



STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

April 18, 2013  
1:16 pm  
State Capitol, Room 225

**H.C.R. 143, H.D. 1**  
**REQUESTING THE PRESIDENT OF THE UNITED STATES AND THE UNITED STATES CONGRESS TO EXEMPT CERTAIN CORAL SPECIES IN ALL COMMERCIAL HARBORS IN THE STATE OF HAWAII FROM RECLASSIFICATION UNDER A PROPOSED FEDERAL RULE CHANGE**

Senate Committee(s) on Transportation and International Affairs  
& Energy and Environment

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The Department of Transportation (DOT) strongly supports HCR 143, HD1 to exempt certain candidate coral species in the state's commercial harbor system from reclassification under a proposed federal rule change. The resolution requests that certain types of reef-building candidate coral species be exempt from reclassification as endangered or threatened species in all harbors in the State of Hawaii. Hawaii is critically dependent upon ocean transportation and commerce that occurs through the State's commercial harbors. The proposed rule for reclassification of 82 reef-building coral species (which has been reduced to 66 species) includes two species, *Montipora patula* and *Montipora flabellate*, which are the fourth and fifth most abundant coral in the waters surrounding Hawaii. This resolution seeks to have these two flourishing coral species within all harbors in the State of Hawaii exempted from reclassification under the proposed rule to ensure that there are no significant impacts to harbor operations.

There is significant economic harm and no justification or value for the listing of these two coral species under the Endangered Species Act. See attached, "Summary of Scientific Review, "Status Review Report of 82 Candidate Coral Species Petitioned under the U.S. Endangered Species Act" NOAA Technical Memorandum NMFS-PIFSC-27 September 2011" letter authored by recognized local and nationally coral experts.

Thank you for the opportunity to provide testimony on this critical resolution.



**STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION**

**ATTACHMENT A**

## Summary of Scientific Review of

### "Status Review Report of 82 Candidate Coral Species Petitioned under the U.S. Endangered Species Act"

NOAA Technical Memorandum NMFS-PIFSC-27

September 2011

On October 20, 2009, the Center for Biological Diversity petitioned the National Marine Fisheries Service (NMFS) to list 83 coral species as threatened or endangered under the U.S. Endangered Species Act (ESA). The petition was based on a predicted decline in available habitat for the species, citing anthropogenic climate change and ocean acidification as the lead factors among the variable stressors responsible for the potential decline. The NMFS identified 82 of the corals as candidate species, finding that the petition provided substantive information for a potential listing of these species (note that this number has subsequently been reduced to 66 species). The NMFS established a Biological Review Team (BRT) consisting of seven members of Federal Agencies to prepare the Status Review Report (SRR) completed in September 2011 that evaluates the extinction risk for each of the species. The BRT considered two major factors in conducting this review: 1) interaction of natural phenomena and anthropogenic stressors that could potentially contribute to coral extinction, and 2) the fundamental ecological character of each candidate coral species, particularly life history, taxonomy and abundance. To achieve this objective, the BRT relied heavily upon the "best available scientific and commercial data and analyses, including the best available climate change and ocean acidification scenarios."

It is not the intent of this paper to evaluate the overall merit or value of the listing of corals under ESA, although there remain important unanswered questions as to how listing under the ESA will provide increased protection from global climate changes. Rather, this document provides a short concise summary of four major points that justify that the SRR clearly does not reflect the "best available scientific and commercial data and analyses" (see Page 2 NMFS SRR) and does not reflect a valid scientific decision-making process. For these reasons, we feel that the NMFS document does not provide a scientifically justifiable basis for listing several species of corals that occur in Hawaii under ESA.

Specific points of concern are as follows:

1) The selection of the 82 species listed as ESA candidates was taken with no other consideration by NMFS from the International Union for Conservation of Nature (IUCN) "Red List" which categorizes threat levels for each species of coral. In the Red List, each species is assessed for potential for extinction by a group of individuals termed "assessors" and "reviewers." Based on these assessments, each species is placed into one of nine classes of sequential vulnerability that range from "not evaluated" to "extinct." All coral species classed at least as "vulnerable" are listed as the 82 ESA candidate species. In the Red List justification of classification for *Montipora patula* and *M. flabellata* the assessors state that while there has not been any recorded population reduction for these species, and no recorded bleaching events, the fact that they are endemic to Hawaii is the sole justification for classification as "vulnerable." However, the IUCN justification for several other Hawaiian endemic coral species (*Porites compressa* and *P. brighami*), conducted by a completely different group of assessors and reviewers do not even consider endemism in their classification of these species as of "least concern," thereby eliminating them from list of 82. Hence, the baseline selection criteria by IUCN of species that is propagated by the NMFS Review for ESA candidacy is seriously flawed owing to inconsistency in selection criteria. If endemism to Hawaii is a sole criterion for selection, then all endemic species should be listed, and if endemism is not a sole criterion, then all species should be reviewed on equal grounds by equal standards of susceptibility to environmental threats. As this is clearly not the case, and Hawaiian corals were evaluated under two

separate sets of criteria, any further consideration of the ESA candidacy should be stopped until a valid evaluation of threat justification can be conducted.

2) The determination of inclusion of a coral species as an ESA candidate was carried out by each member of the BRT evaluating each of eight "risk likelihood categories" designed to evaluate the likelihood of a species falling above or below a "critical risk threshold." These evaluations by BRT members "relied heavily on the best available information on the spatial extent of the species ranges and on their understanding of the likely impacts of a suite of threats on each of the individual populations over the period until 2100. The lack of adequate information on complex coral ecology and interactions between threats made the assessment of extinction risk for each of the 82 nominal coral species extremely challenging and uncertain (emphasis added)." Following these evaluations, each member of the BRT anonymously voted (twice) on the likelihood of whether each of the species would fall below the critical risk threshold. A complete discussion of the overall high uncertainty of this method is provided in the body of the SRR.

Of the seven members that comprised the BRT, all are employees of NMFS or other federal agencies, and only two appear to possess any professional field experience in Hawaiian coral reef ecology or taxonomy. Hence at a maximum, only two of the members of the existing BRT could base their votes on either first-hand knowledge. As several of the important species of Hawaiian corals that are listed are endemic to Hawaii, it is highly unlikely that anyone without first-hand experience on Hawaiian reefs could provide an accurate evaluation of the State-wide status of these corals. As the voting process to evaluate risk factors of each species gave equal value to each member of the BRT, it is difficult to understand how these results can be interpreted as "objectively science-based." An alternate method to determine the various aspects for ESA candidacy would be to convene within each geographical sub-region (e.g., Hawaii) a group of resident scientists who possess a high degree of actual expertise on corals in that region to provide the risk assessment.

3) In the SRR, there is extensive discussion of the distinction between morphological (identifiable by physical characteristics) and genetic constituency (i.e. "clades), with the intent of combining different morphological species that have the same genetic makeup. However, among the 82 listed species, only two groupings combine what are considered separate morphological species into single clades {*Montipora patula (verilli)* and *Montipora dilatata/flabellata (turgescens)*}. These groupings are based on a single scientific publication that suggest, but does not state conclusively, that these species contain the same identical genomes. While these two groupings both occur primarily in Hawaii, the difference in abundance and physiological characteristics of the recognized morphological species cannot be separated when the species are combined to a single entity. Hence, morphological species that may not be over the theoretical "critical risk threshold" category could be considered as such. As this situation only occurs for two groups in Hawaii, and nowhere else in the rest of the world, it is suggested for consistency that the distinction is reversed and each morphological species is considered separately.

4) Probably the most serious deficiency of the SRR, is that the data base used for justification for ESA candidacy is clearly not "based on best available scientific and commercial data and analysis." For instance, for the species *Montipora patula*, the discussion of "Abundance" (P. 316, Status Review Report) consists of six lines, citing two scientific publications (note that the preparer of this paper was one of the authors cited, and the cited sentences are taken out of context and have no bearing on the overall abundance of this species throughout the State). In submitted testimony commenting on the ESA candidacy, Dr. Richard Brock cites numerous long-term monitoring programs that he has conducted throughout Hawaii over the course of the last 38 years which have documented *M. patula* as at least the fourth most abundant coral throughout the main Hawaiian Islands. As stated on page 316 of the NMFS Review Report, the Coral Reef Assessment and Monitoring Program (CRAMP) finds that *Montipora patula* is the 4<sup>th</sup> most abundant coral in Hawaii. In addition to overall abundance, which without question

includes many hundreds of millions of colonies throughout the State of Hawaii, this species has the characteristic to assume a variety of growth forms to adapt to particular physical environments, resulting in occurrence in virtually all reef settings throughout the State. In nearshore areas exposed to extremes of low salinity and low temperature such as the eastern shoreline of the Island of Hawaii where numerous mountain streams and groundwater seeps discharge continually to the ocean, *Montipora patula* is one of the most abundant corals, sometimes covering nearly the entire reef surface (R. Grigg, personal communication). *Montipora patula* has been documented in numerous environmental assessment reports to occur as one of the most abundant corals in both deep-draft and small boat harbors throughout the State. In these Harbors, *M. patula* often assumes a growth form of overlapping plates that colonize man-made submerged vertical faces of piers and pilings. Some of these Harbors (particularly Honolulu Harbor) receive significant sediment input through stream discharge at levels substantially higher than occur on natural reefs. This consistent elevated sediment loading and resuspension is tolerated well by *M. patula* in harbor settings. In sum, based on a extensive quantity of documented field data collected throughout the Hawaiian Islands for the last several decades, it is clear that this particular species has a wide geographic distribution throughout the State, is extremely common in virtually all reef and man-made habitats, and is likely more tolerant of extreme physical conditions associated with sediment, temperature, and salinity than most other Hawaiian corals. As such, *Montipora patula* is likely one of the most tolerant species to environmental stress and should be one of the last species to be considered for ESA candidacy based on objective criteria. Apparently, while readily available, none of this information was reviewed or considered by the authors of the NMFS Review Report. Because of these oversights it is clear that the best available scientific and commercial data and analysis were not applied for the Status Review Report.

