

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

December 13, 2024

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

**Request for Final Approval to Amend Hawaii Administrative Rules Title 13,
Chapter 60.4, "West Hawai'i Regional Fishery Management Area, Hawai'i"**

Submitted for your consideration and approval is a request to amend Hawaii Administrative Rules (HAR) Title 13, Chapter 60.4, "West Hawai'i Regional Fishery Management Area, Hawai'i" ("WHRFMA") to extend the current moratorium on the take of pāku'iku'i ("Achilles tang") for an additional two (2) years until December 18, 2026, and to make other non-substantive amendments to the Chapter to ensure uniformity throughout the Hawaii Administrative Rules.

PURPOSE

The purpose of this rulemaking action is to:

- 1) Extend for an additional two years (through December 18, 2026) the current moratorium on the take of any pāku'iku'i ("Achilles tang") put into place on December 19, 2022, through the Department of Land and Natural Resources' (Department's) adaptive management rulemaking authority, which is set to sunset after December 18, 2024;
- 2) Add the definition of "Pāku'iku'i" to the list of definitions in HAR §13-60.4-3, "Definitions" section.
- 3) Make other non-substantive amendments to the chapter, such as the addition of Miloli'i Community-Based Subsistence Fishing Area, Hawai'i (HAR chapter 13-60.10) to the list of designated areas in subsection (c) of HAR §13-60.4-2, "Geographical Jurisdiction of Chapter Provisions";

The proposed rules are described in detail in the Division of Aquatic Resources' (DAR's) September 13, 2024,¹ submittal to the Board of Land and Natural Resources (Board) (Item F-1), available on the Board's website.²

¹ This BLNR agenda item was originally scheduled to be presented at the September 13, 2024, Board of Land and Natural Resources meeting, but due to a postponement of this meeting, this item was instead presented at the September 27, 2024, Board of Land and Natural Resources meeting.

² <https://dlnr.hawaii.gov/wp-content/uploads/2024/09/F-1-1.pdf>

BACKGROUND

Pāku'iku'i are targeted as a food fish, particularly in West Hawai'i, with the majority of take occurring via spearfishing. While pāku'iku'i often do not make up large portions of spear fishers' overall catch, some fishers do target them specifically, preferring their taste over other surgeonfish. Pāku'iku'i are especially important for certain communities in West Hawai'i where pāku'iku'i are highly sought after. Pāku'iku'i have also been a key component of the commercial aquarium fishery over the past several decades. In 2017, just prior to the closure of the West Hawai'i aquarium fishery, pāku'iku'i was the fourth most collected species, though they represented only 1.7% of the total catch as their numbers were dwarfed by take of lau'ipala (Yellow Tang) and kole (Goldring Surgeonfish) within the West Hawai'i aquarium fishery.

In the submittal for Agenda Item F-1 on the December 9, 2022, Board of Land and Natural Resources (Board) meeting agenda,³ where DAR requested the Board approve adoption of adaptive management rules for pāku'iku'i in the WHRFMA, DAR presented results of underwater visual surveys (UVS) that suggested a long-term decline in pāku'iku'i populations in West Hawai'i. The Board ultimately adopted the adaptive management rules as chapter 13-60.41, HAR, "West Hawai'i Pāku'iku'i Replenishment."

Leading up to and immediately following the adoption of the adaptive management rule in December of 2022, the Division sought to work with several research partners in order to fill gaps in our understanding the life history and status of pāku'iku'i. Staff identified several key research targets that could be the focus of this work over the following two years. These included conducting analyses on their age and growth, reproductive biology and seasonality, drivers of fish presence, and documentation of both historic and current trends both within the Miloli'i Community-Based Subsistence Fishing Area (CBSFA) as well as West Hawai'i at large. The intent of this work was to help identify viable options for current protection and long-term management of pāku'iku'i. To facilitate these goals, DAR worked with researchers from the US Geological Survey's Hawai'i Cooperative Fishery Research Unit at the University of Hawai'i at Hilo, the Hawai'i Institute of Marine Biology, Arizona State University, and the Miloli'i community monitoring team.

On April 23, 2024, DAR and Kalanihale, a non-profit associated with the Miloli'i CBSFA, held a Pāku'iku'i Symposium to share the findings from this broad research group with the public. It also provided an opportunity to listen to the broader West Hawai'i public who shared their observations and understanding of pāku'iku'i. Since then, DAR has continued to gather input from the West Hawai'i community to further document their knowledge of the species and its status through meetings with community networks, individual talk story sessions, and public scoping events. The trends observed in this data exploration were sufficient to raise DAR's level of concern for the status of pāku'iku'i in West Hawai'i. That coupled with community kilo (observations), kupuna testimony, and broad public sentiment of observed decline indicated the need for a precautionary approach to managing this species.

³ <https://dlnr.hawaii.gov/wp-content/uploads/2022/12/F-1-1.pdf>

The research conducted by our various partners has also helped to shed light on which management approaches may be the most appropriate for this species in West Hawai'i. Given that pāku'iku'i rapidly grow to their maximum size and reach sexual maturity at an early age, DAR felt that size restrictions and slot limits would be of limited utility while being more burdensome on fishers. Research into the seasonal cycles of pāku'iku'i spawning did not indicate a clear spawning season. While longer-term data and additional information from fishers could reveal a clearer seasonality, at this time DAR does not have enough information to support a West Hawai'i wide seasonal closure. Smaller area-based restrictions could be an option in the future. However, this requires a long process of collaboration with individual communities similar to what DAR has done as part of the Miloli'i CBSFA process.

Taking into consideration the best available data and our available management tools, DAR came up with a shortlist of three potential management tools:

- 1) A three-year extension of the moratorium;
- 2) A fisher registration program that would include catch data reporting; and
- 3) A bag limit of four pāku'iku'i per person per day.

DAR then hosted two public scoping events in West Hawai'i in June and August of 2024 to solicit feedback from the West Hawai'i community on the three preliminary management options. Based on the feedback from the community during the two public scoping sessions and subsequent internal discussions, DAR amended the proposal to the following management tools and presented these to the Board for approval to hold public hearing(s) on September 13, 2024 (the Board meeting was ultimately postponed until September 27, 2024):

- 1) A two-year extension of the moratorium;
- 2) A ten-year fisher registration pilot program, beginning on December 19, 2026, that would include catch data reporting;
- 3) A bag limit of four pāku'iku'i per person per day during the pilot program period; and
- 4) Other non-substantive amendments to the chapter, such as the addition of Miloli'i Community-Based Subsistence Fishing Area, Hawai'i (HAR chapter 13-60.10) to the list of designated areas in subsection (c) of HAR § 13-60.4-2, "Geographical Jurisdiction of Chapter Provisions" and the addition of "Pāku'iku'i" to the HAR § 13-60.4-2 "Definitions" section.

After DAR's presentation to the Board at the September 27, 2024, BLNR meeting, and after listening to testimony from stakeholders at the BLNR meeting, the Board decided to modify the proposed rules to change the proposed bag limit from four (4) to zero (0) pāku'iku'i per person per day. The Board directed DAR to hold a public hearing to elicit stakeholder feedback on a pāku'iku'i bag limit using a bag limit of zero as a starting point to facilitate further discussion.

DAR then worked with the Department of the Attorney General to revise the draft rules to conform with the Board's directive. The Attorney General interpreted the Board's

directive of setting the pāku'iku'i bag limit to zero (0) during the ten-year fisher registration program, combined with the extension of the current moratorium through December 18, 2026, to amount to a twelve (12) year moratorium on the taking of pāku'iku'i. Based on the Attorney General's guidance, DAR modified the language in the draft rule to present the proposal as a simple twelve (12) year moratorium on the take of pāku'iku'i. The language regarding a proposed bag limit, fisher registration, and mandatory reporting requirement were omitted from the revised draft rules, but DAR specifically requested feedback on a potential pāku'iku'i bag limit and potential registration/reporting requirements from stakeholders at public hearing.

On November 13, 2024, DAR conducted a statewide public hearing on these proposed rule amendments in person at the West Hawaii Civic Center in Kailua-Kona, Hawai'i Island, and virtually on Zoom. The public hearing minutes are attached as **Exhibit 1**. Notice of the public hearing was published in the October 13, 2024, Sunday issue of the Honolulu Star-Advertiser. DAR also published notice of the public hearing on the Draft Rules and Public Notices page of the DAR website. DAR accepted written testimony on the proposed rules from October 13, 2024, to November 20, 2024.

DAR received a total of 18 testimonies (6 oral and 12 written) from 18 individuals. Testimony was mixed, but the majority of testifiers indicated resistance to the proposed pāku'iku'i fisher registration program and the twelve (12) year moratorium on the take of pāku'iku'i. However, 6 of the 18 testimonies (5 written and 1 oral) indicated support for DAR's originally proposed two-year extension of the current pāku'iku'i moratorium to give DAR additional time to gather data and develop a more robust, data-driven management plan. The public hearing was live broadcast to DAR's YouTube channel⁴ where a video recording of the hearing is available for review.⁵ Additionally, copies of the written testimonies received and a summary of oral testimony has been compiled and attached as **Exhibit 2**.

