Duerr

12/18/12

Robert Duerr

### SCUBA Spearfishing Ban

PhDs, experts, and PhDs by proxy aimed brain shot testimony at SCUBA Spearfishing at the West Hawaii Fishery Council hearing to amend Hawaii Administrative Rules. Spear fishermen fighting off an effort to ban SCUBA pulled the rubber back and let fly a 3 pronged Hawaiian sling of allegations against DLNR including procedural errors, biased process, and phantom science.

The West Hawaii Fishery Council (WHFC) with DLNR's Dr. William Walsh of the Division of Aquatic Resources (DAR) held a December 5 public hearing at Kealakehe High School to amend Hawai'i Administrative Rules (HAR) chapters 13-54, 13-57 and 13-75, repeal 13-60.3 and adopt a new chapter 13-60.4.

The full cafeteria of 250 people was contentious at times. Testifier Wesley Murakane said that this "is the biggest turnout that I've seen in Kana."

Dave Zimmerman observed, "I can feel the animosity..." Shawn Jacobs remarked: "when you see who is opposing and who is for, it's like a Democratic and Republican convention."

The proposed rules would govern in the West Hawaii Regional Fisheries Management Area (WHRFMA). Established in 1998 by legislative Act 306, the WHRFMA encompasses 147 miles of shoreline from



South Point to Upolu Point. The WHRFMA is overseen by a partnership between the West Hawaii Fishery Council and DLNR's Division of Aquatic Resources.

The rules were introduced to the crowd by DAR's Dr. Walsh. They propose a SCUBA spearfishing ban, closing aquarium collecting within 1,500 feet of Ka'ohe Bay aka Pebble Beach, an aquarium collecting "white list" of 40 fish species, and regs on inshore sharks, rays and two invertebrate crown-of-thorns predators. There are other rule changes including marking aquarium collecting gear with identification, lay net offsets and regulation housekeeping changes.

The hearing had the unusual practice of written PhD testimony being read by proxy allowing the speaker to receive 6 minutes, twice the allotted time. Testimony was heard from Dr. Brian Tissot, Dr. Chuck Birkeland, Dr. Ross Martin, Dr. Todd Stephenson, Dr. Jack Randall. Phd testimony was scripted in an unanimous call for passing the rules as a complete package.

A Mr. Thompson read a Phd statement from Occidental College and then personally summed the feeling of the SCUBA spearfishing naysayer testimony: "Spearfishing is not a sport it is a slaughter."

While Dr. William Walsh Kona's DAR biologist presided sitting casually akimbo against a stage, former Hawaii representative David Tarnass took the microphone telling the crowd that he wrote Act 306.

The WHRFMA 2010 report to the Legislature states that the Act was passed "largely in response to longstanding and widespread conflict surrounding commercial aquarium collecting."

Key parties to the original conflict were the aquarium fish divers and fish preservation groups like the Lost Fish Coalition. Since the early days of robust interaction, the aquarium collecting issue has mellowed. Not so for the SCUBA ban.

Joy Mills testified: "I have to say this bill is not pono...We all want to be in the ocean. It needs to be reworked. You need to talk to the people who know. Not just the scientists."

Tarnass explained that the purpose of WHRFMA was to help DLNR manage with science "to make well informed resource decisions."

Tarnass celebrated WHFC's success saying that the management area is "effective, the nearshore is enhanced" and stocks of fish like yellow tang have increased. Kona coast day moorings set to avoid coral reef damage are clearly a win for the WHFC.

However, regardless of Tarnass' original intent reviewing WHFC's

scientific effort supporting the SCUBA spearfishing ban is not tedious because there doesn't appear to be any.

Former WHFC board member Teresa Nakama said of the ban, "10 years and thousands of hours there's never science."

The WHFC's document "Background on Proposed Hawaii Administrative Rule #13-60.4 West Hawaii Regional Fishery Management Areas, Hawaii" details the history of the ban Spearfishing proposals.

Scuba has a WHFC mention in 9/19/01 when Dr. Charles Birkeland cites coral reefs being affected by technology like SCUBA and night lights. On February 17, 2002 the Miloli'i Local Resource Council takes community input recommends a ban on day and night commercial scuba spearfishing.

On Feb 20 that same year, a WHFC SCUBA spearfishing subcommittee is formed "to organize, obtain info, set parameters to deal with spearfishing with scuba and present to council."

Kawaihae Local Resource Council holds a meeting on 6/19/02 and says that SCUBA spearfishing "is especially harmful due to efficiency." At this meeting Dr. Richard Brock promised a cure-all "that if spearfishing with SCUBA were to stop there would be a gradual but sure increase in targeted fish, increased habitat health (coral) and a decrease in invasive species."

If WHFC grapples for over 10 years with spearfishing regs, it is not surprising. The history of regulating spearfishing in Hawaii is as tangled as a he'e slipping off a Hawaiian sling. It was prohibited by Act 82 in 1971. In 1977 Act 185 allows for selling speared u'u, uhu and kumu. By 1979 Act 229 removes the ban for a 4 year trial period. All spearfishing regulation is void in 1983 with the passing of Act 62.

By the end of 2002 Rick Gaffney's spearfishing subcommittee's, "comprised of active West Hawai'i spear fishermen and council members," outlines 8 possible scuba spearfishing management solutions.

These eight potential management solutions are: take no action, make closure areas, increase size and bag limits, ban night scuba spearing, ban commercial spearing, ban recreational SCUBA spears, ban all SCUBA spearfishing. The eighth solution is to take "other action."

What kind of "other action?" Puna Brown testified: "This is not the Hawaiian way. You need to ask the right people. The people in the water." Why did a complete ban get the WHFC grade of approval?

Throughout the WHFC scoping night diving with SCUBA is seen as an opportunity to easily kill sleeping fish. No action is taken. The council does appreciate benefits of size limits and bag limits which "benefits the fishery with

blanket law of all user groups."

Regulations outside of a total ban are seen to have merit. The spearfishing subcommittee believed that commercial divers are likely to follow regulations if not a total ban. These divers are highly skilled and unlike recreational divers would catch less fish. Fishermen if educated are believed to become law abiding.

A ban of scuba spearfishing according to WHFC analysis "removes a highly efficient fishing method." The analysis also says speciously of the ban: "Any increase of lack of, in the nearshore fish stocks can be easily attributed to this decision."

One diver counters that with SCUBA spearfishermen banned nearshore diving pressure will certainly rise. An enticingly seductive ban argument for DLNR is that it's "easy to enforce."

In the WHFC "background" document Dr. Walsh doesn't lobby for science funds or studies instead he advocates for scientific non-science. He calls it "Precautionary Approach:"

"Precautionary Approach is a means to manage our resources when there is insufficient scientific data...The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management actions..."

Walsh continues: "If the Precautionary Approach had been used back in 1955 when the Division of Aquatic Resources recognized that there were major declines there would be less need to establish a network of marine protected areas today."

The proposed ban would make it illegal to have spearfishing gear and SCUBA tanks on the same boat. Testimony given by president of Big Island Association of Aquarium Fishermen and a 5 year member of WHFC, Robert Hajek, said that collectors use spears to protect themselves underwater.

Spearfishing is not sport in Hawaii it is food gathering. Hajek says: "We fish out of Miloli'i...different houses ask if we can get some fish...special occasions...a luau...We spear fish for the village...We've been doing this for a long time."

Older divers see SCUBA as a way to enjoy depth with shortened breath and as a safety precaution to help legally harvest fish without fear of shallow water blackout. One diver said that SCUBA is not evil because it is technology, "it's like a cell phone do you ban that?"

SCUBA spearfishing is already covered by regulations and becomes illegal when bag and size limits are violated.

Tracy Kubota, a public policy analyst from Honolulu, testified about the ban's double jeopardy:

"There's current limits, bag limits, size limits. Is something already illegal more illegal? Spear violations with SCUBA tanks or not is already in the books. SCUBA and spear on a boat automatically being a violation I think it's poorly written...opinion based not empirical knowledge."

Unlike coral reef and aquarium fish science, was WHFC ever concerned with spearfishing's empirical data? Ironically the Phd ban testimony included no science while the hearing's local speakers kept calling for it.

What about spearfishing surveys, interviews, creel reports, CPUE, L-50, seasonal pressure, target species, poaching pressure, landings, habitats affected, historical patterns, Hawaiian gathering rights. eliminating invasive species like roi and taape. Where is the methodology that scientific marine wildlife management uses?

If WHFC is short on spearfishing science, Walsh did supply HFN with NOAA writers Brent Stoffle and Stewart Allen's co-authored paper "The Sociocultural Importance of Spearfishing in Hawaii."

It was written to "contribute to the development and refinement of the fishing community profiles for Hawaii in response to The Magnuson- Stevens Act National, Standard 8."

Stoffle and Allen interviewed over 100 spearfishers and studied the Hawaii Marine Recreational Fishing Survey from 2002 to 2007. Spending most of their research time on Oahu, they did travel to the Big Island for a week.

Their work provides a good overlay and they understood quickly that spearfishermen are "a group often perceived to be under represented in the policy process yet they play an integral role in commercial, recreational and subsistence fisheries."

Voodoo science is one thing but was there a biased process with the WHFC's rule package? Many people against the rules package testified that the process was not "vetted" properly. They allege that dissenting voices were not heard.

Kubota continues: "I feel the process was not vetted properly. They're not doing the job. They never stated that there is a problem. Why go on and on...go back to the Department and vette to the whole state."

The "Small Business Impact Statement..." submitted on the proposed rules package maintains there's "16 commercial fishermen who engage in SCUBA

spearfishing (the primary commercial harvesting activities affected by the proposed rules.)"

The impact statement claims "The value of SCUBA-spear fishery in West Hawaii averages approximately \$35,000 annually (FY 2007-2011)." Sixteen divers and \$35 grand does not make an environmental crisis on 147 miles of coastline. Not only where is the science but where is the problem?

