



# Feasibility of a Non-Commercial Marine Fishing Registry, Permit, or License System in Hawai'i

Study Group Final Report  
December 2016



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# I. EXECUTIVE SUMMARY

**Hawai'i's fisheries are indispensable** to the State's environment, economy, food security, and culture. Hawai'i's fisheries require well-informed management with an adequate capacity to ensure that the resources exist for future generations. The Hawai'i State Legislature has periodically examined what a non-commercial marine fishing license may be able to offer to address these needs. Hawai'i remains, however, the only coastal U.S. state without a mandatory non-commercial marine fishing registry, permit, or license ("RPL") system, because these previous attempts to enact an RPL system have been unsuccessful.

To better understand the issues relevant to an RPL system, Conservation International Hawai'i (CI Hawai'i) and the Western Pacific Regional Fishery Management Council ("Council") invited individuals from different fishing organizations and interest groups to serve as members of a Study Group to undertake a fresh examination of the RPL system issues. These individuals have diverse knowledge and experience and worked together over much of 2016 to gather and analyze information to better understand the implications of any prospective RPL system.

The Study Group focused on evaluating any potential RPL system based on its ability to meet three primary objectives: (1) provide additional and more robust data to support fishery management; (2) foster two-way dialogue between fishers and managers by identifying the universe of non-



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commercial fishers in Hawai'i and developing approved communication pathways; and (3) create a source of independent, continuous funding to support effective fisheries management. The Study Group examined several RPL system options, including those enacted by other states, that might meet the above-stated objectives and sought to analyze the respective advantages and disadvantages of each. The group also reviewed the results of legal and financial analyses of some or all of these RPL system options, interviewed fisheries managers in other coastal states, and focused outreach efforts on certain unique stakeholders and rights-holders.

The Study Group did not identify a preferred alternative, however, the Study Group concluded that there are no legal or constitutional barriers in Hawai'i that would prohibit the implementation of a new RPL system, and that it is possible, subject to further consultation regarding implementation, to design a system that does not violate the Native Hawaiian traditional and customary rights protected under Hawai'i law. The Study Group further concluded that only some form of fee-based license or permit system would address all three primary objectives, and that it would be possible for such a system to be designed in a way that would generate additional net revenue for fisheries management using a fee structure not unlike Hawai'i's existing freshwater fishing and game mammal hunting licenses fees.

There are a number of RPL system design and implementation options available to allow different categories of fishers, fishing activities, and other factors to be handled in distinct ways, if necessary. For example, it is common in other states to grant RPL system fee waivers for children, seniors, and in some cases, very low-income individuals. Additionally, there may be special design and implementation considerations to address Native Hawaiian traditional and customary rights. This report identifies and discusses these options.

The Study Group takes no collective position on whether an RPL system should be implemented at this time, or if a specific RPL system option is preferred over others. However, if the State chooses to develop an RPL system, the group recommends that the following issues be carefully considered. (Further elaboration of these are included in Section XII of this report).

## A. OUTREACH

- Undertake extensive outreach, consultation, and discussions with affected stakeholders statewide prior to and as part of the decision-making process.
- As part of any outreach effort, ensure that this study is available to the public in general and to fishing stakeholders in particular.

## B. ADDITIONAL RESEARCH AND INFORMATION GATHERING

- Clarify the definition of the term ‘non-commercial fishing’, and better understand the demographics of the population segments that are active in non-commercial fishing.
- Consult non-commercial Native Hawaiian fishing practitioners to identify practices that are a part of traditional subsistence, cultural, ceremonial, or religious activities.
- Consult with charter fishing industry representatives to identify RPL elements that would work easily for charter patrons and businesses, and consider ways to use RPL fees collected through charter operations to improve State infrastructure used by this industry.
- Continue to collect additional information from other states on their lessons learned.
- Carefully consider and conduct further analysis on the financial implications of prospective fee-waivers or exemptions from any new RPL system.
- Consider ways to align any RPL system with complementary data collection efforts that improve management of near-shore waters.
- Ensure that the State has specific plans for how data will be collected, used, and shared before data collection efforts begin. Conduct further research into any confidentiality and data protection issues that may apply.



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## C. FUNDS

- Ensure that any and all funds collected from any form of RPL system are protected and dedicated to managing marine fisheries.
- Ensure that any funds derived from a fee-based RPL system are additive to the Division of Aquatic Resources’ (DAR’s) budget and do not replace General Funds and/or other funds.

## D. ADVISORY BOARD

- Establish a formal advisory board to help DAR improve communication and information exchange with non-commercial fishers.
- Ensure adequate representation from different segments of the fishing communities, both geographically and by type of fishing.
- Define and publicize lists of any special gear, restricted areas, or individual species if considering charging permit fees for using special gear, fishing in restricted areas, or fishing for specific species.
- If any RPL system is enacted, require that DAR provide annual reports. The annual reports should be provided to any advisory board prior to being released to the public. The annual reports should address the data collected and how it was used to support fisheries management. The report should also include the amount collected from fees (if applicable), and how they were spent to support fisheries management. If a portion of the fees are provided to DOCARE for aquatics enforcement, the report should also describe how those enforcement funds were spent. If data is collected, the report should summarize the preliminary data and include the refined findings when they are analyzed. At minimum, the report should summarize how fishermen benefit from the RPL program.

## **E. NATIVE HAWAIIAN RIGHTS**

- Undertake focused outreach and consultation with the Native Hawaiian community to determine how best to reach Native Hawaiian fishers and fisher groups, particularly in communities where fishing is important to subsistence and cultural practice. Address concerns that traditional and customary fishing practices could be adversely affected by an RPL system or that exercising them could be construed as criminalized by a new RPL system. Solicit Native Hawaiian views and opinions or analyses from recognized experts on acceptable approaches for avoiding these perceptions.
- Develop systems, trainings and policies to avoid criminalization of native Hawaiian practitioners.
- If a permit system is implemented, provide a mechanism for Native Hawaiian non-commercial fishing practitioners to identify their traditional fishing area(s), types of gear, restricted areas or seasons, and specific species that are part of their traditional subsistence, cultural, ceremonial, or religious practices.

## **F. ENFORCEMENT**

- Provide information and training for DOCARE and other law enforcement personnel about changes to the law under any new RPL system. Enlist their assistance with specific outreach and community education, including for Native Hawaiian-related issues and concerns.
- Increase the presence of community-based DOCARE officers simultaneous with implementing any new RPL system. Ensure that they know and understand the communities of non-commercial fishers in the areas to which they are assigned.
- Recognize that any RPL system provisions regarding DOCARE's right to inspect personal coolers may be particularly sensitive to certain fishers. Clarify under what terms and conditions such inspections may be warranted.

## **G. OTHER**

- Research other possible mechanisms for producing additional information and data to support informed decision-making in non-commercial fishing management.
- Consider ways to combine any new RPL system with other existing DAR fishing license programs, such as a combined non-commercial saltwater and freshwater system. Strive for simplicity for the users.
- If a fee-based license or permit is pursued, look into the advantages and disadvantages of creating different tiers of licenses (e.g., levels or categories, such as a single boat license that can cover several non-commercial fishers on the same boat).

## II. GLOSSARY OF KEY TERMS AND ABBREVIATIONS

The Study Group identified working definitions for the following key terms to clarify their meanings as used in the context of this report, but recognizes that alternative definitions may exist.

**Ahupua'a tenants:** Tenants of an area of traditional land division under Hawaiian law (ahupua'a). Ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778 possess customary and traditional rights that the State of Hawai'i has an affirmative duty to protect under state law.

**Extractive use:** An activity that intends to remove terrestrial or aquatic life or other natural resource from lands or waters under the State of Hawai'i's management authority.

**Fishery:** The unit defined in terms of people involved in some or all of the following: species or type of fish, area of water or seabed, method of fishing, class of boats, and purposes of the activities.

**License:** A document that gives the holder the right to operate in a fishery according to the terms established by the state regulating that fishery.

**Native Hawaiian:** For the purpose of this report, the term Native Hawaiian means a person who is a descendant of the native Hawaiians who inhabited the Hawaiian Islands prior to 1778 regardless of their blood quantum.

**Nearshore:** Waters at a small distance from the shore that is reasonably accessible for most people without the means of a powered craft.

**Non-commercial fishing:** Fishing that does not involve or intend to involve the sale of fish for profit. Non-commercial fishing includes sport fishing, recreational fishing, subsistence fishing, and traditional fishing to perpetuate culture and customs. This definition pertains to an activity, and not necessarily to individual fishers who may engage in both commercial and non-commercial fishing.

**Probable Cause:** A requirement generally required before a law enforcement officer can search or arrest someone for a suspected criminal violation. As described by statute, a law enforcement officer has probable cause "when the facts and circumstances within the officer's knowledge and of which the officer has reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that a crime has been or is being committed."

**Permit:** Unless otherwise specified in this report, a permit is a document that gives the holder the right to engage in activity in a fishery that would otherwise be prohibited by the State of Hawai'i.

**RPL:** A Registry, Permit, or License system.

**Registry:** A database of fishers managed by a state to collect relevant information about each fisher and contact them for specific fishing-related purposes. Submitting information

to a registry may or may not give a fisher specific rights or permissions related to fishing.

**Stamp:** An authorization purchased in addition to a general fishing license to allow a fisher to fish for a particular species. The number of stamps available for purchase during a given year is generally unlimited. For example, the Hawai'i Game Mammal Hunting license system provides an option for hunters to purchase Game Bird stamps, allowing them to hunt for specific birds.

**State waters:** Marine waters under the State of Hawai'i's police power and management authority, generally considered to extend 3 nautical miles from the shore.

**Subsistence fishing:** A non-commercial fishing activity that involves the taking of, fishing for, or possession of aquatic life or other fisheries resources under the State of Hawai'i's management authority by a resident of Hawai'i for the purpose of direct personal or family consumption as food or for customary trade, barter, or sharing for personal or family consumption.

**Tag:** A document purchased in addition to a general fishing license to allow a fisher to fish with certain types of gear or to possess certain species of marine life. The total number of tags available for purchase for a particular species during a given year is usually limited.

### ABBREVIATIONS

**CFEU:** Community Fisheries Enforcement Unit

**CI Hawai'i:** Conservation International Hawai'i

**Council:** Western Pacific Regional Fishery Management Council

**DAR:** DLNR's Division of Aquatic Resources

**DLNR:** Department of Land and Natural Resources

**DOBOR:** DLNR's Division of Boating and Ocean Recreation

**DOCARE:** DLNR's Division of Conservation and Resources Enforcement

**HB:** House Bill (within Hawai'i State Legislature)

**HFACT:** Hawai'i Fishermen's Alliance for Conservation and Tradition

**HMRFS:** DAR's Hawai'i Marine Recreational Fishing Survey

**JFF:** Joint Fact Finding

**MRIP:** NOAA's Marine Recreational Information Program

**NMFS:** NOAA's National Marine Fisheries Service

**NOAA:** National Oceanic and Atmospheric Administration

**NSAR:** National Saltwater Angler Registry

**OHA:** Office of Hawaiian Affairs

**PIFSC:** NOAA's Pacific Islands Fisheries Science Center

**USFWS:** U.S. Fish and Wildlife Service

### III. INTRODUCTION AND BACKGROUND

**Hawai‘i’s fisheries are indispensable to the State’s environment, economy, food security, and culture.** They are especially important to people who fish for sustenance, go to the ocean for recreation, or practice their culture. Ocean waters beyond the three-nautical-mile limit are primarily governed by federal and/or international laws, but Hawai‘i’s nearshore ocean waters are the responsibility of the State.