CHANGES TO PROPOSED RULES

Due to the majority of testimony indicating opposition to the twelve (12) year pāku'iku'i moratorium and the pāku'iku'i fisher registration and reporting requirement, DAR has removed the pāku'iku'i fisher registration and reporting requirement from the proposed rules. DAR has removed any reference to "bag limits" for pāku'iku'i as well. Although the Board directed DAR to solicit feedback on a potential bag limit for pāku'iku'i from the public, DAR did not receive enough testimony on a suggested bag limit to inform its decision-making. While the majority of testimony indicated a preference for DAR to collect more data on the current status of pāku'iku'i before embarking on a long-term management plan for pāku'iku'i in West Hawaii, 6 of the 18 testifiers directly mentioned that they supported an extension of the current moratorium on the take of pāku'iku'i for an additional two years so that DAR can collect more data and better develop management options for the species going forward. Therefore, DAR is now only recommending the extension of the moratorium on the take of pāku'iku'i until December

⁴ <https://bit.ly/DARYouTubeChannel>

⁵ <https://www.youtube.com/watch?v=BGPp6cbWYMo>

18, 2026 to give DAR more time to further study and develop long-term management of pāku'iku'i, along with the other non-substantive amendments mentioned previously, such as the addition of Miloli'i Community-Based Subsistence Fishing Area, Hawai'i (HAR chapter 13-60.10) to the list of designated areas in subsection (c) of HAR §13-60.4-2, "Geographical Jurisdiction of Chapter Provisions," and the addition of the definition of "Pāku'iku'i" to the list of definitions in HAR §13-60.4-3, "Definitions" section.

KA PA'AKAI ANALYSIS

On September 11, 2000, the Hawaii Supreme Court (Court) ruled in *Ka Pa'akai O Ka 'Āina vs. Land Use Commission, State of Hawai'i*⁶ (Ka Pa'akai) that State and government agencies have an obligation to "preserve and protect traditional and customary Native Hawaiian rights" and that an appropriate analytical framework was needed to assess whether these rights were unduly violated.⁷ The Court developed a three-pronged test, dubbed the "Ka Pa'akai Analysis," which is triggered when government agencies consider proposed uses of land and water resources that may impact the exercise of Native Hawaiian traditional and customary rights.

Although the Court stated that an agency's constitutional obligation to reasonably protect Native Hawaiian traditional and customary practices was widely applicable to all agency actions, the Court did not opine as to whether the Ka Pa'akai Analysis could or should be applied outside of contested case hearings. Then, on March 15, 2023, the Court ruled in *Flores-Case 'Ohana v. University of Hawai'i*⁸ (FCO) that the obligation described in Ka Pa'akai not only applied to contested case hearings, but also to rulemaking actions.⁹ In doing so, the Court provided a modified Ka Pa'akai Analysis to be used in rulemaking actions. The analysis outlined in FCO requires agencies to consider:

- 1) The identity and scope of Native Hawaiian traditional and customary rights affected by the rule, if any;
- 2) The extent to which Native Hawaiian traditional and customary rights will be affected or impaired by the rule; and
- 3) Whether the proposed rules reasonably protect Native Hawaiian traditional and customary rights, if they are found to exist, as balanced with the State's own regulatory right.

⁶ [Ka Pa'akai o ka 'Āina v. Land Use Comm'n \(Ka Pa'akai\), 94 Hawai'i 31, 7 p.3d 1068 \(2000\)](#) (Ka Pa'akai)

⁷ "Following up on PASH, we recognized in Ka Pa'akai that in contested case hearings, the State and its agencies have an 'affirmative duty ... to preserve and protect traditional and customary native Hawaiian rights' and provided a framework 'to effectuate the State's obligation to protect native Hawaiian customary and traditional practices while reasonably accommodating competing private interests.'" [Flores-Case 'Ohana v. University of Hawai'i, 153 hawaii'i 76, at 83 \(2023\)](#) (quoting Ka Pa'akai at 45-47, 1082-1084)

⁸ [Flores-Case 'Ohana v. University of Hawai'i, 153 hawaii'i 76, \(2023\)](#)

⁹ "In sum, the Ka Pa'akai framework applies to administrative rulemaking in addition to contested case hearings. Requiring the State and its agencies to consider Native Hawaiian traditional and customary rights in these contexts effectuate[s] the State's obligation to protect native Hawaiian customary and traditional practices[.]" [Flores-Case 'Ohana v. University of Hawai'i, 153 hawaii'i 76, at 84 \(2023\)](#)

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

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

The proposed amendments to HAR 13-60.4 would make it unlawful to take pāku'iku'i until after December 18, 2026. Although pāku'iku'i is not considered a food fish throughout much of the Hawaiian archipelago, pāku'iku'i is nonetheless an important subsistence food fish for many residents of the western coast of Hawaii Island. The proposed rules would affect Native Hawaiian subsistence fishing rights and cultural practices because the rules would restrict subsistence fishers' ability to gather pāku'iku'i for food for themselves and their communities. On the other hand, these rules are being proposed based on reports of the decline of pāku'iku'i from West Hawaii waters, and these reports have come from West Hawaii community members. Therefore, the purpose of these proposed rules is to take a precautionary approach to protecting pāku'iku'i populations so that traditional and customary fishing practices that involve pāku'iku'i are sustainable for future generations of Native Hawaiian fishers.

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

During the public hearing process, DAR received testimony that indicated the proposed rules, especially the twelve (12) year moratorium, would threaten Native Hawaiian subsistence gathering rights and negatively impact Native Hawaiians' ability to feed their families. Some individuals identified themselves as Native Hawaiian fishers and provided testimony stating that they did not think a moratorium in any form was appropriate, while others, although not liking the idea of a moratorium, acknowledged that if pāku'iku'i populations are declining, some action is needed. Based on stakeholder feedback, DAR amended the language in its proposal to extend the current moratorium on the take of pāku'iku'i for an additional two (2) years instead of an additional twelve (12) years, as originally proposed.

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

As mentioned in the first prong of the analysis, the proposed rules are meant to serve as a protective or precautionary measure to promote the sustainability of pāku'iku'i populations which, in turn, should strengthen traditional and customary fishing practices in the long-term. The Hawaii Constitution protects Native Hawaiian gathering rights, subject to the right of the State to regulate. Although the proposed rules will likely impact Native Hawaiian subsistence and gathering rights, the State has a Constitutional obligation and right to establish regulations to conserve the State's living marine resources. Because of the temporary nature of the proposed two (2) year pāku'iku'i

moratorium, this reflects DAR's intention that the moratorium not be made permanent but instead shows that DAR is taking a precautionary approach so that pāku'iku'i populations can recover and Native Hawaiians can continue to gather these resources sustainably into the future. The two (2) year nature of the moratorium gives DAR more time to further study and develop a long-term management plan for the protection of the species.

RECOMMENDATIONS:

"That the Board give final approval to amend Hawaii Administrative Rules chapter 13-60.4, "West Hawai'i Regional Fishery Management Area, Hawai'i," as set forth in **Exhibit 3** attached hereto."

Respectfully submitted,



BRIAN J. NEILSON, Administrator
Division of Aquatic Resources

APPROVED FOR SUBMITTAL



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

Attachments:

- Exhibit 1 – Public Hearing Minutes
- Exhibit 2 – Compiled Written Testimony
- Exhibit 3 – Proposed HAR Chapter 13-60.4 (Ramseyer format)

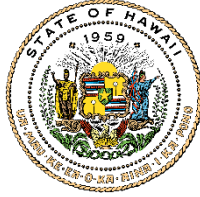
EXHIBIT 1

WEST HAWAI'I REGIONAL FISHERY MANAGEMENT AREA, HAWAI'I HAWAII ADMINISTRATIVE RULES 13-60.4

PUBLIC HEARING MINUTES

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

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



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

RYAN K.P. KANAKA'OLE
FIRST DEPUTY

CIARA W.K. KAHAHANE
DEPUTY DIRECTOR - WATER

BRIAN J. NEILSON, ADMINISTRATOR
DIVISION OF AQUATIC RESOURCES

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

PUBLIC HEARING MINUTES

Amendment of Hawaii Administrative Rules Chapter 13-60.4, "West Hawai'i Regional Fishery Management Area, Hawai'i"

Hearing Date: November 13, 2024, 5:30 p.m.
Hearing Type: Hybrid Zoom with In-Person Host Site
Host Site Location: West Hawaii Civic Center, Community Meeting Hale
74-5044 Ane Keohokālole Highway
Kailua-Kona, Hawaii 96740

The full recording of the public hearing is available on the DAR YouTube Channel at:
<https://www.youtube.com/watch?v=BGPp6cbWYMo>

INTRODUCTION

Opening Remarks

Introductions
Call to order – **5:36 p.m.**
Brief description of the proposal
Availability of draft rules for review
How to watch YouTube live stream

Purpose, Approval, and Notice

Purpose of the public hearing
Approval to conduct this public hearing was obtained from the Board of Land and Natural Resources at their board meeting on September 27, 2024.
The Legal Notice of this public hearing was published in the October 13, 2024 Sunday issue of the Honolulu Star Advertiser. Additionally, notice of this public hearing was posted on the Draft Rules and Public Notices page of the DAR website (where digital copies of the draft rules in Ramseyer format can be found) as well as posted on the Announcements page of the DAR website.