Aquarium collecting in contrast is a business netting \$1.3 million dollars yearly.

Mike Nakachi said at the hearing that the WHFC rules proposal "hasn't been vetted properly where are the fishermen?"

Hajek added: "WHFC doesn't take into account local fishermen...they are falling through the cracks...engage to get in the system...ask them to get in the system..tonight is a start."

"WHFC is not for the stakeholders." Phil Fernandez a Kona based community fishery activist tells HFN in a phone interview, "Do not fault the original intent...It's due to bias and manipulation of the organization."

Rene Umberger, from Maui and a member of the group For the Fishes, told the hearing that DLNR "the division has misled with fear tactics. DAR is calling this an all or nothing up or down vote."

She goes on to say that "it is an illegal process broken, spreading propaganda." She claims that both calls and emails to DAR Kona were "intimidated" to go along with the party line.

"Messages of cohesion by intimidation...dissent is part of the process." DAR according to her lobbied for the rules to be accepted as a package. She claims that DLNR was concerned that a 10 year process would go "down the drain." She counters, "This is not all or noting process making."

One way that the Act 306 process is said to be askew is in the appointments to the WHFC. The council is mandated to have "substantial community involvement" by stakeholders. WHFC maintains that over the years they have had 50 board members and over 1800 citizens attending meetings.

"The primary wrong is the document says that it should be a balanced council of stakeholders from the community." Fernandez explains and furthers with strong accusations:

"If there is a seat empty there is an obligation to recruit. They cqn run ads to recruit. Seats that they don't want filled don't get filled. Seats that they do want get calls and instantaneously approved. People against the council; there's an executive session and they are not approved."

According to Fernandez stakeholders whose interest may not align with the ruling powers are seen not to be in support of the mission so ineligibility for WHFC logically follows. "Support the mission...this person doesn't...so not a member. Biased council today...they have a biased council."

One person who was denied membership was the 18 year TV "Fishing Tales" host and activist Mike Sakamoto now deceased. On April 17, 2003 Sakamoto went into the WHFC minutes as saying he "opposes ban on spearfishing of any type; manage (bag/size limits) but not ban it."

Former WHFC board member Teresa Nakama remembers Sakamoto attempting numerous times to become a board member. Each time he was denied. Chuck Johnston, publisher of Hawaii Fishing News, recalls Sakamoto, who was a HFN writer, telling him of the ordeals of the WHFC application process.

Sakamoto lived on the Hilo side but made the trip to Kona to join the council. He was a nationally recognized fishing expert and well rounded waterman using all fishing styles and methods including diving. He was a community kupuna and gave many demonstrations to keiki and adults alike.

Johnston recalls of the application process: "Mike told me that it was not an interview. It was an interrogation. He asked them a question and they turned to him and said 'you're not allowed to ask questions.'"

Sakamoto was denied membership. Johnston Sakamoto contacted Bill Devick, DAR head at the time, about the transgression.

Tate Marks is one fisherman testifying at the hearing who told HFN that he "tried twice to join the council and told it was a conflict of interest to be a fisherman." The person who told him that being a stakeholder was a conflict of interest was Hannah Springer.

Marks is a well respected fisherman and Hawaiian waterman in the westside ocean community. He stands firmly against the ban. Here's a sample of his testimony:

"I feed my family with the ocean. We are fifth generation. My father only fished. I have more sea time than everyone here. My father has more time than me. All your stories...bullshit because I see it everyday. I don't read it off the internet."

He then made a stakeholder pledge which he says he's made relentlessly at these meetings: "I volunteer my time, my boat and my money. Tell me what you want to see and I'll show you."

Fishermen complained that the WHFC bias has bordered on barbed

ridicule and condescending harassment by those with self-appreciated and perceived higher I.Q.s. Stakeholders repeatedly tell the hearing's microphone and paraphrase the 6th century Chinese sage and Taoist founder, Lao-Tsu's claim, "Those who don't know say. Those who know don't say."

If the WHFC's no science is topped by biased process, the WHFC institutional procedural errors make it appear like a banana republic with bunchy top virus.

The West Hawaii Fisheries Council operates without bylaws and instead functions with "Operational Practices and Procedures." They were last worked on in 2005.

The "Operational Practices and Procedures" call for a "Term of membership shall be two years with a two-term limit or four years." It has been seen that membership has not fulfilled stakeholder requirements. But are members allowed to extend terms?

Though HFN has asked for minutes from WHFC's founding date, they have yet to appear.

Fernandez says "term limits are another violation. And as a consequence members get comfortable and ex-party agreements follow."

The procedures call for selection of 3 chairpersons.

"Selection of one of three Council chairpersons shall take place at the regular meeting following the annual membership retreat."

"Each Chairperson may serve a three (3) year term beginning when new members are elected." The sole chairperson Glennon Gingo says that the triumvirate rulership "occurred in the early years."

When HFN first spoke to Gingo he stated he was on the board for 11 years. He does suggest that he has been chairperson for over 3 years.

"The longest standing chairperson will stand down first and that seat shall be filled by the newly elected chairperson." Gingo says he'd like to step down but "no one came to replace."

Fernandez says "another issue is proxy voting, It's legal under the procedures but if people miss two consecutive meetings it's grounds for disqualification."

Fernandez says "as a result people come to meetings and attend the meeting by proxy for the missing members. Attending members have attended by proxy for multiple members." Of course they also vote by proxy for multiple members.

Gingo makes the claim that the council "is not mandated by the legislature." He is a seasoned community volunteer and knows the pitfalls of filling a board, "I wish someone would come and do it."

Not wanting to be tied to cumbersome rules he says the WHFC "is operating by best practices leadership and getting something done." He does say that he has been telling the board about some of the procedural shortfalls but so far rules amendments haven't happened.

Why is it important that WHFC become the diverse community based organization that Tarnass and Act 306 envisioned?

Stoffle and Allen state that "Spearfishermen in Hawaii believe that spearfishing is more than just learning to fish; it is learning the appropriate ways to fish, the life cycles of fish, and how to carry oneself as a responsible fishermen (an important part of one's identity as a "good" and respected" fisherman)."

Makani Christensen, Kamehameha Schools and U.S. Naval Academy graduate, gives testimony against the ban and to a revitalized community stakeholder process. He speaks:

"Everyone in this room has a responsibility to take care. Listen to fishermen we have a wealth of knowledge more than any Phd I've heard. I ask to reach out...to bridge the gap. It's a gap that is affecting our socio economic...! ask you to bridge. We can do this...The fishermen are not the enemy."

What is the problem with fishermen not being Act 306 stakeholders? Carl Dellings, an akule fisherman from Waianae active in fishing issues, "especially the future of fishing, "since the 1980's, is at the hearing:

"What I hear is saving for the future generations. If you don't train your child to catch...how to be conservation. It's how you fish sustainably. I know people who train their kids over and over until they master it...you train a child so he can train his child."

The hearing process will now have written testimony was due by December 19, 2012, to the Division of Aquatic Resources (DAR Kana office) at 74-3808 Kealakehe Parkway, Kailua-Kana, HI 96740. The Land Board will hear the proposals at a future meeting. If approved it will go to the governor for signature.

If you have concerns contact William Aila DLNR Chair at 1151



Punchbowl Street Honolulu Hawaii 96813. Tel: (808) 587-0400. Email: [dlnr@hawaii.gov](mailto:dlnr@hawaii.gov). Contact your local representatives at the State House. Contact Governor Abercrombie directly The Honorable Neil Abercrombie Governor, State of Hawai'i Executive Chambers, State Capitol Honolulu, Hawai'i 96813 Phone: 808-586-0034. Or contact your a local island governor's liaison. <http://governor.hawaii.gov/about/governors-neighbor-island-liaison-offices/>

Draft rules may be reviewed on the Division of Aquatic Resources website at <http://hawaii.gov/dlnr/dar>

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STATEMENT OF TERESA M. TELECKY, Ph.D.

Regarding Amendments to Chapters 13-54 and 13-57, Repeal of Chapter 13-60.3, Adoption of a new Chapter 13-60.4, and Amendments to Chapter 13-75 (6/24/2011)

I am a professional zoologist employed by Humane Society International (HSI), the international arm of the Humane Society of the United States (HSUS), in the position as Director of the Wildlife Department. I obtained my Ph.D. in zoology from the University of Hawaii at Manoa in 1989. I have worked for HSI/HSUS since 1990. My area of expertise is the conservation and welfare impact of the international trade in wild-caught animals.

In preparing these comments, I have reviewed the most recent scientific and management information that pertains to the West Hawaii Regional Fisheries Management Area aquarium fishery. I would like to make it clear that the comments I will make are not intended in any way to question the value or quality of scientific research that has been and is being done by State of Hawaii biologists on the animals that are targeted by the aquarium trade. Rather, my concerns focus on the use of that science in development of these rules and management of the fishery.

White List

The proposed rules contain a proposed "white list" of species that can continue to be collected. The white list is a form of species exclusion, a typical management tool used to ensure that species that are sensitive to collection, including those that have been depleted due to over-collection or those that are naturally rare or endemic, are excluded from the fishery. However, more than half of the 40 species on the proposed white list are species that have already been depleted by overharvesting by collectors, species that are in decline for other reasons, or species that are threatened with extinction. The inclusion of such species in the white list renders it inadequate.

According to the Hawaii Department of Land and Natural Resources (DLNR), Division of Aquatic Resources (DAR) the following 10 species contained in the proposed white list have already been over-harvested by aquarium collectors (Walsh et al. 2010)¹:

- **Yellow tang:** DAR documented the "major impact" that aquarium fishing is having on the yellow tang,

the most intensively collected species in Hawaii, stating, “The yellow tang, *Zebrasoma flavescens*, is particularly noteworthy as the disparity between the open areas [where aquarium collecting is allowed] and the FRAs² [where aquarium collecting is not allowed] is substantial and continually increasing.