Hawai‘i’s fisheries require well-informed management with an adequate capacity to ensure that the resources exist for future generations. As one, but by no means the only, way to help accomplish this, the Hawai‘i State Legislature has periodically examined the pros and cons of a fishing license for better managing non-commercial fishing in local waters. However, Hawai‘i remains the only coastal state in the U.S. without a mandatory non-commercial marine fishing registry, permit, or license system (RPL). (Appendix B).

There have been previous attempts by the Legislature to authorize the Department of Land and Natural Resources (DLNR) to create a non-commercial marine fishing license system. The last effort was in 2014 when two bills were introduced: HB 1911 (to establish a nonresident permit for marine and freshwater fishing) and HB 1912 (to create a saltwater non-commercial fishing license that applies to residents and nonresidents). Neither bill survived committee hearings. While there was very little testimony regarding HB 1911, there was some opposition to HB 1912. The primary concern was that key provisions of the proposed license had not been defined and sufficiently analyzed, such as how much it would cost, how the fee revenues would be used, to whom it would apply, and how often it would need to be renewed. Other concerns were raised about its potential impacts on Native Hawaiian traditional and customary rights, subsistence practices, and whether a license would improve enforcement. These and other concerns became the foundation for this Study Group effort.



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In addition, there have been several attempts in the Legislature since 2007 to provide DLNR’s Division of Conservation and Resources Enforcement (DOCARE) with the authority to inspect fishing bags and coolers without the need to establish probable cause. DOCARE’s lack of ability to do so is seen by some as limiting the State’s ability to effectively enforce the rules and regulations that are currently in place to protect Hawai‘i’s nearshore fisheries. However, there also was strong feeling among some in the fishing community that such a rule would be overly invasive and could cause strong opposition and negative response to a license with such a provision. None of these prior legislative bills passed.

With Conservation International Hawai‘i (CI Hawai‘i) and the Western Pacific Regional Fishery Management Council (the Council) as conveners, several experts and individuals from various marine fishing agencies and organizations were invited to be members of a Study Group that would examine the issues described above and explore various options that might address them. The Study Group met six times in Honolulu between May and December 2016. Some members of the Study Group, along with CI staff and the Group facilitators, participated in separate web meetings and conference calls. These included a limited number of “listening sessions” to gather additional perspectives from Native Hawaiian fishers and charter boat industry representatives (Appendix C lists dates for these sessions, the Study Group members that participated, and the groups that were contacted). The Study Group acknowledges that this is not the universe of perspectives that should be considered, and has made recommendations for more outreach and consultation.

### IV. FORMATION, SPONSORSHIP, AND FUNDING

Funding for this project was provided by the Harold K.L. Castle Foundation and the National Oceanic and Atmospheric Administration’s (NOAA’s) Coral Reef Conservation Program and Saltonstall-Kennedy Grant Program. Peter S. Adler, Ph. D. and Keith Mattson of The Accord 3.0 Network of mediators, planners, and facilitators were retained as neutral conveners and facilitators. Invitations to serve on the Study Group were made to different members of marine fishing organizations, interest groups and fishery experts with experience in local, small scale fisheries. In addition, representatives from DLNR’s Division of Aquatic Resources (DAR) and the Office of Hawaiian Affairs (OHA) were invited to serve as ex officio members of the Study Group. Each Study Group member agreed to a Charter of Commitments that defined the purpose and the process used (Appendix A).

## V. STUDY GROUP COMPOSITION

The following individuals agreed to participate in the Study Group in their individual capacities rather than as official organizational representatives (listed alphabetically):



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Kua'aina Ulu Auamo (KUA), Executive Director



**Aarin Gross**  
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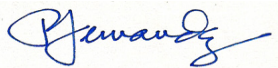
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**Phil Fernandez**  
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**Ed Watamura**  
Waialua Boat Club

### EX OFFICIO MEMBERS:

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## VI. OBJECTIVES

The Study Group came to consensus on three major objectives that any new registry, permit, or license (RPL) system for Hawai'i's non-commercial marine fisheries would be evaluated against. In effect, they became criteria for comparing possible RPL systems against each other. These objectives include the system's ability to:

**1) Provide additional and more robust data to support fishery management.** The State, stakeholders, and rights-holders all need better information about who fishes, how they fish, when and where fish are taken, and how much is caught.

**2) Foster more two-way dialogue between fishers and managers.** Improved mechanisms are needed for non-commercial marine fishers to be identified and contactable so they may effectively engage in regulatory and policy decisions and to create better information exchanges between fishers and managers, so fishers can exercise a greater voice in decision-making and managers can stay educated and informed on issues of importance to the non-commercial fishing community.

**3) Create a source of independent, continuous funding to support effective management.** Funding for nearshore fisheries management is perceived by fishers and managers to be inadequate, and there is a desire for dedicated monies that would benefit fisheries conservation, management, and enforcement and to improve stock assessments, restore habitats, and enhance fish populations.

The Study Group also sought to answer the following questions:

- What RPL system options meet the above-stated objectives? (Other options were not analyzed.)
- What are the relative advantages and disadvantages for each option?
- How would each of the options benefit or negatively impact different stakeholder interests in Hawai'i?
- Which option maximizes potential benefits and minimizes negative impacts to Hawai'i's stakeholders in relation to the three objectives identified by the Study Group?
- If there is an option that maximizes benefits and minimizes impacts, what should be done to enact it.

The Study Group ultimately did not identify a 'preferred option' that maximizes potential benefits and minimizes negative impacts or make specific recommendations for the enactment of a preferred option. However, the Study Group's conclusions and recommendations will be useful to support any future efforts to define, enact, and implement an RPL system option.

## VII. METHODOLOGY

The Study Group engaged in a facilitated Joint Fact Finding (JFF) process led by Adler and Mattson. JFF is an analytic deliberation process designed to gather facts pertinent to a specific problem. It does this in a focused manner based on courteous, evidence-based debate. The process uses a carefully selected working group of experts and knowledgeable stakeholders who typically have diverse opinions but are willing to engage in rigorous, open-minded, and candid, factual discussions. The overall goals of any JFF are to illuminate the factual assumptions behind an issue, identify areas of factual agreement, put those areas in a proper context, and help inform policy making. This particular JFF was designed to inform future decision making by DLNR and/or the Legislature.

The Study Group then gathered, analyzed, and discussed data and information on:

- Pertinent legal, regulatory, and financial issues;
- Native Hawaiian traditional and customary practices and the legal protections in place for those practices;<sup>1</sup>
- Existing data on Hawai'i's fisheries and surveys of non-commercial marine fishing activities;
- Information from DLNR on current fisheries management, regulation and enforcement, and the administration of other current license systems for freshwater and commercial marine fishing and hunting; and
- Non-commercial marine fishing license, registry, and permit systems from other states and US territories.

At the conclusion of the process, each of the Study Group members was invited to write a Personal Statement regarding the process, report, or related issues. These statements are included in Appendix I.

## VIII. THE ISSUES

### A. NON-COMMERCIAL MARINE FISHER DATA

Unlike commercial fishing in Hawai'i, for which the State has a license requirement and a great deal of detailed data dating back to the early 1900s, the State does not have a license requirement for the non-commercial marine fishing sector. The most consistent estimates of the 'universe' of Hawai'i's non-commercial marine fishers come from a broader nationwide effort to estimate fishing and hunting activity. Since 1955, the U.S. Fish and Wildlife Service (USFWS) has partnered with the U.S. Census Bureau to collect phone survey information on fishing and hunting from each State every five years. The most recent USFWS survey in 2011 estimated there are 155,000 non-commercial marine fishers in Hawai'i, including residents and visitors. In contrast, there were only 3,715 commercial marine fishing license holders in 2015.

A somewhat similar effort has been conducted by NOAA's National Marine Fisheries Service (NMFS), Pacific Islands Fisheries Science Center (PIFSC), Fisheries Research and Monitoring Division in partnership with DAR. NOAA's Marine Recreational Information Program (MRIP) and DAR's Hawai'i

1 The Study Group was assisted in this by Assistant Professor Malia Akutagawa, Esq., of the William S. Richardson School of Law, University of Hawai'i at Mānoa.

Marine Recreational Fishing Survey (HMRFS) were designed to develop statewide, annual estimates of the non-commercial fishing catch by species. The HMRFS program started in 1979, was halted after 1981, then was restarted in 2001. This effort has utilized a household telephone survey, a field intercept survey, and at one time, a charter boat survey to produce estimates of fishing effort, catch, and participation. The program is in the process of replacing the telephone survey with a mail survey with a more direct intercept survey methodology.

While both of these efforts fill some data gaps associated with the non-commercial marine fishing sector, they are still only estimates that are often incomplete and conflicting. Some have questioned the usefulness of the data and its accuracy for management purposes.

A survey conducted by the USFWS occurs every five years which makes it useful for long term trends, but less useful for understanding shorter and more specific periods. Its sample size is also limited. For example, the 2006 data was extrapolated from eligible households throughout the State. Of those approximately 1,600 eligible households, 1,401 phone interviews were obtained. Detailed interviews were then conducted with 299 individuals of the designated “sportsperson” category.

The HMRFS program faces similar challenges with sample size, but is also challenged by the physical and financial difficulties faced by its costly field intercept approach and the evolution of its methodology over time. (Field intercept surveys are on-site interviews with fishers engaged in some form of fishing.) There are very few surveyors compared to shoreline areas fished, and the terrain is often difficult, making it challenging to reach fishers. Some fishing also occurs at night when surveys cannot be done due to safety and liability issues. There are also no concentrated points of entry into the water for activities like spear fishing.

Importantly, estimates of Hawai‘i’s non-commercial marine fishing population from the programs described above vary widely and are considered highly uncertain. The 2006 USFWS survey estimated approximately 154,000 fishers in Hawai‘i, while the MRIP estimated 396,000 anglers for the same year. There are also significant differences in estimates of long term trends. NOAA Fisheries estimated a decreasing trend in recreational angler participation in Hawai‘i between 2003 (260,745 anglers) and 2006 (172,696 anglers), while the USFWS survey estimated an increase in participation during a similar time period from 2001 (113,000 anglers) to 2006 (157,000 anglers). Due to changes in sampling methodology, NOAA Fisheries participation estimates are not available after 2006, so it is difficult to compare these datasets beyond 2006.