Hearing Procedures

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

POWERPOINT PRESENTATION

Proposed Amendment of Hawaii Administrative Rules Chapter 13-60.4, “West Hawai‘i Regional Fishery Management Area, Hawai‘i”

Brief description and summary of the proposed amendment of HAR chapter 13-60.4

TESTIMONIES

Collection of Oral/Video Testimonies

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

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

Collection of testimony in **Kailua-Kona (West Hawaii Civic Center In-Person Site)** [6 testimonies collected]

Collection of testimony on **Zoom** [2 testimonies collected]

Last call for all others wishing to provide testimony who were not called or for those wishing to provide additional testimony [3 additional in-person testimonies collected – these were testifiers who already presented testimony but wanted to add more]

*Summary of in-person testimony is included on the following page

Written Testimony

Announcement of deadline to provide written testimony: **Wednesday, November 20, 2024**

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

NEXT STEPS AND ADJOURNMENT

Extended Timeline

Outline of the projected timeline of the rules

Last call for questions

Adjournment – 6:18 p.m.

11/13/2024 Pakuikui Hearing: In Person Attendees & Zoom Testimony:

*Please note that there may be errors regarding the spelling of testifier's names. Also note that this is a summary of oral testimony. For a full transcript of testifiers' comments, please see the YouTube recording of this public hearing at: <https://www.youtube.com/watch?v=BGPP6cbWYMo>

1. Hali'a Locke-n - NA
2. Taha'a – NA
3. Alex Gerken (fisher from the east side)
 - Doesn't know Kona that well, but talked to lots of fishers that fish for pāku'iku'i
 - He thinks data has to drive the results of what bag limit we decide; If it's 0, if it's 10, the decision has to be supported by data
 - There are other species in worse condition, could this lead to the closure of other species that are being targeted as well?
4. William Maihulihuli (community member from Milolii)
 - Request more public scoping meetings so more community members can be here
 - 10 years is hard to comprehend
 - Not much information on pāku'iku'i; Milolii collects data and more collaboration is needed
 - More outreach with Milolii and others around the island is needed, specifically on north and east sides of the island
5. Laila Kaupu (community member from Milolii)
 - Milolii CBSFA marine monitoring
 - Want to support extended 10 year, but it's probably not the best way to go
 - More info is needed to understand this species
 - Wants to support 2-year extended moratorium
 - Wants collaboration to understand more
 - Impact is to west Hawaii and where it's found, so...
 - Outreach could have been louder – not many community members here so there is more communication needed with community members
 - Zero (0) bag limit is not pono
 - Leave registration voluntary
 - When did registration become a requirement, especially for kanaka? It's a cultural practice to take this species
 - Highly doubt fishers will give info on what they catch
6. Steve Kaiser (fisher from Hawi)
 - 1995 there was a lot of pāku'iku'i and in 1996 it all disappeared
 - His conclusion is data from 1995 is wrong and he doesn't believe it's low, there are still fish out there
 - He never eats pāku'iku'i. It's a west Hawaii thing. It's a local issue
 - We don't need laws to take care of the ohana
 - People didn't even know that pāku'iku'i was closed for there 2 years
 - The regulations should be based on science
 - The state should make it better if it is low

- 10 year closure is wrong
 - Milolii CBSFA is a mish mash of rules and DOCARE cannot even tell you what the rules are
 - Adding one more layer to West Hawaii restrictions is undesirable
 - Have rules that people can understand
 - West Hawaii is a mess with so many rules and more to come
 - He is supportive of the proposed rules
 - It's become a commercial business, non profits are making money
 - Must look at West Hawaii as one complete thing and not break it up
7. Jonah Marks (4th generation fisher, grew up fishing and diving in Kona and Hilo)
- Looks at the room , says he's the youngest person that shows up. People in this room know info from before when he was around
 - 10 year ban is not for these people. People here will live off the ocean for next 10 years and will rely on his generation for the fish that they eat
 - He's seen many people take pakuikui over last 2 years when there was supposed to be a moratorium.
 - Will people listen? Will it be enforced? If 10 year closure does happen
 - He has called DLNR on illegal thrownets and DLNR said they would see if someone can come down
 - What's the point if we aren't going to get the support in the first place & no one is going to obey the rules
 - Where is data that supports a complete ban?
 - This will be the third time it's considered changed
 - People say there is little to no data on pāku'iku'i, so how is this proposal supported?
 - It's like the bottom fishing closure – shut it down until we figure it out
 - Turns out data was wrong and it led to the community losing trust
 - As for bag limits, if there is data to support bag limits
 - 6 bag limit per person, we'll support it
 - If data says to bring it down and it actually makes sense, we will support it
 - Reservations towards registration
 - We already have registrations we have to pay for
 - Are we going to need registration for every fish we catch?
 - Why is registration money not coming back to the community?
8. Jason Helyer - NA
9. Damien (last name unclear)
- How did we come to this situation? Why is this fishery so depleted? Why doesn't DAR know why? Visitors are damaging the population. Hawaiians harvest they way they always have.
 - Other stakeholders, aquarium fishers, subsistence fishers
 - Micronesians eat lots of fish
 - DAR had not done a good job of keeping them aware of the rules or working with local culture to understand boundaries
 - Not allowing us to harvest is not pono

- Regulate stakeholders that do the most damage

Zoom testimonies:

1. Addison Davis - NA
2. Lillian Tuttle - NA
3. Mary Donovan - NA
4. Amber Datta - NA
5. Sheri Salmon - NA
6. Korynn Grenert - NA
7. Lauren Nakoia - NA
8. Kaimi Kaupiko
 - a. Supports continuation of the ban for pakuikui take
9. Titus Salter
 - a. What were the proposed rules?
 - b. He's in favor of additional management
 - c. A bag limit that would allow community to contribute to data collection
 - d. Bag limit of 0 would disconnect the community from the regulators
 - e. He is in favor of bag limit after initial 2 year moratorium but did not propose a number

EXHIBIT 2

**WEST HAWAI'I REGIONAL FISHERY
MANAGEMENT AREA, HAWAI'I
HAWAII ADMINISTRATIVE RULES 13-60.4**

WRITTEN TESTIMONY

From: Aaron Iha <aaroniha3@gmail.com>
Sent: Saturday, November 2, 2024 7:30 PM
To: DLNR.AR.Rulemaking <dar.rulemaking@hawaii.gov>
Subject: [EXTERNAL] Pakaikui reporting

Hi I figured I write in with my two cents on this proposal. I think it would be much more beneficial to have reporting and registration for other more popular fish around the islands. Pakakui are not a fish that many divers target in large numbers and I personally don't see the point or benefit this will have. It seems to me that if we had reporting on more popular fish such as ulua or maybe uhus that would be much more beneficial. Many fishermen and divers that I know often feel like dlNr is wasting their time and efforts on things that don't really matter and this to me feels like another one of those things. I personally would be very supportive of registration and reporting on the catch of uluas because then the state could get a better idea of how many are being caught and hopefully it would lead to stricter regulations. If there ever is discussion on more regulations for uluas I would be very supportive of slot limits being implemented to protect the big breeders.

Thanks,
Aaron

Department of Land and Natural Resources
Division of Aquatic Resources
1151 Punchbowl Street, Room 330
Honolulu, HI 96813

Re: Relating to the Proposed Amendment to Chapter 13-60.4 “West Hawai‘i Regional Fishery Management Area, Hawai‘i”

Aloha Chair Chang and members of the Board of Land and Natural Resources,

My name is Abigail Mawae, and I am a current student at the University of Hawai‘i, William S. Richardson School of Law. I am writing to oppose the proposed amendments to the Department of Land and Natural Resources, Division of Aquatic Resources, Chapter 13-60.4, West Hawai‘i Regional Fishery Management Area, Hawai‘i.

As a Kānaka, mālama ‘āina means the protection and care for our land and resources, including the species that provide subsistence for our people. But the proposed moratorium on Pāku‘iku‘i establishing a zero-bag limit for 10 years unfairly burdens kānaka who fish for Pāku‘iku‘i as a source of food. The DLNR and DAR fail to provide any data showing how the current moratorium protects the Pāku‘iku‘i population. The DAR indicates that the Pāku‘iku‘i population declined between 1999 and 2021 in specific locations but does not consider this effect as an outcome of overfishing by the aquarium trade—which takes large numbers of Pāku‘iku‘i before they can reproduce, significantly depleting their numbers. Further, no data indicates that the current moratorium from 2021 has made any significant impact on increasing the Pāku‘iku‘i population. Therefore, the current extension of the ban is unjustified without quantifiable data demonstrating its usefulness.