In summary, review of the NMFS Status Review Report of 82 Candidate Coral Species Petitioned Under the U.S. Endangered Species Act falls far short of providing a valid scientific document for evaluating suitability of these species owing to several major factors. These factors include: 1) faulted and inconsistent methods for determination of IUCN Red List classification (and virtually no independent substantiation of these classes by NMFS; 2) an incomplete risk assessment methodology and non-scientific "voting" method by a team of NOAA employees with limited or no knowledge of the factors on which they were voting; 3) inconsistent "lumping" of only Hawaiian morphological species into genetic "clades" without conclusive evidence of genetic certainty, and 4) a near-complete lack of review of existing scientific literature on the distribution, abundance, and environmental tolerance levels candidate species resulting in inaccurate determination of suitability for ESA candidacy. All of these factors indicate that the Status Review Report does not indeed reflect the "best available scientific and commercial data and analysis" as mandated by the directive of the Status Review Report. As a minimum, the present report should be discarded, and the process repeated with these errors corrected to provide a valid indication of suitability of corals for protection under the Endangered Species Act.

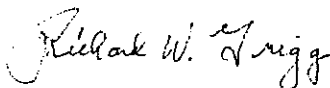
Respectfully signed,



Dr. Steven Dollar



Dr. Richard Brock




Dr. Richard Grigg

# HCR143

Wednesday, April 17, 2013

3:53 PM

Subject	Submitted testimony for HCR143 on Apr 18, 2013 13:16PM
From	mailinglist@capitol.hawaii.gov
To	TIATestimony
Cc	david.w.fink@hawaii.gov
Sent	Wednesday, April 17, 2013 3:51 PM
Attachments	 HCR143H...

## **HCR143**

Submitted on: 4/17/2013

Testimony for TIA/ENE on Apr 18, 2013 13:16PM in Conference Room 225

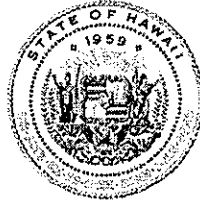
Submitted By	Organization	Testifier Position	Present at Hearing
William J. Aila, Jr.	Department of Land and Natural Resources	Oppose	Yes

Comments: This is an attachment to our previously submitted testimony. Mahalo.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

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CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTER KIA'AINA  
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AQUATIC RESOURCES  
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CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAIHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Testimony of  
WILLIAM J. AILA, JR.  
Chairperson

Before the Senate Committees on  
TRANSPORTATION AND INTERNATIONAL AFFAIRS  
And  
ENERGY AND ENVIRONMENT

Thursday, April 18, 2013  
1:16 pm  
State Capitol, Conference Room 225

In consideration off  
HOUSE CONCURRENT RESOLUTION 143, HOUSE DRAFT 1  
REQUESTING THE PRESIDENT OF THE UNITED STATES AND THE UNITED  
STATES CONGRESS TO EXEMPT CERTAIN CORAL SPECIES IN ALL  
COMMERCIAL HARBORS IN THE STATE OF HAWAII FROM  
RECLASSIFICATION UNDER A PROPOSED FEDERAL RULE CHANGE

House Concurrent Resolution (HCR) 143, House Draft (HD) 1, requests that the President and Congress exempt two coral species in all Hawaii harbors from listing as "threatened" under the Endangered Species Act ("ESA"). **The Department of Land and Natural Resources ("DLNR") supports the intent of this measure, but strongly recommends a key change in the Resolution clauses.**

Listing Coral as "Threatened" under the ESA

First, on April 6, 2013, DLNR submitted comments *opposing* the proposal by the National Oceanic and Atmospheric Administration ("NOAA") National Marine Fisheries Service ("NMFS") to list three species of coral in Hawaii (*Acropora paniculata*, *Montipora dilatata/flabellate/turescens*, and *Montipora patula/verrilli*) as "threatened" under the Endangered Species Act. See attached. NOAA is not proposing to list them as "endangered."

DLNR explained that listing the three coral species as "threatened" is *not warranted* because:

1. There is not sufficient available data about the historical and current trends of the species;
  2. There is a high degree of uncertainty about when the primary stressors may affect these species in the Hawaiian archipelago and little likelihood of major impacts before 2050;
- and



3. The analysis did not sufficiently consider the ability of coral species to adapt to the primary threats identified by NOAA, especially when local stressors are well managed.

Listing these species will do very little or possibly nothing to address the primary threats identified in the biological findings. Available data indicates that *Montipora patula* and *Montipora flabellata* are the fourth and sixth most commonly occurring coral species throughout the main Hawaiian Islands. *Acropora panicula*, while less common, is not known to have been historically abundant.

Instead, listing will redirect substantial local resources away from direct management of these corals. With fewer staff and less money, diverting resources away from active management to bureaucratic consultation will ultimately reduce DLNR's ability to actively and effectively manage these species and their ecosystems.

#### Coral Mitigation Duties

There is a second set of issues which are related to, but distinct from, the ESA. These involve the duty to mitigate loss of coral under various U.S. Army Corps of Engineers and NOAA authorities (Clean Water Act, sec 404; Rivers and Harbors Act, sections 9 and 10; Endangered Species Act, sections 7 and 10; Magnuson - Stevens Act 16 U.S.C. 1861a (b) - (e) (Transition to Sustainable Fisheries - Essential Fish Habitat). The duties may apply to all coral loss (ESA listed or not) from ship groundings, harbor improvements, maintenance of aids to navigation, or other actions.

For coral mitigation, there are a variety of options and the ability to negotiate particular remedies (perhaps even site specific exemptions). It is a rapidly evolving subject. There may be room for creative administrative and executive initiatives.

#### ESA v. Mitigation

DLNR opposed the ESA "threatened" listing for three corals, but has not yet completed its analysis of coral mitigation options. There is an important reason. It bears directly on the WHEREAS clauses in HCR143, HD1.

Under federal laws addressing mitigation for coral loss, there is room for negotiation and administrative remedies. Under the ESA, there are few, if any, such choices.

To the precise point, the President does not have the unilateral authority to amend the federal ESA. Congress may have the ability to pass a law exempting particular corals generally, but it is doubtful Congress could make an exemption for only a few places. Moreover, any proposed amendment to the ESA itself would open up the entire Act for rewriting or repeal. That is not going to happen. It is certainly not going to happen to benefit a few harbors in Hawaii (or anywhere else for that matter).

#### Revised Resolution

Therefore, DLNR STRONGLY RECOMMENDS that HCR143, HD1 be amended in a new SD1 that eliminates all references to harbors in the resolution clauses. The new SD1 should simply



oppose listing of the three coral species anywhere in state waters for the reasons stated by DLNR in its April 6, 2013 comments to NOAA.

In this way, the unrealistic request to amend the ESA is removed. The real problems associated with mitigation of coral loss can be addressed administratively and with more flexibility. HCR143 will be more narrowly tailored to support a practical solution.

To this end, DLNR proposed to NOAA (in the April 6, 2013 letter) that DLNR and NOAA work together to investigate and negotiate a mutually beneficial set of actions under the authority and provisions in Candidate Conservation Agreements (see 64 FR 32726). This allows for mutually agreeable, practical site specific actions.

We encourage your consideration of these suggestions. We would be glad to assist you in any further ways you think helpful. Mahalo.

Attachment:

- a) DLNR April 6, 2013 letter to NOAA on proposed listing of three coral species as "threatened."
- b) HCR143, HD1, Proposed SD1

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GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

April 6, 2013

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

ESTHERE KIA'AINA  
FIRST DEPUTY

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AQUATIC RESOURCES  
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ENDANGERED  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAOLOAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Chief, Protected Resources Division  
Regulatory Branch  
National Marine Fisheries Service  
1601 Kapiolani Blvd., Suite 1110  
Honolulu, Hawaii 96814

Dear Sir:

Re: NOAA Proposal to List 66 Coral Species under the Federal Endangered Species Act

The Hawai'i Department of Land and Natural Resources ("DLNR") provides the following comments on the proposal by the National Oceanic and Atmospheric Administration ("NOAA") to list 66 species of stony coral under the Federal Endangered Species Act ("ESA"). DLNR addresses the 3 species on the proposed list that occur in Hawaii. The DLNR is the lead Hawaii state agency with public trust responsibility for ocean and marine resources, including stony corals. We have restricted our comments to those species present in Hawaii. These comments supplement DLNR's July 31, 2012 submission and are part of an ongoing dialogue with NOAA over coral management and mitigation within the waters and lands of the State of Hawaii.