¹ William Walsh, Russell Sparks, Camille Barnett, Courtney Couch, Stephen Cotton, Darla White, Kristy Stone, and Eric Conklin. 2010. Long-Term Monitoring of Coral Reefs of the Main Hawaiian Islands. Final Report, 2009 NOAA Coral Reef Conservation Program, State of Hawai'i Monitoring Report, NA06NOS4260113, 10/01/2006 - 09/30/2010. Hawaii Division of Aquatic Resources, Department of Land & Natural Resources.

² Fish Replenishment Areas, where aquarium collection is not allowed. Averaged over the past three years ('07-'09) yellow tang are 73% less abundant in the open areas as compared to the FRAs. Yellow tang are by far the most heavily targeted species in West Hawai'i and over the past decade the numbers of aquarium collectors and collected fish have increased substantially (Figure 60). A substantial and increasing impact of collecting is clear on yellow tang indicating the need for additional management measures” (Walsh et al. 2010, page 105). An estimated 60% of the yellow tang population in the 30-60 ft. range is taken by collectors (Walsh et al. 2010, page 113).

- **Kole:** DAR also documented that the second most collected species, the kole, *Ctenochaetus strigosus*, “also exhibits a collecting impact” and that “open areas contain 30% fewer fish than the FRAs” (Walsh et al. 2010, page 105).
- **Bird wrasse:** DAR documented “clear evidence of collecting impact” with 24% fewer in the collected areas, compared to protected areas (Walsh et al. 2010, pages 105, 106).
- **Multiband butterflyfish:** DAR documented “clear evidence of collecting impact” with 9% fewer in the collected areas, compared to protected areas (Walsh et al. 2010, pages 105, 106).
- **Forcepsfish:** DAR documented “clear evidence of collecting impact” with 44% fewer in the collected areas, compared to protected areas (Walsh et al. 2010, pages 105, 106). Another species, the longnose butterflyfish, is not differentiated in trade from the forcepsfish, as they are look-alike species. Although the longnose butterflyfish is not included in the proposed white list, DAR documented that its population is reduced overall with an increasing disparity between the collected areas and protected areas, a situation described by DAR as an “alarming pattern”. The fact that the forcepsfish is on the white list raises the concern that longnose butterflyfish will be collected and traded as forcepsfish, and that this will be detrimental to the survival of a species not on the white list.
- **Blackside hawkfish:** DAR documented 18% fewer in the collected areas, compared to protected areas (Walsh et al. 2010, pages 107, 108).
- **Thompson's surgeonfish:** DAR documented 41% fewer in the collected areas, compared to protected areas (Walsh et al. 2010, pages 107, 108).
- **Black durgon:** DAR documented 152% fewer in the collected areas, compared to protected areas (Walsh et al. 2010, pages 107, 108).
- **Goldrim surgeon:** DAR documented 126% fewer in the collected areas, compared to protected areas

(Walsh et al. 2010, pages 107, 108).

- **Chevron tang:** DAR documented 19% fewer in the collected areas, compared to protected areas (Walsh et al. 2010, pages 107, 108).

The proposed “white list” of 40 species that can continue to be collected also includes 7 species that have declining populations according to the DAR (Walsh et al. 2010, pages 108-110). These are:

- **Achilles tang:** DAR estimated 80% of the population in the 30-60 ft. range is taken by collectors.
- **Orangespine unicornfish**
- **Eightstripe wrasse**
- **Lei triggerfish**
- **Saddle wrasse**
- **Hawaiian whitespotted toby**
- **Fourspot butterflyfish**

The proposed “white list” of 40 species that can continue to be collected also includes three species that are described in the 2005 DLNR Comprehensive Wildlife Conservation Strategy³ as threatened with extinction because they are “prized by aquarists” and require conservation actions to “protect current populations”; these are **Tinker’s butterflyfish**, **psychedelic wrasse**, and **Fisher’s angelfish**.

Finally, the proposed white list contains the **Hawaiian dascyllus** (*Dascyllus albisella*) which in September 2012 was proposed for listing under the U.S. Endangered Species Act⁴ because of threats to its habitat caused by coral bleaching and ocean acidification.

Bag Limits

The proposed rules contain proposed “bag limits” for three of the 40 species on the proposed white list. The purpose of establishing bag limits is to limit the number of fish that can be collected by each collector which, in combination with limits on the number of collectors, will control and reduce fishing pressure on the species with bag limits.

The first concern about the proposed bag limits is that it is not accompanied by a proposed limit on the number of collectors. This renders the proposed bag limits completely ineffective. To explain: if there are currently 30 collectors with a bag limit of 10, this would limit the number of fish collected to 300. However, if there is no limit to the number of collectors, and that number increases to 60, each with a bag limit of 10, then this would limit the number of fish collected to 600. Bag limits are ineffective without “limited entry”, meaning a limit on the number of collectors who can get permits to catch fish.

³ Mitchell, C., Ogura, C., Meadows, D., Kane, A., Strommer, L., Fretz, S., Leonard, D., & McClung, A. (2005). *Hawaii’s*

comprehensive wildlife conservation strategy. 13-14, Hawaii Department of Land and Natural Resources, Honolulu, HI. http://www.wildlifeactionplans.org/pdfs/action_plans/hi_action_plan.pdf

⁴ Center for Biological Diversity, 2012. Petition to list eight species of pomacentrid reef fish, including the orange clownfish and seven damselfish, as threatened or endangered under the U.S. Endangered Species Act.

http://www.biologicaldiversity.org/campaigns/reef_fish_in_peril/pdfs/Clownfish-and-damselfish-petition-2012.pdfThe second concern about the proposed bag limits is that it is applied to only three of the 40 species on the white list (**yellow tang**, **kole**, and **Achilles tang**). As noted above, most of the species on the white list have already been depleted by overharvesting by collectors, are in decline for other reasons, or are threatened with extinction. Each of these species should have bag limits to allow recovery of their populations. And, the bag limits must be accompanied by limited entry.

The third concern about the proposed bag limits for two species, the **yellow tang** and **kole**, is that they specify the sizes of fish to which the bag limit applies and these sizes are not those targeted by collectors. This means that the bag limits for the yellow tang and kole will not in fact limit the number of fish collected. For example, the proposed rules contain a bag limit of 5 of yellow tang larger than 4.5 inches and 5 that are smaller than 2 inches, but these are not the sizes targeted by collectors. Rather, collectors target yellow tangs that are 2 to 4 inches in size.

The fourth concern about the proposed bag limits is that for the **Achilles tang**, considering the current number of collectors, the proposed bag limit would result in far more fish being collected than the number taken now without bag limits. For example, in 2011 twenty-five collectors collected 7,040 Achilles tang. With a proposed bag limit of 10 for these same twenty-five collectors, the 2011 total catch would be reached in just 29 days.

Conclusion

Coral reefs are in serious decline worldwide due to a number of anthropogenic factors including climate change and over-fishing⁵. As testament to the seriousness of these threats, in November 2012, the U.S. federal government proposed to list 66 species of coral species as Endangered or Threatened under the Endangered Species Act (ESA)⁶. The corals, many of which occur in Hawaii—such as the Blue rice coral (*Montipora flabellata*) found only in Hawaii, and the Hawaiian reef coral (*Montipora dilatata*), which remains in fewer than five locations—have declined by more than 30 percent in the past 30 years due in part to global warming. Warmer water causes corals to “bleach” and die. A recent study on the vulnerability to extinction of coral reef fishes found that fish subject to both climate change and fisheries exploitation are most at risk of extinction⁷.

These threats do not act in isolation but rather have synergistic impacts on the survival of species. Local factors, such as over-fishing, are far easier to control than global factors like climate change. It is vitally important that managers ensure that coral reef wildlife are protected from over-fishing.

The DLNR—which it is important to note has never conducted an environmental impact assessment on aquarium collection as required under the Hawaii Environmental Policy Act (HEPA)—has been trying since 1998 to develop a sustainably managed aquarium fishery in West Hawaii. However, unfortunately, as documented in

⁵ See for example, Anthony et al. 2011. Ocean acidification and warming will lower coral reef resilience. *Global Change Biology* 17: 1798-1808. http://reefresilience.org/pdf/Anthony_etal_2011.pdf

⁶ <http://www.nmfs.noaa.gov/stories/2012/11/82corals.html>

⁷ Graham et al. 2011. Extinction vulnerability of coral reef fishes. Ecology Letters 14: 341-348.

a 2010 DAR report (Walsh et al. 2010) and as described above, the fishery has caused and continues to cause serious damage to fish populations. And now, instead of proposing rules to address this over-fishing and allow depleted populations to recover, the Department has irresponsibly proposed a white list that allows collectors to continue to deplete already depleted species, and bag limits that are meaningless. If the intent and purpose of the proposed rules is to ensure the sustainability of the aquarium fishery then they have fallen seriously short of that goal.

Not only will the proposed rules allow continuation of the unsustainable aquarium fishery in West Hawaii but they will also not address the community's concerns about this fishery. A June 2012 poll conducted by Honolulu-based Ward Research⁸ found that more than two-thirds (69%) of Big Island residents support ending commercial aquarium collecting. The reasons Big Island residents support ending the trade include, in order of importance: concern about negative environmental impacts to coral reefs, disrespect of native Hawaiian values of caring for the land and ocean, inhumane treatment of reef wildlife, and the negative impact on those who rely on fish to feed their families. Most Big Island residents (72 percent) agreed that only captive-bred fish should be kept in saltwater aquariums, even if this meant the number of species available for purchase was dramatically decreased.

Indeed, the only thing that will be achieved by the proposed rules is make it seem as though the DLNR is addressing the unsustainable trade when it is not, while minimizing the impact on the collectors: the proposed rules would reduce the numbers of fish collected by only 1% and reduce trade revenue by less than 0.01%.

Recommendation

I urge the Department of Land and Natural Resources to establish an immediate moratorium on commercial aquarium collecting unless and until the requisite HEPA analysis has been conducted and measures to demonstrably prevent over-fishing are developed and implemented.