This new rule, while trying to restore and preserve the population, unfairly burdens kānaka who fish Pāku‘iku‘i for subsistence purposes and punishes them for the acts of aquarium harvesters. The history of Hawai‘i shows that repeatedly, Kānaka unjustly suffered from the actions of others, and this regulation—if passed—continues that history. The conservation of fish resources and the need for a more sustainable future where kānaka can live off the ‘āina will always be competition concerns. Still, without solid data that demonstrates the necessity of this regulation and an explanation for the number of years the moratorium is being extended, this regulation is unwarranted. To continue forward with these regulations, many fishers have testified how the rule

unfairly targets kānaka subsistence fishers and impedes their exercise of traditional and customary practices. Because of this, I oppose the Proposed Amendment to Chapter 13-60.4, West Hawai'i Regional Fishery Management Area, Hawai'i.

Mahalo nui for your time,

Abigail Mawae

Addison Davis

November 20th, 2024

Re: Proposed amendment of Hawaii Administrative Rules (HAR) chapter 13-60.4

To whom it may concern,

I am writing to express my thoughts regarding the proposed amendment of Hawaii Administrative Rules (HAR) chapter 13-60.4. I am a graduate student at the University of Hawai'i and have a background in Natural Resources and Environmental Studies. While I generally support enhancing protections for Pāku'iku'i, I believe that the agency should simultaneously consider how to allow Kānaka Maoli to sustainably use traditional fishing resources.

The first proposal would extend the moratorium regarding Pāku'iku'i for two additional years. After attending the public hearing on November 13th it appears that there is a lack of public information regarding the conservation status of Pāku'iku'i. I believe that the two year moratorium should be extended to provide the agency with more time to research and understand the health of the Pāku'iku'i, and communicate that information to the public stakeholders. I did appreciate the agency's efforts at holding a Pāku'iku'i symposium earlier this year to incorporate community knowledge into the rulemaking, but I believe it also highlighted the lack of information regarding the species. I support the extension of the two year moratorium, if the agency can use the time effectively to better understand how to appropriately manage Pāku'iku'i.

The second proposal would require mandatory registration of Pāku'iku'i fisherman, and would set a bag limit of 0 Pāku'iku'i through the year 2036. This aspect of the proposal received significant criticism from fishermen in West Hawai'i, and I express my support for their concerns. Foremost, the purpose of a public hearing is to provide the public with the opportunity to provide oral or written testimony. Stakeholders from the fishing community expressed how the agency needs to do a better job at informing the public of the proposed amendments, so that their voices have the opportunity to be heard. The public hearing had a small number of community members in attendance, and I worry that amending HAR chapter 13-60.4 without stakeholder participation could result in agency rulemaking that unfairly impacts local communities.

Members at the public hearing expressed frustration for how this amendment fits into the complex web of DAR regulations, and I support their concerns. The existing regulations and fishing boundaries are confusing for fisherman to understand and follow, and there is a lack of agency enforcement. I believe that the agency should extend the two year moratorium to better communicate the existing regulations to the public and thoroughly explain how these amendments interact with existing fishing regulations. There are already fishing license requirements established by the agency, and I

believe they should better articulate how the amended registration requirement fits into the existing obligations of fishermans to obtain licenses and permits.

A bag limit of 0 through the year 2036 would prohibit Kānaka Maoli from accessing traditional fishing resources for a substantial period of time. I believe that their interests could be balanced with the need to conserve and prevent exploitation from the aquarium industry. While I support the stringent regulations preventing commercial exploitation of the species, this should be done in a way that can allow local fishermen who have used fishing resources for millenia to continue their tradition. I believe that the agency should wait to establish a bag limit for Pāku'iku'i once they collect more data regarding the conservation status of the fish, and communicate the needs of the species to the public. I believe that local fishermen share conservation goals in maintaining the species for future generations, but their voice must be heard in order for the regulations to be respected and effective.

With Gratitude,
Addison Davis

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

Aloha Board of Land and Natural Resources, DAR, and Committee Members,

My name is Alexys, and I am submitting this written testimony to express my opposition to the proposed passage of Title 13, Chapter 60.4-4, providing that no person shall “take or possess any pāku‘iku‘i before December 17, 2036”. I deeply value the preservation of Hawai‘i’s natural resources and respect the efforts of the DAR to ensure the long-term sustainability of the fish. This proposed measure, however, lacks the foundation and community engagement necessary to justify such an extensive ban.

The proposed regulation, at first glance, appears to be a well-intentioned effort to restore pāku‘iku‘i populations to non-threatening levels. While the initial two-year ban implemented by DAR may have been a reasonable starting point, this new proposal for a twelve-year ban feels excessive and lacks a clear evidentiary basis. Without robust and updated research to justify such a lengthy prohibition, the timeline appears arbitrary rather than grounded in sound science. Furthermore, the Board’s proposal to reduce the bag limit from four to zero raises significant concerns. While I do not have a specific recommendation for an appropriate bag limit, it would be far more constructive for DAR to provide transparent data on the current state of pāku‘iku‘i populations and the rationale for a complete ban. This information would be critical to ensuring that the community understands and supports any such measures.

From my research, I read a lot of articles discussing the ban imposed as early as 2022, and have read that some people have seen a decline in pāku‘iku‘i. Articles discuss the “dangerous decline” with nothing further. An article released just two years ago in December 2022 provided that the “DAR is working with coastal communities. . . to better understand pāku‘iku‘i life history traits that will support a more robust understanding of their stocks[,]” but I do not see anywhere new information discussing any progress or findings in that realm. It makes no sense to ban taking per day for an entire decade with no hard statistics demonstrating why.

While data from the DAR and the National Oceanographic and Atmospheric Administration (NOAA) highlighted the decline of the species beginning in the early 2000’s, this information is twenty years old. It seems unfair to punish and impose restrictive measures today, penalizing future generations for circumstances that occurred so long ago, which most had no effect on.

The decline in pāku‘iku‘i populations has been widely discussed, but I have yet to see clear and current data that demonstrates why a twelve-year ban is necessary or how it was determined that this timeframe would be effective. Many of the studies cited reference population declines from as far back as the early 2000s with no updates. The recent two-year ban from 2022 can prove to be helpful if the results from the ban are published... did this two-year ban from 2022 lead to any measurable improvements in population size or health of the fish? After two years of this ban, has there been an increase of pāku‘iku‘i? A decrease? Any data at all? Without this information, it is difficult to support a proposal like this, when a ban is already in place with no data to show.

Furthermore, the proposal overlooks the impact on Native Hawaiian practices and subsistence fishing. Pāku‘iku‘i has long been an important food source for local families. This proposed blanket ban for over a decade could disproportionately affect those who rely on these fish for sustenance, especially when alternative solutions might achieve similar conservation goals. As mentioned before, I do not have a proposal for what the bag limit should be as I am not as well-informed as those affected community members or even the researchers studying pāku‘iku‘i, but it does not take an expert to realize that a blanket ban is excessive. I am not convinced that the local people who eat pāku‘iku‘i for survival or cultural ties are alone going to deplete an entire fish population.

Another concern I have with this proposal is the lack of public awareness and outreach surrounding this issue. From my research and observation, it appears that many local fishermen were not even aware of the initial two-year ban implemented in December of 2022. If enforcement and education efforts during that period were insufficient, it is likely that this extended ban will face similar challenges.

In conclusion, I deeply appreciate the DAR’s commitment to protecting our ecosystems, and I support efforts to preserve species like pāku‘iku‘i. However, I believe this proposed regulation, as it stands, requires further refinement to balance conservation goals with the needs and realities of our local communities. I urge the DAR to provide updated data, consider more adaptive management strategies, and prioritize meaningful engagement with those who will be most affected by these policies.

Thank you for taking the time to consider my testimony and for providing a platform for public input on this important issue. I am grateful for the opportunity to share my concerns and hope that they contribute to a more thoughtful approach to safeguarding our natural resources. This is a great step and wonderful outreach to hear from people most affected.

Mahalo nui loa,
Alexys Delgado

November 17, 2024

TO: David Sakoda, Fisheries Program Manager
Division of Aquatic Resources, Department of Land and Natural Resources

SUBJECT: Written Testimony for the Proposed Amendment of Hawaii Administrative Rules Chapter 13-60.4, "West Hawai'i Regional Fishery Management Area, Hawai'i"

My name is David Shinsato and I am providing written testimony regarding the proposed amendment to the Hawaii Administrative Rules Chapter 13-60.4. Specifically, **I am providing testimony regarding the proposed amendment 13-50.4-4(7) regarding the extension of the restriction on taking or possessing Pāku'iku'i until December 17, 2036.** I have no issue with the term "Pāku'iku'i" being added to the Definitions section of the Chapter or the addition of the Miloli'i community-based subsistence fishing area to the list of regional fishery management areas.

Although I fully support the intent of the proposal to protect and preserve the Pāku'iku'i, I had concerns with (1) the proposal to place restrictions for ten years after the proposed extended moratorium, and (2) the practical enforceability of bag limits and related registration and reporting requirements.

(1) The proposal to restrict the taking and possessing of Pāku'iku'i for ten years after the extended no-take moratorium sunsets in December 2026 seems excessive.

