

State of Hawai'i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawai'i 96813
May 25, 2012

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

REQUEST FOR APPROVAL TO HOLD PUBLIC MEETINGS AND HEARINGS
PURSUANT TO HRS CHAPTER 91, TO AMEND HAWAII ADMINISTRATIVE RULES
(HAR) TITLE 13, CHAPTERS 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 HAWAI'I REGIONAL FISHERY MANAGEMENT AREA, HAWAI'I;" AND TO
AMEND TITLE 13, CHAPTER 75, "RULES REGULATING THE POSSESSION
AND USE OF CERTAIN GEAR" AS ATTACHED AS EXHIBIT A OF THIS AGENDA

Submitted for your consideration and approval is a request to hold public meetings and hearings to amend by chapter 91, Hawaii Revised Statutes (HRS) rulemaking, Hawaii Administrative Rules (HAR) Title 13, chapters 54 and 57; to repeal HAR Title 13, chapter 60.3; to adopt HAR Title 13, chapter 60.4; and to amend HAR Title 13, chapter 75, to allow the Department of Land and Natural Resources (DLNR) to more effectively regulate and protect the fisheries resources within the West Hawai'i Regional Fishery Management Area (WHRFMA).

HISTORY

In 1998, the Hawai'i State Legislature passed Act 306 (now codified in HRS chapter 188F), which established the West Hawai'i Regional Fishery Management Area (WHRFMA). The WHRFMA encompasses the ocean area off approximately 147 miles of shoreline, from Ka Lae, Ka'u (South Point) to 'Upolu Point, North Kohala.¹ The establishment of the WHRFMA was intended, among other purposes, to "[e]nsure the sustainability of the State's nearshore ocean resources; . . . minimiz[e] user conflicts and resource depletion . . . [c]arry out scientific research and monitoring . . . [and] provide for substantive involvement of the community in resource management decisions."²

In order to achieve these purposes, the West Hawai'i Fisheries Council (WHFC) was formed in 1998, and empowered by DLNR to serve as an advisory body for the management of the WHRFMA. The WHFC consists of stakeholders and community representatives, as well as non-voting, ex-officio members from such programs as the Division of Aquatic Resources (DAR), 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

¹ Haw. Rev. Stat. § 188F-2.

² Haw. Rev. Stat. § 188F-3.

more than 3,000 volunteer hours. At least 1,800 community members have attended one or more WHFC meetings.

The management objectives of chapter 188F are currently implemented by chapter 13-60.3, HAR, which was originally promulgated in 1999 and amended in 2005. This chapter established nine fisheries management areas (FMAs), and contains rules regulating aquarium fisheries, netting, and fish feeding. The WHFC had substantial input into the contents of these rules, and has continued to serve its role in providing community involvement in the management of the WHRFMA.³

In addition to the general rules governing the WHRFMA, other rule chapters separately regulate areas within the WHRFMA region, for varying purposes. These include chapter 13-54, which regulates the “Puako Bay and Puako Reef Fisheries Management Area,” and chapter 13-57, which regulates the “Keauhou Bay Fisheries Management Area.” The rules found in these chapters are cumulative with rules established in chapter 13-60.3; this submittal proposes to further amend these particular chapters for consistency and clarity.

PURPOSE

A. Repeal of HAR chapter 13-60.3 and the adoption of proposed HAR chapter 13-60.4, West Hawai‘i Regional Fishery Management Area

In accordance with HRS chapter 188F, DAR is proposing to amend the rules governing the WHRFMA. Due to the complexity and potential confusion in amending the current WHRFMA rule chapter, DAR is proposing to restructure the rules for better accessibility and understanding. In order to accomplish this, chapter 13-60.3 in its current form would be repealed, and a new chapter 13-60.4 will take its place. See Exhibit A. The HAR chapter number “13-60.4” was tentatively proposed for designation of the Miloli‘i Community Based Subsistence Fishing Area several years ago, but was never formally assigned to any promulgated or proposed rules.