⁸ <http://hawaiitribune-herald.com/sections/news/local-news/most-residents-want-aquarium-fish-collecting-banned-poll-says.html>

Dec. 05, 2012

Aloha, my English name is Melvin G. Mason, Jr. [Speaking Hawaiian]. I was raised in Waipio, Valley of the Kings. The kupuna talked about Kamehameha. Yes, my family raised Kamehameha.

A lot of things of the ahupua'a system relates to relationships. It wasn't just a relationship of what we're all trying to do here tonight with each other, but the relationship with the aina, the mauka and the makai. I was brought up in Waipio [speaking Hawaiian]. I'm mostly English and Scottish.

My great grandma is [Hawaiian] who is the sister of Queen Liliuokalani, King Kalakaua. I'm also related to the white man. Interesting, yes. The characteristics is not about me. It's about us.

We sustained ourselves from many, many generations. How I know, 'aumakua. I carry the name. I'm the first born son for the next seven generations. That is my kuleana. It's not about me. It's not about my children. It's not about even my hanai children, the 13 -- actually, I get 14, one more today, pure haole, blond hair, blue-eyed kids said teaching them the right things, what is pono.

I honor the Marks' ohana in the back and some other kupuna because what they do is what they know. What they think they know, because this is just administrative rules, because we can go back to the semantics of the constitution which is just de facto quasi state '78 administrative rights, Concon, [ph] but people forget about the 1111 [ph], yeah, the exploring and exploiting of Hawaii's resources. Not just you, most of you know what I'm talking about because this is just one small part. There's a major, bigger part of the resources of Hawaii. I grew up with my grandfather, we had a canoe, kawa'a where he [tapping], the vibration, the connection where fish come up and swim. Why, because our ko'a. So a few people talked about two elements, in taking care of how the fisherman takes care of his ohana, his community, his ili, but there is more to it.

There is five elements. Five elements is about the fisherman, that teaches how to fish, then teaches how to catch the fish because it might be the wrong time, wrong place, wrong season, wrong moon, wrong bait. We have this relationship.

Fourth is that when you learn how to catch it, then we learn how to prepare it. This is when the teacher and the student becomes the lawai'a is just the point of student. The fisherman becomes a student and the student becomes a fisherman when we pass to the next generations.

The ko'a, the fifth element that comes to this is the ko'a. My family, we malama all 'aumakua. Yeah, we get opihi this week, we let them do this. See, most you forget about procreation [speaking Hawaiian], look to the source. Every single source that we have was, not just the fish, because why most of you scientists with Ph.D. forget about pesticides, insecticides, the quality of water. Why you guys forget about that?

Industrialization, urbanization, you guys forget about that. That's the characteristics of things that have changed because most of you love Hawaii, come to Hawaii. I was fortunate to be here today, why, because I'm also white.

My English bloodline, I am of King Richard III. The family brought the crown to Hawaii. It's very heavy for me. It's hard because I have to balance within myself to understand the clarity and the truth about life, love, aloha, how we can malama what we need to do. Literally, you guys like pesticides and insecticides. Out. Why, the water quality from mauka to makai, when the rain come, it goes into the ocean.

You guys don't even think about that. Talking about the water quality of the fish, I know most of the study is all about the kou [ph]. That's what makes the habitat enriched with itself.

DLNR, most of you got to come to an understanding of the clarity of even the point of jurisdiction. They do not have jurisdiction from Waipio to Pololu. My kuleana, in my family, we malama, we take care because many people who go there, they die, because the mano eat them. We malama the mano.

The canoe, yeah, we take, we hunt, too. We feed the mano first, and then we swim. Then we know already full the opu [speaking Hawaiian].

The clarity that comes down to these things is that I understand that even at the age of 7 I had to learn the white man way. It was difficult. You guys also forget about the mapuna wai, how come, the freshwater, what about the opae, starts with the opae.

You know, just like the county council, they got involved in two things, getting to the fisheries, they don't have jurisdiction in that. Yes, there is many generations. Why, because I [speaking Hawaiian], Hualalai, 55 BC, my kane nui.

That's kuleana. Kuleana that comes down to this, is that yes, I've come to Kona, I've shared a lot, I come over catch two uluas, was fortunate enough down in certain places and points that we can do what we need to do, with even our upena.

You know, I listen to a lot of the testimonies tonight, and it's kind of sad. You guys like learn, not just talk, just make words because you know what, the pretense of all these words most of the people can't even understand, the semantics and clarity of the truth that everybody is trying to rely upon.

Yeah, I do have a Ph.D., pretty handsome and us Hawaiians, we go deep, very deep. You know, when my grandfather passed away, it was very hard because it passed onto me because of the kuleana that comes down to these things. Yes, lifetime, Aunty, not about 7 minutes or 3 minutes or 2 minutes or 1 minute or 15 minutes, it's a lifetime. We talk about lifetime kuleana after kuleana after kuleana. That is why a lot of the Hawaii Revised Statutes comes from the constitution of the so-called administrative rules, 1978, not 1959 statehood. Statehood is not what it is because House of Congress never even ratify, never vote because they have no jurisdiction. You know why I know, my great great grand aunt signed the executive order.

There is clarity to truth. We can live here together. It's not about compromise because it's Hawaiian don't compromise. This Englishman, I don't compromise. This Scottish-man, I don't compromise. Yes, I am a Wallace, Scottman, related to the Greenwells, too.

But you know what comes down to a lot of these things is truth, not my truth, our truth because this compromising is what kills everything. So it's about co-existence, having the relationship with the ocean.

Yes, I have clearance for going Kaloko pond. Why, how come only me, how come only a few family members. You know why, because we take on the kuleanas. We take on the responsibilities. And these are the kind of things -- if you need one job, just ask because most of us we don't even ask to get paid for do what we do.

I know that the DLNR and what they trying to do is because they want to cut costs because the 11.2 billion dollar can't even pay for retirement or medical. There is more to the story than just this. This is just one small little part, but the small little part makes a difference because if that opae don't survive that i'a don't survive, circle of life [speaking Hawaiian]. The [speaking Hawaiian] has everything to do with this.

Yeah, reality, that's what made who we are today, our mothers and our fathers. We are generational. Same thing with the i'a, same thing with the pua'a. Our relationship was because there was our 'aumakua, and we mahi'ai even our 'aumakua. We model the spirit. Even had someone talk today about the spirit of Hawaii leaving, that's good. Maybe the aloha stay going with them, and when they come over here, they already know.

You know Ph.D., hmmm, go check Harvard University. I, actually, did a presentation for them. I was blown away, doing Harvard professors, educating them about the sun, the moon, the stars, the relationship, sun, [speaking Hawaiian]. We take care of mahina and how mahina take care of us. The medicine, how I know. Who eat squid luau. Sometimes when we come what we call between October 5th to February, makahiki, we malama our ko'a and we don't fish the ko'a. My family still do that today. That's why we have. I understand that we all need for survive. We do.

The other, rest of the people talk about Ka'ohē Bay. If you have been maintaining it eight years, you must have a lot of fish. Take your breeders and move them. That's the thing that needs to be educated amongst people because they take the female and the male breeders. Take the mahu i'a. You know the mahu i'a. It's a fish that stay turning between should I be female or should I be male. That's what you eat, because that's what's going to sustain you because there is a lot more of them because they're trying to judge on their own semantics of how their own survival and say am I going to be a male or am I going to be a female. Yeah, I'm a scientist now.

The kupuna is important, very important. Don't forget the kupuna, Uncle Willie over there and then the Marks brothers are going to become kupuna soon. You know, kupuna is nothing to do with age, has everything to do with knowledge and that's how we survive here for thousands of years. You guys go check them out, Kings' Shops, Queens Shop, go walk on the pahoehoe, go look at our marked words, petroglyphs, the pohaku, it tells the stories.

I'm not here to tell you a story. I hear to tell you the facts, the truth. These words, most of them bogus, because you know why, everybody is just trying to survive and this is just one way to make the kala, the money, the federal reserve note, the fee, the dollar that is worth nothing today. And they can go KTA, Wal-Mart, Safeway, you get good poke over there, but the

know the best poke I ever taste is when you get ohana and nothing to do with the color of your eyes, your hair, your skin, when we can come as an ohana, luaus, parties, yeah, and weddings. That's what make Hawaii real. It's about relationships. It's about having a relationship with your i'a.

Mahalo.

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**From:** Matt Pedersen  
**Sent:** Wednesday, December 05, 2012 7:58 AM  
**To:** darkona@hawaiiantel.net; Alton.K.Miyasaka@hawaii.gov  
**Subject:** Regarding Today's Aquarium Fishery Hearings

Today the DLNR will hold hearings on proposed additional rules and regulations surrounding the marine aquarium fishery. These new rules add restrictions and improve the DLNR / DAR ability to manage the fishery.

As both a veteran aquarist, but also a fly fishing angler, I am well aware of the implications and need for fisheries management practices, and I am therefore largely in support of these rule packages.

Living in states where fisheries managers can close fisheries or change quotas, angling methods, seasons etc., at their discretion based on the data at hand, I am familiar with these practices as necessary tools of fisheries management. I was surprised when I learned a few years ago that DAR / DLNR did not have the ability to quickly address the needs of a dynamic and ever changing system. I strongly encourage you to give DLNR / DAR the power to execute their plans based on data and the scientific method of fisheries management.

However, I must continue to voice my personal disappointment over any white or black listing created that in essence will ban the collection of a species at any level. As an experimental marine fish breeder, I (and others) require access to wild specimens in order to research and develop protocols to spawn and rear the species. Since it is truly the aquarist who may represent the final failsafe for a troubled species, it is wholly inappropriate to hamstring the efforts of aquarists who may wish to attempt to propagate a species for the very first time.

Let me be clear, I am in support of bans that come about as the result of scientific management practices. When a ban is put in place by the DLNR because fishery data supports or recommends the closure of a fishery, I can certainly understand. In other words, for example, I would not endorse a fishery for an endangered species. But if a fishery can be sustainably managed, I see no reason to ban the fishery.