The current moratorium put into place on December 19, 2022 the DLNR's rulemaking authority allowed for an initial two-year moratorium with the option for the BLNR to extend for up to one year at a time. Just two years ago the DLNR deemed it a year-by-year issue. To propose then a further ten-year period to restrict the taking and possessing of the fish seems to be an excessive extension. Although it was mentioned that DAR was interested in gathering more data during this period, the ten-year extension appears to the lay onlooker to be just an arbitrary number. If there is data to argue for the ten-year period, DAR should make it known to the public especially if the goal is to gain public support.

(2) The proposal to set bag limits per person per day, in addition to registration and reporting requirements, without a concrete plan for enforcement is also concerning.

The specific call for testimony for setting bag limits during the proposed ten-year period brings to question the mechanisms of enforcement, which many of the oral testifiers at the public hearing brought up. Even if the rules are put into place, if it is not enforceable, it will only be punishing the law-abiding citizens who are aware of and go out of their way to follow the rules. Furthermore, with the heightened obligations arising from the registration terms and conditions and monthly reporting requirement, one can only imagine that would be more reason for noncompliance, whether by ignorance or intention. Again, I wholeheartedly agree with the intent for these proposals, but the heightened restrictions, with the complexities of the process, seem to be only creating a barrier for those actively keeping up with the rules, and would most likely not deter those who are not.

I am grateful that DAR is actively concerning itself with specific species of fish that may need protection, but I believe that providing more information and explanation as to the reasoning for proposed rules and amendments in addition to proposals of enforcement plans, would greatly increase the propensity for the public to be supportive. Thank you for this opportunity to provide written testimony on this matter.

Respectfully submitted,
David Shinsato

Tuesday, November 19, 2024

Mr. Brian Nielson, Administrator of the Division of Aquatic Resources
Attention: **Mr. David Sakoda**, Fisheries Program Manager
The Department of Land and Natural Resources, State of Hawai‘i
1151 Punchbowl Street, Room 330
Honolulu, Hawai‘i 96813

Aloha Mr. Sakoda,

Thank you kindly for the opportunity to submit testimony on the proposed amendment of Hawai‘i Administrative Rules (HAR) § 13-60.4-2(c), adding the Miloli‘i Community-Based Subsistence Fishing Area to the geographical jurisdiction, § 13-60.4-3, adding the definition of pāku‘iku‘i, and § 13-60.4-4, placing a twelve year (continued) moratorium on the taking or possession of pāku‘iku‘i. For the reasons set out below, I support the proposed amendment to HAR § 13-60.4-3 but oppose the proposed amendment to HAR § 13-60.4-4. I would like to note, though, that my opposition to the latter is based on the need for further explanation and transparency rather than the substance of the amendment itself.

I do not, here, present any views on the proposed amendment of HAR § 13-60.4-2(c). There was limited testimony on this particular amendment, and I do not feel adequately informed to speak on this topic.

To start off, I am not a fisherman nor do I reside on the island of Hawai‘i. I am a graduate student who lives on the island of O‘ahu. The primary basis of the forthcoming testimony is my interest in the amendment process and regulatory approach. I attended the public hearing on Wednesday, November 13, 2024, via the live YouTube broadcast. I turn now to my opposition to the proposed HAR § 13-60.4-4 amendment.

Like many who gave oral testimony at the hearing, I believe that it is critical to answer certain questions before an informed decision about whether or not to support the proposed amendments can be made. This begins at the Division’s presentation to the Board of Land and Natural Resources. Though attendees of the hearing were informed that the Division’s original proposal was a two-year moratorium on the catching of pāku‘iku‘i, followed by a ten-year restriction, or “bag limit,” on how many pāku‘iku‘i can be harvested, the rationale behind the Board’s suggestion to impose a twelve-year moratorium instead was not revealed. Without first understanding the basis for that suggested course change, the proposal cannot be fairly evaluated.

More fundamentally, however, a question was posed and remains as to the data supporting even the two-year moratorium and ten-year restriction, as originally proposed, much less the twelve-year moratorium advised by the Board. Several of those who testified at the November 13, 2024 hearing shared their desire for further transparency and accountability in this decision-making process. Though I appreciate the Division’s diligent efforts to solicit public

comments on these proposals, the public's ability to effectively consider these proposed amendments depends, in large part, on its ability to weigh the reasons behind the amendments, whether that be the Division's initial proposal or the Board's suggested change. Without such insights, the public can offer instinctual reactions to the proposal but will be ill-equipped to meaningfully participate in the process. Meaningful participation relies on the opportunity for the public, and community stakeholders in particular, to engage with the rationale set forth by the Division or the Board and to either affirm or challenge that reasoning. This step, I believe, is necessary before the Division can make a prudent decision.

For these reasons, I oppose the proposed amendment to HAR § 13-60.4-4 due to the lack of explanation underlying this proposal and until such time as such explanations can be made available for the public to meaningfully respond to.

Relatedly, if the proposed amendment prohibiting the taking or possession of pāku'iku'i is not appropriate for resolution at this time (pending a more meaningful engagement with the public), the proposed amendment to HAR § 13-60.4-3 may be rendered pointless. If no further regulation is to be imposed on the taking or possessing of pāku'iku'i, it follows that a definition thereof may be unnecessary. I recognize, however, that pāku'iku'i is regulated in the status quo and, moreover, the mere existence of the proposed moratorium suggests that pāku'iku'i may continue to be an appropriate area of study going forward. Therefore, despite the fact that the HAR § 13-60.4-4 amendment seems premature at this stage, the focus on pāku'iku'i does not, and, thus, adding a definition of pāku'iku'i seems nonetheless valuable. It is for these reasons that I support the proposed amendment to HAR § 13-60.4-3.

Lastly, a larger issue emerged from the testimony offered on November 13, 2024: the practicability of such regulations in the first place. Though many stakeholders who attended the hearing were sympathetic to efforts and desires to sustain pāku'iku'i populations, many felt that such efforts, however admirable in purpose, had failed to provide any substantial impact or benefit. Several attendees lamented the fact that pāku'iku'i, in recent years, has been and is currently subject to a moratorium, which does not seem to be abided by nor enforced. If, indeed, violations are common, unaddressed, and undeterred by the Division or the Department, such regulations, in the first place, lose significance. If this is the case, even the data supporting the proposal becomes irrelevant because the regulation, even if imposed, lacks consequence. Though I cannot, from personal experience, speak to whether or not enforcement is a prevalent problem, specifically with respect to fishing restrictions, I share the sense that the promulgation of regulations, however well-reasoned or prudent, is simply futile and wasteful without compliance and enforcement.

Under such circumstances, if they are true, the prudent path forward is not the promulgation of further regulations. Even if, as may very well be the case here, a regulation is wise and measured, the first step must be to address the enforcement and efficacy of such rules. Whatever energy and resources are being directed towards the consideration and promulgation of

new regulations ought to be diverted to implementing enforcement systems and mechanisms that will breathe new life into not only new regulations but those that have long been there. Only then can efforts be properly focused on new areas of concern and potential regulation; only then will the Division and the Department be empowered to actively protect and improve our State's precious resources.

Thank you again for the opportunity to submit testimony on this proposal, and thank you kindly for your consideration. Please let me know if you have any questions or concerns regarding the foregoing testimony. I can be reached at elijah28@hawaii.edu or at (808) 679-7897.

Thank you kindly,
Elijah Lee

DLNR Hearing on Chapter 13-60.4
West Hawai'i Regional Fishery Management Area, Hawai'i
Hearing: November 13 , 2024 @ 5:30 PM
West Hawaii Civic Center
Opposition for Amendments
Relating to the Division of Aquatic Resources

Aloha David Sakoda, Chris Teague, and DLNR staff,

My name is Emma Palmer and I am a 3L law student at the William S. Richardson School of Law. I am interested in this subject matter because I spend a lot of time in the ocean and I care about the sustainable management of aquatic resources. I do not support the amendments to set the bag limit at 0 until 2036 because it prevents Cultural Practitioners and community members from fishing in a responsible and sustainable manner, and it does not appear to be based on sound rationale.

I am against 1) extending the moratorium on the taking of Pāku'iku'i through 2036. I am for 2) establishing a Pāku'iku'i Fisher Registration requirement with registration Terms and Conditions for any take of Pāku'iku'i, including mandatory Pāku'iku'i catch reporting, through 2036. However, I am against establishing a bag limit of zero (0) Pāku'iku'i per person per day through 2036. Instead, I am for DLNR facilitating further discussion on bag limits.

It is important that agency rationale is available for public review. Without a clearly articulated basis for this amendment, it appears arbitrary and thoughtless. We have seen the dangers and impacts of this kind of decision-making in the past. It may lead to a general disregard for the rule itself and a general disrespect for the integrity of the agency that promulgated the regulation. Where there are not sufficient enforcement mechanisms to ensure compliance, and the agency is largely reliant on the community's goodwill and internal accountability, these issues are compounded.