The following species should not be listed as threatened under the Endangered Species Act: *Acropora paniculata*, *Montipora dilatata/flabellata/turescens*, and *Montipora patula/verrilli*.

Listing is not warranted for the following reasons:

1. Sufficient data regarding the historical and current trends of the species is not available;
2. There is a high degree of uncertainty about *when* the primary stressors may affect these species in the Hawaiian archipelago and little likelihood of major impacts before 2050; and
3. The *determination tool* did not sufficiently consider the ability of coral species to adapt to the primary threats identified by NOAA, especially when local stressors are well managed.

Listing these species will do very little or possibly nothing to address the primary threats identified in the biological findings. Instead, listing will redirect substantial local resources away from direct management of these corals. With fewer staff and less money, diverting resources away from active management to bureaucratic consultation will ultimately reduce DLNR's ability to actively and effectively manage these species and their ecosystems.

### **Abundance and Trends**

Available data indicates that *Montipora patula* and *Montipora flabellata* are the fourth and sixth most commonly occurring coral species throughout the main Hawaiian Islands, respectively. *Acropora panicula*, while less common, is not known to have been historically abundant. Present and historical trends in abundance and distribution should be carefully considered in evaluating whether they face a threat of extinction. There is no information presented suggesting that in recent history the range of the species in Hawaii has significantly changed. Although there have been some declines in abundance, this is not serious enough to suggest that the aforementioned species are at risk of extinction in the foreseeable future.

### **Threats and Vulnerability**

DLNR agrees that greenhouse gases, particularly carbon dioxide, will lead to a rise in sea surface temperatures and changes in ocean chemistry. These trends present real threats to coral reef ecosystems globally. However, for the Hawaiian Islands, models cited by NOAA do not show a sufficient increase in sea surface temperature within the next 50 years to cause chronic bleaching conditions. The relevant species already occur in places with warmer waters than Hawaii. Climate change projections beyond 50 years have a high degree of uncertainty and may be impacted by numerous unforeseen and unpredictable circumstances. Consequently, NOAA's definition of the "foreseeable future" as the year 2100 is not appropriate. Because climate change and acidification models do not show significant impact within 5 decades, listing these three species is not warranted.

Both the climate change and acidification models applied in the assessment are too coarse to accurately predict the conditions that Hawaiian reefs will experience in the future (the scale is too large; sea surface temperature is too crude a proxy). The real conditions are impacted by bathymetry, water mixing, wind patterns, fresh water inputs, and other bio-geographic factors. Therefore, existing projections for sea surface temperature and ocean chemistry are not sufficient by themselves to conclude the species face an existential threat.

The species of coral proposed for listing in Hawaii are abundant, relatively healthy, and relatively insulated from impacts of the primary threats identified by NOAA. As a result, the species will persist despite more immediate threats in other portions of their range. Although NOAA has not defined "significant portion of its range" in the proposal, NOAA and the U.S. Fish and Wildlife developed a policy in 2011 to interpret this phrase ([http://www.fws.gov/endangered/improving\\_ESA/SPR\\_draft\\_policy\\_FAOs\\_FINAL\\_12-7-11.pdf](http://www.fws.gov/endangered/improving_ESA/SPR_draft_policy_FAOs_FINAL_12-7-11.pdf)). Under the proposed policy, NOAA defines the "significant portion of its range" of a species as "significant" if its contribution to the viability of the species is so important that without that portion, the species would be in danger of extinction. Given the health and extent of the three species throughout the Hawaiian archipelago, listing is not warranted. Even if these species were to go extinct elsewhere in the world, these species would persist in Hawaii which is a large and diverse enough system to allow the species to avoid extinction.

Historically and currently, corals migrate as ocean conditions change. There is good reason to assume that their range will expand or shift as temperatures change. Although changing ocean chemistry could impact the ability of corals to successfully migrate, the projections for acidification are much slower than demonstrated migration rates. Corals are a highly plastic and adaptive species. Scientists and managers are only just learning the extent to which coral adapt to changing conditions including temperature and chemistry. The *determination tool* did not sufficiently consider the ability of corals to migrate and adapt to changing conditions, especially when local stressors are well managed.

#### **Hawaii as a Model for Management of Localized Threats**

The proposal concludes that local stressors do not present an extinction threat. However, in evaluating the global stressors, NOAA overlooked the way local management may enhance coral resiliency. The State of Hawai'i prohibits the "take" of stony corals. The State is currently proposing a new, more protective administrative rule that will address both marine and land-based threats. See March 22, 2013 Board of Land and Natural Resources action approving public hearing on coral "no take" rule (attached). The Hawaiian archipelago includes the Northwest Hawaiian Islands State Marine Refuge. The refuge is part of Papahānaumokuākea Marine National Monument (Monument) and UNESCO World Heritage Site, one of the largest marine protected areas in the world. The state and federal regulations for this area create a highly restrictive and coordinated management regime overseen by State and Federal co-managers. The strong management regime throughout the Hawaiian archipelago contributes significantly to the health of all corals in the island chain. Because of this protective and effective local management as well as the relative health of the species here, the species as a whole is not at risk of extinction.

#### **Effects of Listing**

Given their abundance and the wide range of the three corals, NOAA's proposed listing will create a significant burden on state and federal management agencies. However, the listing will not address the primary threats posited in the proposal. The State is responsible for managing both natural and economic resources. Hawai'i will need to develop its existing harbors and conduct improvement projects. As a result, listing will place considerable additional demands on the State to consult and survey for proposed projects. The scope of any potential projects will not threaten the existence of any of the proposed species due to their great abundance in Hawaii. NOAA has already concluded that local stressors do not pose a threat of extinction. However, if the species are listed as threatened, Hawai'i would be required to redirect limited capacity away from active management towards meeting the demands of the ESA (consultation and surveying). As a result, listing will actually reduce resources for active management and not help Hawaiian coral reef ecosystems—including the relevant three coral species. Ironically, there is a real risk that listing these corals under ESA in Hawai'i (where they are already protected) will actually have a negative impact on the species and the coral reef ecosystem.

### **Alternative approaches for improved management**

The ESA is an important conservation tool that has been critical in preventing numerous species from extinction. However, the ESA needs to be applied judiciously and appropriately to address the threats at hand. In this case, the ESA is not the right tool to address the global threat climate change poses to coral. The theoretical benefits do not outweigh the potential costs to the species.

The listing of coral is further complicated by a provision in the ESA that prohibits invertebrate species from being classified as a "Distinct Population Segment" ("DPS"). Thus, NOAA is required to lump Hawaii's coral populations together with populations of coral throughout the Pacific. This obfuscates meaningful local conditions related to threats, trends, and managements.

There is an alternative to listing. DLNR strongly recommends that NOAA implement a *Candidate Conservation Agreement* (CCA) in a manner similar to that implemented by the U.S. Fish and Wildlife Service for other species. See Final Policy for Candidate Conservation Agreements with Assurances, 64 Fed. Reg. 32726 (June 17, 1999). These preventive measures allow the federal resource agency to work with its partners to identify threats to candidate species, plan the measures needed to address the threats and conserve these species, and design and implement conservation measures and monitor their effectiveness (<http://www.fws.gov/endangered/what-we-do/cca.html>). This approach would be extremely effective for a number of marine species, including coral. The State of Hawaii is very interested in a CCA partnership with NOAA. There are numerous local management strategies that the State of Hawaii is currently undertaking that have proved effective for mitigating threats to coral reef ecosystems and for promoting resiliency (for example, MLCs, FMAs, herbivore enhancement areas, and NOAA's own Coral Reef Conservation Plan Priority Sites (West Maui and South Kohala), among others). Furthermore, Hawaii can serve as a model and partner with other managers throughout the Pacific to help improve their coral management.

If NOAA decides to go forward with listing the three coral species in Hawaii, NOAA should consider a *4d* rule that exempts consultation and surveying for activities: 1) intended to protect and restore near shore ecosystems, 2) those required to improve existing harbors; and 3) those required to maintain aids to navigation. The battle to protect coral will not be won or lost in harbors and on navigation buoys. The State of Hawaii has constitutional and other legal obligations to protect and uphold the indigenous rights of the native culture. See Haw. Const. art. XII. Accordingly, NOAA should also exempt cultural practices in a *4d* rule.

Additionally, Hawai'i urges NOAA to consider its policy with respect to Section 6 of the ESA to allow States with Section 6 agreements to undertake management activities that benefit the species without requiring the additional administrative burden of a permit.

Chief, Protected Resources Division  
Regulatory Branch, National Marine Fisheries Service  
April 6, 2013  
Page 5

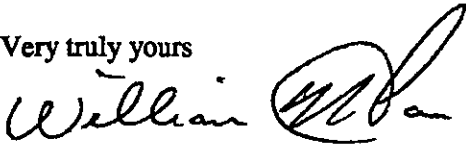
### Conclusion

In summary, listing *Acropora paniculata*, *Montipora dilatata/flabellata/turescens*, and *Montipora patula/verrilli* is not warranted at this time due to the lack of good information regarding trends, the uncertainty of models by which primary threats are identified, and insufficient consideration of adaptive capacity of the corals. It is important to better understand all of these factors and to monitor closely the impacts of greenhouse gases. In short, there is not sufficient evidence at this time to conclude that the species are facing the threat of extinction in the foreseeable future.