Because so much is unknown about the population characteristics of the non-commercial marine fishing sector, it has been a challenge to accurately estimate catch (how many fish are being removed) and fishing effort. Without having good estimates of these factors, it is difficult for managers and scientists to accurately answer even the most basic management questions about the impact of this sector on the fisheries resources, the economy, and the overall ecosystem.

## B. NON-COMMERCIAL MARINE FISHING OUTREACH AND EDUCATION CHALLENGES

Outreach and education occur at different levels in Hawai‘i. DAR is the primary State agency that performs public outreach for nearshore marine resources. DAR has four Education Specialists (one each for O‘ahu, Maui County, Kaua‘i, and Hawai‘i island) and one Program Manager who are specifically tasked with these activities. On the Federal level, NOAA Fisheries and the Council collaborate with DLNR to conduct outreach and education regarding fisheries matters in State waters that overlap with federal jurisdictions such as for bottomfish, major pelagic fisheries, and interactions with protected species. Fisheries outreach and education also occurs on a non-governmental and community level.

One difficulty in developing and assessing outreach efforts is defining fisher representation within the State. Without knowing the universe of fishers and certain characteristics about that population, it is difficult to determine the level of effort necessary for targeted outreach and education on a particular topic. It is also challenging to assess the effectiveness of such an effort after the fact. For example, if there was a proposed regulation that would impact spear or line fishers, currently it would be difficult to determine an effective method to engage those specific user groups because there is no easy way to efficiently contact these groups in their entirety.



People fishing sunset at Ala Moana Beach Park, O‘ahu © RobertCravens

This is likely reflected in the low turnout and participation rate of fishers in many fisheries-related management actions, such as public hearings. Fishers often say, “I didn’t know about it or I would have come.” This has also led to discontent among some within the fishing community and a feeling they are not being adequately notified or given the opportunity to become more involved.

In addition to the challenge of being able to contact fishers, it is equally challenging to determine who are the most “representative” fishers to contact. Fishing practices and activities may be significantly different on different islands and in different local areas, which indicates the need to better understand locale-based fisher communities. For both area-based and species-based management, there is a multitude of different fishing modes for catching a species or fishing in an area. An additional challenge with outreach and education are the cultural and language barriers that exist due to Hawai‘i’s diverse resident, transient, and visitor populations.

The extent of these challenges is evidenced by the fact that citizens have felt the need to take it upon themselves to establish non-governmental groups for purposes such as “[helping] to organize and keep Pacific Island fishermen engaged and informed” (the Pacific Island Fisheries Group, or PIFG) and to “provide and promote the interests of fishermen through education, information, advocacy, improved economic efficiencies, and representation with a unified voice” (Hawai‘i Fishermen’s Alliance for Conservation and Tradition, or HFACT). A governmental program with a similar goal of “increasing communication and collaboration” between fishers, managers, and scientists is the Fisheries Extension Program co-managed by DLNR and NOAA Fisheries.

Many of the non-governmental groups and government agencies work together to conduct outreach and education efforts, promote representation of fishers, and encourage participation of fishers in management decisions. However, as alluded to earlier, we do not know how effective these efforts are, since it’s not clear there is sufficient representation of Hawai‘i’s diverse fishing communities. Boat, shoreline, and dive clubs are used as a point of contact for outreach efforts, but members of these groups constitute only a small percentage of the larger communities to which they belong. Fisher forums, social media, “talk story” sessions, and websites are often used as tools to engage or educate fishers, but the effectiveness of these efforts for reaching target audiences will remain unknown until sufficient information on the target audiences is known.

### C. NON-COMMERCIAL MARINE FISHING ENFORCEMENT CHALLENGES

DOCARE is responsible for enforcing the State of Hawai‘i’s fisheries rules and regulations, but it has a broad mandate that goes beyond aquatic resources. Essentially, DOCARE has full police powers to enforce all State laws and rules involving State lands, State Parks, historic sites, forest reserves, aquatic life and wildlife areas, coastal zones, conservation districts, State shores, as well as County ordinances involving County parks. The division also enforces laws relating to firearms, ammunition, and dangerous weapons.

DOCARE’s budget for fiscal year (FY) 2016-17 is approximately \$12.3 million, which is roughly 10% of DLNR’s overall budget. In October 2016, DOCARE had 100 fulltime and 10 volunteer officers statewide to provide natural resources enforcement to a population of approximately 1.4 million residents across Hawai‘i’s diverse archipelago and to an additional 8.1 million estimated annual visitors. DOCARE expected to spend 36% of its time and resources on aquatic resources enforcement during FY 2016-17, and is currently issuing approximately 10-20 citations per month statewide for both commercial and non-commercial fishing rule violations. Many fishers argue that DOCARE’s enforcement and monitoring efforts are seriously under-resourced.

DOCARE officers are assigned to specific islands, with a range of 15 officers on Kaua‘i and up to 35 officers on O‘ahu. Shift assignments, weekends, vacations, and sick leave means that the actual number of officers on duty at a given time is relatively small. For example, on a ‘peak day’ on O‘ahu (e.g., major holidays), approximately 10 to 20 officers will be on duty to cover the entire island, which is where just under one million people or approximately 70% of the state’s entire population is located. Officer activities vary statewide, but

the greatest differences are between O‘ahu and the Neighbor Islands. On the Neighbor Islands, officers collectively spend about 45% of their time on aquatic resources and another 45% of their time on boating activities. The remaining 10% is spent on other duties, including hunting, forest, and various other natural resource issues. O‘ahu’s officers are forced to spend significantly more time on park- and harbor-related enforcement due to the island’s relatively large population and greater incidence of non-resource-related crimes, such as vandalism, theft, and other property crimes.

The most common fishing citations issued by DOCARE are for illegally taking regulated marine life. This includes using illegal gear such as small-eyed gill nets, fishing in marine reserves, taking undersized or out of season species, and taking too many of a certain type of marine life. Other common violations include illegally fishing in restricted areas and using illegal or inappropriate equipment such as lay nets or gill nets. The most common commercial fishing violation is for failing to file monthly catch reports, as required by the State’s commercial marine fishing license.

While most DOCARE officers must divide their time between aquatic and other resource activities, a pilot program on Maui has allowed three officers to dedicate their time solely to aquatic resources enforcement. The North Maui Community Fisheries Enforcement Unit (CFEU) has a team of three DOCARE officers who since 2013 have patrolled 17-miles of state-controlled ocean water on Maui’s north shore. The CFEU received initial funding for a vessel and supporting equipment from CI Hawai‘i and the Harold K.L. Castle Foundation to concentrate on fishing and recreation within a heavily-used area. The program emphasizes outreach and education, as well as surveillance and enforcement, and has successfully curbed the number of fishing violations in the area over the more than two-year period of operations. CFEU officers indicate that a dedicated jet-boat capable of navigating shallow waters and improved surveillance equipment have been



Manini (Convict Tang) © G Ward Fahey

instrumental for identifying illegal fishing activities and enabling enforcement to be more effective. The CFEU is a potential model for other marine areas in the state that are heavily used for both fishing and recreation. In addition, the CFEU program benefited from additional support staff who helped with reporting, financial management, and other administrative requirements thus allowing DOCARE officers to spend more time in the field.

## D. DLNR FUNDING CHALLENGES

DLNR’s mission is to conserve, protect, and manage Hawai‘i’s natural and cultural resources for the benefit of present and future generations. This mission translates into the department being responsible for stewarding approximately 30% of Hawai‘i’s land and water resources with an allocation of approximately 1.1% of the State’s operating budget. For nearly two decades, Hawai‘i has ranked between 45th and 48th out of the 50 U.S. states in terms of the percentage of state funds that are spent on natural resource management. The portion of state funds dedicated to fisheries in particular is minuscule, with approximately 0.014% of the State operating budget dedicated to fisheries management and approximately 0.035% dedicated to aquatics resources enforcement. Although it is difficult to confirm without knowing the full cost to provide DLNR with the staff and resources necessary to effectively fulfill its substantial mandate under the law, there is a perception among many in the fishing community and the broader public that DLNR – particularly fisheries management and aquatics resources enforcement – lacks the funding levels required to effectively maintain the sustainability of fishing in Hawai‘i’s nearshore waters.

## IX. FINDINGS

### A. LICENSE AND REGISTRY SYSTEMS FOR OTHER NATURAL RESOURCES IN HAWAI‘I

The Study Group reviewed some of the regulatory systems that are currently used by the State of Hawai‘i for other natural resources, and focused on three license systems in place in Hawai‘i for the extractive use of natural resources:

1. Freshwater Game Fishing License (Hawai‘i Administrative Rules (HAR) § 13-74-10, established in 1949);
2. Commercial Marine Fishing License (HAR § 13-74-20, established in 1925); and
3. Game Mammal Hunting License (HAR title 13 chapter 123, established in 1907).

Hawai‘i also has an existing registry which applies to non-commercial fishers who take bottomfish from a vessel in Hawai‘i’s marine waters (HAR § 13-94-9, established in 1998).

These license and vessel registry systems are administered by DLNR, must be renewed on an annual basis, and are enforceable through DOCARE. Basic details on each license’s fee structure, requirements, use of revenues, and other aspects are included in Table 1. Generally speaking, each of these license systems was created to help the State better manage specific natural resources, and the license fee revenues are dedicated to management and enforcement needs and programs of those specific natural resources. As a regulated activity, game mammal hunting in Hawai‘i is very different from fishing, in part because hunting targets animal

populations that are destructive to the native environment, such as feral pigs, feral goats, and Mouflon sheep. Additionally, the use of firearms for hunting raises public safety concerns that the hunting license rules and regulations must address. Nevertheless, the game mammal hunting license provides an example of an existing regulatory tool currently used for natural resource management in Hawai‘i.

Applicants for a hunting license must first take a hunter education course and have a valid hunter education certificate, proof of completion, or written exemption when applying for a hunting license.<sup>2</sup> Once the education course certificate or proof of completion is obtained, the hunting license can be purchased online with payment by credit card. Only individuals 10 years of age or older are eligible to participate in the hunter education program.<sup>3</sup> The license must be shown to enforcement officers upon demand, and the officer must be allowed to inspect a hunter’s game bag, container, or any other carrier that might be used to conceal game.<sup>4</sup> Hunting without a license or failing to cooperate with inspections can result in criminal fines of \$100 and up to 30 days imprisonment for the first offense.<sup>5</sup> A hunting license can also be revoked for violating Hawai‘i’s game laws.<sup>6</sup> All fees collected from hunting licenses, stamps, tags, hunter education training programs, and the use of public target ranges must be deposited into the Wildlife Revolving Fund.<sup>7</sup> This fund can only be used for programs and activities related to wildlife and game management, preservation, propagation, and protection, including providing match for federal grants to support specific wildlife and game programs.

Hawai‘i’s commercial marine fishing license was originally established to prevent foreign fishers from fishing in Hawai‘i’s waters. The license system dates back to Hawai‘i’s territorial days. Currently, anyone who catches fish to be sold, or intends to, must have a valid commercial marine fishing license. This requirement means that even fishers who derive only a very small amount of money from fishing must be licensed in order to occasionally sell the fish they catch. Charter fishing vessel operators and crew must also have commercial marine fishing licenses, whether or not they intend to sell their catch.

