

The story of Wānanalua: Stranded whales and contested marine sovereignties in Hawai‘i

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Abstract

This paper considers how systems of interspecies knowing and care in Hawai‘i push against state-supported frameworks of liberal biopolitical governance. In 2015, the National Oceanic and Atmospheric Administration (NOAA) issued a citation two Kanaka Maoli (Native Hawaiian) women under the Marine Mammal Protection Act, for unlawfully “tak[ing] and/or or transporting” a stranded melon-headed whale (“Wānanalua”). In the lawsuit, prosecutors deliberated on the legality of the traditional sea burial situating it within a broader context of cultural accommodations granted by National Oceanic and Atmospheric Administration. From our examination of the lawsuit, we develop the argument that marine mammal care operates in Hawai‘i as a regulatory device for ordering interspecies relations and for pacifying Indigenous demands for greater marine political authority. To combine these claims, we consider the relation between two governance logics: liberal “recognition,” wherein accommodations regarding culture are extended to previously disenfranchised social groups, and biopolitics, pertaining in the present case to care practices governing more-than-human actors and environments. Our arguments are supported by detailed case files and interviews with local informants, including the Kanaka women accused of mishandling Wānanalua. The “ruptures” marking the Wānanalua case suggest a liberal recognition framework whose failures are connected to the biopolitics it embraces, but with an added detail: The present story reflects on how an interspecies biopolitics—an attempted management of Kānaka-whale care practices—structures strategies of liberal recognition.

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Introduction

As dawn approached on 11 June 2014, a small boat left Kawaihae Harbor, on the west side of Hawai'i Island. For 18 hours prior, two Kanaka Maoli (Native Hawaiian) women, Kealoha Pisciotta and Roxane Stewart, had guarded, held, and chanted to a moribund animal they called Wānanalua (“Double”), a melon-headed whale who had stranded in the rocks at the end of a nearby spillway.¹ Now, they paddled her to a deep-water location, and gently submerged Wānanalua's body in accordance with customary protocol. By completing this act, Pisciotta and Stewart were defying US federal law, which stipulates that marine mammals who perish from strandings be handed over to state scientists, who then typically perform a number of post-mortem assessments, including necropsy. Their obstinacy did not escape local authorities. In 2015, the National Oceanic and Atmospheric Administration (NOAA) issued a citation suing Pisciotta and Stewart under the Marine Mammal Protection Act (MMPA), Section 102, for unlawfully “tak[ing] and/or or transporting” a federally protected animal.²

There is much to learn about marine politics from the “lively legalities” of a stranded whale (Braverman, 2015).³ In this paper, we examine the story of Wānanalua to understand liberal recognition as the biopolitical management of interspecies care. What happens when Indigenous systems of stranding response become entangled with liberal frameworks of marine mammal governance? How might a biopolitics of settler-colonial recognition not simply obstruct but problematically seek to *inform* Indigenous care practices? One of the noteworthy facts about NOAA's decision to cite Pisciotta and Stewart was the institution's longstanding interest in their work. Only two years prior, Pisciotta and Stewart had been active collaborators with NOAA, working under the auspices of the Hilo Marine Mammal Response Network (HMMRN) to develop “culturally appropriate” stranding response protocol. When NOAA dropped its lawsuit on 22 July 2018 it marked the conclusion of a decade-long engagement between the parties. But the conflicts surrounding Wānanalua's burial and the ambiguities of the ensuing lawsuit continue to resonate in Hawai'i, where contested histories of marine mammal governance and political sovereignty are surfacing with a harsh clarity.

To develop this argument, we draw from two theoretical literatures. The first is critical Indigenous scholarship that explores how liberal states seek to “recognize” Indigenous political claims. Of focus here are the rationalities guiding state efforts to accommodate the demands of politically disenfranchised Indigenous peoples (Coulthard, 2014; Goodyear-Ka'ōpua, 2018; Povinelli, 2002; Simpson, 2014). Liberal recognition theory's solution to “misrecognition”—e.g. the institutionalized forms of disrespect internalized by particular social groups—consists in extending respect (“recognition”) to the cultures and social identities of the disparaged (Honneth, 1996; Taylor, 1993). By interrogating the “profoundly asymmetrical and nonreciprocal forms of recognition either imposed on or granted to them by the settler state and society,” critics of this approach seek to challenge the ways Indigenous peoples are transformed into “instruments of their own dispossessions” in settler societies (Coulthard, 2014: 25, 156). The second is the Foucauldian account of biopolitics, particularly as it has been taken up in literature on environmental and biological conservation. Foucault's (1978 [2004]: 08) original account

of biopolitics developed from an observed triad of “sovereignty-discipline-government,” “which has as its primary target the population and as its essential mechanism the apparatuses of security.” Biopolitics, Foucault explains, produces a set of political transformations meant to control various aspects of life. Political ecologists have extended Foucault’s ideas to explore how the state perpetuates itself by casting non-human life as a “field of intervention, and an objective of governmental techniques” (Biermann and Mansfield, 2004; Collard, 2012; Hodgetts, 2016).