The State of Hawai'i looks forward to working with NOAA to manage coral in a manner that focuses resources on meaningful management activities to meet our shared goal of protecting important coral reef ecosystems.

Thank you for your consideration in this matter.

Very truly yours



For William J. Aila, Jr.  
Chairperson  
Hawai'i Board of Land and Natural Resources

State of Hawaii  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Aquatic Resources  
Honolulu, Hawaii 96813

March 22, 2013

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

**REQUEST FOR APPROVAL TO HOLD PUBLIC MEETINGS AND HEARINGS  
TO AMEND HAWAII ADMINISTRATIVE RULES:**

- §13-95-1 DEFINITIONS;
- §13-95-1.1 LICENSES, PERMITS, AND OTHER EXEMPTIONS;
- §13-95-2 PENALTY;
- §13-95-70 STONY CORALS; AND
- §13-95-71 LIVE ROCKS

Submitted for your consideration and approval is a request to hold public meetings and hearings to amend Hawaii Administrative Rules ("HAR") §§13-95-1, -1.1, -2, -70, and -71, to allow the Department of Land and Natural Resources ("DLNR") to more effectively regulate and protect stony coral and live rock.

**HISTORY**

In 1998, the Board of Land and Natural Resource ("BLNR") adopted HAR §13-95-70 and §13-95-71, regulating the take or damage to stony corals and live rocks. The 1999 Hawaii Legislature amended Hawaii Revised Statutes ("HRS") §188-68 (Act 85, SLH 1999) by removing the "no take" rule from the statute and effectively transferring management and jurisdiction to DLNR. DLNR was authorized to recognize and respond to specific threats to aquatic resources and adopt appropriate conservation and management measures via statewide administrative rulemaking.

In 2002, BLNR amended HAR title 13, chapter 95, to remove an "intent" requirement and to define "break" and "damage." The express purpose of these amendments was to broaden the applicability of the rules protecting stony coral and live rock.

On March 13, 2009, BLNR approved DLNR's request to hold public meetings and hearings to amend HAR § 13-95-70 and §13-95-71. The Attorney General's Office suggested that DLNR clarify the purpose of the proposed amendments and focus on resource protection and enforcement. The current draft reflects adjustments made based on those comments.

EXHIBIT \_\_\_\_\_

ITEM F-1



PURPOSE

DLNR's Division of Aquatic Resources ("DAR") proposes to clarify state regulations protecting corals and live rocks. See Exhibit A. Both resources benefit marine ecosystems by providing habitat, cover, biomass, and primary production for aquatic plants, animals, and plankton including socially and economically important reef fisheries.<sup>1</sup> Both aid in protection from wave damage, production of beach sand, and ocean recreation (such as fishing, surfing, and diving).<sup>2</sup> Coral is culturally significant as the first organism described in the Kumulipo.<sup>3</sup> Currently, human-caused threats to these resources include physical damage from:

- diver-related activities<sup>4</sup>
- aquatic resource collecting activities<sup>5</sup>
- recreational and commercial vessel operations<sup>6</sup>
- anchoring or mooring activities<sup>7</sup>
- salvage operations<sup>8</sup>

<sup>1</sup> See Division of Aquatic Resources website, Coral Reefs, [http://hawaii.gov/dlnr/dar/coral/coral\\_reefs.htm](http://hawaii.gov/dlnr/dar/coral/coral_reefs.htm) (last visited Sept. 25, 2009).

<sup>2</sup> *Id.*

<sup>3</sup> THE KUMULIPO: A HAWAIIAN CREATION CHANT 55 (Martha Beckwith, ed., trans., 2d ed. 1981) available at <http://www.ulukau.org/elib/cgi-bin/library?c=beckwit2&l=en> ("The selection of hard-coated creatures as the first forms of life on earth harmonizes with the idea of reproductive power inherent in a stone into which a god enters, an idea fundamental to Polynesian thought about the structure of the world"); see also GEORGE HU'EU KANAHELE, KO KANAKA, STAND TALL: A SEARCH FOR HAWAIIAN VALUES 223 (1986).

<sup>4</sup> Carl G. Meyer and Kim N. Holland, *Spatial dynamics and substrate impacts of recreational snorkelers and SCUBA divers in Hawaiian Marine Protected Areas*, 12 J. COAST CONSERVATION 209 (2008); Nola H.L. Barker and Callum M. Roberts, *Scuba diver behaviour and the management of diving impacts on coral reefs*, 120 BIOLOGICAL CONSERVATION 481 (2004).

<sup>5</sup> See, e.g., JOHN E. RANDALL, ET. AL., THE CASE AGAINST LAY GILL NETS (2006) available at <http://www.faircatchhawaii.org/images/pdf/ScientistPaperFINAL.pdf> ("If not set with care, lay gill nets can damage fish habitat. When removing them, fishermen lift the weighted nets over reefs, and they can break off branch coral. While those branches will grow back in ideal conditions, in the worst cases they can be overgrown by algae, which prevent the coral from recovering. With surge, these nets frequently get hung up on coral and are often abandoned. . . . An entangled and abandoned net can cover and kill an entire coral colony because algae grows where coral is abraded and on the net itself, which smothers the reef area."); BOB ENDRESON, WILLIAM AILA, AND LINDA PAUL, DESTRUCTIVE FISHING METHODS: LAY GILLNETS (2002) available at <http://www.pacfish.org/wpapers/gillnets.html>; Michael D. Wilson, *Editorial: Chlorine is Poison to Waters*, HONOLULU STAR-BULLETIN, Feb. 7, 1997, available at <http://archives.starbulletin.com/98'02'12/editorial/viewpoints.html>.

<sup>6</sup> See, e.g., Jan TenBruggencate, *Freed ship leaves 'a lot of damage'*, HONOLULU ADVERTISER, Feb. 12, 2005, available at [http://the.honoluluadvertiser.com/article/2005\\_Feb\\_12/in/ln01p.html](http://the.honoluluadvertiser.com/article/2005_Feb_12/in/ln01p.html); *Proposal would lower fine for coral reef damage*, MAUI NEWS, July 21, 2009 available at <http://www.maui.news.com/page.content.detail/id/521268.html>; Audrey McAvoy, *Coral Costs*, HONOLULU STAR-BULLETIN, Aug. 4, 2009 available at [http://www.starbulletin.com/news/20090804\\_Coral\\_costs.html](http://www.starbulletin.com/news/20090804_Coral_costs.html).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* ("No tourists were hurt when the ship sank after developing mechanical problems, but the company tripled the original coral damage area by bungling salvage attempts").

- grading and construction activities<sup>9</sup>
- other activities resulting in the discharge of pollution or disease into state marine waters<sup>10</sup>

### PROPOSAL

Given the diverse range of activities now identified as posing a serious risk to the health of Hawai'i's coral reefs, the following amendments are designed to provide clearer and more enforceable protection for stony coral and live rock.

HAR §13-95-1 currently defines "damage" of coral and live rock using an "extensive injury resulting in irreparable [sic] harm or death" standard. Given the colonial and regenerative nature of coral and live rock, however, "irreparable [sic] harm" does not necessarily address the type of damage sought to be prevented by this rule. Protection is still important for colonial species because re-growth can take decades or longer during which time ecosystem services are lost. "Extensive injury" is also a term which both staff and enforcement feel does not provide sufficient guidance for assessing violations in the field. DLNR therefore proposes to amend the definition of "damage" to reflect the types of harms recognized as specific to coral and live rock.

In certain cases, extensive coral or live rock damage occurs where there are multiple specimens. HRS §187A-12.5 provides for violations to be charged on a per-specimen basis. However, the common understanding of "specimen" is ambiguous when used in reference to colonial stony corals and the collective definition of live rock. Therefore, DLNR proposes to amend HAR §13-95-2(b) to clarify how fines per specimen are to be applied.

In addition, DLNR proposes to limit liability for inadvertent taking, breaking, or damaging stony coral that is less than one-half square meter in area or live rock that is less than one square meter in area. Similar standards based on bottom cover are currently used in Florida to assess penalties for damage to coral reefs.<sup>11</sup>

Finally, the current language of HAR §13-95-70 and §13-95-71 makes it unlawful for a person to take, break, or damage stony coral or live rock using an "implement" (i.e., a crowbar, chisel, hammer, or other implement).<sup>12</sup> Although "implement" may be interpreted broadly, prohibiting the use of an "implement" may not provide adequate protection for stony coral and live rock, and has led to confusion for ocean users and enforcement agents. DLNR proposes to eliminate the use of an "implement" as an element of the rule. Damage is damage however it is caused.