If this amendment is passed, the best-case scenario is that the Department will have the opportunity to assess the current population of the Pāku'iku'i to inform future policy decisions. I understand that additional data is needed before informed management policies may be effectively written and implemented. I do support the idea of designating fish replenishment areas in vulnerable places on a seasonal or short-term basis. I do support the restricted fishing of this species to promote and enable research and monitoring of the resource and its habitat. However, there is no information in the record (that I have seen) for the community to review the methods with which the population of Pāku'iku'i will be assessed. Will DLNR allocate resources and manpower to consistently monitor the population of Pāku'iku'i throughout the West Hawai'i Regional Fishery Management Area? This seems unlikely.

Additionally, I do not think that the burden for replenishing the population should be on individual fishermen and fisherwomen when the cause of the population may very well be unsustainable development, overdevelopment, increased erosion, or habitat degradation from pollution. As an aside, I do think the collection of this species for aquariums should be prohibited, and that this species should not be sold for profit.

There is a real opportunity here for the community to be empowered as citizen scientists to address the seemingly sparse existing data regarding the population of Pāku‘iku‘i. If bag limits were increased to something above zero, perhaps 2, and reporting requirements were encouraged moving forward, 1) DLNR would have the opportunity to collect data on a species of concern and 2) community members would actively be involved in the stewardship that DLNR intends to encourage. This collaborative approach is most likely to be successful if the community is not completely cut off from fishing Pāku‘iku‘i for an extended period of time.

There is a way to encourage goodwill and meaningful community engagement throughout this process. I think that a collaborative approach would be more successful in the long term and would encourage the meaningful stewardship of marine resources for future generations. I understand that DAR needs tools to enforce compliance with fishing regulations, and community members know their community’s resources best because they are most proximate. Community members are in the water every day, week after week. They are the ones who know which bait to use, what fishing gear to pack, and which areas to check for Pāku‘iku‘i. Although there may be a dearth of data, there is an active community of fishermen and fisherwomen who are likely intimately familiar with the behavioral patterns and ecological needs of this species. DLNR would do well to listen and learn from them throughout this process.

Again, I ask that the Division of Aquatic Resources amend Chapter 13-60.4 to allow the community a bag limit for Pāku‘iku‘i that is higher than 0, and that the number that is settled on is sufficiently informed by community feedback. I support the moderated, regulated taking of this species for subsistence or for cultural or religious purposes.

Thank you for your time and consideration. You can reach me at (830) 563 7508 or at emmabp@hawaii.edu if you have any questions about my testimony.

Mahalo,

Emma Palmer

To: The Department of Land and Natural Resources
Division of Aquatic Resources
1151 Punchbowl Street, Room 330
Honolulu, HI 96813

From: Erina L. Yamamoto (erinayam@hawaii.edu)

Date: November 19, 2024

Re: Proposed Amendment of Hawaii Administrative Rules Chapter 13-60.4

Aloha,

I am writing to submit written testimony in partial support of the proposed amendments to Hawaii Administrative Rules (HAR) Chapter 13-60.4. I am currently a law student at the William S. Richardson School of Law at the University of Hawai'i. As a student, my interest in this amendment is from an environmental policy and administrative law perspective.

I am writing in support of extending the moratorium Pāku'iku'i for an additional two (2) years, or until December 2026. However, I do not support the subsequent ten (10) year moratorium with additional bag limits and reporting requirements.

It has been suggested that the Pāku'iku'i population was impacted most significantly by the commercial aquarium collection industry. In 2017, DLNR enacted a commercial aquarium fishing ban in the WHRFMA. I believe a modest extension of the moratorium would be beneficial to allow additional time for the Pāku'iku'i population to be replenished. However, subjecting non-commercial fishers to the ten-year bag limit and recording requirements appears unreasonable.

I believe that DLNR should provide additional data provided regarding the Pāku'iku'i population and other data relevant to these amendments before December 2026, in conjunction with continued outreach efforts and public scoping events to allow for input from the West Hawai'i fishing community.

Thank you for the opportunity to testify.

Sincerely,

Erina Yamamoto

To: The Department of Land and Natural Resources and the Division of Aquatic Resources
Division of Aquatic Resources
1151 Punchbowl Street, Room 330
Honolulu, HI 96813

From: Justine Park, law student
jspark3@hawaii.edu

Date: November 19, 2024

Re: Proposed Amendment of Hawaii Administrative Rules (HAR) chapter 13-60.4

Aloha Chairperson Chang, members of Department of Land and Natural Resources, and the Division of Aquatic Resources.

My name is Justine Park and I am a third-year law student at the William S. Richardson School of Law. As a student, my interest in this amendment is both from an Administrative Law perspective and an Environmental Policy perspective. Thank you for the opportunity to give written testimony regarding the proposed amendment to Hawaii Administrative Rules (HAR) chapter 13-60.4.

I support the amendment for extension on take of any pāku'iku'i for an additional two years. I believe the short term extension of this moratorium will increase the likelihood that pāku'iku'i populations will continue to thrive so that future generations may continue fish and enjoy this species.

I do not support continuing the moratorium for an additional ten years for the reasons below:

I briefly read the NOAA Fisheries "Stock Assessment Update for the Main Hawaiian Islands Deep 7 Bottomfish Complex in 2021, with Catch Projections Through 2025" and attempted to research current data on the *Acanthurus Achilles* on the NOAA website. I found that the scientific findings that NOAA undoubtedly possesses are not easily found on the website and the information is not easily understandable for a lay person without a scientific background.

Among the species that NOAA Fisheries monitors, like in "Status of Stocks 2023" by NOAA Fisheries, the agency does not mention the paku'iku'i (*Acanthurus achilles*) at all. I looked

outside NOAA to see if there were studies that are publicly available that support the finding that the paku'iku'i is depleted but even on the Hawai'i Wildlife Fund which says, "Experts recently described this species as "dangerously depleted"[.]", the source of that quote and the experts they refer to are unavailable and unclear.

Additionally, in researching the *Acanthurus Achilles* (paku'iku'i) outside of NOAA, the general consensus is that this fish is neither endangered or of serious concern. (<https://fs.wp.odu.edu/wp-content/uploads/sites/756/2016/03/Surgeonfishes-SIS-draft-accounts.pdf>)

As a result, I do not support the extension of the moratorium for longer than two more years since there seems to be no concrete scientific basis for prohibition on take. I believe that the moratorium's intent to protect the species in this case does not outweigh the concern by Hawaiian fishermen that was expressed at the hearing on 11/13/2024.

If the Division of Aquatic Resources provides the sources that support the moratorium for an additional ten years, I would support this amendment. However, both at a national level and local level, there is a lack of support for the finding that the *Acanthurus Achilles* population is depleted enough to necessitate a long-term suspension of take.

Thank you for your time and consideration of my testimony. Please feel free to contact me with any questions at jspark3@hawaii.edu.

Sincerely,

Justine Park

Testimony for DLNR-DAR's proposed changes to HAR chapter 13-60.4

Good morning, DLNR-DAR.

My name is Korynn Grenert, and I am a law student at the William S. Richardson School of Law. My enrollment in an Administrative Law class led me to DLNR-DAR's public hearing on Wednesday, November 13, 2024.

I am emailing you today with testimony regarding the three proposed amendments to Hawaii Administrative Rules chapter 13-60.4. After attending the public hearing on this matter, listening to public commentary, and researching the implications of the proposed amendments, I oppose all three proposed amendments to the fishing of pāku'iku'i in the West Hawai'i Regional Fishery Management Area off Hawai'i island.

I oppose the first proposed amendment for multiple reasons. First, because the original two-year moratorium on the taking of pāku'iku'i was established under the State's adaptive management rulemaking authority—the first time DLNR-DAR has used this authority to adopt a rule—the option to extend a moratorium on pāku'iku'i was supposed to be limited to one year at a time. However, here DLNR-DAR is proposing to extend the moratorium for an additional two years. This additional two-year extension on the moratorium should be reduced to a maximum of one year, as originally proposed, with the possibility of additional one-year extensions.

I also oppose the first proposed amendment because the local community fishing in the West Hawai'i Regional Fishery Management Area overwhelmingly opposes this extended moratorium, with many claiming they did not even know there had been a moratorium for almost two years now. This community, which has many people of Native Hawaiian descent, relies on hunting and gathering for much of the food they eat. Listening to the input from this community on their desires for management of this population of fish and their reliance on this fish as one of their food sources heavily weighs against DLNR-DAR's proposed amendment to extend the moratorium.

I oppose the second proposed amendment for multiple reasons. First, the establishment of a registration and reporting requirement for ten years following the additional two-year proposed moratorium will put a financial burden on the fishermen who fish for pāku'iku'i. This community testified during the meeting that they are not sure where the money from fishing registrations go, as they do not see it going into the enforcement of fishing regulations nor the betterment of fishing grounds. Further, one of the testifiers said he had seen illegal fishing of pāku'iku'i numerous times over the last two years but had never seen enforcement of the moratorium by DLNR-DAR. Additionally, also based on testimony I heard during the meeting, the limited amount of data obtained by DLNR-DAR on the pāku'iku'i population demonstrates that the money is likely not going back into research for the pāku'iku'i. DLNR-DAR's proposed registration requirement would only place financial and procedural hardship upon a community that has been fishing pāku'iku'i for generations and who will struggle to meet these requirements in order to obtain this basic human need—food.