Liberal recognition and biopolitics are both state projects, albeit in different forms. Within the context of this paper, their dual discussion helps to clarify an institutional attempt to instruct, guide, and ultimately control Indigenous care relations with whales. These care relations are informed by rich, co-constitutive genealogies of communication and responsiveness, but they are evolving, shapeshifting, and pliable practices too—“twenty-first-century Indigenous knowledge articulations” (TallBear, 2011: 230). As emerging objects of state interest, they have become manifestly political in Hawai‘i in new ways. Many state regulators are today promising to incorporate historically marginalized Indigenous care perspectives into their animal management regimes (Baptiste et al., 2017). If the languages employed appear encouraging, examinations of the co-governance practices evolving in settler colonial contexts are routinely anything but (Nadasdy, 2005). NOAA’s unwillingness to cede authority to two Indigenous women who were themselves willing to meaningfully collaborate with state scientists reveals the inadequacy of liberal recognition as a framework for mediating across difference. The Wānanalua case captures some of the terms of this unwillingness, and the “limited freedoms afforded by state recognition” more generally (Coulthard, 2014: 15–16). In particular, we contend that the “ruptures” (Braverman, 2015) that mark the case suggest a liberal recognition whose failures are connected to the biopolitics it embraces, but with an added detail: The present story reflects on how an *interspecies* biopolitics—an attempted management of Kānaka-whale care practices—also structures strategies of liberal recognition.

Whales and Hawai‘i: Situating the geopolitics of care and Kanaloa

Whale strandings are events of considerable biological and spiritual significance in Hawai‘i. In order to discuss them in this account, we need to provide some clarifying detail onto the interlinked aspects of institutional culture and Indigenous cosmologies that prevail upon understandings of whales as more-than-human akua (deities). Institutional politics surrounding the management of whales are notoriously complex. Whales are often flashpoints for marine-geopolitical conflicts owing to their massive scientific value and public popularity (Asdal and Hobæk, 2016; Singleton and Lindskog, 2018; Zelko, 2013). Following Charlotte Epstein (2008), we pay close attention to the institutional discourses structuring whale management regimes, and specifically how “ways of knowing, envisaging, and talking about whales” (2) determine structured patterns of interaction and practice. At the same time, we develop a contextual reading that recognizes biopolitical strategies as emergent from specific networks of actors and institutions. One useful concept for developing this focus within our discussion is “policy assemblage.” As Wiebe (2016) explains, a “policy assemblage” points to the institutional articulations of discourses, law, and embodied practices. In Hawai‘i, a nexus of animal protection mandates, restricted areas, and forms of private property organizes the way state subjects are to conduct themselves around stranded whales. Here, the “policy assemblage” concept assists us in exploring how biopolitical governance becomes inscribed within the desired conducts of Kanaka cultural practitioners,

whose interspecies care relations are to be interpolated into the promise of a compassionate liberal society.

To examine whale strandings in Hawai‘i, we must be also attentive to the dynamic between management discourses and material practices of animal management. Public encounters with whales consistently frustrate the intentions of state regulators (Ritts 2017; Zelko 2013; Rutherford, 2011). In Hawai‘i, the procedures of NOAA’s stranding response model include particular training modules, spatial restrictions, handling procedures, and chains of command. They are governed by authorities granted under the MMPA, which render illegal certain forms of civilian–whale contact or “harassment,” while periodically granting exemption to navy operators who kill and maim thousands of whales during routine military testing exercises (Roman et al., 2013). This marine mammal policy assemblage includes the “affirmative” practices of whale watching and the aestheticized pursuits that structure routines in a commodified seascape economy, rather than a relational one. This assemblage reveals how the biopower constitutive of biopolitics enrolls animals in diverse and dynamic ways, not all of which satisfy state designs and ambitions.

A crucial aspect here involves Indigenous care practices. In recent years, political ecologists have given greater attention to the ontological aspects of interspecies biopolitics, including the political significance of Indigenous care relations within these schemes (Ojalammii and Blomley, 2015; Hoogeveen, 2016; Whyte, 2017). Sakakaibara’s (2010: 1003) notion of “cetaceousness”—“a hybrid of cetaceous and consciousness”—is suggestive of the way Kānaka *actively work* to develop interspecies care relations. They commit to customary practices that energize and re-energize connections with whales. Pisciotta and Stewart’s willingness to support NOAA always contained the insistence that “this is about more than a box you can check; this is about sacred life we are obliged to care for and protect” (Roxane Stewart, 2018, Personal Communication; RX-A). “Cetaceousness” describes a point beyond which state authority cannot apply. Of special interest to our interlocutors is how these “limits” would ramify within a broader moment of Hawaiian Sovereignty (Maile, 2018). When we spoke to one respected Kanaka Maoli cultural authority, Bonnie Pualani “Pua” Case, she reminded us that Pu‘ukoholā, the great heiau (Hawaiian temple) is less than a kilometer beyond the breakwater where Wānanalua was discovered. “Wānanalua was trying to get there,” Case told us, “and she would have, if that modern industry wasn’t in the way” (Pua Case, 2018, Personal Communication). On a clear day, the heiau’s summit draws a direct line of sight to Mauna Kea, the Hawaiian mountain which embodies these struggles and their unshakeable spiritual basis.