Substantive changes to the rules governing the WHRFMA are discussed below. These recommended changes are the result of ten years of research, committee meetings, and community discussions, all facilitated by the WHFC. The overall goals of these changes are to ensure continued resource sustainability, to enhance nearshore resources, and to minimize user conflicts in the WHRFMA. Except for minor changes to address inconsistencies, loopholes, and to clarify or remove superfluous language, all other existing rules governing the WHRFMA remain substantively the same.

The first proposed change prohibits the practice of SCUBA spearfishing in the WHRFMA. Currently, Hawai‘i is one of few Pacific areas where SCUBA spearfishing is not prohibited.⁴ In 2002, the WHFC began engaging in community discussions regarding the practice of SCUBA

³ See Maurin, P. and S. Peck. 2008. The West Hawai‘i Fisheries Council Case Study Report. University of Hawaii Sea Grant. 32pp.

⁴ See GILLET, R. & W. MOY, SPEARFISHING IN THE PACIFIC ISLANDS CURRENT STATUS AND MANAGEMENT ISSUES (2006); Christie Wilson, *Lay nets threaten Hawaii sea life*, HONOLULU ADVERTISER, Sept. 28, 2009 available at <http://the.honoluluadvertiser.com/article/2009/Sep/28/ln/hawaii909280357.html>

spearfishing, and has hosted research presentations, held committee and subcommittee meetings, and gathered public input regarding the practice. A consensus by the WHFC and its Scuba Spearfishing Management Subcommittee was reached in 2004, and rule language was drafted in 2007. The new proposed rule, section 13-60.4-4(f), proposes to ban SCUBA spearfishing in the WHRFMA, based on its potential detrimental effect on reef fish populations.

The second proposed amendment addresses a conflict that arose in 2004 between recreational user groups and commercial aquarium fish collectors in Ka'ohē Bay, South Kona (also known as "Pebble Beach"). In order to equitably resolve the conflict, the WHFC established the User Conflict Subcommittee, which held public meetings with groups of stakeholders over the next 20 months. An "FRA exchange" was agreed upon as the most equitable means of reducing the conflict, and the WHFC, in conjunction with DAR and the then-DLNR-DAR Marine Law Fellow, drafted a rule proposing to effectuate this agreement. However, after consultation with DAR staff, Big Island aquarium collectors later agreed to simply allow the closure of Ka'ohē Bay to aquarium collection without opening any other areas to collecting. This agreement was subsequently approved by the WHFC and the Big Island Association of Aquarium Fishermen (BIAAF) which had 32 official members at that time. The current proposal establishes an approximate 1,500 foot section of Ka'ohē Bay as a protected FRA (i.e., no aquarium collecting/recreational fish feeding).

The third major substantive proposal would establish a list of "no-take" protected species and a list of the only species that may be permitted for aquarium take purposes (i.e., an aquarium species "white list") within the WHRFMA. Any marine species that is not on either list may be taken in accordance with any other regulations, but not for aquarium purposes. This proposal originated with a DAR presentation to the WHFC, indicating the desirability and potential of creating a species of special concern list in conjunction with a limited entry aquarium fishery. The WHFC Species of Special Concern Subcommittee was established in 2005 to study the issue, and after several years of consultation with DAR biologists, fishers, wholesalers, and other community and ocean user groups, a WHRFMA-specific list of species to be protected and a list of permitted species for aquarium take was compiled. The current proposal embodies these lists in section 13-60.4-4(1) (prohibiting any take of certain vulnerable species) and section 13-60.4-7(b) (permitting aquarium take or possession of only the 40 enumerated species). Size and/or bag limits for aquarium collectors are also established in this latter section for three species (yellow tang, kole, and Achilles tang) which have been identified as important components of the aquarium fishery. In addition, in order to preserve and recognize the importance of yellow tang to the aquarium fishery, bag limits on yellow tang less than two inches in total length and greater than 4.5 inches in total length are established for all fishers. The WHFC and BIAAF have also approved the "white list" and associated size and bag limits.