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<sup>9</sup> See, e.g., Anthony Sommer, *Kauai mudslide's effects debated*, HONOLULU STAR-BULLETIN, July 21, 2004, available at [http://archives.starbulletin.com/2004\\_07/21/news\\_story10.html](http://archives.starbulletin.com/2004_07/21/news_story10.html);

<sup>10</sup> [http://www.fordham.edu/images/academics/programs\\_environmental\\_studies/essaydanamitchell.doc](http://www.fordham.edu/images/academics/programs_environmental_studies/essaydanamitchell.doc)

<sup>11</sup> See FL Stat. § 403.93345(8) available at [http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String=&URL=Ch0403/SEC93345.HTM&Title=>2009->Ch0403->Section%2093345#0403.93345](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0403/SEC93345.HTM&Title=>2009->Ch0403->Section%2093345#0403.93345)

<sup>12</sup> See HAR §§ 13-95-70, -71.

NOAA is currently proposing to list three Hawai'i coral species as "threatened" under the Endangered Species Act ("ESA"). Listing these coral species may impose a significant administrative burden on the State and could open the door to new federal oversight and authority in State waters. Enacting stronger "no take" rules will help to demonstrate the State's ability and commitment to properly manage and protect our coral reefs, enabling us to maintain our lead role in managing State coral resources.

The proposed rule amendments do not affect small business. Thus, the Department is not required to prepare a small business impact statement pursuant to HRS § 201M-2(b).

**RECOMMENDATIONS:**

That the Board:

1. Authorize and approve DLNR to hold public meetings and hearings to amend HAR §§ 13-95-1 (Definitions), 13-95-1.1 (Licenses, permits, and other exemptions), 13-95-2 (Penalty), 13-95-70 (Stony Corals), and 13-95-71 (Live Rocks).
2. Delegate to the Chairperson the authority to appoint a hearings officer to conduct the aforementioned public meetings and hearings.

Respectfully submitted,



WILLIAM M. TAM, Interim Administrator  
Division of Aquatic Resources

APPROVED FOR SUBMITTAL



WILLIAM J. AILĀ, JR., Chairperson  
Department of Land and Natural Resources

Attachment(s): Proposed rule (clean and Ramseyer version)

Ramseyer Draft  
(Date)

Rules Amending Title 13  
Hawaii Administrative Rules

(Date)

1. Section 13-95-1, Hawaii Administrative Rules, is amended by amending the definitions of "damage", "live rock", and "stony coral" to read:

"§13-95-1 Definitions. As used in this chapter, unless otherwise provided:

"Damage" means to [smash , trample, ]scrape, smother, poison, or otherwise cause [extensive injury resulting in irreparable] any physical or physiological harm [or death] to the living portion of a stony coral or live rock.

"Live rock" means any [rock or coral ]natural hard substrate to which marine life is visibly attached or affixed.

"Stony coral" means any [variety of ]invertebrate species belonging to the [o]Order [Scleractinia]Scleractinia, characterized by having a hard, calcareous skeleton, that are native to the Hawaiian islands."

[Eff 12/03/98; am 12/09/02; am 12/19/02; am  
] (Auth: HRS §§187A-3.5, 187A-5, 190-3)  
(Imp: HRS §§187A-3.5, 187A-5, 190-3)

2. Section 13-95-1.1, Hawaii Administrative Rules, is amended to read as follows:

Exhibit A

"13-95-1.1 Licenses, permits, and other exemptions. Notwithstanding the provisions of this chapter, the department may issue the following licenses and permits to exempt persons from the provisions of this chapter:

- (1) Licenses issued pursuant to [section]sections 187A-3.5 or 189-6, HRS;
- (2) Permits issued pursuant to [section]sections 187A-6, 188-23, 188-37, 188-44, 188-57, 188-68, or 190-4, [HRS;
- (3) Permits issued pursuant to section 188-23, HRS;
- (4) Permits issued pursuant to section 188-37, HRS;
- (5) Permits issued pursuant to section 188-44, HRS;
- (6) Permits issued pursuant to section 188-57, HRS;
- (7) Permits issued pursuant to section 188-68, HRS;
- (8) Licenses issued pursuant to section 189-6, ]HRS; and
- [(9)](3) As may be otherwise provided by law."  
[Eff 12/19/02; am ] (Auth:  
HRS §§187A-3.5, 187A-6, 188-23, 188-37, 188-44, 188-45, 188-57, 188-68, 190-4) (Imp:  
HRS §§187A-3.5, 187A-6, 188-23, 188-37, 188-44, 188-45, 188-57, 188-68, 190-4)

3. Section 13-95-2, Hawaii Administrative Rules, is amended by adding subsections (a) and (b) to read as follows:

"§13-95-2 Penalty. (a) A person violating any section of this chapter [shall be punished as provided by law.] may be subject to any applicable criminal or administrative penalties or both. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State.

(b) For the purpose of calculating the administrative penalties for violations of this chapter, if a fine per specimen may be applicable, fines per specimen may be imposed on the following basis:

- (1) For finfish, each individual;
- (2) For invertebrates, not including stony corals or live rock, each individual;
- (3) For solitary (having a single polyp) stony corals, each individual;
- (4) For colonial stony corals:
  - (A) Each damaged head or colony less than one square meter in surface area; or
  - (B) For a colony greater than one square meter in surface area, each square meter of colony surface area and any fraction remaining constituting an additional specimen;
- (5) For live rocks, each individual; but if the violation involves greater than one square meter of bottom area, on the basis of each square meter of bottom area." [Eff 12/03/98; am ] (Auth: HRS §§187A-5, 187A-12.5, 187A-13, 188-53, 188-70, 189-4) (Imp: HRS §§187A-5, 187A-12.5, 188-53, 188-70, 189-4)

4. Section 13-95-70, Hawaii Administrative Rules, is amended to read as follows:

"§13-95-70 Stony corals. (a) Except as otherwise provided in this section or authorized by law:

[(a)](1) Subject to subsection (b), [I]it is unlawful for any person to take[ stony coral, or to break or damage any stony coral with a crowbar, chisel, hammer, or any other implement.], break, or damage any stony coral, except as provided in sections 171-58.5 and 205A-44, HRS;

(2) It is unlawful for any person to damage any stony coral by any intentional or negligent activity

causing the introduction of sediment, biological contaminants, or pollution into state waters;

[(b)](3) It is unlawful for any person to sell any stony coral; except that stony coral rubble pieces or fragments imported for the manufacture and sale of coral jewelry, or dead stony coral obtained through legal dredging operations in Hawaii for agricultural or other industrial uses, may be sold.

(b) No liability shall be imposed under subsections (a)(1) of this section for inadvertent breakage, damage, or displacement of an aggregate area of less than one half square meter of coral if caused by:

- (1) A vessel with a single anchor damage incident, in an area where anchoring is not otherwise prohibited, and not more frequently than once per year; or
- (2) Accidental physical contact by an individual person.

(c) Any person found in violation of any provision of this section pursuant to a criminal prosecution shall be subject to penalty as provided under section 190-5, HRS. Any person found in violation of any provision of this section pursuant to civil or administrative action shall be subject to penalty as provided under section 187A-12.5, HRS."

[Eff 12/03/98; am 12/09/02; am 1  
(Auth: HRS §§189-6, 190-3) (Imp: HRS §§187A-6, 187A-12.5, 189-6, 190-1, 190-3, 190-5)]

5. Section 13-95-71, Hawaii Administrative Rules, is amended to read as follows:

"§13-95-71 Live rocks. (a) Except as otherwise provided by this section or authorized by law:

[(a) It](1) Subject to subsection (b), it is unlawful for any person to take, break, or damage any live rock[, or to break or damage with crowbar, chisel, hammer, or any other implement, any rock or coral to which marine life is visibly attached or affixed];



(2) Subject to subsection (b), it is unlawful for any person to damage any live rock by any intentional or negligent activity causing the introduction of sediment, biological contaminants, or pollution into state waters; and

[(b)](3) It is unlawful for any person to sell any live rock[ or coral to which marine life is visibly attached or affixed].

(b) No liability shall be imposed under subsections (a)(1), (a)(2), or (a)(3) of this section for inadvertent breakage, damage, or displacement of an aggregate area of less than one square meter of live rock bottom cover.

(c) Any person found in violation of any provision of this section pursuant to a criminal prosecution shall be subject to penalty as provided under section 190-5, HRS. Any person found in violation of any provision of this section pursuant to civil or administrative action shall be subject to penalty as provided under section 187A-12.5, HRS."

[Eff 12/03/98; am 12/09/02; am ]  
(Auth: HRS §§189-6, 190-3) (Imp: HRS §§187A-6, 187A-12.5, 189-6, 190-1, 190-3, 190-5)

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

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

8. These amendments to chapter 13-95, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

William J. Aila, Chairperson  
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General

Final Form Draft  
(Date)

Rules Amending Title 13  
Hawaii Administrative Rules

(Date)

1. Section 13-95-1, Hawaii Administrative Rules, is amended by amending the definitions of "damage", "live rock", and "stony coral" to read:

"§13-95-1 Definitions. As used in this chapter, unless otherwise provided:

"Damage" means to scrape, smother, poison, or otherwise cause any physical or physiological harm to the living portion of a stony coral or live rock.

"Live rock" means any natural hard substrate to which marine life is visibly attached or affixed.