When a ban is put in place on the arbitrary notion that a species may or may not fair well in captivity based on someone's opinion, this is not science. We must remember that many of the marine aquarium fishes that now flourish for decades in captivity were once considered impossible to keep alive. The corals that we propagate as easily snapping a piece of coral into two, were considered doomed to failure in captivity only 2 decades prior. So too, fishes that are considered difficult or

impossible to keep alive, such as coral feeding butterflyfish, are already starting to demonstrate that with proper care, they can and will thrive in captivity. I'm personally responsible for changing the fate of the coral-feeding filefish, *Oxymonacanthus longirostris*, from "doomed" to "hopeful", and am in fact the first person to have successfully spawned and reared it in captivity. Had this fish, formerly viewed as a "cut flower" destined to wither and die in a few weeks time, been on a blacklist (or absent from a whitelist), my discoveries and contributions to both the aquarium industry and science at large would have not been possible. I cannot support bans on the collection of species when these bans are based solely on the current "impression" of aquarium suitability.

I am also troubled by the notion of species bans put in place simply to satiate the demands of a vocal minority who'd rather see a complete closure of the aquarium fishery, permanently. Not only is such a measure without scientific merit, but I do believe that such a compromise will not be seen as a compromise by the opposition to the aquarium fishery. Instead, a compromise will simply be the first "inch" in the "give an inch, they take a mile" type outcome. Throughout the US, we do not manage fisheries based on emotion, we use data, and the scientific method to make informed decisions.

Case in point, the Minnesota and Wisconsin wolf hunts – I was initially emotionally quite opposed to these hunts because I was presented with very misleading data (eg. that 6000 licenses would be issued when there were only 3000 wolves in the state?). However, once I was presented with the more complete picture, one that included the fact that only roughly 200 wolves would be harvested before the season would be closed, along with the DNR's reasoning behind the wolf hunt, my opposition to this hunt was greatly diminished. I still have reservations about some of the permitted hunting methods, but only because they cause suffering that other methods do not cause.

Anti-aquarium groups would of course, argue that the aquarium trade causes "great suffering" when in fact, I have been told that the prospects for aquarium fishes collected in Hawaii are some of the demonstrably best anywhere. From a fisheries management standpoint, what happens with the fish after it is removed from the reef is truly of no consequence to the reef, or to the fishery.

However, I'm still willing to discuss this ethical question that the opposition raises. When I put myself in the shoes of a reef fish, my choice may lie between death at the end of a spear to be sold for \$4.99 per lb at a local fish market, vs. maybe months, or years, or DECADES of life in predator free environment, having been sold for potentially \$150 to \$300. I believe most of us would chose a potentially cushy life over death, and so too, we cannot condone the harvest of reef fish to be sold for as foodfish for pennies on the dollar when compared to their value within the marine aquarium fishery. This is not to say that I condemn the food-fishing of reef fish, although I do believe that it's selective harvest of the largest, adult, reproducing population, will likely cause far more harm than the harvest of juveniles that already experience terribly high natural mortality anyways. So ultimately, I leave the fisheries management to the managers – it is DAR's role to determine if, for example, the spearfishing of the Achilles Tang should continue, and it is their role to do so based on science and an understanding of the biology of the species in question.

I urge the support of rules changes that allow DAR to manage the marine aquarium fishery both nimbly and effectively. It is time we make sure they have the tools they need to do the jobs that they are

hired to do. Being able to adjust quotas, bag limits, and catch methods in response to on-the-ground data and observations is highly necessary and I was surprised to learn that the DAR did not already have these powers.

However, I do not support the codification of bans on individual species, or the creation of laws that DAR / DLNR cannot change in a responsible manner should circumstances on the ground change. DAR can easily set very low quotas on any species it wishes to restrict based on emotional grounds or compromise; such a low quota could ensure that these species are only collected to order for people like myself who have a demonstrated need for access to the species to conduct innovative, pioneering work that could forever change the fate of the species. Perhaps this is where the "compromise" is found.

Again – I support management tools in the hands of knowledgeable managers who have a mandate to scientifically manage the aquarium fishery, but I do not support the provisions of these rules that create outright bans based on emotion, opinion, or simply the "spirit of compromise".

Best Regards,

Matt Pedersen

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From: Angela
Sent: Wednesday, December 05, 2012 7:33 AM
To: alton.k.miyasaka@hawaii.gov; darkona@hawaiiantel.net
Subject: From an Ex Aquarium store owner

To whom it may concern,
I am writing you this letter in regard to the fish collecting practices for the purpose of the aquarium trade. I have been a fisheries professional for at least twenty years. In that time I have seen the popularity of the saltwater aquarium business skyrocket. Along with this skyrocketing comes a very ugly side however. There is no governing body that regulates or oversees the collection, handling or keeping of aquarium fish; the only restrictions being imposed at the collection sites. This has made it the wild west of industries ruled only by the dollars made. This has also led to the wiping out of natural resources that have been the major attracting point for tourism and recreational diving.

I started in the fish business by having a service business in which I would clean and care for other people=s tanks. I eventually opened my own store and then started importing fish and corals for my business. I eventually set up a coral farm to grow corals in a captive environment. I became involved in fish wholesaling and importation from all over the world. I have met with many importers, collectors and retailers and have set up several fish keeping systems for housing and shipping of fish and corals. I have now stepped away from the industry. It weighed too heavy on my conscience to continue doing business in the face of so much death. At some point, somebody needs to defend the creatures that have no defenders.

There have been many improvements in the keeping of fish but sadly most of those gains are made in the freshwater part of the trade. Somewhere around 98% of the fish in freshwater are tank raised and

only around 2% are wild caught. This ratio is almost exactly opposite in saltwater. Many of the fish in Hawaii are open water breeders and cannot reproduce in the captive environment. Hawaii also is the exclusive home to several of the most popular fish with Yellow Tangs, Achilles Tangs and Humu Triggers being among the top. You can look at ORA's website @ orafarm.com to see what is being bred as they are the most renown and successful captive breeders.

Because of the lack of regulation and oversight, it is difficult to gather any data with regards to the life span of fish once they have been collected. Most stores would try to say that they maintain something less than a 30% loss for their bookkeeper's sake. The fish wholesalers would be similarly close to the same number depending on who is asking what the loss rate is. The deeper effect is that most of the patrons who have saltwater tanks will have their tank running for less than one year. Unfortunately, this doesn't fair well for the tank inhabitants. Fish are not like puppies and are not usually found good homes.

Besides the aquarium industry, fish collection has it's other devastating effects. It is an easy thing to see what happens with the removal of any species from its natural ecosystem and the after effects. Without the fish to keep and maintain the reef and all of its life, the whole system begins to fail. Right now there is a ban on coral and 'live rock' from Hawaii but the fish are easily acquired. So why ban the collection or harvesting of corals and rock if you neglect to protect the keepers of it? Fish are the natural maintenance crew of those reefs and prevent the infection of parasites and algae invasion. The latest trend in the biz is medicine that treats coral infections whether by pest or disease. Why is this? Not hard to see what happens when the fish are removed or over harvested.

In addition to disease and loss of reef life, over-collection has a more urgent and devastating effect - The loss of Eco-tourism. Right now Hawaii rates among dive locations only for it's "swim with manta rays" experience at # 7. Without this particular experience, Hawaii rates as # 48 with Fodor's Best Diving, # 47 with SCUBA Magazine and no rating in CNN Top 100 Dive Sites. I gathered this from Google's first page for best dive sights. Without the fish there are few reasons to come see the waters of Hawaii and those reasons are declining rapidly as a direct result of the lack of native fish.

The other horrible truth about fish collection is that because of the effects of over collecting, the native fish now are covered in several different diseases. The last few years any fish from Hawaii were automatically dipped for flukes and treated for Ick and checked for other infectious diseases. This never happened ten years ago and now the occurrence is now common enough to treat all Hawaiian fish as if they are infected. Now this may come as a shock but the collection practices in Hawaii are humane and do not poison the fish. However, because of the lack of the numbers of fish left to carry out natural selection process, the native fish are plagued by disease resulting in a weaken gene pool. Not much hope for the return of healthy reef in that case scenario.

Another sad but obvious truth is to follow the money. The amount of money Hawaii and it's residents brings in from tourism is a major source of income. The money actually in the fish trade is also very lucrative. The profit margins are enough to lure even those without degrees or business experience into the field.... Truly like the wild west. Sadly though, the money made from the aquarium trade is certainly not left in Hawaii. It is made by the wholesaler and retailer of those fish which are again, not in Hawaii. Even the online fish sellers now want the collector to 'dropship' the fish directly to the purchaser to avoid the unnecessary handling of fish (loss) and the cost of fish keeping systems. This

may sound like a good move but the money still leaves Hawaii and is used elsewhere. Hawaii collects a small annual fee every year for selling its birthright of natural resources. Other countries have faced these effects and have issued restrictions, bans or regulations on fish collection. Not Hawaii?

I sincerely hope the regulation and control of Hawaiian fisheries is taken seriously and not left to "someone else". This kind of pillaging cannot last forever, only until all the resources are gone. With your help, that can be a very long time in the future for Hawaii. I urge you to go and take a look at any of the unprotected areas of your islands and see for your self. It will convince you even when words will not.