Several other rule changes are also included with this proposal, to address reported incidences of poaching activities, and to clarify existing rule provisions. These include the following:

1. Establishing a West Hawai'i Aquarium Permit requirement to engage in aquarium collecting activities in the WHRFMA and to use fine mesh nets. Replacing the previously-required statewide permit for small mesh nets and traps, this West Hawai'i-specific Aquarium

Permit is now required for both recreational and commercial collectors to use such gear or collect marine life for aquarium purposes, under proposed HAR section 13-60.4-7(a);

2. Allowing the possession of aquarium collecting gear or marine life collected for aquarium purposes after sunset or before sunrise only where prior notification is made to the DAR-Kona office, HAR proposed section 13-60.4-4(3);

3. Requiring that nets or containers used to capture or hold aquatic life for aquarium purposes be labeled with the commercial marine license number or numbers of the persons who own or are using such equipment, HAR proposed section 13-60.4-4(4);

4. Specifying that minimum mesh size requirements for “lay nets” (defined as panel mesh nets with a lead line and float line) do not apply to lay nets that are permitted for use under an aquarium fishing permit, and labeled with the CML number of the person owning or using the net, HAR proposed section 13-60.4-6(g); and

5. Clarifying that the “total length” standard will be used for length measurements, HAR proposed section 13-60.4-3.

B. HAR chapter 13-54, Puako Bay and Puako Reef Fisheries Management Area

In addition to the above-discussed amendments to and restructuring of the WHRFMA rules, this submittal includes two other proposed rule changes involving updates to FMAs contained within the West Hawai‘i region.

First, amendments are proposed to HAR sections 13-54-1, 13-54-2, and 13-54-3, to clarify the boundaries of the Puako Bay and Puako Reef Fisheries Management Area (proposed as “Puakō FMA”), clarify the types of nets prohibited within the FMA, and to incorporate an updated and more accurate map of the Puakō FMA.

The current Puako FMA was established in 1985 in order to restrict the use and possession of any type of net, other than thrownets. When promulgated, section 13-54-1 included both a description of the FMA’s boundaries, as well as a reference to a map showing the “approximate no-netting area” of the FMA. Although boundaries are adequately described by point and distance provisions in the rules, the map exhibit currently accompanying the rules shows only an “approximate” bounded area which does not necessarily conform to the FMA description. Moreover, signs posted on the Puako FMA shoreline do not reflect the area described in the rules, adding significantly to compliance and enforcement issues. Ongoing reports of poaching activity, including the use of nets other than thrownets, within the Puako FMA indicates the possible confusion arising from these differing descriptions of the FMA boundaries.⁵ This rule proposal therefore seeks to amend the current FMA rules to incorporate by reference a more detailed, accurate, and up-to-date map of the Puako FMA; clarify that barrier nets and hand nets are also prohibited by the Puako FMA, and add Hawaiian language diacritical markings.

⁵ When Act 306 established the WHRFMA in 1998, the Puako FMA was included within its boundaries. HRS section 188F-2. Pursuant to WHRFMA rules under HAR chapter 13-60.3, the Puako FMA boundaries under HAR chapter 13-54 are referenced to describe the Puakō-‘Anaeho‘omalū fish replenishment area, which is established as part of the WHRFMA, and which prohibits the collection of aquatic life for aquarium purposes. HAR section 13-60.3-14. Aquarium collecting is therefore severely restricted within the Puakō FMA. However, aquarium collecting activities involving the use of barrier and hand nets continue to be reported as occurring within the FMA boundaries.

C. HAR chapter 13-57, Keauhou Bay Fisheries Management Area

In 1992, the Keauhou Bay Fisheries Management Area was established by HAR chapter 13-57, to regulate fishing activities in this north Kona bay. Pursuant to the rule amendments, fishing with greater than two lines or two poles and lines, snagging or attempting to snag any fish, using any net other than a hand net less than three feet long or a throw net in a special “thrownetting zone,” and the herding or chasing of fish to be netted outside of the fisheries management area, are prohibited, absent a department-issued permit (see proposed amendments to HAR sections 13-57-2 and -3).

With the subsequent establishment of the WHRFMA, further regulations on lay-netting in the Keauhou region were recommended by the WHFC, to address ongoing user conflicts in the bay. Section 13-60.3-5, effectively extended netting prohibitions within Keauhou Bay from the existing Keauhou Bay Fisheries Management Area Boundaries to Kaukala‘ela‘e Point and Haiku‘ua Point, for laynetting purposes.⁶ Although partially superseded by this latter regulation, the no-netting boundaries were never changed within chapter 13-57.