Commercial marine fishing license holders are required to submit monthly reports on all their fishing activities, including their non-commercial fishing activities. License holders must also allow DOCARE to inspect their catch, and acknowledge that the State may suspend or revoke their license for cause. The monthly reporting requirement enables the State to maintain reasonably accurate information on the rates of fish extraction relative to fishing effort. In some cases, this has helped DLNR determine if or when restrictions are needed to prevent significant population declines among specific fish species. However, commercial fishing catch data does not always provide an accurate picture of fishing resources and/or activities, since business and economic factors might determine whether certain species are targeted, and caught, at any given time. Likewise, environmental factors such as invasive species or pollution may impact certain species and influence catch data in ways that don’t necessarily relate to fishing activities.

2 HRS § 183D-22(a)(3).  
3 HAR § 13-122-12(a)(5).  
4 HRS § 183D-25.  
5 HRS § 183D-5.  
6 HRS § 183D-5(f).  
7 HRS § 183D-10.5.

**Table 1. Existing DLNR License and Registry Systems**

	COMMERCIAL MARINE FISHING LICENSE	RECREATIONAL FRESHWATER FISHING LICENSE	HUNTING LICENSE	BOTTOMFISH VESSEL REGISTRY
<b>YEAR ESTABLISHED</b>	1925	1949	1907	1998
<b>CURRENT HOLDERS (FY 2015)</b>	3,715	5,189	About 13,000	1,326
<b>CURRENT ANNUAL REVENUE GENERATED</b>	About \$300,000*	About \$25,000	About \$400,000 to \$500,000	\$0
<b>FEE STRUCTURE</b>	\$50 for residents and nonresidents	\$5 for residents and nonresident military personnel between 15 – 64 years; \$3 for residents 9 -15 years; \$25 for nonresidents not in military. Short-term non-resident licenses for \$10 - \$20	\$20 for residents under 65 years; \$105 for nonresidents. Also sell game tags and have special hunts.	Free, but required for anyone (not just the vessel owner) to legally fish for bottomfish from a vessel.
<b>FUND FOR REVENUES</b>	Commercial Fisheries Special Fund (HRS § 189-2.4)	Sport Fish Special Fund (HRS § 187A-9.5)	Wildlife Revolving Fund (HRS §183D-10.5)	No revenue generated
<b>FEE WAIVERS</b>		65 years and older	Over 65 years; Hansen's disease residents of Kalaupapa, Moloka'i	
<b>DURATION</b>	One Year	One Year	One Year	One Year
<b>STAMPS OR TAGS FOR EXTRA FEES</b>	Baitfish license	Not applicable	Game Birds; Special Lottery Hunts	Not applicable
<b>RESTRICTIONS ON USE OF REVENUES</b>	Can be used only for programs, activities, research, and personnel involved in conservation and management of aquatic life for commercial purposes	Federal Sport Fish Restoration laws and HRS § 187A-9.5 pertain	Funds can only be used for hunting related activities	No revenue generated
<b>PROVISIONS FOR NATIVE HAWAIIAN RIGHTS</b>	No	No	No	No

\* The Commercial Marine Fishing fee for nonresidents was reduced from \$250 to \$50 per year in 2015. That change is not yet reflected in annual revenue generated.

Hawai'i's freshwater game fishing license program regulates recreational fishing for seven species of introduced freshwater game fish in the State's fairly limited inland water bodies and streams. These include public fishing areas at the Kōke'e and Wailua reservoirs on Kaua'i, Lake Wilson on O'ahu, and the Waiākea fish pond on Hawai'i Island. Other smaller freshwater reservoirs can also be fished, although many of them are on privately owned shores with access requiring special permission. No education course is needed to obtain this license. Licenses must be shown to enforcement officers upon demand, and enforcement officers are allowed to inspect bags or containers. Consent to such inspections is also required as a condition of fishing within the Kōke'e and Wailua Reservoir Public Fishing Areas.<sup>8</sup>

Freshwater fishing without a license, or failing to allow inspections when required, can result in criminal fines up to \$250 or administrative fines up to \$1,000 for the first offense or violation.<sup>9</sup> Fees collected from the freshwater game fishing licenses, permits, or the use of public fishing areas or other fishing grounds must be deposited into the Sport Fish Special Fund, which can only be used to implement DLNR's programs and activities related to the management and administration of the aquatic life and aquatic resources of Hawai'i. Although freshwater license fee revenues are small, they do provide a match for federal funds to support sport fish projects, development and maintenance of trails and access ways into public fishing areas, and research programs and activities that concern sport fish conservation and management.<sup>10</sup>

Hawai'i's bottomfish vessel registry requires all vessels used to fish for bottomfish in Hawai'i waters to be registered with DLNR's Division of Boating and Ocean Recreation (DOBOR).<sup>11</sup> Bottomfish include: (1) 'Ula'ula koa'e, ruby or longtail snapper, or onaga (*Etelis coruscans*); (2) 'Ula'ula or ehu (*Etelis carbunculus*); (3) Kalekale (*Pristipomoides sieboldii*); (4) 'Opakapaka (*Pristipomoides filamentosus*); (5) 'Ukikiki or gindai (*Pristipomoides zonatus*); (6) Hapu'u, hapu'upu'u, or Hawaiian grouper (*Epinephelus quernus*); and (7) Lehi or rusty jobfish (*Aphareus rutilanus*).<sup>12</sup> These fisheries occur in both State and federal waters, and the State cooperates with federal agencies to create uniform and comprehensive management measures for them.<sup>13</sup>

The bottomfish vessel registry system enables the State to send surveys and other information to bottomfishers for fisheries management use.<sup>14</sup> The bottomfish vessel registry is free and as such does not generate any revenues for DLNR. It is only valid for one year, and is required for anyone (not just the vessel owner) to legally fish for bottomfish from a vessel.<sup>15</sup> Violators are subject to criminal fines up to \$250 or administrative fines up to \$1,000 for the first offense.<sup>16</sup> Vessels can be registered online through the same third-party vendor that administers the online purchases of hunting and freshwater fishing licenses or in person at one of DAR's administrative offices.<sup>17</sup>

## B. REGISTRY, PERMIT AND LICENSE (RPL) SYSTEMS IN OTHER STATES

All other coastal states in the U.S., as well as the territory of Puerto Rico, have some form of mandatory, non-commercial marine fishing RPL system in place. Some of these are longstanding systems. Others were created more recently, in response to the federal government's requirement that recreational marine fishers without a state-issued license, permit, or registration must register annually with the National Saltwater Angler Registry (NSAR) for a fee (currently \$29). Of these other coastal systems, the Study Group selected nine states and the territory of Puerto Rico for further analysis, based on similar attributes to Hawai'i and the types of non-commercial fishing license systems they created that cover a range of RPL system options. (The basic details of some of these other systems are included in Appendix D).

Study Group members contacted officials responsible for some of these other non-commercial marine fishing regulatory systems to seek further insight into how their systems were developed and how well their systems addressed the Study Group's objectives for improving marine resource management. The jurisdictions contacted include:

- Florida (license with stamps for different species);
- Massachusetts (flat fee permit);
- Connecticut (license with stamps for different species);
- Maryland (license);
- New Jersey (free registry);
- North Carolina (license); and
- Puerto Rico (license).

Representatives from these other jurisdictions were helpful and offered the following advice and observations, if Hawai'i decides to create a registry, permit, or license system for its non-commercial marine fishing.

1. Keep licensing systems as simple as possible, and avoid needless complications such as multiple categories of fishers, multiple types of tags and permits, and other variables.
2. Avoid systems that allow fishers to wait several years before they have to renew (to ensure that fisher data remains current).
3. Be very cautious about the age definitions used for fee waivers, since these can have significant impacts on a system's potential revenues. (For example, the definition of 'senior' is of particular concern, since fishing activity is often higher among older residents.)
4. Consider how license requirements would be met by tourists. Make the license simple, easily understood, and easy to acquire.

8 HAR § 13-64-3(b)(4); § 13-65-4(b)(4).

9 HRS §§ 187A-12.5; 187A-13.

10 HRS § 187A-9.5(c); HRS § 187A-2.

11 HAR § 13-94-9.

12 HAR § 13-94-5.

13 HRS § 187A-5.5.

14 Moffitt, Robert B. et al. May 2006. Status of the Hawaiian Bottomfish Stocks, 2004. Pacific Islands Fish. Sci. Cent., Natl. Mar. Fish. Serv., NOAA, Honolulu, HI 96822-2396. Pacific Islands Fish. Sci. Cent. Admin. Rep. H-06-01, 2-3 pp.

15 HAR § 13-94-9.

16 HRS §§ 187A-5, 187A-13; HAR § 13-94-3.

17 <http://dlnr.hawaii.gov/dar/contact-us/>; <https://dlnr.hawaii.gov/cms-public/app/new-vessel-registration;jsessionid=91DA6BB006CCB7193BC3252450F10E98.prodapp1?execution=e1s1>

5. Having a private sector vendor develop and administer the online applications can ease State financial and administrative burdens. Consider using an ‘administration fee’ on top of any license fee that can go directly to the vendor for that service.
6. Facilitate obtaining a license through various means, including online, at fishing supply stores, via charter boat operations, or in person.
7. Consider including active military members as state residents for the purpose of license requirements and fees.
8. Obtain email addresses, as they are an effective way to maintain communication with fishers.
9. New Jersey is one of three states with a free registry, and its registered numbers have decreased over time, due primarily to a perceived lack of necessity to fishers and a lack of compliance enforcement.
10. It is very important to emphasize to the public the additional benefits for fishing resources that will be realized from any fishing license revenues.
11. None of the states that the Study Group talked to had special license provisions for indigenous persons in their general fishing license; however, some licenses explicitly acknowledged that indigenous fishers were not required to have state fishing licenses when fishing on sovereign tribal reservations. (Tribal governments may have their own license requirements.)
12. Consider allowing ‘open fishing days’ when no licenses would be required.
13. Florida does not require licenses for people fishing with ‘cane poles’ in their county of residence. This is a possible analogy for traditional gear & methods that may be associated with traditional and customary rights in certain areas of Hawai‘i.
14. Some states formed fisheries advisory groups to help set priorities for use of the fishing license or permit revenues, or conducted surveys of license holders to ask how they thought funds should be spent.
15. The license application form/process is a good opportunity to collect data on the types of fishing people engage in (e.g., frequency, gear used, species sought, etc.). This data can be compared with other survey data obtained through other means.
16. Some states issue annual reports on RPL system revenues and how they are spent.
17. North Carolina has a ‘blanket license’ for certain public piers and for charter boats, which covers anyone fishing from within these confines.
18. North Carolina has a fishing license fee waiver for low-income persons, who must demonstrate their eligibility for other government assistance, such as participation in the Supplemental Nutrition Aid Program (SNAP).