Sincerely,
Ron Gossett

~~~~~  
Dec. 05, 2012  
Pete Basabe:

My statement as a person, and I'm representing a couple of gentlemen that couldn't be here, Kaumano Casuga and Teituna Faavasi [ph] from Miloli'i.

We fish out of Miloli'i. And on a daily basis as we're going down to launch our boat, different households ask us if we can get some fish, spear some fish for their house for that evening or tutu or whether they have a tutu or an uncle that needs fish. And for 25 years now we've been doing that.

We don't go out and spear coolers full of fish. We get six, eight, ten fish and drop it off at a house. When there is a luau happening or something happening at the halau, we're asked to go out and spear fish. We go out and spear fish for the village, so this has been going on for a very, very long time.

One of the things that I've noticed being involved in this process for 40 years, I was on the West Hawaii Fishery Council for a period of time, I went over to Honolulu and testified at the proposed ban on kole about two years ago. I was involved down in Miloli'i when the DAR's office, a couple people from the DAR, went down there to try and bring some rules and regulations into Miloli'i, and what's happening is the way the West Hawaii Fishery Council is set up and it's not that it's a bad thing, but it does not take into account the local fisherman. They've tried at different times to have local fisherman be on the West Hawaii Fishery Council, but they just wandered away.

We, actually, had a group of fishermen show up at one meeting and wanted to testify about the kole ban and they were told that it wasn't going to be discussed that night, and that they'd have to come back another night. They got very upset.

The way the West Hawaii Fishery Council is set up, it just hasn't taken into account the local fishermen. We very seldom ever get any word down in Miloli'i what's happening. They would have to come up and try to find out what's going on. And I think if you're going to be a representative of

stakeholders as the West Hawaii Fishery Council says it is, then you maybe need to change your program a little bit or make a bigger effort to get down and touch the local fishermen, because the way it is now they're falling through the cracks. They don't have anything exchanged back and forth.

Now, this is great because they're here. This is the first step. But what you need to do is you need to engage them to become involved in the system and ask for their opinions, ask them to be involved in making the rules. It's possible that maybe bag limits may be an answer, instead of a ban. We need some science behind what you're, actually, going to do with the spearfishermen. So if you ask them to be engaged and go forward from here, there is a good chance that maybe we can make some headway.

Thank you.

Dec. 05, 2012

Aloha, everyone. My name is Rene Umberger. I'm from Maui.

I'd like to first address a process issue that's been going on. A public trust has been broken. Kona Division of Aquatic Resources has spoiled this public comment process by attempting to silence comments on the rules. The division has misled the public with fear tactics. This is the process. I think the public needs to know what's going on. I'm going to keep going. Everybody needs to know what this division has done. The division has misled the public with fear tactics, calling this an all or nothing, up or down, vote.

MR. TAM: Excuse me. Excuse me a second.  
In unison from the audience "let her talk.")

MR. TAM: Just a second. Just a moment. I'll let her talk in a second. For your information all the comments go to the chair's office, so everything that's submitted will go to the chairman's office, just so you understand that.

MS. UMBERGER: Thank you. The division has misled the public with fear tactics, calling this an all or nothing, up or down, vote. They have claimed that any opposition to these rules to any of the rules would kill the whole package. We cannot know how many voices have been silenced or influenced by Kona DAR's propaganda campaign. We do know that stifling dissent to influence an outcome is not a public service. It's illegal. A public comment process must be impartial to maintain public trust in the process. Both the public trust and the process are broken from official messages spreading propaganda and soliciting support for the rules. These messages were sent in e-mails from the same desk, the same e-mail address accepting public comments.

Worse, from that same e-mail address and in direct response to comments opposing the rules, messages of coercion were sent attempting to suppress, by intimidation, comments critical of aspects of the rules. This illegal activity demonstrates a failure to conduct an objective and impartial public comment process. Public comment is meant to measure public opinion without fear or coercion by a government agency. Dissent is part of the process, except in a dictatorship or communist regime. We need robust dialogue, not strong-arm tactics.

Kona DAR, essentially, said that ten years of community effort will go down the drain from critical feedback. This is a bogus claim. This is not an all or nothing, up or down vote. This is a public comment period to ensure the public's right to be heard. This is a process for making changes in a timely manner. After receiving public comments the land board decides to approve, deny, or recommend changes to the rule proposal. If changes are recommended, the revision goes to the Attorney General's office for review and response within two weeks. That's amazing. They would have two weeks to respond. The rest of that revision process could be completed and the rule made law within six months. So why the propaganda and why the coercion? The question on my mind is why did Kona -- what did Kona DAR gain or hope to gain from these actions?

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From: Jim Whillock
Sent: Thursday, November 15, 2012 10:14 AM
To: darkona@hawaiiantel.net
Subject: Fish Collection

As a diver with an Assistant Scuba Instructor Certification who has been diving the leeward waters of the Big Island for some 30 years, I am completely baffled by the claim that Bill Walsh makes regarding the situation with our reef fish population. I am further baffled that DLNR relies entirely on him as the expert in this matter. His expert opinion is disputed by many dive operator, scuba diver, snorkel operator, returning snorkeler, and "watermen/waterwomen" on the island.

During my 30 years of diving these waters I have watched our fish population, especially of the so called "fish of charismatic value", as Mr. Walsh calls them, decline significantly. All you need is a set of eyes to see this happening.

I dive the waters all over the world, including many areas that might be considered third world or emerging countries. Almost without exception, the Philippines being an exception, divers are forbidden from taking anything, including shells, from the water. Collecting for profit is unheard of. The quality of the reefs and the fish populations in these areas are amazing! Are we less intelligent than the authorities in these countries? They see the value in ensuring that their reefs are protected, yet we deny that we have a problem

I spent 35 years in the travel and tourism business, with Hawaii being a large part of my annual sales. My wife and I owned, as part of our business, an Internet based scuba travel business. Hawaii represented a very small part of that side of our business mix as experienced divers did

not see the value of diving reefs with such poor fish populations, except for the manta ray night dives.

I spoke with candidate Abercrombie twice about the serious issue of allowing a small minority of the population to place an important part of our ocean based tourism at such risk. He promised me that he would look into it. If we do not care about the health of our reef system, we should look at this from a purely financial perspective. The State of Hawaii earns under \$300,000 per year from collectors, as I understand it. How much does the State earn from taxes paid annually by the scuba and snorkel companies? It must be in the millions of dollars.

I implore you to look beyond the denials of one expert, exercise sound judgement and common sense, and put a stop to the stripping of our reefs for mere pennies. These fish collectors will work themselves into unemployment in time, so we should help them find another income source that does not harm the rest of us.

I am more than willing to discuss this further.

Jim Whillock

~~~~~  
**Sent:** Monday, December 03, 2012 7:40 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** Urgent-Hearing and Support

I HAVE ALSO ATTACHED, BUT IN CASE CANNOT OPEN, POSTED BELOW. MAHALO

To Whom It May Concern:

**RE: PUBLIC SUPPORT HEARING ON REEF FISH**

I am a local girl born and raised, and I have been to most beaches on the Big Island. Fifty years ago reef fish were plentiful, and they were everywhere. Now, I rarely see the beautiful angelfish, parrot fish, and other Hawaiian species, that were once thriving on our coral reefs. I wanted to propose some ideas at the hearing, but unfortunately I will not be able to attend, but want you to submit on my behalf. First of all, whatever the outcome of the hearing in reference to permits, bans on spearfishing, no-collecting zones etc., the critical issues are:

- “How do we monitor how many fish are taken?”
- “Who holds collectors responsible, when they disobey the rules and regulations?”
- “Who makes sure that no-collecting spots are monitored, and who to report to?”
- “What equipment and process, is required to properly collect species?”

With this in mind, the above issues should be proposed and discussed. For example, if a permit is issued for collecting reef fish. What is the protocol on how many days, and what species can be taken? How many hours are allotted for collecting? In reference to equipment used, some collectors use vacuum systems. With this system, they can take out an alarming rate of reef fish. With no time limits, and no one monitoring equipment used, this is a very serious issue. Also, West Hawaii Today reported a story not too long ago, regarding two commercial trash receptacles found with hundreds of dead reef fish. Again, illegal collecting, and improper process and transportation, has happened.

Propose to utilize volunteers, that can sign up via an email blast, or with ads in the WHT, that list dates, times, and locations of the collection permits and how to sign up. Volunteers will be the monitor's on-hand at these



locations, to keep a tally sheet of what species, and how many species were taken. Also, if they disobey rules, or take protected species, this can be reported to DLNR for immediate action. Our entire State of Hawaii is concerned about this issue, and there are more than enough caring individuals ready to donate their time to help.

We have to monitor what is going on in our ocean. DLNR and other agencies are doing the best they can, but we all need to "Malama" (care for, preserve) our ocean, and protect our Hawaiian reef fish, so they can be here for generations to come.

Thank you for your consideration, and best of luck. Your caring and support makes a difference.

Mahalo Leilani Pacheco-Datta

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From: Kona Business Center  
Sent: Monday, November 26, 2012 12:01 PM  
To: darkona@hawaiiantel.net  
Subject: testimony from Alice Goo

#### TO LOVE OUR REEFFISH

I've been a Scuba diver since Cousteau first introduced scuba diving. Prior to the invention of Scuba, we did skin diving and only took enough edible fish for food. I'm against commercial scuba spearfishing and aquarium fish collecting for the following reasons:

1. In all the arguments, no one mentioned the damages the collectors do to the coral. Each time they lay a long line of nets, the nets get tangled in the coral. When retrieving the entangled nets the coral is damaged and some are pulled off the seabed and stepped on. The anchor also damages the coral.
2. In Honolulu a fish collection sent reef fish to NYC and after 2 weeks was told a lot of fish were Doa. Most of the fish did not survive more than a month due to the improper care of salinity, PH imbalance, unnatural food etc.
3. I'm also against collecting KOLE & PAKUIKUI fish. In the past these fish were reserved for the Alii and were for eating not collecting.
4. Some years ago a UH Professor published a scientific study of Ocean currents movements that circulate clockwise expanding from Kawaihae to South Point outwards to 4 or 5 miles. At this particular event all the reef fish spawned. The eggs hatched in the deep waters and the juveniles recirculated back toward Kawaihae reef and towards South Point. On their return to the reef thousands were consumed by predators, a balancing act of nature. The fish collectors are causing some imbalance and destroying the corals. As a fisherman before the aquarium collectors from the the US started we had a bountiful catch of Aku, today ZIP.
5. The Hawaiians had a KAPU system, the aquarium collectors all come from the mainland (no locals). They have no respect for the reef. In collecting reef fish many by catch are also destroyed.