"Stony coral" means any invertebrate species belonging to the Order Scleractinia, characterized by having a hard, calcareous skeleton, that are native to the Hawaiian islands.

[Eff 12/03/98; am 12/09/02; am 12/19/02; am  
] (Auth: HRS §§187A-3.5, 187A-5, 190-  
3) (Imp: HRS §§187A-3.5, 187A-5, 190-3)

2. Section 13-95-1.1, Hawaii Administrative Rules, is amended to read as follows:

"13-95-1.1 Licenses, permits, and other exemptions. Notwithstanding the provisions of this chapter, the department may issue the following licenses and permits to exempt persons from the provisions of this chapter:

Exhibit B

- (1) Licenses issued pursuant to sections 187A-3.5 or 189-6, HRS;
- (2) Permits issued pursuant to sections 187A-6, 188-23, 188-37, 188-44, 188-57, 188-68, or 190-4, HRS; and
- (3) As may be otherwise provided by law."  
 [Eff 12/19/02; am                    ] (Auth:  
 HRS §§187A-3.5, 187A-6, 188-23, 188-37, 188-44, 188-45, 188-57, 188-68, 190-4) (Imp:  
 HRS §§187A-3.5, 187A-6, 188-23, 188-37, 188-44, 188-45, 188-57, 188-68, 190-4)

3. Section 13-95-2, Hawaii Administrative Rules, is amended by adding subsections (a) and (b) to read as follows:

"§13-95-2 Penalty. (a) A person violating any section of this chapter may be subject to any applicable criminal or administrative penalties or both. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State.

(b) For the purpose of calculating the administrative penalties for violations of this chapter, if a fine per specimen may be applicable, fines per specimen may be imposed on the following basis:

- (1) For finfish, each individual;
- (2) For invertebrates, not including stony corals or live rock, each individual;
- (3) For solitary (having a single polyp) stony corals, each individual;
- (4) For colonial stony corals:
  - (A) Each damaged head or colony less than one square meter in surface area; or
  - (B) For a colony greater than one square meter in surface area, each square meter of colony surface area and any fraction remaining constituting an additional specimen;

- (5) For live rocks, each individual; but if the violation involves greater than one square meter of bottom area, on the basis of each square meter of bottom area." [Eff 12/03/98; am ] (Auth: HRS §§187A-5, 187A-12.5, 187A-13, 188-53, 188-70, 189-4) (Imp: HRS §§187A-5, 187A-12.5, 188-53, 188-70, 189-4)

4. Section 13-95-70, Hawaii Administrative Rules, is amended to read as follows:

"§13-95-70 Stony corals. (a) Except as otherwise provided in this section or authorized by law:

(1) Subject to subsection (b), It is unlawful for any person to take, break, or damage any stony coral, except as provided in sections 171-58.5 and 205A-44, HRS;

(2) It is unlawful for any person to damage any stony coral by any intentional or negligent activity causing the introduction of sediment, biological contaminants, or pollution into state waters;

(3) It is unlawful for any person to sell any stony coral; except that stony coral rubble pieces or fragments imported for the manufacture and sale of coral jewelry, or dead stony coral obtained through legal dredging operations in Hawaii for agricultural or other industrial uses, may be sold.

(b) No liability shall be imposed under subsections (a)(1) of this section for inadvertent breakage, damage, or displacement of an aggregate area of less than one half square meter of coral if caused by:

- (1) A vessel with a single anchor damage incident, in an area where anchoring is not otherwise prohibited, and not more frequently than once per year; or
- (2) Accidental physical contact by an individual person.

(c) Any person found in violation of any provision of this section pursuant to a criminal

prosecution shall be subject to penalty as provided under section 190-5, HRS. Any person found in violation of any provision of this section pursuant to civil or administrative action shall be subject to penalty as provided under section 187A-12.5, HRS." [Eff 12/03/98; am 12/09/02; am ] (Auth: HRS §§189-6, 190-3) (Imp: HRS §§187A-6, 187A-12.5, 189-6, 190-1, 190-3, 190-5)

5. Section 13-95-71, Hawaii Administrative Rules, is amended to read as follows:

"§13-95-71 Live rocks. (a) Except as otherwise provided by this section or authorized by law:

(1) Subject to subsection (b), it is unlawful for any person to take, break, or damage any live rock;

(2) Subject to subsection (b), it is unlawful for any person to damage any live rock by any intentional or negligent activity causing the introduction of sediment, biological contaminants, or pollution into state waters; and

(3) It is unlawful for any person to sell any live rock.

(b) No liability shall be imposed under subsections (a)(1), (a)(2), or (a)(3) of this section for inadvertent breakage, damage, or displacement of an aggregate area of less than one square meter of live rock bottom cover.

(c) Any person found in violation of any provision of this section pursuant to a criminal prosecution shall be subject to penalty as provided under section 190-5, HRS. Any person found in violation of any provision of this section pursuant to civil or administrative action shall be subject to penalty as provided under section 187A-12.5, HRS." [Eff 12/03/98; am 12/09/02; am ] (Auth: HRS §§189-6, 190-3) (Imp: HRS §§187A-6, 187A-12.5, 189-6, 190-1, 190-3, 190-5)

6. These amendments to chapter 13-95, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, which were adopted on \_\_\_\_\_, and filed with the Office of the Lieutenant Governor.

\_\_\_\_\_  
William J. Aila, Chairperson  
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:

\_\_\_\_\_  
Deputy Attorney General



# HCR143 HD1

Wednesday, April 17, 2013

2:27 PM

Subject	Testimony in support of HCR143 HD1
From	Kuuhaku Park at HQ x1266
To	TIATestimony
Sent	Wednesday, April 17, 2013 10:56 AM

Testimony of Ku`uhaku Park

On behalf of Matson Navigation Co., Inc.

In regards to HCR143 HD1

Before the Senate Committees on Transportation and International Affairs, and Energy and Environment

On April 18, 2013

Chair English, Chair Gabbard and committee members,

Thank you for hearing HCR143 HD1 which recognizes the importance and vital nature of the New Day Work Projects in our harbors to our entire state. Matson Navigation Co., Inc. supports this measure and humbly requests your respective support as well.

While our ports and maritime industries are universally recognized as being the literal and figurative lifeline to our islands, it has been over forty years since any significant improvements have been made to our commercial harbors.

Even in this down economy of late, our commercial harbors are very near capacity. In fact, at Matson, we are stretched out over three non-contiguous piers in order to satisfy our operational needs. With signs of an improving economy, our commercial harbors may well be, in a very short time, in a state of overcapacity and congestion.

With 98% of all imported consumer goods moving through our commercial harbors, it is imperative that we move responsibly, and in the most expeditious manner, to complete these port improvements. This resolution will help all parties involved to do just that.

Thank you for your consideration of my testimony.

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# HCR143

Wednesday, April 17, 2013  
9:35 AM

Subject	Submitted testimony for HCR143 on Apr 18, 2013 13:16PM
From	mailinglist@capitol.hawaii.gov
To	TIATestimony
Cc	mz@conservehi.org
Sent	Monday, April 15, 2013 8:47 PM

## HCR143

Submitted on: 4/15/2013

Testimony for TIA/ENE on Apr 18, 2013 13:16PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Marjorie Ziegler	Conservation Council for Hawai'i	Oppose	No

Comments: The original resolution was about zipper lanes. It was heard by the House Transportation Committee. There, it morphed into a completely different resolution requesting an exemption for two coral species from a federal proposal to list these corals and other species as threatened or endangered species. We oppose not only the substance of the amended resolution but also the process of gutting the original resolution and not holding a hearing in the appropriate House subject committee in addition to the House Committee on Transportation, either the House Committee on Energy and Environmental Protection or House Committee on Ocean, Marine Resources, and Hawaiian Affairs.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)





April 16, 2013

To:

Chair Senator English,  
Vice Chair Senator Dela Cruz, and the  
Committee on Transportation and International Affairs

Chair Gabbard,  
Vice Chair Ruderman, and the  
Committee on Energy and Environment

**Re: Testimony in **Opposition** to HCR 143, HD1 Requesting the President of the United States and the United States Congress to Exempt Certain Coral Species in All Commercial Harbors in the State of Hawaii From Reclassification Under a Proposed Federal Rule Change**

On behalf of the **Center for Biological Diversity** and our 500,000 members and online activists, including thousands in Hawaii; I am writing to ask the Committee to reject HCR 143, HD1 which will frustrate coral conservation in Hawaii to the detriment of all Hawaiians and visitors. Coral reefs are in crisis, and the Endangered Species Act is intended to ensure that federal actions, including harbor developments that may need a federal permit, are carried out using the best management practices to ensure that harms to endangered and threatened species are reasonably mitigated or avoided.

Exempting corals in harbors from the benefits of protection would frustrate the intent of Congress in enacting the Endangered Species Act. Congress and the Supreme Court have stated that species survival and recovery must be prioritized, "whatever the cost." See *TVA v. Hill*, 437 U.S. 153, 154 (1978). Given their incalculable intrinsic value, their pivotal role in marine ecosystems, and their importance to human communities, the corals proposed for Endangered Species Act protection warrant the full protections afforded to them under the law. Requesting to exempt certain corals from protections in certain places would undermine the important conservation benefits of the Endangered Species Act. A key point of the law's protections is to make sure that all federal actions are done in a way that is sensitive to the concerns of imperiled species, and take steps to mitigate or avoid harming those species. It is a vital check to ensure that development projects do not jeopardize the future existence of species that are headed toward extinction.