19. Consider ways for fishers exempted from a fee-based RPL system requirement to be enumerated and captured in the universe of non-commercial fishers. A special free license or certificate that must be carried while fishing is one option.

## C. HAWAI‘I LAW CONSIDERATIONS

Hawai‘i is the only coastal state in the nation without a mandatory registration or license requirement for non-commercial marine fishing. Enacting one requires addressing specific legal questions, which are briefly listed and discussed below. A more complete summary of these legal issues is included in Appendix E.

### 1. Hawai‘i law protects the public’s right to fish. Doesn’t this provision therefore prohibit the creation of a mandatory registration or license requirement for non-commercial marine fishing in Hawai‘i?

**Short Answer: Not likely.**

Hawai‘i law grants to the people of Hawai‘i access to and use of the public fisheries in State waters, but that grant of access and use is subject to the State’s right and responsibility to regulate and manage the taking of fish and other aquatic life in order to protect the long-term use of the fisheries. Specifically, Article XI, section 6 of Hawai‘i’s Constitution reads “The State shall have the power to manage and control the marine, seabed and other resources located within the boundaries of the State ... All fisheries in the sea waters of the State not included in any fish pond, artificial enclosure or state-licensed mariculture operation shall be free to the public, subject to vested rights and the right of the State to regulate the same[.]” This is reinforced in HRS § 187A-21.

The legal meaning of the word “free” in the above quote is the primary issue in this question. Basically, can “free to the public” and “free and equal use by all persons” be interpreted as prohibiting the State from charging a fee for a license, registry, or permit? Or is it based on the Organic Act which sought to do away with “private” or “exclusive” fisheries rights that would otherwise prevent equal access to the fisheries? Many believe the State’s right to “manage and regulate the taking of aquatic life” allows the State to create a fee-based fishing license to protect the sustainability of fisheries under its control. Hawai‘i courts have not yet addressed this issue, but many other states with mandatory, fee-based fishing licenses have similar provisions in their constitutions and statutes that also protect the public’s right to fish subject to the state’s right to regulate fishing.<sup>18</sup>

### 2. If a fee-based, non-commercial, marine fishing license were created, could the Legislature use the license fees for something other than programs that benefit fishers?

**Short Answer: No.**

Hawai‘i law requires any license fees collected by the State government to be used for purposes that specifically benefit the individuals who paid the fees. If they aren’t, license holders can challenge the license fee as an improper tax and ask a court to invalidate the fee requirement.<sup>19</sup> Also, federal and

<sup>18</sup> See Appendix F for a matrix comparing the language that appears in the following state authorities: Ala. Const. § 39.02, Amendment 5; Alaska Const. VIII, § 15; Cal. Const. Art. 1, § 25; Fla. Stat. § 379.104; Ga. Code Ann. § 27-1-3(a); La. Const. Art. I, § 27; R.I. Const. Art. I, § 17; S.C. Art. 1, § 25; Va. Const. Art. XI, § 4.  
<sup>19</sup> *Hawai‘i Insurers Council v. Lingle*, 201 P.3d 564, 120 Haw. 51 (2008).

state law requires all sport fishing license fees to be deposited into the Sport Fish Special Fund.<sup>20</sup> This fund was created in 1993 “to establish a Sport Fish Special Fund to be administered by the Department of Land and Natural Resources and into which sport fishing license and permit fees, and other associated moneys are to be deposited[.]”<sup>21</sup>

The exact definition of “sport fishing” is not provided under Hawai‘i law. Based on definitions provide under federal law, however, “sport fishing” activities include recreational fishing and likely overlap with most but possibly not all of the activities described by the term “non-commercial fishing” (such as subsistence, bartering, or traditional fishing to perpetuate culture or customs). This means that if Hawai‘i chose to create a “non-commercial” marine fishing license (rather than one called “sport fish” or “recreational”), the majority but possibly not all of the license fees would be required by law to be deposited into the Sport Fish Special Fund. To resolve any doubt, the State would need to amend the language of the Sport Fish Special Fund statute to add the phrase “non-commercial” to guarantee that all non-commercial marine fishing license fees would be required by law to be deposited into the fund. That being said, nothing in the statute prevents



Spearfisherman with his catch, photo by Jhana Young

the State from choosing to deposit all “non-commercial” license fees into the Sport Fish Special Fund without amending the statute.

Once any license fees are deposited into the Sport Fish Special Fund, those moneys can only be used for:

- Programs and activities to implement the laws related to aquatic resources and wildlife, including providing state funds to match federal grants under the Federal Aid in Sport Fish Restoration Act (Dingell-Johnson/Wallop Breaux Act) for sport fish projects;
- Acquiring the use, development, or maintenance of trails or access ways into public fishing areas, fishery management areas, marine life conservation districts, or private lands where public sport fishing is authorized;

- Research programs and activities concerning sport fish conservation and management; and
- Importation into, and the management, preservation, propagation, enforcement, and protection of sport fishes in the State.<sup>22</sup>

Any deviation from these allowable uses of the Sport Fish Special Fund would jeopardize the federal Sport Fish Restoration Act (Dingell-Johnson/Wallop Breaux Act) funding that Hawai‘i receives annually (known as “DJ funds”). Currently, Hawai‘i receives a 1% allocation of available DJ funds, which has been approximately \$3.5M per year.<sup>23</sup> These DJ funds provide approximately 40% of the annual budget for DAR.<sup>24</sup>

It is important to note that these requirements would prevent the Legislature from diverting fees from a fee-based RPL system, but they would not prevent the Legislature from reducing other funding (including General Funds) that must be allocated to DLNR for fisheries management and enforcement.

### 3. If a fee-based license were created, could the license fees be used to improve enforcement?

**Short Answer: Yes.**

Federal DJ funds generally will not be granted to state fish and wildlife agencies to support projects that involve law enforcement activities to enforce fish regulations.<sup>25</sup> But this does not prevent a state from using the fees that it collects on its own from a recreational or non-commercial fishing license (i.e. state funds) for enforcement activities. The USFWS has confirmed that law enforcement activities specific to fish conservation are very much a part of the administration of state fish and game agencies and can be funded by state recreational or non-commercial fishing license fees without negatively affecting its ability to continue receiving federal DJ funds. However use of such fees would require that DOCARE officers separately track and account for time spent responding to fisheries enforcement versus other responsibilities. Funding could also be used for supplies and equipment dedicated to enforcement of fisheries, such as vessels and surveillance devices.

### 4. If a fee-based license were created, would the nonresident fee amount have to be the same as the resident fee amount?

**Short Answer: No.**

The State of Hawai‘i charges different fees for residents and nonresidents in its Freshwater Game Fish and Game Mammal Hunting license programs. Different resident and nonresident fee rates are also consistent with the trend seen in a majority of other coastal states and do not appear to have been challenged in court.<sup>26</sup>

There have been legal challenges to commercial fishing licenses based on a legal principle that protects a U.S. citizen’s

20 HRS § 187A-9.5.

21 S. Stand. Comm. Rep. No. 1647, in 1993 Senate Journal, at 1348.

22 HRS § 187A-9.5(c)-(e).

23 Specifically, Hawai‘i’s final apportionment of DJ funds for the last three available fiscal years were: \$3.6M (FY2016); \$3.4M (FY2015); \$3.2M (FY2014). See [https://wsrprograms.fws.gov/Subpages/GrantPrograms/SFR/SFR\\_Funding.htm](https://wsrprograms.fws.gov/Subpages/GrantPrograms/SFR/SFR_Funding.htm).

24 DJ funds are provided in the form of reimbursement for up to 75% of eligible project costs. This means that a state must cover the other 25% of a project’s costs from its own funds or in-kind contributions. 50 C.F.R. § 80.12.

25 50 C.F.R. § 80.6. Exceptions to this general rule can be made when these activities are necessary for the accomplishment of project purposes that have been approved by the USFWS regional director.

26 See Appendix B for a detailed comparison of marine fishing regulatory systems in U.S. coastal states and territories.



right to conduct business on equal footing with other U.S. citizens in all of the U.S. states.<sup>27</sup> There are circumstances where different resident and non-resident fees are allowed in the commercial context, but states must be able to make a factual showing to support the basis for this difference.<sup>28</sup> Hawai'i had a different fee for resident and nonresident commercial fishing licenses, which was challenged and subsequently revised in 2015 to remove the differential. Since these challenges were based on a legal principle that specifically protects business interests, they do not appear to apply to recreational/non-commercial fishing license fees.

**5. If the State creates a fee-based license, would everyone have to get one?**

**Short Answer: It will depend upon the details of any RPL system enacted.**

The State has the power to create a fee-based license system that applies to all fishers or one that creates exemptions and/or fee-waivers for certain categories of fishers. Fee waivers or license exemptions are frequently granted in other states to senior citizens, children, disabled persons, and active military personnel. In some cases, other categories like low income persons, veterans, and members of federally recognized tribes are eligible for fee waivers or exemptions.

For example, Hawai'i's freshwater game fish license exempts fishers under 9 years old, waives license fees for seniors 65 years and older, and provides a reduced-fee license to members of the U.S. armed forces on active duty in Hawai'i and their families. Hawai'i's game mammal hunting license has fee waivers for seniors over 65 and residents of Kalaupapa, Moloka'i with Hansen's disease.

Providing complete exemptions from license requirements would reduce data that many fishers say is lacking. Reduced-fee licenses or fee waivers may be better approaches to providing special treatment for certain categories of fishers.

## D. NATIVE HAWAIIAN RIGHTS

The Hawai'i Constitution provides unique protections for Native Hawaiian culture and for traditional and customary practices that exist in addition to any protections provided by the United States Constitution. Protected Native Hawaiian traditional and customary rights are determined under the law on a case by case basis and are difficult to generalize, even in the fishing context. Fishing practices or customs and their associated rights may differ at the island-level (mokupuni), island district-level (moku), or district division-level (ahupua'a). An analysis of how a new State non-commercial marine fishing RPL system might affect these rights and protections was prepared by Malia Akutagawa, Esq. to support this Study Group process, and her full analysis is included in Appendix G.

Below is a summary of the key questions Ms. Akutagawa analyzed for the Study Group, as well as her conclusions and recommendations. The Study Group took Ms. Akutagawa's analysis and all of her recommendations under consideration, but did not adopt them all. The recommendations that were adopted by the entire Study Group are outlined in Section XII of this report.

## KEY QUESTIONS ANALYZED

**1. Would any kind of statewide non-commercial marine fishing RPL system automatically threaten Native Hawaiian rights and practices?**

**Short Answer: No.** If the intent of a non-commercial marine fishing RPL system would be to provide adequate data on the fishery health as well as potentially fund additional monitoring and enforcement efforts, this is a form of mālama (conservation and stewardship) that is aligned with Hawaiian cultural beliefs and practices.