I also oppose the second proposed amendment because the bag limit of zero (0) pāku'iku'i per person per day as a “placeholder to facilitate further discussion on bag limits” may never be amended by DLNR-DAR and will effectively serve as an additional ten-year moratorium on top of the proposed two-year extension of the moratorium. Based on the lack of data collection on pāku'iku'i during this first two-year moratorium, DLNR-DAR is likely to move equally as slowly in having community discussions, collecting more relevant data, and making any proposals and subsequent decisions that increase the bag limit beyond zero. What's more, these discussions, data collections, and protective rulemakings are taking DLNR-DAR's limited resources away from fish species and populations that the larger community—not just limited to those who fish in the West Hawai'i Regional Fishery Management Area—are much more worried about than the pāku'iku'i. DLNR-DAR should focus their energy, time, resources, and attention to fish populations that are in more critical need of protection than the pāku'iku'i.

I oppose the third proposed amendment for the reasons discussed earlier. Adding the Miloli'i Community-Based Subsistence Fishing Area to the jurisdiction of this chapter and these proposed amendments to the fishing of pāku'iku'i will only impact the types of fish that a larger number of fishermen are allowed to take and will take more resources from DLNR-DAR to regulate this fishing moratorium (which could be more efficiently used with other fish species). Because sufficient data collection has not been obtained and disseminated from DLNR-DAR thus far during this first two-year moratorium, DAR should be required to show that adding this additional area is more beneficial to the pāku'iku'i population than harmful to the fishermen.

In closing, I oppose all three proposed amendments to HAR chapter 13-60.4 relating to the fishing of pāku'iku'i in the West Hawai'i Regional Fishery Management Area.

Thank you very much for allowing me to submit testimony on this matter and for considering my testimony in your decision. If you would like to contact me regarding my testimony, please email me at korynng@hawaii.edu or call me at (808) 675-8254. Thank you.

Sincerely, Korynn Grenert

To: The Department of Land and Natural Resources and the Division of Aquatic Resources
Division of Aquatic Resources
1151 Punchbowl Street, Room 330
Honolulu, HI 96813

From: Lu Kline, law student
lukline@hawaii.edu

Date: November 19, 2024

Re: The proposed amendment of Hawaii Administrative Rules (HAR) chapter 13-60.4

Aloha, Chairperson Chang, members of the Department of Land and Natural Resources, and the Division of Aquatic Resources. My name is Lu Kline, and I am a third-year law student at the William S. Richardson School of Law. I appreciate the opportunity to testify before you today regarding the proposed amendment to Hawaii Administrative Rules (HAR) chapter 13-60.4.

I support the agency's proposed amendments to extend the current moratorium on the take of any pāku'iku'i for an additional two years, which was initially put in place on December 19, 2022. I also support the agency's decision to add the Miloli'i Community-Based Subsistence Fishing Area to the list of designated areas in the rule. I believe that, with the extended period, we will see a significant recovery of pāku'iku'i in West Hawaii, which will allow for continued fishing and enjoyment of this local favorite.

Regarding the 10-year Pāku'iku'i Fisher Registration requirement for any take and the zero bag limit, I believe the agency should collaborate with local fishermen. It would be beneficial to provide them with additional statistical data to support the agency's decisions, as well as clearer instructions on the registration terms and conditions. This is important because local fishermen will be the group most affected by this rule.

To help concerned citizens better understand the agency's goals and the purpose of this amendment, I suggest that the agency include a key finding report or a scientific data report to support its position. For example, a report could illustrate the decline in Pāku'iku'i populations over the past few years. In addition to extending the prohibition on taking Pāku'iku'i for additional years, it would be beneficial to include any measurements that the agency has taken or plans to take to preserve Pāku'iku'i.

Thank you for taking the time to read my testimony. I greatly appreciate your consideration of my testimony. If you have any questions, please feel free to contact me at lukline@hawaii.edu.

Sincerely,
Lu Kline

Aloha to the Department of Land and Natural Resources (DLNR), Division of Aquatic Resources (DAR). I am writing regarding the proposed amendments to the West Hawai'i Regional Fishery Management Area on the Big Island concerning regulation on taking Pāku'iku'i.

My name is Ryan Witthans. I have spent the majority of my life living on the Big Island of Hawai'i, enjoying the abundance Hawai'i has to offer. As I grow older, I worry about the future my children and the next generation will have. Without adequate regulation, it is only a matter of time before selfish (or, at best, ignorant) individuals will overfish local populations of fish until they are badly depleted or extinct. For that reason, I am in favor of each of the following proposed amendments: 1) Extending the moratorium on take of any pāku'iku'i for two years, (2) a fisher registration requirement with terms and conditions for the following ten years, and (3) other non-substantive amendments, including adding Miloli'i Community-Based Subsistence Fishing Area as a protected area.

I support all of the proposed amendment because, although the risk of devastating the Pāku'iku'i population to extinction is currently unknown, it is a possibility we should avoid at all costs. Each species in an ecosystem may be crucial to that ecosystem's health and survival. Pāku'iku'i, which live in the pacific and usually off the edge of coral reefs, may be crucial to ensure those coral reefs stay healthy, especially considering the rate at which our reefs are disappearing. Admittedly, I do not study aquatic wildlife. Nevertheless, I understand that taking precautions is the safer option. Because I want to ensure that Pāku'iku'i and other local fish remain for our posterity, I support prohibition on taking of the fish, registration requirements, and even more terms and conditions, at least until data supports Pāku'iku'i survival.

Now, many may argue that regulating the take of Pāku'iku'i is not necessary, unfair to considerate fisherman, or unduly burdensome. And they may be right. They pale in comparison, however, to the alternative. To avoid unfairly burdening active fisherman by allowing the take of Pāku'iku'i would be to risk unfairness to all future fisherman of Pāku'iku'i.

Overall, I am in complete support of each proposed amendments. Thank you for reading my submission.

Please feel free to reach out to me at ryanwitt@hawaii.edu.

Best,
Ryan Witthans

My name is Sigrid Howard and I am a student at the William S. Richardson school of law. I am interested in this matter both as a student of environmental and Native Hawaiian rights law and as a lifelong resident of the Big Island. I believe the DAR should more thoroughly study the status of pāku'iku'i and the impact of fishing practices on the population before extending the take moratorium in the West Hawai'i Regional Fishery Management Area.

As the November 13th meeting on the issue evidenced, residents who fish in the West Hawai'i Regional Fishery Management Area do not feel that the issue has been adequately studied. Conducting more research before extending the moratorium for a decade might help assuage their concerns and make working with the community easier and more effective. Additionally, further research might help clarify exactly what the bag limit should be, since the limit of zero appears to just be a placeholder. Given that many of the people providing testimony were Native Hawaiian sustenance fishermen and women, it seems that the issue deserves further scrutiny before more permanently depriving Miloli'i residents and other Native Hawaiians of their access to pāku'iku'i.

I believe that the DAR should undertake further research and solicit more comments from people who fish in the West Hawai'i Regional Fishery Management Area, particularly those from Miloli'i because of their strong Native Hawaiian rights and sustenance fishing interests in access to pāku'iku'i.

Thank you for your consideration. In case you need to reach me for any reason, my email is chiller@hawaii.edu.

EXHIBIT 3

**WEST HAWAI'I REGIONAL FISHERY
MANAGEMENT AREA, HAWAI'I
HAWAII ADMINISTRATIVE RULES 13-60.4**

PROPOSED AMENDMENTS (RAMSEYER)

Amendment and Compilation of Chapter 13-60.4
Hawaii Administrative Rules

[INSERT DATE OF FINAL BLNR APPROVAL]

1. Chapter 13-60.4, Hawaii Administrative Rules, entitled "West Hawai'i Regional Fishery Management Area, Hawai'i", is amended and compiled 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 permit and use requirements
§13-60.4-7	Aquarium collecting permit and vessel registration requirements
§13-60.4-8	Penalty
§13-60.4-8.5	Asset forfeiture
§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 12/26/13]

§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 12/26/13; comp 3/11/23; comp] (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 marine reserves, 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 the exhibit entitled "Map of Marine Reserve, Fish Replenishment Area, and Netting Restricted Area Boundaries", dated 12/12/12, located at the end of this chapter):

- (1) Ka'ūpūlehu marine reserve, 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);

- (2) North Kohala fish replenishment area, identified on shore to the north by Kamilo Gulch and to the south by the Kawaihae Lighthouse;
- (3) Puakō-`Anaeho`omalū 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`omalū Bay (Kapalaoa);
- (4) Kaloko-Honokōhau fish replenishment area, identified on shore to the north by the southern boundary of Wāwālolī 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 Nenuē 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-Kalīpoa netting restricted area, identified on shore to the north by Kanonone, inclusive of Pōhue Bay, Kahakahakea, and identified to the south by Kalīpoa, 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 located at the end of this chapter entitled "Table of Reference Coordinates to Marine Reserve and Fish Replenishment Area Boundaries", dated 12/12/12, and "Table of Reference Coordinates to Netting Restricted Area Boundaries", dated 12/12/12, 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 one hundred fathom (six hundred feet) depth contour, between the intersection of the one hundred fathom depth contour and the northern and southern boundary lines. Seaward GPS reference points are for guidelines and the one hundred 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) Kīholo 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; and
- (11) Miloli'i community-based subsistence fishing

area, Hawai'i, as described in chapter 13-60.10.