Economic concerns are inappropriate to consider when determining if a species warrants protection under the Endangered Species Act, and this is how Congress intended it. The law

mandates that listing decisions be based solely on the scientific data. 16 U.S.C. § 1533(b)(1). The decision must be based on whether the species is threatened or endangered based on five listing criteria: habitat destruction; overutilization, disease or predation, inadequacy of existing regulations, or other natural or manmade threats. 16 U.S.C. § 1533(a)(1). The request in this resolution circumvents the intent of Congress in passing the Endangered Species Act, and it represents an appalling attempt to undercut the effectiveness of the law.

The benefit of Endangered Species Act consultations on corals outweighs the burdens described in this resolution. Hawaii has many threatened and endangered species, and federal actions on the coast should already be consulting on impacts to those species adding to that analysis how to reduce harms to corals is a prudent step forward. Moreover, there are important ways that consultations can be streamlined, for example through informal consultation or programmatic consultations. For elkhorn and staghorn corals, already listed in the Caribbean, about two dozen consultations per year occurred between 2008 and 2012, and several of those were resolved quickly through the streamlined informal consultation process. In turn, those consultations resulted in on-the-ground benefits to listed corals, including protections of corals from certain damaging fishing gear, redesign of developments to reduce impacts, relocation of certain coral stands, monitoring programs, mitigation during construction, installation of mooring buoys, and mitigation in stormwater management plans. These are concrete and enforceable conservation measures that will benefit corals, and they should not be underestimated.

Concerns about the delay of the Hilo Harbor New Day Project are inappropriately referenced here because they have nothing to do with corals proposed for Endangered Species Act listing. The corals have yet to be afforded protections under the Endangered Species Act, and therefore were irrelevant to the delay of the Hilo Harbor project. This project was likely delayed by the state, which already makes it unlawful to take corals. Accordingly, regardless of the proposal to protect corals under the Endangered Species Act, this project and other commercial harbor projects would still require similar efforts to mitigate coral damage. In Hawaii, it is already illegal to harm or kill corals, so protecting *Montipora patula* and *M. flabellata* corals under the Endangered Species Act will not change that. Additionally, the Endangered Species Act sets out a prompt timeline for consultations. Even formal consultations are generally required by statute to be concluded within a 90-day period, unless consent is obtained. 16 U.S.C. § 1536(b). This resolution therefore fails to address the concerns raised by its proponents.

The resolution also fails to describe the important commercial, recreational, cultural, and conservation interests that enhanced coral protections will bring. It is abundantly clear that coral reefs are important—for diversity, fish habitat, shoreline protection, cultural heritage and our economy. And scientists tell us that coral reefs are in trouble and that, without help, they could be completely destroyed in a few decades. According to scientists by mid-century coral reefs will no longer exist as we know them if we don't act now. They predict that by 2030 the most severe bleaching we've seen will be annual, and that by 2040 reefs will be in a rapid terminal to decline. The proposed rule for the coral listings states that 97% of coral reefs will experience severe thermal stress by 2050. Moreover, the local stressors of pollution, overfishing, reef damage, and disease are degrading coral reefs and making them less resilient to all threats. Every step that can be taken to manage coral reefs, along with local stewardship, is critical to the long-term survival of corals.

The Endangered Species Act works, and it can provide a safety net for these imperiled corals. Listing the corals will provide habitat protections and recovery plans, both of which have proven extremely important for the recovery of many endangered species. Additionally, in our experience, the mere designation of critical habitat or the listing of a species provides clear and early notification to project proponents who will be more likely to relocate or redesign the project with sensitivity to the endangered species issues. Reducing local problems such as overfishing, unsound coastal development, and pollution through consultations under the Act is important to improve reef resilience.

It is undisputed that coral reefs are important for Hawaii and all of your constituents. Fishermen, boaters, surfers, divers, environmentalists, tourists, and all ocean users alike depend upon and enjoy Hawaii's corals. Even coastal developers and harbors depend on coral reefs to provide shoreline protection from severe storms. It would be counterproductive to pass this resolution. I appreciate your consideration of this testimony and again ask you to reject HCR 143, HD 1.

Sincerely,

/s/ Miyoko Sakashita

Miyoko Sakashita, Oceans Director



Your Neighbor Island Partner

Pier 40, P.O. Box 3288, Honolulu, HI 96801-3288  
Ph: (808) 543-9311 Fax: (808) 543-9458  
www.youngbrothershawaii.com

**SENATE COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS**

THE HONORABLE J. KALANI ENGLISH, CHAIR  
THE HONORABLE DONOVAN M. DELA CRUZ, VICE CHAIR

**SENATE COMMITTEE ON ENERGY AND ENVIRONMENT**

THE HONORABLE MIKE GABBARD, CHAIR  
THE HONORABLE RUSSELL E. RUDERMAN, VICE CHAIR

HCR 143, HD 1, scheduled for hearing on April 18, 2013, 1:16 p.m.

Testimony of Roy Catalani,  
Vice President of Strategic Planning and Government Affairs, Young Brothers, Limited

Chairs English and Gabbard, Vice Chairs Dela Cruz and Ruderman, and Members of the Senate Committees on Transportation and International Affairs and on Energy and Environment:

Young Brothers, Limited (**Young Brothers**) supports House Concurrent Resolution 143, House Draft 1 (HCR 143 HD1), and offers the following comments.

Young Brothers is a water carrier that provides essential cargo services to the Neighbor Islands and is a member of the Hawaii Harbor Users Group (HHUG). We support HCR143 HD1 in seeking the exemption of two coral species (specifically, *Montipora patula* and *Montipora flabellata*) in commercial harbors of the State of Hawaii from classification as endangered species in a proposed federal rule change under the federal Endangered Species Act (ESA). At a minimum, a rigorous re-evaluation of the scientific process by which these reportedly very common coral species were selected for listing should be undertaken before any federal rule change is approved.

In Act 200 (2008), commonly referred to as the Harbors Modernization Plan, the Legislature found it imperative to the public interest to move forward with certain key harbor modernization projects. In that Act, the Legislature specifically found:

Ocean surface transportation is our state's lifeline. It remains the only viable means to service the largest share of Hawaii's economic needs. However, Hawaii's aging commercial harbor system has not kept pace with our growing economy, and Hawaii's commercial ports statewide are experiencing competition for berthing rights for cargo, fuel, and cruise ship activities, and severe congestion in harbor facilities. Harbor users, the state administration, and the legislature recognize that it is now extremely critical to upgrade existing port facilities and develop harbor improvements in an expedited manner. The Hawaii Harbors Users Group, a maritime transportation industry group, was formed in 2005 because the industry recognized that Hawaii is facing a shortage of port facilities statewide. Its goal is to help the State identify and prioritize Hawaii's harbor improvement needs. The Hawaii Harbors Users Group has completed research



that predicts that if Hawaii's harbor infrastructure is not improved, the loss of real domestic product (in 2007 dollars) could amount to more than \$50,000,000,000 by the year 2030. In comparison, an assessment of immediate commercial harbor needs statewide is estimated to cost in the range of \$850,000,000.

One of the key projects identified in Act 200 is the development of Kapalama Container Terminal (KCT) in the area now known as the Kapalama Military Reservation. KCT will provide much needed terminal space for cargo arriving from the U.S. mainland via major shipping companies that serve mainland routes. The added capacity will allow Young Brothers to work more efficiently with these carriers in handling cargo arriving in Honolulu but destined for a Neighbor Island. Since the majority of goods transported into or within the State flows through Honolulu Harbor as the hub, it is equally critical to the welfare of Oahu and each Neighbor Island to complete needed infrastructure at KCT.

The Legislature recognized this fact even before Act 200 when, in Senate Concurrent Resolution 33 (2006), it cited a 2005 report commissioned by HHUG. In SCR 33, the Legislature pointed out that the report by the research firm Mercator Transport Group identified Kapalama Terminal Development as one of three priority projects that should be completed in the timeframe of five or more years. Mercator noted that "the calculated throughput per acre at the existing Sand Island terminals is about 8800 TEU/acre, which is the highest of any North American terminal." The Legislature also cited Mercator's report with respect to the looming shortage of port facilities, the loss of reserve capacity of existing facilities, and impending reduction of the ability of ports and port users to efficiently serve the existing market, respond to new service requirements, or recover quickly from the natural and man-made service disruptions that invariably occur.

Because the proposed KCT project will require in-water construction activities, aquatic resources such as corals are expected to be affected during construction. Recent marine surveys have identified multiple coral species in the harbor at the KCT project site, including one of the two species cited in this proposed resolution, *Montipora patula* and *Montipora flabellata*. We understand that the State Department of Transportation (DOT) has begun a process to develop a mitigation plan that would address potential impacts on corals under the Section 404 permitting requirements of the federal Clean Water Act (CWA). Notwithstanding DOT's efforts to mitigate the project's impacts on coral, there are strong concerns about the possibility of intensified project delays not only as a result of the CWA Section 404 process, as recently happened in the Hilo Harbor New Day Work Project (cited in this proposed resolution), but additionally if these corals were to be listed as endangered species. In other words, the proposed ESA listings of reportedly commonly found coral will pose another administrative hurdle where regulatory protections already exist.