**2. May the State exercise its regulatory authority to create a non-commercial marine fishing RPL system even if it may cause harm to Native Hawaiian rights?**

**Short Answer: Yes and No.** Article XII, Section 7 of the Hawai'i State Constitution describes the State's legal obligation to Native Hawaiians. "The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights."<sup>29</sup>

The language is clear. While the Hawai'i Constitution requires State agencies like DLNR to protect Native Hawaiian rights, agencies may also regulate these rights. The Hawai'i Supreme Court rationalized that ancient Hawaiian usage was self-regulating and on this basis the State may also impose appropriate regulations to govern the exercise of native Hawaiian rights in conjunction with permits it issues.<sup>30</sup> However, the State, in exercising its regulatory authority over Hawaiian rights, must weigh and reconcile competing interests.<sup>31</sup> Even when certain types of permits may interfere with Native rights the State and/or its political subdivisions may still issue these permits in instances where preserving and protecting Native rights would result in actual harm to the recognized interests of others.<sup>32</sup> While the State and counties may regulate Hawaiian rights, they are still obligated to protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians to the extent feasible.<sup>33</sup> Moreover, government has an affirmative duty<sup>34</sup> to preserve native rights and does not have unfettered discretion to regulate such rights out of existence.<sup>35</sup>

27 See *Marilley v. Bonham*, 802 F.3d 958 (9th Cir. 2015) (a class of non-resident fishers who purchased commercial fishing licenses and gear and species specific permits in California and paid higher fees than California residents successfully sued the State of California for violation of the Privileges and Immunities Clause of the United States Constitution).

28 Courts use a two-part test to determine whether different treatment of non-residents violates the Privileges and Immunities Clause:  
1) Does the challenged restriction deprive nonresidents of a privilege that falls within the protection of the Privileges and Immunities Clause? If yes, then:  
2) Is the restriction closely related to the advancement of a substantial state interest? If no, then the court will invalidate the restriction.

29 HAW. CONST. art. XII, § 7 (1978).

30 *Public Access Shoreline Hawaii v. Hawaii County Planning Commission (PASH)*, 79 Hawai'i 425, 451, 903 P.2d 1246, 1272 (1995).

31 *Id.* at 447, 903 P.2d at 1268.

32 *Id.* at 450, n. 43, 903 P.2d at 1271, n. 43 (citing *Kalipi v. Hawaiian Trust Co.*, 66 Haw. 1, 12, 656 P.2d 745, 752 (1982)).

33 *Id.* at 450, n. 43, 903 P.2d at 1271, n. 43.

34 *Ka Pa'akai O Ka 'Aina v. Land Use Commission (Ka Pa'akai)*, 94 Haw. 31, 45, P.3d 1068, 1082 (2000) (citing *Stand. Comm. Rep. No. 57*, reprinted in 1 PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF 1978, at 639 (1980)).

35 *PASH*, supra note 2, 79 Haw. at 451, 903 P.2d at 1272.

### 3. What are the sensitive areas and issues to be aware of when contemplating RPL system scenarios?

**Short Answers:** Primarily hoā‘āina (ahupua‘a tenant) practices, and konohiki fisheries that survived condemnation proceedings in the aftermath of the 1900 Organic Act and were deemed “vested.”

In addition, the following issues should be considered:

- Relative geographic isolation of rural subsistence communities, who are most dependent on nearshore resources, and their limited ability to access and participate in an RPL system;
- Resistance of many Native Hawaiians to participate in what they perceive as illegitimate state authority especially in regards to cultural customs and practices;
- Historically high resistance and negative reaction to any form of licensing or “registration” requirement for cultural practitioners;
- Exacerbating the disproportionate impacts of the criminal justice system on Native Hawaiians, through criminal penalties associated with a potential RPL system, especially as there may be higher numbers of Native Hawaiians who fish in general; and
- Disagreement and misunderstanding about what are “rights” and how they are protected by the law.

### 4. How can an RPL system respect and protect Native Hawaiian rights and also avoid criminalizing Native Hawaiians who are exercising their traditional and customary rights?

**Short Answer:** Some form of identification could potentially be provided that would alert DOCARE officers patrolling State marine waters that these individuals are exercising their protected rights within an area where their rights attach.

These rights holders could also be exempted from fees associated with a non-commercial marine fishing RPL system when exercising their rights within the geographic areas where their rights attach, including conducting traditional subsistence fishing and native mālama practices. When fishing in any other area, however, these individuals should be required to follow the RPL system requirements, including fees, that are applicable to the general public.

### 5. How would a mandatory free registry for non-commercial marine fishing impact Native Hawaiian rights?

**Short Answer:** There is likely no impact to Native Hawaiian Rights, since the State Constitution acknowledges the State’s authority to regulate those rights.

### 6. How would a fee-based fishing license for non-commercial marine fishing impact Native Hawaiian rights?

**Short Answer:** On its face, this is a reasonable regulation provided that it doesn’t allow the State to prevent a Native Hawaiian from exercising his or her customary rights within the ahupua‘a fishery where the fisher physically resides, and/or other fishing areas where that fisher’s customary rights attach.

### 7. How would including additional fees for particular activities impact Native Hawaiian rights?

**Short Answer:** Fees may be problematic if they completely infringe upon or cause extreme hardship to subsistence fishers. A fee waiver or exemption for subsistence fishers who are indigent/low-income may mitigate this issue.

Additional considerations:

**Fishing Gear Types:** Regulatory provisions for gear designed to take large harvests or resembling commercial fishing gear is likely no infringement on Hawaiian rights. If the gear is for subsistence fishing (modern gear included) or is crafted traditionally (e.g., leho he‘e – octopus lure with cowry shell) this might unreasonably infringe on cultural practices and should probably be exempted.

**Fishing Area Restrictions:** If the restricted area includes a Native Hawaiian fisher’s ahupua‘a fishery or other traditional fishing grounds, any cost or restriction may infringe on the indigenous user’s rights. However, it is noted that the State already restricts fishing in specific areas, at specific times, and for specific species.

**Permits for Different Species:** Requiring a special permit and/or additional fees for specific species may infringe upon Hawaiian cultural practitioners and “summarily extinguish” that person’s practice in violation of constitutional protections if that species is critical to a Native Hawaiian fisher’s subsistence diet or other traditional practice.

## ADDITIONAL RECOMMENDATIONS FROM MS. AKUTAGAWA

Ms. Akutagawa also recommended the following, if an RPL system is pursued for Hawai‘i:

- Train DAR personnel and DOCARE officers in the rights guaranteed to Native Hawaiian fishers and ocean stewards;
- Always reference the [Ka Pa‘akai](#) case framework in decision-making (i.e. [Ka Pa‘akai O Ka ‘Aina v. Land Use Commission](#)); and
- Utilize the ‘Aha Moku system as a unifying entity for broader education and outreach.

## ADDITIONAL RECOMMENDATIONS FROM LISTENING SESSION PARTICIPANTS

At the Listening Session held with Native Hawaiian Fishers, participants made the following additional recommendations:

- Consider the feasibility of organizing and implementing a place-based pilot project for any new RPL system prior to considering it statewide; and
- Consider other possible mechanisms for generating additional funding to support fisheries management and conservation in Hawai‘i, such as imposing a small surcharge on incoming non-resident airline passengers.

The Study Group did not adopt all of these recommendations, but it did recognize that before any potential non-commercial marine fishing RPL system is operationalized, further research and consultation should be done to:

- Identify who or what entity will determine the existence of Native Hawaiian traditional and customary rights in any given instance;
- Clarify how these rights would be determined; and
- Decide if exceptions would be granted for broader categories of fishers to ensure that all or most potentially protected traditional and customary practices would be not be infringed on.

## E. FINANCIAL CONSIDERATIONS

The Study Group looked at some of the general dynamics of potential costs and revenues associated with a new non-commercial marine fishing RPL system as described in a Financial Impact Analysis prepared by CI Hawai'i (Appendix H). The Analysis utilized information from DLNR, other Hawai'i agencies, and licensing agencies in other states to examine the potential financial impacts of a range of RPL system design scenarios, including both non-revenue and revenue-generating programs.

DLNR staff indicate that, in absence of revenue generating mechanisms or external financial support, establishing a free (no-fee) fishing RPL system will create an additional financial burden on an already resource-limited DLNR. If increasing State financial burdens is a concern to be avoided, any new RPL system contemplated by the State of Hawai'i would need some mechanism for recovering program operating costs over time.

To understand the potential net financial contributions of a revenue-generating licensing program, CI Hawai'i conducted a discounted cash flow (DCF) analysis to explore three different fee scenarios. Each scenario assumed a total of 158,123 non-commercial saltwater anglers in 2015, based on an estimate from the USFWS. However, in each scenario different assumptions were made for other key factors such as the expected annual volume of licensing transactions (i.e. purchases and renewals), program cost structure, and license fee rates. (A more detailed description of these factors is included in Appendix H).

### Scenario A: Minimum Universal License Fee (Break-Even Fee Rate).

Scenario A attempted to identify the minimum license fee rate that would still enable the licensing program to 'break-even'. In other words, the scenario that would cover all of the up-front and recurring costs generated by the licensing program over a 15-year time horizon, but without generating any new net revenue. Assuming a fixed, universal rate (applied to all license purchases irrespective of residency status, or waiver eligibility), the minimum license fee to break-even is \$1.13. (See Appendix H for further detail).

### Scenario B: Residency-Based Price Differentials and Demographic-Based Subsidies.

Scenario B evaluated the potential financial returns generated by a licensing program with a residency-differentiated rate structure of \$15.00/year for permanent Hawai'i residents and \$35.00/year non-permanent residents) and waiving license fees for: (a) Hawai'i residents ages 65 years and older; (b) individuals ages 16 years and younger, irrespective of residency status; and (c) Hawai'i residents eligible for Supplemental

Nutrition Assistance Program (SNAP) benefits. Under this scenario, the Analysis projected that the licensing program will generate a Net Present Value (NPV) \$18,027,240 over 15 years and an Internal Rate of Return (IRR) of 284.73%. In other words, based on the assumptions stated in the Financial Impact Analysis and an estimated initial program investment of \$296,250, the net cash flows generated by the licensing program over a 15-year period would be valued at an estimated \$18,027,240 in present dollars. Very preliminary estimates of net annual revenues under Scenario B are \$686,140 in Year One and \$2,089,807 in Year Five.

### Scenario C: Alternative Residency-Based Price Differentials and Demographic-Based Subsidies.

Scenario C evaluated the potential financial returns of a licensing program under assumptions identical to those of Scenario B, with reduced license fee rates. In this Scenario, the analysis assumed a fee rate of US \$5.00/year for permanent Hawai'i residents and US \$25.00/year for non-residents. The same license fee waivers in Scenario B applied to Scenario C. Under this scenario, it is projected that the licensing program will generate an NPV of US \$9,818,565 and an IRR of 170.35% over a 15-year time horizon. Very preliminary estimates of net annual revenues under Scenario C are \$360,504 in Year One and \$1,159,654 in Year Five.