Our approach: Reading recognition through biopolitics

This paper developed in collaboration with Kai Palaoa, the social enterprise Kealoha Pisciotta founded in 2012 to advocate for Kanaka systems of marine mammal protection, stewardship, and connectedness.⁴ We were fortunate to receive factual details and testimony about NOAA’s lawsuit from friends and allies of the association, including cultural authorities like Pua Case, and Indigenous legal experts like Malia Akutagawa. Informed by their insistence on the felt realities of colonial law, we supplement our review of legal and policy documents (exhibits, transcripts, hearing briefs, official decisions) with conversations involving those directly implicated in the Wānanalua lawsuit. Following Jonathan Goldberg-Hiller and Noenoe Silva (2011), we seek to highlight spaces where “new contact with . . . Indigenous knowledge” (431) can bring new understanding into the ontological nature of contemporary political ecologies.

At the center of this account stands a deep body of protocol that informs Kānaka care relations with whales. The ‘Ōiwi—or grounded, and genealogically shaped—ontologies constitutive of these relations comprise a multiplicity of locally articulated engagements, which shape articulations of jurisdiction and spiritual life across the archipelago.⁵ Kanaloa is “one of the four primary male gods in Hawai‘i, functioning as the main oceanic deity of the region” (Au, 2018: 5); the kīno lau of Kanaloa describes particular embodiments which Kanaloa can assume. For Kānaka, a Kanaloa’s “life” does not end at “death.” After death, beings transform into ‘aumākua, such as sharks and animals—ancestors as family descendants (Goldberg-Hiller and Silva, 2011). In describing Wānanalua as Kanaloa, Pisciotta and Stewart articulate a concept of being that cannot be registered in a fixed subject position. It is thus a distinctly Hawaiian concept that they sought to promote in their cultural outreach work with NOAA and which they continue to promote with other settler institutions in Hawai‘i today.

Guided by this understanding, we propose marine mammal stranding responses as an underexamined site of biopolitical maneuvering, with relevance to a range of colonial contexts. Foucault’s (2000, 2003, 2004) concern with the politics and government of life, and his emphasis on the detached and technical stance toward individual lives characteristic of biopolitical governance, has inspired a wealth of investigations into how scientific regimes manage animal bodies and territories (Asdal and Hobæk, 2016; Braverman, 2015; Collard, 2012; Wolfe, 2012). Building on these discussions, we seek here to discuss the distinctive ways stranding response enacts “security mechanisms . . . around the random element inherent in a population of living beings so as to optimize a state of life” (Foucault, 2003: 246). Stranding response reveals that biopolitical strategies are both productive and repressive technologies for determining who has the right to die, to live, and to be sacrificed. In Hawai‘i, stranding response highlights the way that significant encounters with whales can be used by the state as opportunities to affirm the moralizing impulse of biopolitics, and in ways constitutive of liberal recognition as well.

For Cary Wolfe (2012: 89), occasions where the law grants “associations between humans and non-humans” are occasions where the law opens itself to the “ecology of its broader environment and the changes taking place.” The acutely political character of stranding responses in Hawai‘i cannot be understood without attention to ecological, or for that matter, geopolitical context. No treaty of annexation between the U.S. and the Hawaiian Kingdom was ever ratified (Goodyear-Ka‘ōpua, 2018; Maile, 2018; Silva, 2006). The State of Hawai‘i, founded “on land stolen from Kānaka ‘Ōiwi” (Maile, 2018: n.d.), forms the antagonistic context for the “policy assemblage” of marine mammal stranding response. It legitimates the eco-tourisms, exotic foods production, and extensive settlement from haole Mainlanders—all of which have made vivid use (and abuse) of the Hawaiian setting (Casumbal-Salazar, 2017; Goodyear-Ka‘ōpua, 2018; Trask, 1996). Kānaka Maoli efforts to practice customary culture—including relations with whales—must negotiate the basic frustrations of living in a settler state that seeks to both ignore and appropriate their culture at different moments.