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 12/26/13; am 7/29/16; comp 3/11/23; am and comp] (Auth: HRS §§187A-5, 188-53, 188F-6, 190-3) (Imp: HRS §§187A-5, 188-53, 188F-2, 188F-3, 188F-4, 188F-6, 190-3)

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

"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.

"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.

"Deploy" means to place the specified gear in the water, in whole or in part.

"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.

"Fishing gear" means any net, spear, rod, reel, hook-and-line, slurp gun, or any other equipment or gear adapted, designed, or commonly used to take or capture aquatic life.

"Hook-and-line" means a fishing line to which one or more hooks or other tackle are attached. A hook-and-line may include a fishing rod or reel or both to deploy and retrieve the line, and the use of a landing net to land hooked fish.

"Kona crab net" means a mesh net encircled by a rigid frame no more than three feet in length in any direction.

"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.

"Marine reserve" means an area where any and all extraction of reef-related marine life, either alive or dead, or any portion of the reef structure, including coral, rocks, plants, algae, sand, shells, or any feature of the natural reef, shall be prohibited, except as allowed in this chapter.

"Multi-panel lay net" means a lay net consisting of two or more layers of netting, usually of different mesh size. This gear is also known as a trammel net.

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

"Pāku'iku'i" means any fish known as *Acanthurus achilles* or any recognized synonym. Pāku'iku'i is also known as Achilles tang.

"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 12/26/13; am 7/29/16; am and comp 3/11/23; comp] (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 two 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. The notification shall include the names of individuals who plan to possess the gear or aquatic life and the location where the possession will take place;
 - (B) Without holding a valid West Hawai'i aquarium permit issued pursuant to section 13-60.4-7(a);
 - (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 section 13-60.4-7(d);
- (4) Possess or use any net or container employed underwater to capture or hold aquatic life alive for aquarium purposes, that is not labeled with the commercial marine license number or numbers of the person or persons owning, possessing or using the equipment;
 - (5) Possess a lay net or engage in lay net fishing in violation of the requirements of section 13-60.4-6; [~~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[~~-~~]; or
 - (7) Take or possess any pāku'iku'i before December 18, 2026. [Eff 12/26/13; comp 3/11/23; am and comp] (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 marine reserves, fish replenishment areas, or netting restricted areas described in section 13-60.4-2(b) or any of the other areas listed in section 13-60.4-2(c).

(b) While within the fish replenishment areas described in section 13-60.4-2(b)(2) to (10), or while within any of the areas listed in section 13-60.4-2(c) other than the Kīholo Bay fisheries management area, no person may:

- (1) Collect aquatic life for aquarium purposes; or
- (2) Possess any aquarium collecting gear, or take or possess any specimen of aquatic life for aquarium purposes, except that aquarium collecting gear or aquatic life collected for aquarium purposes may be possessed while onboard a vessel in active transit through the areas, provided that no collecting gear is in the water during the transit. Boats that 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 section 13-60.4-2(b) and in the tables located at the end of this chapter entitled "Table of Reference Coordinates to Marine Reserve and Fish Replenishment Area Boundaries", dated 12/12/12, and "Table of Reference Coordinates to Netting Restricted Area Boundaries", dated 12/12/12:

- (1) Puakō-`Anaeho`omalu fish replenishment area;
- (2) Kikaua Point-Mākole`ā netting restricted area (Kekaha Kai State Park);
- (3) Nenu Point (Red Hill fish replenishment area)-Kealakekua Bay netting restricted area;
- (4) Hanamalo Point-Kanewa`a Point netting restricted area;
- (5) Kanonohe-Kalīpoa netting restricted area; and
- (6) 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, that is used in compliance with section 13-60.4-6.

(d) Except as provided in subsection (e), and subject to all other applicable laws, while within the Ka'ūpūlehu marine reserve no person may:

- (1) Take or attempt to take any specimen of aquatic life, provided that the following species may be taken by hook-and-line seaward of the twenty fathom (120 feet) depth contour: *Pristipomoides filamentosus* ('ōpakapaka), *Pristipomoides sieboldii* (kalekale), *Aphareus rutilans* (lehi), *Pristipomoides zonatus* (gindai), *Etelis coruscans* (onaga), *Etelis carbunculus* (ehu), *Epinephelus quernus* (hāpu'upu'u), *Aprion virescens* (uku), *Lutjanus kasmira* (ta'ape), *Cephalopholis argus* (roi), *Lutjanus fulvus* (toau), *Iniistius pavo* (nabeta), *Katsuwonus pelamis* (aku), *Thunnus spp.* ('ahi and tombo), Family Istiophoridae (a'u), *Acanthocybium solandri* ('ono), *Coryphaena spp.* (mahimahi); and provided further that *Ranina ranina* (kona crab) may be taken by kona crab nets only, while seaward of the twenty fathom (120 feet) depth contour;
- (2) Possess any specimen of marine life other than the species listed in subsection (d)(1) above;
- (3) Possess or use any fishing gear other than hook-and-line or kona crab nets or both; or
- (4) Deploy any fishing gear (including hook-and-line or kona crab nets) shoreward of the twenty fathom (120 feet) depth contour.

(e) The department may issue permits in accordance with sections 187A-6 and 188-53, Hawaii Revised Statutes, for the take of non-native or invasive species of fish and invasive algae from the Ka'ūpūlehu Marine Reserve.

(f) Subsections (d) and (e) of this section shall be effective until June 30, 2026, or until the effective date of rules implementing a comprehensive fisheries management plan as developed by the department in consultation with the Ka'ūpūlehu community and other interested parties, whichever occurs later. [Eff 12/26/13; am 7/29/16; am and comp 3/11/23; comp] (Auth: HRS §§187A-5, 188-53, 188F-6, 190-3) (Imp: HRS §§187A-5, 188-53, 188F-6, 190-3)

§13-60.4-6 Lay net permit 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 without first obtaining a lay net permit pursuant to section 13-75-12.4;
 - (2) Possess or use more than one lay net;
 - (3) Possess or use a lay net:
 - (A) Longer than one hundred twenty-five 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 two hundred fifty 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 by the department. Each identification tag must legibly display the lay net permit number of the person possessing or using the net. 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 by the department. The buoys shall legibly display the lay net permit number of the person using the lay net, 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 one thousand two hundred 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 eighty feet in depth;
- (4) Use a lay net for more than four hours during any one set; provided that the same person shall not set any other lay net within twenty-four hours after the ending of the set;
- (5) Leave a lay net unattended for any amount of time, provided that a lay net shall be considered unattended if the lay net or surface buoys are not within eyesight of the person using the lay net;
- (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 any lay net.

(d) Persons using a vessel or float may use a total maximum of two hundred fifty feet of lay net, provided that at least two persons are present and associated with the same vessel or float.

(e) Any lay net within the West Hawai'i regional fishery management area that does not have proper identification tags, as required in subsection (a)(1) and (a)(5), shall be subject to immediate seizure according to section 199-7, HRS, and subject to forfeiture by the department under procedures similar to chapter 712A, Hawaii Revised Statutes.

(f) 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 12/26/13; am and comp 3/11/23; comp] (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) and to use fine meshed traps and nets (other than throw nets) to collect those species in the West Hawai'i regional fishery management area, notwithstanding section 13-75-14, subject to terms and conditions the department deems necessary for the management of the area and its resources. No person, unless exempted from provisions of this chapter by the 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), *Cirrhitilabrus 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 ornatus* (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 section 13-60.4-4(2);
 - (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; and
 - (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 each vessel;
- (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 inches high and three inches wide

in either black or a color that contrasts with 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 onboard;
- (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 12/26/13; comp 3/11/23; comp _____]
(Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-3)

§13-60.4-8 Penalty. (a) Any person violating any provision of this chapter or the terms and conditions of any permit issued as provided by this chapter, shall be subject to:

- (1) Administrative penalties as provided by section 187A-12.5, HRS;
 - (2) Criminal penalties as provided by sections 187A-13 and 188-70, HRS; and
 - (3) Any other penalty as provided by law.
- (b) Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State. [Eff 12/26/13; am and comp 3/11/23; comp] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-12.5, 188-53, 188-70)

§13-60.4-8.5 Asset forfeiture. Any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of this chapter or the terms and conditions of any permit issued as provided by this chapter, may be seized and subject to forfeiture as provided by section 199-7 and chapter 712A, HRS. [Eff and comp 3/11/23; comp] (Auth: HRS §188-53) (Imp: HRS §199-7, ch. 712A)

§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 12/26/13; comp 3/11/23; comp] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§1-23, 187A-5, 188-53, 188F-6)

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

3. Additions to update source notes and other notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 13-60.4, Hawaii Administrative Rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

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

APPROVED AS TO FORM:

Deputy Attorney General