For the dive shops that are against collecting I would recommend they monitor the collectors, how they trap fish and the damage they do to the coral. The white list that limits collection to 40 species is ridiculous compared to the damage of the coral.

Ask DNRL Aila who collected tropicalfish if he did'nt see damage to coral.

P.S. Sorry I can't attend the meeting. No Name due to bad blood confrontation.

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From: Earthjustice [mailto:action@earthjustice.org] On Behalf Of Isaac Harp
Sent: Monday, December 03, 2012 10:24 AM
To: darkona@hawaiiintel.net
Subject: Re: Comments on DLNR's Proposed Aquarium Collection Rules

Dec 3, 2012

Hawai`i DLNR Division of Aquatic Resources (Kona Office) 74-380B Kealakehe Parkway
Kailua-Kona, HI 96740

Dear Division of Aquatic Resources (Kona Office),

Aloha DLNR DAR:

As you know, all fish have a role in maintaining healthy reef ecosystems, but prohibiting extraction is NOT what I am proposing. Please read on.

I propose that the DLNR support community-based management of Hawaii's coastal waters and marine resources. These are community resources that were once managed under an ahupua'a konohiki management system.

The konohiki system worked because management was based on simple observations of marine habitats and resources in a very specific areas.
The current blanket approach with the same regulations covering broad areas, that may vary greatly from place to place, has proven ineffective.
The konohiki system worked because the community could easily replace the konohiki if his/her performance as a resource manager was not up to the expectations of the community. Empowering communities this way provides a sense of ownership and with it kuleana/responsibility.

Sense of ownership creates peer pressure. Peer pressure is one of the greatest enforcement tools available. Who better to watch over an area's resources than the people who live there?

In order for us to evolve back to what worked in Hawaii, DAR staff would need to work with konohiki. Much traditional knowledge such as breeding seasons has been lost, but this can be

addressed by what science has discovered in modern times. DAR working with communities for the benefit of the whole would be a tremendous improvement over the status quo.

Finally, for those individuals with an interest in selling fish for aquariums, the best approach that I can suggest is to move into aquaculture where their product is hatched and raised in a captive environment. This approach would minimize trauma to the product compared to the current practice of taking fish from the wild and placing them in a captive environment for the rest of their life. This is simply cruel.

Put yourself in the wild fishes' position for a moment and you may realize how traumatic an experience they go through. When taken as food the fish are usually killed immediately. This is more humane than a life in captivity.

Mahalo for considering my mana'o.

Sincerely,

Isaac Harp

From: Kathryn Reynolds
Sent: Thursday, November 29, 2012 9:10 AM
To: darkona@hawaiiantel.net
Subject: proposed collection rules

I find it difficult to believe that the private business of Aquarium collection takes precedent over the well being of our reefs.

Our reefs which are living ecosystems that support our well being in so many ways. Tourists love our island because it is not yet totally destroyed by businesses who make their money by taking away the natural beauty of the natural vistas, the wildlife and the history.

We were walking along Waikiki beach this past weekend. My partner, who lived there many years, was surprised and so happy just to see 10 large humuhmunukunukuapua'a along with 3 bonefish swimming near the shore. He said that the mile of shoreline protected fish area has helped to make that sighting possible. The number of fish and sizes are still not even close at all to being on their way to what it used to be, but little by little it is helping.

Protection helps. Protection is needed.

I have lived here in Kailua Kona 23 years. I never see schools of trigger fish along the coast like I used to. I have worked in the tourist industry the entire time and can tell you that barren waters and stolen vistas are real threats to the draw of visitors and the well being of those who live here.

No one wants it to end up that you can see more fish in an Aquarium on the mainland or anywhere else than you can see along our Hawaiian coasts.

Kathryn Reynolds

From: Sylvia
Sent: Sunday, November 18, 2012 8:44 AM
To: darkona@hawaiiantel.net
Subject: Fish Collecting

My first experience scuba diving in Hawaii was in 1980. It was like diving in an aquarium. The dramatic decline in the fish populations since that time is appalling. I remember when Kona was the Gold Coast because there were so many yellow Tang the water looked gold!

While I know the entire decline cannot be laid at the feet of the fish collectors, the numbers of certain fish varieties has certainly declined in direct correlation with the number of fish collecting permits that have been issued. To think that twice as many fish are taken from our islands as are taken from the Great Barrier Reef is a frightening indication of the massive amounts of our beautiful fish that are being wasted.

As a resident and avid diver I have seen the scarcity of certain fish that used to be abundant, and the almost complete disappearance of the more rare species. To see a Tinker butterfly, Banded Angel or Long-fin Anthias has gone from infrequent to impossible, yet they are on the "white list".

Only you can change this! Please at least try a moratorium on fish collecting, let's see what happens to the fish population. Please take the steps to save our valuable resources. It's almost too late now!

Aloha, Sylvia Owens

From: Darcy May
Sent: Sunday, November 18, 2012 7:42 AM
To: darkona@hawaiiantel.net
Subject: Aquarium fish collecting testimony

To: DLNR fisheries management
To Whom it may concern,

Fish collecting should be banned from the Big Island as well as for the entire state of Hawaii. Violators should have steep fines and penalties. The tropical fish population has declined over the 8 years I've been a full-time resident here and scuba diver. I frequent the dive sites all up and down the Kona coast by boat and also from the shoreline. It's alarming to me that the DLNR would even allow ANY tropical fish species collected on a commercial basis, let alone 40 species allowed for the take. Please don't allow this as people from all over the world come to Hawaii to see our beautiful fishes here as well as Hawaiian residents. Please consider penalties and enforcement laws similar to Washington State. That's the only way to get the excessive taking of tropical fish to stop and preserve our precious tropical fish for future generations. If you don't take measures to preserve and protect the creatures of the ocean then who will?

Thank you,

Darcy May, Kailua-Kona
~~~~~

December 4, 2012

Dept. of Land and Natural Resources  
Division of Aquatic Resources  
1151 Punchbowl Street, Room 330  
Honolulu, Hawaii 96813

**RE: Repeal of HAR, TITLE 13-60.3, TO ADOPT A NEW CHAPTER 13-60.4-7(B).  
The "WHITE LIST" and Bag Limits.**

Dear Sir:

Thank you for the opportunity to participate in this public process. My name is Ms. Jojo Tanimoto and I live in Kawaihae on Hawaiian Home Lands. I thank you for all the work to update the rules to protect the near shore fish species.

However:

1. First, I was made aware that the procedures for this public hearing is incorrect. There was no signature on the presentation and nothing said about forwarding the agenda to the AG for approval. Perhaps you will consider holding this meeting at a later date and get the procedure correct.
2. This "White List" should include all the near shore fish species that are favorite food species. This list needs to include: Akule, Kala, Maiko, Manini, O'io, Opelu, Palani, Paka, Uhu, Uku, etc. Also, "Bag Limits" should delete Kole and Pakuku'i, at least until the need for any moratoriums and "no take" programs or instituted.

Thank you for the opportunity to provide these comments.

Sincerely,

Jojo Tanimoto  
~~~~~

From: phil hayward
Sent: Monday, December 10, 2012 4:24 PM
To: darkona@hawaiiantel.net
Subject: 13-60.4 etc. testimony

Aloha, as a Puako resident and wildlife biologist and resource manager, I hereby testify in relation to the proposed changes to the 13-60.4: The likely overfishing issue with spearfishing is not as much with scuba, but night-time free-diving spear fishing abuse. There is almost zero monitoring of night-time fishing activity and teams of free-divers fish our reef areas (especially the drop-off with plenty fish hiding/sleeping places) at night with floating coolers which are filled with fish- who knows if size and

numbers taken are within regulation (and no regulations exist to protect the larger breedstock). Also, areas of "no-take" for breedstock and grwo-out are slow in comijng to the proportion of the reef as outlined in previous legislation. On Chapter 13-54, Puako boundary for aquarium fishing should be extended to 1/5 mile to effectively eliminate this taking from the area from the Puako boat ramp to the FRA boundary at the Paniau/Orchid line. Thank you for your consideration, Phil Hayward

Philip Hayward, S Kohala Oceanfront Research and Education
LLC www.skorellc.org Working Together as Stewards of this Unique Hawaiian Coastline

~~~~~  
**From:** Ruthie Charter  
**Sent:** Saturday, November 17, 2012 4:00 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** STOP collecting aquarium Fish !!!!

It doesn't take a rocket scientist or any more "scientific studies" to figure out that if the fish are being taken from the ocean in such large numbers and for such a long time that we will soon enough have no more fish !!! DUH !!!!!

A friend of mine that moved here about a decade ago was telling us that back then the waves were just filled with Yellow Tang, for one, in the shore break. Now you can see maybe 4 or 5 !!! Your job is STEWARDSHIP of our waters, fish and reefs!!! Time to do your job without any excuses!! Stop the over collecting of our aquarium fish!! Surely you won't wait until we have such low numbers of them that they are in danger of being lost for all of us!! Use common sense, for God's sake!!

R. Charter  
~~~~~

Dec. 05, 2012

MR. TAM: April Sutton.

Thank you guys for coming out here tonight. It's amazing to see so many people here.

I've been to a few of these meetings where it's like just the library. It's cool that we're taking over this whole area. I'm going to be really brief because I know a lot of us have been here all night.

I don't think we can be sustainable by still collecting fish. We just need to make our entire coastline a marine protected area and stop collecting.