While additional evaluation on the reasonableness of revenue, cost and other assumptions is strongly recommended, the preliminary analysis indicates potential for a licensing program to generate financial benefits for the State of Hawai'i, provided however, the program involves some revenue-generating mechanism.

## X. OPTIONS

The Study Group examined four different non-commercial marine fishing RPL system options, as well as considering a 'do nothing' or status quo option in which nothing new is implemented. Three of the four RPL system options were based on existing systems used in other coastal states. Table 2 includes basic details about each option and lists examples of states that use them, if applicable.

**TABLE 2: RPL SYSTEM OPTIONS CONSIDERED**

RPL OPTION	SYSTEM ELEMENTS	EXAMPLE STATES
EXISTING SYSTEM	Non-commercial marine fishing from the shoreline to three nautical miles out is legal for residents and nonresidents of all ages without a license or registration and without paying any fees (except for bottomfish)	N.A. (Hawai'i only)
FREE MANDATORY REGISTRY	Mandatory annual registration for all fishers over a certain age (often 16 yrs). No fee required.	New York, New Jersey, Maine
FEE-BASED LICENSE W/ FEE WAIVERS OR REDUCTIONS FOR CERTAIN CATEGORIES OF FISHERS	Mandatory fee-based, annual license with fee waivers for certain categories of fishers (e.g., residents vs nonresidents, seniors, disabled, military, low income).	Rhode Island
LOW-FEE LICENSE W/PERMITS, STAMPS, OR TAGS AT ADDITIONAL CHARGE	Mandatory low-fee, basic, annual license with the option to purchase special permits, tags, or stamps for special activities (e.g. different species or gear). Fees could be waived or reduced for certain categories of people.	Alaska, California
FREE LICENSE W/PERMITS, STAMPS, OR TAGS AT ADDITIONAL CHARGE	Mandatory free, basic, annual license with the option to purchase special permits, tags, or stamps for special activities for additional fees. Fees could be waived or reduced for certain categories of people.	N.A.

**TABLE 3: EXISTING SYSTEM, REGISTRY, PERMIT, AND LICENSE OPTIONS EXAMINED COMPARED TO OBJECTIVES**

RPL OPTION	SYSTEM ELEMENTS	NEW DATA	BETTER COMMUNICATIONS		MORE FUNDS	
		PROVIDE ADDITIONAL INFORMATION ON FISHERS	ENHANCE COMMUNICATION WITH FISHERS	STRENGTHEN 'VOICE' FOR FISHERS	INCREASE REVENUES FOR FISHERIES	IMPROVE ENFORCEMENT
EXISTING SYSTEM	Non-commercial marine fishing from the shoreline to three nautical miles out is legal for residents and nonresidents of all ages without a license or registration and without paying any fees (except for bottomfish)					
<b>NEW OPTIONS COMPARED AGAINST EXISTING SYSTEM</b>						
FREE MANDATORY REGISTRY	Mandatory annual registration for all fishers over a certain age (often 16 yrs). No fee required.	✓	✓	✓		
FEE-BASED LICENSE W/ FEE WAIVERS OR REDUCTIONS FOR CERTAIN CATEGORIES OF FISHERS	Mandatory fee-based, annual license with fee waivers for certain categories of fishers (e.g., residents vs nonresidents, seniors, disabled, military, low income).	✓	✓	✓	✓	✓
LOW-FEE LICENSE W/PERMITS, STAMPS, OR TAGS AT ADDITIONAL CHARGE	Mandatory low-fee, basic, annual license with the option to purchase special permits, tags, or stamps for special activities (e.g. different species or gear). Fees could be waived or reduced for certain categories of people.	✓	✓	✓	✓	✓
FREE LICENSE W/PERMITS, STAMPS, OR TAGS AT ADDITIONAL CHARGE	Mandatory free, basic, annual license with the option to purchase special permits, tags, or stamps for special activities for additional fees. Fees could be waived or reduced for certain categories of people.	✓	✓	✓	✓	✓

✓ = the RPL system option addresses the objective.

# XI. CONCLUSIONS

Hawai'i's marine resources are affected by a number of factors besides non-commercial fishing including pollution, invasive species, erosion, coastal development, climate change, and impacts from other marine recreational or industrial activities. However, this Study Group focused solely on issues associated with creating a non-commercial marine fishing RPL system and evaluated whether an RPL system had the potential to accomplish three objectives:

1. Provide additional and more robust data to support fishery management;
2. Foster two-way dialogue between fishers and managers; and
3. Create a source of independent, continuous funding to support effective management.

This section includes three parts:

1. A 'threshold analysis' indicating each RPL system's ability to address each objective;
2. Specific conclusions for each objective and for overarching legal matters;
3. Relative advantages (pros) and disadvantages (cons) of different RPL system options.

## A. THRESHOLD ANALYSIS

The Study Group evaluated four broadly-defined RPL system options, in addition to Hawai'i's existing system, to determine the ability of respective options to address the Study Group's three objectives. Two of the objectives were divided into 'sub-objectives' to allow further definition. The evaluation results are summarized in Table 3. This table illustrates a simple 'threshold' analysis that depicts whether or not each RPL system option meets the stated sub-objective, as compared to the existing system. The table does not reflect whether one option meets a sub-objective better or worse than another option; it simply indicates whether the option does or doesn't address the sub-objective.

Based on this threshold analysis, the only options that would address all five of the sub-objectives are the fee-based license options and the free-license with fee-based permits, stamps, or tags option. The free registry would address only three of the sub-objectives.

## B. SPECIFIC CONCLUSIONS

The Study Group also reached the following conclusions relative to the three objectives, and overarching legal matters:

### Objective 1: Provide additional and more robust data to support fishery management

- a. The 'status quo' or existing system will not provide additional or more robust data on non-commercial marine fishing activity in Hawai'i unless different approaches are used for surveys and fisher censuses.
- b. It is likely that a statewide RPL system would provide more useful and complete data than is currently gathered. A statewide RPL system could potentially provide DAR with

a count of non-commercial fishers who participate in non-commercial marine fishing activities and comply with that particular RPL system. A simple RPL system could result in a "phonebook" of fishers for further survey efforts. A more intensive RPL system could gather additional user demographic information such as where they reside, their age, and information about their typical fishing activities. But these options would likely provide only the total number of non-commercial fishers, subtotals of fisher types, and information on how to contact them for surveys or other data collection efforts.

- c. To avoid creating gaps in data on fishers, it is better to grant fee waivers for specific categories of fishers rather than exempting them from participating in the RPL system. For example, if a fee-based license program was implemented, a fee waiver for low income fishers would generate data on them without imposing financial burdens. In contrast, if those fishers are exempt, there would be no data generated for that user group.

- d. For data gathering purposes, an RPL system will be more effective if lifetime application options are not offered (as opposed to annual renewals). Many states noted that lifetime or multi-year RPL holders limited their data gathering capabilities.

- e. Similar to existing DAR and DOBOR RPL systems, confidentiality requirements will exist for any new non-commercial fishing RPL system. Specific confidentiality concerns regarding fisher data collected by any RPL system is a subject that should be investigated further. Confidentiality requirements may affect how any RPL system option needs to be designed and put into operation, and how personal information from it is collected and used.

### Objective 2: Foster more two-way dialogue between fishers and managers

- a. The status quo or existing system is not likely to foster more two-way dialogue unless an alternative means is used to identify more members of the non-commercial fishing community.

- b. Many fishers are interested in having a greater voice and influence on the laws, rules, and regulations that affect them. Knowing the number of non-commercial marine fishers who are active in Hawai'i and having current contact information available to engage them on relevant issues could give fishers a stronger voice in decision-making processes.

- c. Depending on how it is designed, any form of RPL system could provide a means for more two-way communication between fishers and the State. A fee-based permit or license may also be seen as an implied two-way contract or understanding between fishers and the State that would bring with it expectations for better communication of rights, responsibilities and fisheries management.

- d. Depending on how it is designed, an RPL system could provide opportunities for more focused outreach and education on fishing issues and more organized and effective interactions between State agencies and Hawai'i's various fishing communities than is currently the case. Other states, for example, use formal advisory groups to inform their state fisheries management agency on management priorities.

- e. An RPL system could make it easier and more cost-effective to get information out to license holders about updated or new spatial, temporal, gear, or species related rules and restrictions.
- f. Requiring fishers to annually renew their participation in any of the RPL system options would prevent fisher contact information from becoming out-of-date or obsolete.
- g. All RPL system options would need to address cultural and linguistic differences among fishers, and the geographic isolation of certain rural fishing communities in order to be most effective.
- h. All of the RPL system options could be designed to allow fishers to selectively determine how they should be contacted (via email, phone text, or mail), and how they should be engaged (e.g. surveys, additional information options, etc.).

**Objective 3: Create a source of independent, continuous funding to support effective management**

- a. Neither the status quo/existing situation or free registry would create new sources of funding.
- b. A fee-based license system has the potential to generate additional revenue for the State. However, the amount of revenue and net income derived from a fee-based permit or license will depend upon specific design and implementation factors. Revenues can be modeled using assumptions about the fee amounts to be charged for a permit or license, the numbers of participating fishers (i.e. total number of fishers minus the number of fishers who would receive waivers or qualify for exemptions), expected compliance rates (i.e. the percentage fishers who actually purchase licenses compared to the number of fishers that should), and the costs to start-up and maintain the permit or license system over time.
- c. The Study Group’s preliminary financial analysis of potential licensing revenues and net income assumed two different fee structures: a \$15 resident/\$35 nonresident annual license and a \$5 resident/\$25 nonresident annual license. Using available estimates of the number of participating fishers, and projected compliance rates and program costs, this analysis indicated that a fee-based license with similar features would likely generate positive annual net income in a relatively short amount of time. While the results of these preliminary analyses appear promising, further research and analysis should be conducted to validate the revenue, cost, and other assumptions associated with any fee-based permit or license system that may be selected. Additionally, any fee waiver categories should be studied further for projected increases or decreases over time and the related impact those changes may have on expected net revenues.
- d. The Study Group reviewed the non-commercial marine fishing license systems of twelve coastal states. Among those states, annual license fees ranged from \$7 to \$35 for residents and \$10 to \$145 for nonresidents.
- e. DAR currently charges residents \$5 for an annual freshwater fishing license and charges nonresidents \$25 for the same license. The Division of Forestry and Wildlife (DOFAW) charges \$20 and nonresidents \$105 for annual game mammal hunting licenses. DAR charges \$50 annually

for commercial marine fishing licenses for residents and nonresidents alike.