For consistent and readily identifiable boundaries, this submittal proposes to amend HAR chapter 13-57 to make the described Keauhou Bay Fisheries Management Area no-netting boundaries consistent with the no-laynetting boundaries established under chapter HAR 13-60.3 (and retained in the proposed chapter 13-60.4). This will be accomplished by updating the current map and relevant rule language in chapter 13-57, to match the boundaries described in chapter 13-60.3.

D. HAR section 13-75-12.4 lay net rules.

Finally, technical amendments to department lay net rules under HAR section 13-75-12.4 are proposed for purposes of consistency and to replace references to sections within chapter 13-60.3 to their counterpart sections in the proposed replacement chapter 13-60.4.

RECOMMENDATION:

“That the Board authorize and approve the holding of public meetings and hearings according to the rulemaking requirements of HRS chapter 91, to amend Hawaii Administrative Rules (HAR) Title 13, chapters 54 and 57; to repeal HAR Title 13, chapter 60.3; to adopt HAR Title 13, chapter 60.4; and to amend HAR Title 13, chapter 75, to allow the Department of Land and Natural Resources to more effectively regulate and protect the fisheries resources within the West Hawai‘i Regional Fishery Management Area (WHRFMA).”

“That the Board delegate to the Chairperson the authority to appoint a hearings officer to conduct the aforementioned public meetings and hearings.”

⁶ HAR § 13-60.3-5(h)(2).

Respectfully submitted,



Guy H. Kaulukukui, Interim Administrator
Division of Aquatic Resources

APPROVED FOR SUBMITTAL



William Aila, Chairperson
Department of Land and Natural Resources

Attachment

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 Wāwālololi 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'ū.

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 Kiholo 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) Nenu 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.

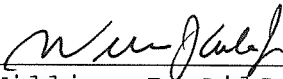
(g) Any person violating any subsection of this provision shall be subject to penalty as provided under chapter 187A, HRS. Each violation may constitute a separate offense." [Eff and comp 3/2/07; am](Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

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.