I don't think that having anything collectable is going to be good for us. If we can sell a yellow tang for 39.95 to somebody on the mainland, what good does that do us here, yeah, so thanks.
~~~~~

**From:** Pi'i Laeha  
**Sent:** Wednesday, December 19, 2012 2:48 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** WHRFMA testimony  
Aloha,

Thank you WHRFMA for your time and energies in managing our marine resources. My thought on your recent proposal is that you have placed too many rules/ amendments/ policies in one Chapter. I agree with some, disagree with others. Is this an all-or-nothing situation? This may be a standard practice in politics but I would like to see that each issue is addressed individually.

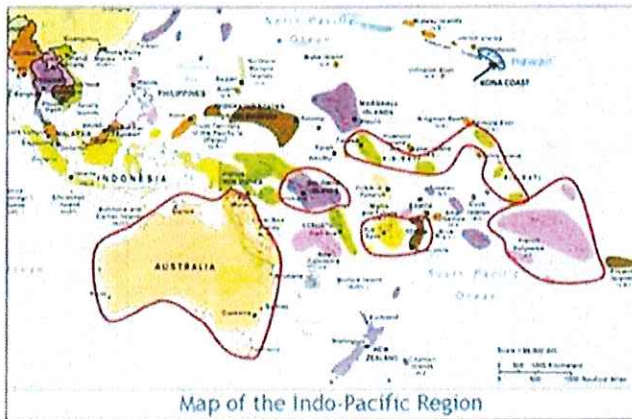
Where does education fit in these restrictions? What allocations and exemptions will be given to educational / cultural programs?

Culturally, there should be some easy access areas with calm shoreline waters where we can teach our youth gathering and hunting skills. We need some of these places to practice and teach our culture.

Mahalo for your attention,  
Pi'i Laeha

~~~~~  
From: Mike Maddux
Sent: Sunday, December 02, 2012 6:07 PM
To: darkona@hawaiiantel.net
Subject: fish kidnapping

Aloha,
I am 100% is support of a ban on all commercial exploitation of the reef fishery.
I would allow the current rules for resident's home aquaria to stand.
In 1960 I could sit waiting for waves off Waikiki and watch the fish nibble at my toes...
I think that a commercial license would be a great front for another source of income... and not pot. Great cover for laundering money.
But that's just me.
I live in Hawi and most meetings are too far, but please include me in your efforts.
Thank you,
Mike Maddux



Map of the Indo-Pacific Region
 More fish are annually taken from Hawaii's reefs for U.S. saltwater aquariums than are imported from the reefs of Australia, Solomon Islands, Fiji, Tonga, French Polynesia and Kiribati, combined.

Name Owen Hashida
 City/ Captain Cook
 State: Hawaii

Dear Governor Abercrombie and Hawaii State Legislators:

I support ending Hawaii's aquarium trade because:

It depletes our reefs which need these fish and support our families.

It conflicts with cultural values and the values we teach our keiki.

Our wildlife suffers and dies needlessly.

Mahalo, [Signature]

DEC 15 1PM 2012

ALOHHA

Dept. of Land & Natural Resources
 Division of Aquatic Resources
 74-381 Kealahou Pkwy.
 Kailua-Kona, HI 96740

Name	Date	Address
Angelito dePadua	12/10/2012	Walnut Creek, CA
Cheryl Becker	12/10/2012	Campbell, CA
Jon Lucker	12/10/2012	Portland, OR
Bill Beckir	12/10/2012	San Jose, CA
Emmeline Katsarelis	12/10/2012	Dublin, CA
Denis Simoneau	12/10/2012	St. Isidore, Alberta Can
Genevieve T	12/10/2012	Alameda, CA
Tracy Simoneau	12/10/2012	Alberta, Can
Jo Wallach	12/10/2012	Kapa'u, HI
Rebecca Jetzer	12/10/2012	Kailua-Kona, HI
Jim Johnson	12/15/2012	Littleton, CA 80124
Baris Ergin	12/13/2012	New York, NY
Ray Bolger	12/13/2012	Alberta, Can
Nellie Dickson	12/13/2012	Burkett, TX
Linda Carstens	12/13/2012	Phoenix, AZ
Dana Sausedd	12/13/2012	Phoenix, AZ

Vicky Hsu	12/13/2012		Seattle, WA
Linda Fischer	12/13/2012		Dallas, TX
Mavis Rose	12/13/2012		NSW, Australia
Nancy Harkaker	12/13/2012		Davis, CA
Randy Arnold	12/13/2012		Santa Monica, CA
Pamela Arnold	12/15/2012		Santa Monica, CA 93454
Ireen Law-Noonan	12/15/2012		Brampton, Ontario, Can
Michele Jetzer	12/15/2012		Las Vegas, NV
Gail Hielsher	12/15/2012		Holyoke, CO
Marshella Burton	12/15/2012		Alexandria, VA
Nancy Kluss	12/15/2012		Beaverton, OR 97007
Dawn Carlozzi	12/15/2012		Centerville, WA
Diane Jetzer	12/15/2012		Madison, WI
Dennis Jetzer	12/15/2012		Madison, WI
J. Yanamoto	12/15/2012		Honolulu, HI
Susan Yamasaki	12/15/2012		Laguna Harbor, CA
Lynn Boyanovsky	12/15/2012		Portland, OR
Sandy Muhlhausen	12/15/2012		Santa Rosa, CA
Kathy Carlozzi	12/15/2012		Hilton Head, SC
Olga Libova	12/15/2012		Mt. View, CA 940440
Kelly Stedry	12/15/2012		Ronnut Park, CA
Nuva Nickelson	12/15/2012		Burkburnell, TX
Richard Hirlschen	12/15/2012		Holyoke, CA
Gary Abramy	12/15/2012		Port Angeles, WA
K. Miasukawa	12/15/2012		Kailua-Kona, HI
David Kleiner	12/15/2012		Mountain View, CA 94040
Drik Shimizu	12/15/2012		Honolulu, HI
Diane Johnson	12/15/2012		Littleton, CA
Karol Sarratt	12/15/2012		Victorville, CA 92395
Diana Oharriet	12/15/2012		Victorville, CA 92395
Alison Carlozzi	12/15/2012		Ranson, WV
Oalem Gul	12/15/2012		Brooklyn, NY
Tami Kawamoto	12/15/2012		Rodeo, CA 94578
Gwen Hashida	12/15/2012		Captain Cook, HI

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**From:** Terra  
**Sent:** Wednesday, December 05, 2012 1:18 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** fish collected

I don't feel that ANY FISH should be collected for Aquariums period..... We should give to the Ocean NOT TAKE Man has done too much harm already and has not appreciated what the Ocean does for us EVERY day of our lives.... Terra Luckey...

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From: Rhodie.F.Masusako@hawaii.gov [mailto:Rhodie.F.Masusako@hawaii.gov] **On Behalf Of**
Dlnr.Aquatics@hawaii.gov
Sent: Tuesday, November 27, 2012 5:54 AM
To: darkona@hawaiiantel.net
Subject: Fw: Kona Spearfishing and collecting limits

Benjamin Glick

To "DLNR.aquatics@hawaii.gov" <DLNR.aquatics@hawaii.gov>

cc

11/27/2012 03:32 AM

Subject Kona Spearfishing and collecting limits

DNR, I have been diving on and off for 30 years in Kona. Over this time I have seen an incredible reduction in marine life to where it is no longer worth diving this area. Please give the reef life here a chance to rebuild. This is worth big money to the area if reef life is present. I consider fish collectors a menace to the economy of The Kona area. Respectfully submitted, Ben Glick MD

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**From:** Clear Englebert  
**Sent:** Thursday, November 22, 2012 3:49 PM  
**To:** darkona@hawaiiantel.net  
**Subject:** Collecting aquarium fish

I support a **complete ban** on collecting aquarium fish in Hawaii, and especially in the waters around Hawaii Island. People come here because the waters are rich with life. To deplete that for the profit of a few people is short-sighted and the essence of greed.

Thank you,  
Clear Englebert

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Sent: Saturday, December 01, 2012 8:22 AM
To: darkona@hawaiiantel.net
Subject: West Hawaii Regional Fishery Management Area

Aloha, I, Karen Guerreiro & husband Robert Guerreiro support a West Hawaii Regional Fishery Management Area. When we moved to Kona in 1997, there were yellow tang everywhere. They are now abundantly missing. Hopefully with good management they will survive & multiply.

Respectfully yours
Robert & Karen Guerreiro

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From: Susan Kromer  
Sent: Friday, December 14, 2012 5:11 PM  
To: darkona@hawaiiantel.net  
Subject: In support of WHRFMA Amendments

I am from Oahu and have made several trips to Kona to experience the beauty of the Mantas. I

am in full support of the WHRFMA Amendments which are being proposed to protect the mantas.

Mahalo,  
Susan Kromer

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From: Shane and Johanna
Sent: Tuesday, December 04, 2012 7:47 PM
To: darkona@hawaiiintel.net
Subject: Ka'ohe Bay

I own 5 acres above Kona Paradise and do not want commercial tropical fish collectors to be able to collect in the Bay... Please make note of my opinion in this matter Thank you ... Johanna Brown

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**From:** Nancy Bauer  
**Sent:** Monday, December 03, 2012 3:45 PM  
**To:** darkona@hawaiiintel.net  
**Subject:** reef fish

WE KNOW THAT WE NEED TIGHTER CONTROLS ON THE COLLECTION OF REEF FISH BY AQUARIUM SUPPLIERS. PLEASE DO WHAT IS NECESSARY TO

CURB THE INAPPROPRIATE USE OF HAWAIIAN REEF ENVIRONMENTS.

SINCERELY,

NANCY BAUER,

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From: Debra Wright
Sent: Sunday, December 16, 2012 10:05 AM
To: darkona@hawaiiintel.net
Subject: Protect the Mantas & full support for WHRFMA amendment

I live on Oahu & have made 5 dives off Kona to see the wonderous Mantas. Please protect them and pass the WHRFMA amendent.
Debra H. Wright

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**From:** Kappes  
**Sent:** Saturday, November 17, 2012 11:31 AM  
**To:** DARKona@hawaiiintel.net  
**Subject:** Aquarium fish collecting testimony

We oppose collecting of ANY aquarium fish.

Nancy & Jeff Choy-Hee