- f. State law requires that fees collected from a “recreational” marine fishing permit or license be deposited into the Sport Fish Special Fund. It is less clear if all fees from a “non-commercial” marine fishing permit or license would be treated the same way. Once deposited into the Sport Fish Special Fund, both federal and state law requires that the funds be used only for specific fisheries-related purposes. These uses are defined by statute, but all fishers may not agree that these uses are the only activities that support ‘effective fisheries management.’
- g. The Sport Fish Special Fund cannot be diverted by the legislature for other purposes without risking Hawai‘i’s eligibility to continue receiving federal funds that make up 40% of DAR’s annual budget. However, this provision would not prevent the legislature from possibly reducing the State General Funds allocated for fisheries management to compensate for anticipated income from permits or licenses. Having a stronger enumerated fisher ‘voice’ could help fishers advocate for preserving the existing funds allocated for fisheries management by the legislature and preventing such reductions in General Funds from occurring.
- h. RPL system fees could potentially be used to support DOCARE’s fisheries enforcement activities, but would need to be carefully defined and accounted for in order to maintain the State of Hawai‘i’s eligibility to continue receiving the federal funds that support fisheries management. Even without additional revenues to DOCARE, a license or permit system could also enhance their capabilities and effectiveness for aquatics enforcement efforts, (i.e. through improved data collection or the requirement for license holders to consent to inspections).

**LEGAL MATTERS**

- a. There is no indication that a fee-based fishing permit or license is prohibited by Art. XI, § 6 of the Hawai‘i Constitution (which addresses people’s rights to fish in Hawai‘i’s sea waters. (See Section IX (C) 1 for discussion)
- b. If a fee-based, non-commercial, marine fishing permit or license were created and all the fees were deposited into the existing Sport Fish Special Fund, the Legislature could not use the license fees for something other than programs relating to fisheries management. (See Section IX (C) 3 for discussion)
- c. If a fee-based permit or license were created, fees could be used to increase the capacity and tools available for enforcement of Hawai‘i’s fishing rules and regulations (See Section IX (C) 3 for discussion)
- d. If a fee-based license were created, nonresident license fee amounts do not have to be the same as resident license fee amounts. (See Section IX (C) 4 for discussion)
- e. The State can exempt certain categories of people from the requirements of any new RPL system or provide those categories of people with fee waivers. (See Section IX (C) 5 for discussion)

f. Requiring a new non-commercial fishing RPL system will not automatically threaten Native Hawaiian rights and practices. (See Section IX (D) 1 for discussion). Any new RPL system must not prevent Native Hawaiians that hold traditional and customary rights from exercising those rights within fishing areas where those rights attach. (See Section IX (D) 6 for discussion). The most important areas to be aware of when considering a new RPL system are Hoa'āina (ahupua'a tenant) practices and any existing konohiki fisheries that survived condemnation proceedings following the 1900 Organic Act and were deemed "vested". (See Section IX (D) 3 for discussion) Additionally, any RPL system should avoid placing additional burdens or liability on cultural practitioners engaging in bona fide traditional and customary or subsistence practices.

g. A subsistence-based fee waiver could address financial or cultural impacts to indigent, low-income, Native Hawaiian, and other fishers. (See Section IX (D) 7 for discussion)

### **C. RELATIVE ADVANTAGES (PROS) AND DISADVANTAGES (CONS) OF DIFFERENT OPTIONS**

The Study Group identified various advantages and disadvantages to each of the RPL system options evaluated. These are a reflection of the Study Group's informed opinions and observations based on the collective knowledge and experience of its members.

**Table 4: Advantages and Disadvantages of Different Registry, Permit, and License System Options**

RPL SYSTEM	PROS (POTENTIAL ADVANTAGES)	CONS (POTENTIAL DISADVANTAGES)
<p><b>1. EXISTING SYSTEM</b></p>	<p>No additional administrative burden                      All non-commercial marine fishing is free                      No push back from public who don't support change to status quo</p>	<p>Don't know how many people are fishing                      Difficult to contact, talk to or hear from fishers on important issues                      Effective enforcement is difficult                      No additional revenue for fisheries management                      Risk of mismanaging the fisheries based on limited data</p>
<p><b>2. FREE REGISTRY</b></p>	<p>Allows you to know who is fishing non-commercially                      May not cost as much to create &amp; maintain as other options                      Opportunity to enhance outreach and education                      All non-commercial marine fishing is free</p>	<p>Difficult to get compliance                      Limited in types of data collected                      No additional revenue for administering the system                      Limited usefulness for enforcement (registration cannot be revoked for not complying with rules and regulations)                      Low incentive for fishers to register</p>
<p><b>3. FEE-BASED LICENSE W/ FEE WAIVERS OR REDUCTIONS FOR CERTAIN CATEGORIES OF FISHERS</b></p>	<p>Would produce more data on the universe of fishers                      Would generate new revenue source                      Could help with enforcement by providing greater authority to inspect                      Could be relatively easy to implement and comprehend</p>	<p>A system with fee waivers or reduced fee licenses would be more complicated and could create enforcement challenges                      Most fishers would have to pay to fish legally                      Requires more funds to institute &amp; maintain                      Waivers could result in less overall support and buy in</p>
<p><b>4. LOW-FEE LICENSE W/ PERMITS, STAMPS, OR TAGS AT ADDITIONAL CHARGE</b></p>	<p>Similar to hunting license structure                      Would identify a more complete universe of fishers                      Would improve data on specific categories of fishing activity                      Would provide a cheaper and relatively easier option for fishers not engaged in stamp/permit/tag activities                      Would generate new revenue source through basic license and additional stamp/permit/tag fees</p>	<p>May not generate enough funds - implementing a stamp &amp; tag system would be costly, but the most common fee collected would be low                      May be complicated &amp; confusing                      Could infringe on cultural rights</p>
<p><b>5. FREE LICENSE W/ PERMITS, STAMPS, OR TAGS AT ADDITIONAL CHARGE</b></p>	<p>Free for most fishers                      May have a better compliance rate                      Capture basic info on all fishers while adding additional information about specific activities</p>	<p>Revenues may not cover implementation costs                      Could be seen as unfair targeting certain activities</p>



## XII. RECOMMENDATIONS

The Study Group takes no collective position on a preferred option or whether an RPL system should be implemented at this time.

However, if any of these options are to be pursued at a later date, the Study Group recommends that the following be considered:

### A. OUTREACH

- Undertake extensive outreach, consultation, and discussions with affected stakeholders statewide prior to and as part of the decision-making process.
- As part of any outreach effort, ensure that this study is available to the public in general and to fishing stakeholders in particular.

### B. ADDITIONAL RESEARCH AND INFORMATION GATHERING

- Improve the definition of non-commercial fishing and an understanding of the demographics of affected population segments, for example, the delineation between boat and shore-based fishers, their age, and their geographic distribution and how issues of sustenance and subsistence fishing apply.
- Consult non-commercial Native Hawaiian fishing practitioners to identify practices that are a part of traditional subsistence, cultural, ceremonial, or religious activities. These may include types of gear, restricted areas or seasons, and high value species.
- Consult with charter fishing industry representatives to identify RPL elements that would work easily for charter patrons and businesses, and consider ways to use RPL fees collected through charter operations to improve State infrastructure used by this industry.
- Continue to collect additional information from other states on their lessons learned, special issues, the social challenges that have arisen, and financial costs and benefits of how generated funds can and have been used. However, be conscious of demographic, geographic, historic, and cultural differences between Hawai'i and the other states in considering the adoption of any approaches.
- Carefully consider and conduct further analysis on the financial implications of prospective fee-waivers or exemptions from any potential RPL system. Develop a more thorough understanding of the full range of costs the State may incur if it seeks to implement any of the RPL systems examined.
- Consider ways to align any RPL system with complementary data collection efforts that improve management of near-shore waters.
- Ensure that the State has specific plans for how data will be collected, used, and shared before data collection efforts

begin. Conduct further research into any confidentiality and data protection issues that may apply.

### C. FUNDS

- Ensure that any and all funds collected from any form of RPL system are deposited in the Sport Fish Special Fund and protected and dedicated to managing marine fisheries.
- Ensure that any funds derived from a fee-based RPL system are additive. The addition of funds from any fee-based RPL system should not replace or reduce General Funds and/or other funds currently supporting DAR or other DLNR divisions for fisheries management and conservation.
- Recognize that DLNR is already systematically underfunded and a new RPL system may not fully alleviate that situation for fisheries management.
- If an RPL system is pursued that would generate additional net revenue, the use of that revenue should strive to meet the needs identified in Objective 1 (better data) and Objective 2 (enhanced information and dialogue) of this study.

### D. ADVISORY BOARD

- Establish a formal advisory board to consult with DAR to improve communication and information exchange on matters pertaining to non-commercial fishing in local waters.
- Ensure adequate representation from different segments of the fishing communities, both geographically and by type of fishing.
- Define and publicize lists of any special gear, restricted areas, or individual species, if a potential RPL system considers charging permit fees for using special gear, fishing in restricted areas, or fishing for specific species.
- If any RPL system is enacted, require that DAR provide annual reports. The annual reports should be provided to an advisory board prior to being released to the public. The annual reports should address the data collected and how it was used to support fisheries management. The report should also include the amount collected from fees (if applicable) and how they were spent to support fisheries management. If a portion of the fees are provided to DOCARE for aquatics enforcement, the report should also describe how those enforcement funds were spent. If data is collected, the report should summarize the preliminary data and include the refined findings when they are analyzed. At minimum, the report should summarize how fishermen benefit from the RPL program.

### E. NATIVE HAWAIIAN RIGHTS

- Undertake focused outreach and consultation with the Native Hawaiian community to determine how best to reach Native Hawaiian fishers and fisher groups, particularly in communities where fishing is important to subsistence and cultural practice. Address concerns that traditional and customary fishing practices could be

adversely affected by an RPL system or that exercising them could be construed as criminalized by a new RPL system. Solicit Native Hawaiian views and opinions or analyses from recognized experts on acceptable approaches for avoiding these perceptions.

- Develop systems, trainings and policies to avoid criminalization of native Hawaiian practitioners.
- If a permit system is implemented, provide a mechanism for Native Hawaiian non-commercial fishing practitioners to identify their traditional fishing area(s), types of gear, restricted areas or seasons, and specific species that are a part of their traditional subsistence, cultural, ceremonial, or religious practices.

non-commercial saltwater and freshwater system. Strive for simplicity for the users.

- If a fee-based license or permit is pursued, look into the advantages and disadvantages of creating different tiers of licenses (e.g., levels or categories, such as a single boat license that can cover several non-commercial fishers on the same boat).



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## F. ENFORCEMENT

- Provide information and training for DOCARE and other law enforcement personnel about changes to the law under any new RPL system, particularly about how to validate any proposed RLP system exemptions. Enlist their assistance with specific outreach and community education, including for Native Hawaiian related issues and concerns.
- Increase the presence of community-based DOCARE officers simultaneous with implementing any new RPL system. Ensure that they know and understand the communities of non-commercial fishers in the areas to which they are assigned.
- Recognize that any RPL system provisions regarding DOCARE's right to inspect personal coolers may be particularly sensitive to certain fishers. Clarify under what terms and conditions such inspections may be warranted. Other state laws may be sources of guidance on the types of language that can be used to specify and limit the consent to inspection.

## G. OTHER

- Research other possible mechanisms for producing additional information and data to support informed decision-making in non-commercial fishing management.
- Consider ways to combine any new RPL system with other existing DAR fishing license programs, such as a combined

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