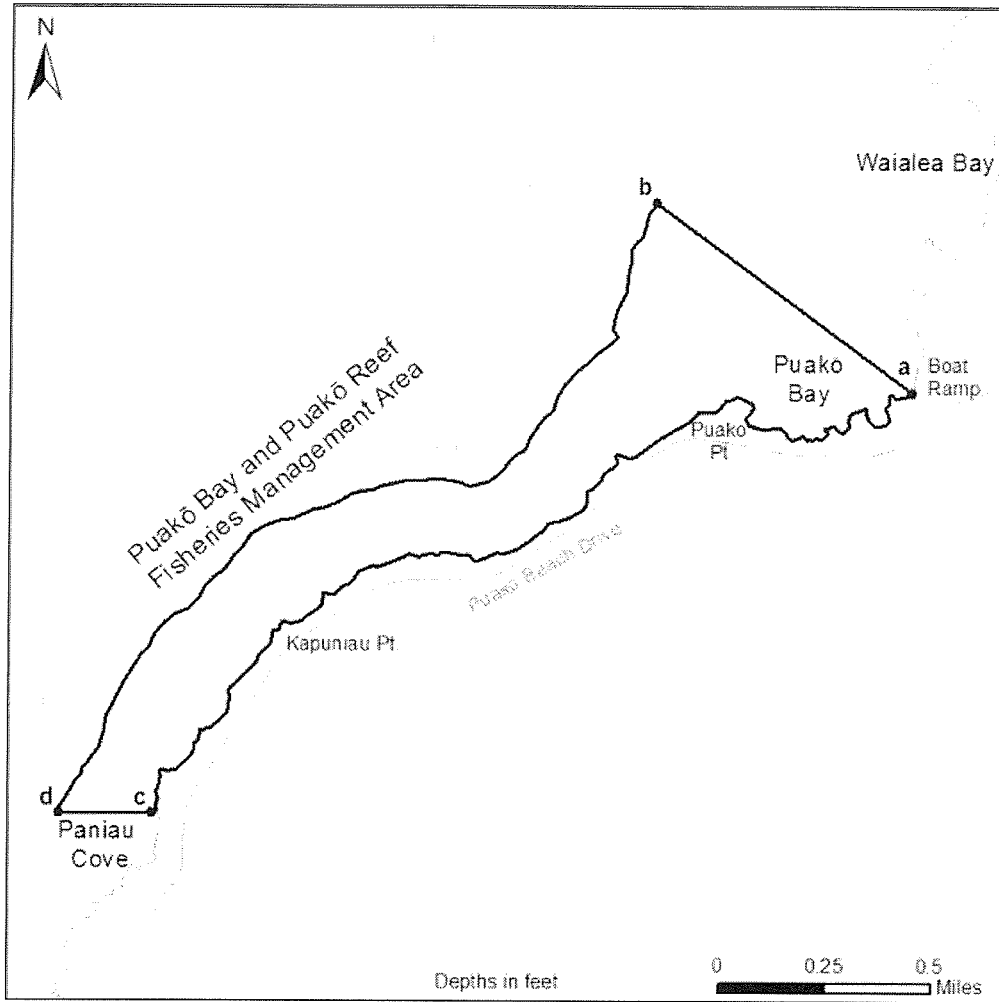


William J. Ailā, Jr., Chairperson
Board of Land and Natural
Resources

APPROVED AS TO FORM:

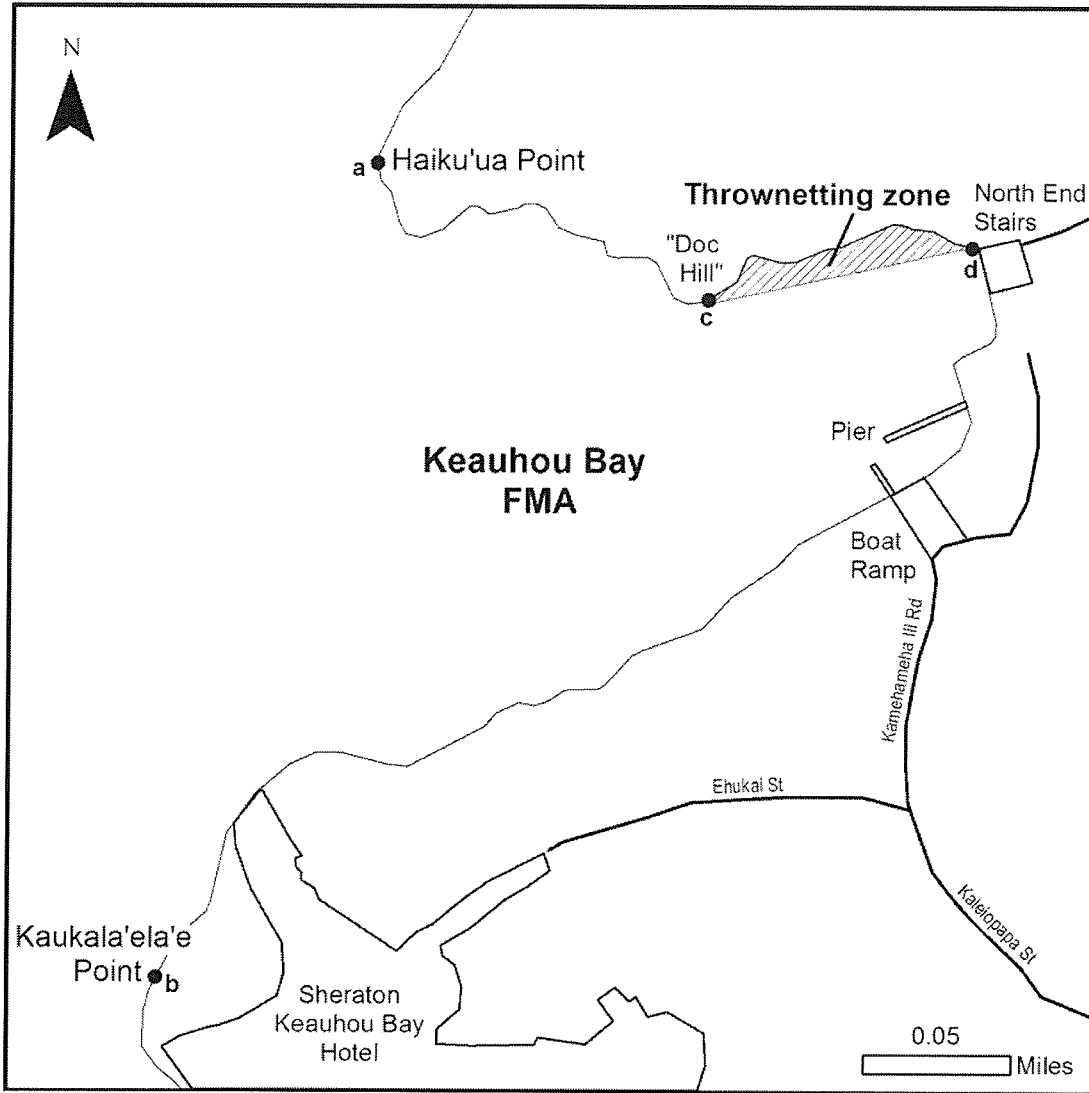
 s Colin J. Lau
Deputy Attorney General

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)