For these reasons, we support HCR 143 HD1, which promotes the important public interests identified in the proposed resolution as well as in Act 200 (2008) and SCR 33 (2006).

Thank you for this opportunity to testify.



Testimony of Kekoa Kaluhiwa on behalf of Horizon Lines, Inc.

Senate Committee on Transportation and International Affairs

Senate Committee on Energy and Environment

April 18, 2013 1:16pm

Conference Room 225

Hawaii State Capitol

**Re: HCR 143 HD1**

**Requesting the President of the United States and the Congress to exempt certain coral species in all commercial harbors in the State of Hawaii from reclassification under a proposed federal rule change**

Aloha Chairs English, Gabbard and Distinguished Committee Members:

Horizon Lines wishes to submit its support of HCR 143 HD1.

As the most isolated archipelago in the world, the State of Hawaii relies on the shipping industry to provide nearly 99% of all goods for Hawaii's residents, tourists, and military personnel. Most of these goods are shipped to Honolulu Harbor on Oahu, and then transported by barge to the outer islands. With such heavy reliance on ocean transportation and a "just-in-time" delivery of goods, it is imperative that commercial harbors throughout the state, and Honolulu Harbor in particular, receive needed upgrades and expansion of harbor facilities.

Horizon Lines supports the intent of HCR 143 HD1 in requesting that President Obama and the U.S. Congress exempt the *Montipora patula* and the *Montipora flabellate* species of coral in all harbors in the State of Hawaii from reclassification. In particular, studies done on the *Montipora patula* species over the last three decades indicate that these species are prevalent throughout Hawaii's near shore waters. An exemption within Hawaii's commercial harbors will ensure that needed improvements to Honolulu Harbor can proceed as scheduled, greatly benefitting Hawaii's residents and military communities.

Thank you for this opportunity for Horizon Lines, Inc. to testify in support of HCR 143 HD1.



COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS

Senator J. Kalani English, Chair  
Senator Donovan M. Dela Cruz, Vice Chair

COMMITTEE ON ENERGY AND ENVIRONMENT

Senator Mike Gabbard, Chair  
Senator Russell E. Ruderman, Vice Chair

NOTICE OF HEARING

DATE: Thursday, April 18, 2013  
TIME: 1:16 p.m.  
PLACE: Conference Room 225

**Speaking in Support of HCR 143 HD1**

**RELATING TO CORALS IN HARBORS**

**James E. Coon, President**  
**Ocean Tourism Coalition**

My name is **James E. Coon, President of the Ocean Tourism Coalition** (OTC) Hawaii's State-wide organization. We represent the 300 Small Commercial Passenger Vessels operating out of State Harbor facilities. We speak in **Support of HCR 143 HD1**

We agree with the intent of this Resolution to exempt some corals in commercial harbors **but would like to see this exemption expanded to small boating facilities state wide.** Currently coral growth is a major obstacle in routine harbor dredging and pier maintenance and is either stopping or delaying important harbor improvements. Coral mitigation also massively increases the cost to the state for every harbor project. These are not pristine coral reefs we are talking about here. These are corals growing on manmade harbor improvements.

Thank you for the opportunity to submit testimony. If you have any questions, please contact me at 808-870-9115.

Sincerely,

James E. Coon, President  
Ocean Tourism Coalition  
808-870-9115 [captcoon@gmail.com](mailto:captcoon@gmail.com)

# HCR143

Wednesday, April 17, 2013  
9:32 AM

Subject	<b>Submitted testimony for HCR143 on Apr 18, 2013 13:16PM</b>
From	<a href="mailto:mailinglist@capitol.hawaii.gov">mailinglist@capitol.hawaii.gov</a>
To	TIATestimony
Cc	<a href="mailto:dkekaua lua@yahoo.com">dkekaua lua@yahoo.com</a>
Sent	Monday, April 15, 2013 9:04 PM

## **HCR143**

Submitted on: 4/15/2013

Testimony for TIA/ENE on Apr 18, 2013 13:16PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
debra kekaua lua	Individual	Comments Only	No

Comments: TO EXEMPT all CORAL SPECIES IN ALL waters public and COMMERCIAL IN THE fake-STATE OF HAWAII FROM RECLASSIFICATION UNDER A PROPOSED FEDERAL RULE CHANGE. DO NOT touch these lands, President Obama. So much secrecy over the years, so much corruption to attend to instead of continuing to further ruin the resources, land and water grabs that are also more important than coral species.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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# HCR143

Wednesday, April 17, 2013

9:16 AM

Subject	<b>Submitted testimony for HCR143 on Apr 18, 2013 13:16PM</b>
From	<a href="mailto:mailinglist@capitol.hawaii.gov">mailinglist@capitol.hawaii.gov</a>
To	TIATestimony
Cc	<a href="mailto:inunyabus@gmail.com">inunyabus@gmail.com</a>
Sent	Monday, April 15, 2013 9:49 PM

## **HCR143**

Submitted on: 4/15/2013

Testimony for TIA/ENE on Apr 18, 2013 13:16PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Elaine D.	Individual	Oppose	No

Comments: Kill it. The resolution, not the coral.

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# HCR143

Wednesday, April 17, 2013

9:37 AM

Subject	Submitted testimony for HCR143 on Apr 18, 2013 13:16PM
From	<a href="mailto:mailinglist@capitol.hawaii.gov">mailinglist@capitol.hawaii.gov</a>
To	TIAtestimony
Cc	apohi21@gmail.com
Sent	Monday, April 15, 2013 4:34 PM

## **HCR143**

Submitted on: 4/15/2013

Testimony for TIA/ENE on Apr 18, 2013 13:16PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Bill Brown	Individual	Oppose	No

Comments: Ku'e This is so wrong in so many ways, to ask permission to America for the destruction of our indigenous plant life from its habitat for (transoceanic cable) commerce. Shame on the legislative body (Kalani English) as a whole along with the governor to continue to proliferate egregious projects that destroys the natural beauty of Hawaii to justified a over bloated financial RAILED! BILL BROWN MEMBER OF AUPUNI O HAWAII

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# HCR143

Wednesday, April 17, 2013

9:38 AM

Subject	Submitted testimony for HCR143 on Apr 18, 2013 13:16PM
From	<a href="mailto:mailinglist@capitol.hawaii.gov">mailinglist@capitol.hawaii.gov</a>
To	TIATestimony
Cc	davidlhenkin@yahoo.com
Sent	Monday, April 15, 2013 4:28 PM

## HCR143

Submitted on: 4/15/2013

Testimony for TIA/ENE on Apr 18, 2013 13:16PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
David Henkin	Individual	Oppose	No

Comments: Chairs English and Gabbard, Vice-Chairs Dela Cruz and Ruderman and members of the Committees, HCR 143 reflects a fundamental misunderstanding of the listing process under the Endangered Species Act and should be held. Congress instructed that listing decisions are to be made solely on the basis of biology, not economics. If a species is threatened with extinction, it must be listed. The alleged impact on harbor improvement projects is legally irrelevant. Moreover, the fact that a species is listed under the ESA does not preclude public works projects from going forward. They simply must ensure that adequate protections are put in place to minimize and mitigate the impacts on listed species. In a world beset by climate change, we should support efforts to protect our precious coral reefs, which attract tourists, provide habitat for fish that local residents gather to feed their families and protect our shorelines from storm surge. Please hold this measure. Mahalo for the opportunity to offer this testimony.

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# HCR143

Wednesday, April 17, 2013  
9:38 AM

Subject	<b>*Submitted testimony for HCR143 on Apr 18, 2013 13:16PM*</b>
From	<a href="mailto:mailinglist@capitol.hawaii.gov">mailinglist@capitol.hawaii.gov</a>
To	TIATestimony
Cc	mzerbe808@gmail.com
Sent	Monday, April 15, 2013 4:00 PM

## **HCR143**

Submitted on: 4/15/2013

Testimony for TIA/ENE on Apr 18, 2013 13:16PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Margaret Zerbe	Individual	Oppose	No

### Comments:

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# HCR143

Wednesday, April 17, 2013

9:39 AM

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From	<a href="mailto:mailinglist@capitol.hawaii.gov">mailinglist@capitol.hawaii.gov</a>
To	TIATestimony
Cc	mendezj@hawaii.edu
Sent	Monday, April 15, 2013 3:48 PM

## **HCR143**

Submitted on: 4/15/2013

Testimony for TIA/ENE on Apr 18, 2013 13:16PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Oppose	No

Comments: Our coral reefs and coral species are deteriorating at an alarming rate as it is, without the state trying -once again- to neglect its obligations to protect the Hawaiian environmental health. NOAA is considering including some species of coral in the endangered species list because it was prompted by legal action for being remiss in its duties. The shortsightedness of Aila and the DLNR is appalling at best, and malicious at worst.

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