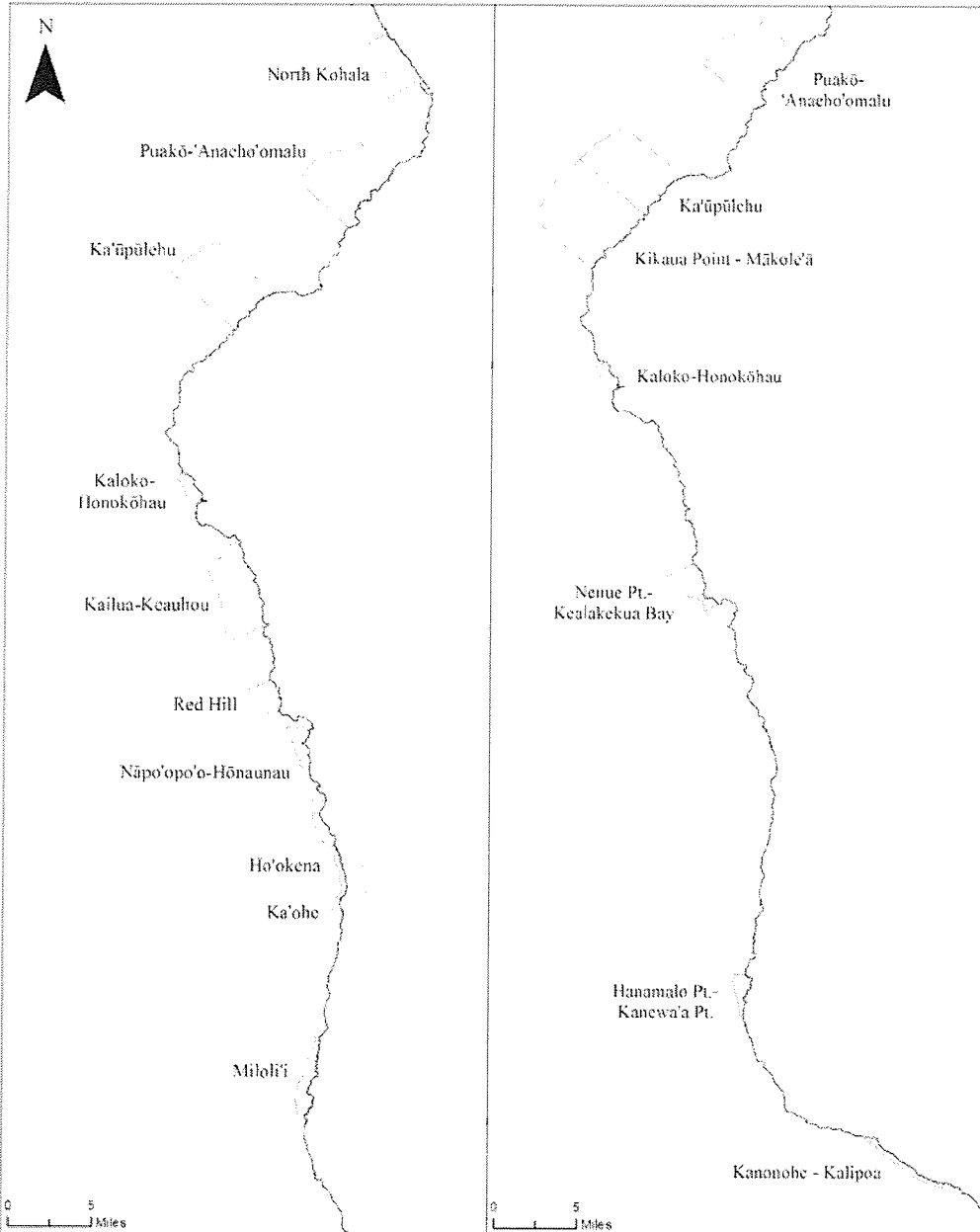


Point	Boundary	Latitude	Longitude
a	Haiku'ua Point	19° 33.773'N	155° 57.914'W
b	Kaukala'ela'e Point	19° 33.528'N	155° 57.989'W
c	"Doc Hill"	19° 33.731'N	155° 57.812'W
d	North End Stairs	19° 33.745'N	155° 57.730'W

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

Fish Replenishment Areas

Netting Restricted Areas



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

^{1,2} Northern Boundary runs 0.25nm along existing Kealakekua Bay MLCD 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	D (nm)	Southern Point	D (nm)	@
Puakō – ‘Anaeho‘omalū	19° 57.529' N 155° 51.553' W	19° 54.641' N 155° 53.893' W	19° 59.206' N 155° 53.383' W	2.40	19° 57.034' N 155° 56.658' W	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	3.91	19° 51.724' N 156° 03.947' W	4.39	300° 300°
Kīkaua 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	4.41	19° 49.000' N 156° 06.164' W	3.98	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	0.35	19° 39.844' N 156° 02.169' W	0.46	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	1.41	19° 28.316' N 155° 56.983' W	0.90	235° 235°
Hanamalo 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	0.55	19° 07.093' N 155° 55.313' W	0.18	260° 260°
Kanonone - Kalīpoa	19° 00.662' N 155° 48.302' W	18° 58.180' N 155° 44.182' W	19° 00.409' N 155° 48.302' W	0.25	18° 57.941' N 155° 44.183' W	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

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</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</p>
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		<p>general public on new rules</p> <ul style="list-style-type: none"> + Easy to enforce - More people may be against - Possibly more difficult to pass at DAR level 	<p>guidelines when not a total ban.</p> <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>

01/16/03 Spearfishing Management

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'ōkena, 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'ōkena 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'uho'oua 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, its accessibility, its 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’ohe 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  
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***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 phthiophagus* - 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 Hawai'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'īpala</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>Cirrhitilabrus 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. For all take of yellow tang >5" (Total Length) there is a bag limit of 5 fish/person/day.

C. All take of the following species is prohibited:

|                     |                                   |                     |
|---------------------|-----------------------------------|---------------------|
| 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>Pseudocheilinus octotaenia</i>  |
| 37 | Fourstripe Wrasse        | <i>Pseudocheilinus 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 (*Zebrafoma 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 DNLN Chairperson for approval to resend to AG.

**June 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.

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, Walter Paulo and Doug Robbins.

|               |                  |              |               |                |                   |
|---------------|------------------|--------------|---------------|----------------|-------------------|
| <b>Edward</b> | <b>Ahuna Jr.</b> | Richard      | Beesow        | Brent          | Carman            |
| Kanoe         | Adlawan          | Andrew       | Behic         | Noa            | 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>Hoopough</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           | Abel           | Pacatang Jr.     | Hernan        | Ridders              |
| Sarah          | Moon           | Pedro          | Padillio         | <b>Doug</b>   | <b>Robbins</b>       |
| Anthony        | Moreno         | Todd           | Pakani           | Paul          | Robinson             |
| Betsy          | Morrigan       | <b>George</b>  | <b>Paleudis</b>  | Blaine        | Rogers               |
| Alton          | Murakame       | Kristen        | Paleudis         | Jeff          | Rogers               |
| Wesley         | Murakami       | Tom            | Parker           | <b>JR</b>     | <b>Rosario</b>       |
| Nancy          | Murphy         | Todd           | Parkinson        | Steven        | Rose                 |
| Bill           | Murray         | John           | Parks            | Matthew       | Ross                 |
| Ann            | Murray         | Meg            | Parrish          | Shane         | Rumsey               |
| Milt           | Myser          | Jim            | Parrish          | Mike          | Sakamoto             |
| Tony           | Nahacky        | Nathan         | Pascual          | <b>Dale</b>   | <b>Sarver</b>        |
| <b>Mike</b>    | <b>Nakachi</b> | Jim            | Passon           | Sandra        | Scarr                |
| <b>Teresa</b>  | <b>Nakama</b>  | Mike           | Patterson        | Jay           | Scharf               |
| Kyle           | Narimasu       | <b>Walter</b>  | <b>Paulo</b>     | Brian         | Schatz               |
| Goodale        | Nathaniel      | Jerome         | Paulo            | Christiane    | Schmidt              |
| Danny          | Navarro        | Neil           | Paulsen          | John          | Scott                |
| <b>Cynthia</b> | <b>Nazara</b>  | Pat            | Pearlman         | Lydia         | Sease                |
| Dickie         | Nelson         | Sara           | Peck             | Janna         | Shackeroff           |
| Mike           | Nelson         | Colby          | Pedefferri       | Phoebe        | Shackeroff           |
| Esther         | Nelson         | Erica          | Perez            | <b>Robert</b> | <b>Shallenberger</b> |
| Kim            | New            | Judy           | Perino           | Linda         | Shea Flanders        |
| Robin          | Newbold        | Doug           | Perrine          | Scott         | Shero-Amba           |
| Vicky          | Newman         | Patty          | Peters           | Ilma          | Shim                 |
| Gerald         | Newman         | Dan            | Polhemus         | Tom           | Shockley             |
| Jason          | Ng             | Amber          | Pollard          | Dave          | Shoup                |
| Kamaile        | Nichols        | Gary           | Post             | Sandra        | Siegel               |
| Casuga         | Nicko          | Leroy          | Prange           | Jay           | Skeldrake            |
| Michael        | Niereanu       | Linda          | Preskitt         | Andy          | Smith                |
| Kihe Sali      | Nihu           | <b>Richard</b> | <b>Prohoroff</b> | Paulette      | Smith                |
| Garrett        | Nishihara      | Ginger         | Pua              | Kim           | Smith                |
| Robert         | Nishimoto      | Shelby         | Pudwell          | Rhine         | Smith                |
| Alain          | O'Connor       | Puaita         | Pulotu           | Adam          | Snodgrass            |
| Arvid          | Ohe            | Noelani        | Puniwai          | Dave          | Sommers              |
| Rick           | Oliver         | Chris          | Ragura           | Richard       | Spiegel              |
| Delisse        | Ortiz          | Jack           | Randall          | Alfred        | Spinney              |
| Kara           | Osada-D'Avella | Bolo           | Ray              | <b>Hannah</b> | <b>Springer</b>      |
| Jan            | Ostman-Lind    | Taran          | Reese            | Pat           | Sistolfa             |
| <b>Frank</b>   | <b>Ota Jr.</b> | Clarence       | Rengulbai        | Kristen       | St. Pierre           |
| <b>Bob</b>     | <b>Owens</b>   | Lance          | Rengulbai        | Kosta         | Stamoulis            |
| Tina           | <b>Owens</b>   | Shiryl         | Richards         | John          | Stevens              |
| Sonny          | Paalua         | <b>William</b> | <b>Rickards</b>  | Shandon       | Stevens              |
| Vicki          | Pacatang       | Dana           | Riddle           | 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  
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 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  
 Kanako  
 Rene  
 Bill  
 Stephanie  
 Deron  
 Justin  
 Ginger  
 Bill  
 Becky  
 Bill  
 Brian  
 Sherman  
**Paul**  
 Corinne  
 Richard  
 Porter

Tolzmann  
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 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  
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**Wiggins**  
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**Yamanaka**  
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