Because stranding response presents opportunities to witness the perdurance of colonial ordering efforts, it stands as a site where Indigenous subjects negotiate “competing incitements to be and to identify differentially” (Povinelli, 2002: 13). For Pisciotta, a trained scientist, the effort to develop “culturally appropriate” stranding response necessarily proceeded on the belief that science and traditional practice can be combined in ways that do not delegitimize either: “Trust,” she would tell us multiple times, “is key.” Ho‘oululāhui Erika Perry, another Kanaka Maoli cultural practitioner who worked with NOAA on stranding issues, seconded this theme. Her “final report” (2014) to NOAA warned that its

management schemes risked sowing considerable discord if not conducted in good faith (RX-R).⁶ For Pisciotta and Stewart, NOAA's decision to refer to Wānanalua by her proper name (e.g. "Kāmaui") was a hopeful gesture. NOAA and other administrations typically discuss whales in terms of accession numbers that disregard the "nicknames" bestowed by volunteers and cultural practitioners (Schofield Tr. at 415)—a fact that has long affronted the Kanaka Maoli community (Erika Perry, 2018, Personal Communication; Ruth Aloua, 2018, Personal Communication). The act of naming an animal can carry a range of political valences (Benson, 2016). Viewed through the lens of NOAA's treatment of the two defendants, naming Wānanalua appears, in the end, to have been more about promoting the cultural accommodations typical of the recognition approach. It left unexplored the question of how marine mammal management might proceed differently if it proceeded with the understanding that individuals register within multiple value systems and not just as statistically determined populations.

This is not surprising. In recent years, many critical Indigenous scholars have refuted the claim that liberal strategies of recognition can provide effective vehicles for trust-building between Indigenous and settler groups (Balaton-Chrimes and Stead, 2017; Coulthard, 2014; Daigle, 2016; Goodyear-Ka'ōpua, 2018; Maile, 2018; Simpson, 2014). Noelani Goodyear-Ka'ōpua (2018) notes that "recognition" efforts in Hawai'i have repeatedly tended toward producing a class of law-abiding "citizens," whose cultural identities, social customs, and political aspirations are to be formed firmly under the aegis of the colonial state. One of the "lessons" carried by stranding response is the insight that recognition projects can work in tandem with biopolitical ones. For the liberal state, stranding response is an opportunity to educate a population into the command structures that reproduce desired forms of "citizen caring" (Bowden, 1998). It is an opportunity to display an acculturated sensitivity to Indigenous concerns. It is not an opportunity which grants Indigenous peoples the ability to invoke the "grounded normativities" constitutive of their Indigenous identities (Coulthard, 2014). Under the auspices of the MMPA (1972), a stranded whale in Hawaiian waters is a piece of state property. Hawaiian cultural practitioners, whatever their interests and authorities, must attain NOAA permits prior to encountering whales.

While all biopolitical struggles entail recognition to some degree, our case highlights the concurrence of these logics in the context of culturally guided stranding response. The institutional response Pisciotta and Stewart encountered is notable as an expression of broader political logics. Working in the Australian context, Povinelli (2002) describes circumstances where the "potential radical alterity of indigenous beliefs" (14, 29) is used by states as opportunities to shore up a liberal self-regard in the name of progressive nationhood. In Hawai'i, state agencies similarly model themselves as "more responsible colonizers" (Roxane Stewart, 2018, Personal Communication) through culturally sensitive outreach activities (cf. Casumbal-Salazar, 2017; Goldberg-Hiller and Silva, 2011).⁷ Here and elsewhere, the identity-based practices that constitute subjects of recognition are treated as reified things so that their "land-centered literacies" (we would add: marine-centered literacies) can be assimilated (Goodyear-Ka'ōpua, 2013: 30). From astronomy struggles to sea-based struggles, recent years have seen various state efforts to develop "fictive kinship" between US and Hawaiian cultures (Casumbal-Salazar, 2017).

Stranded whales in Hawai'i

Few events in the animal kingdom can rival the drama and affective power of a stranded whale. A massive body has thrust itself out of the water, a last-ditch effort to support a failing respiratory system, to escape toxic waters, or perhaps an act of willing death itself.

Within Kanaka Maoli cosmologies, the act of stranding implies a crossing of worlds—a divine message “that we need to learn and figure out” (Roxane Stewart, 2018, Personal Communication; see also RX-D; Au, 2018). For marine scientists, whale strandings are likewise highly significant, as they can provide valuable information on everything from environmental contaminant levels to population health. Media coverage has long presented whale stranding as an event of incredible social power, symbolic of nature’s vulnerability. Human onlookers can be moved to tears by the spectacle of the immobilized whale body, and in populated areas of Hawai‘i, it is not uncommon for strandings to draw dozens of photographers, well-wishers, and would-be caretakers.

Approximately 20 whale and dolphin strandings occur in the Hawaiian archipelago every year. These range from single animal events to mass strandings involving hundreds of animals.⁸ Melon-headed whales like Wānanalua have been known to strand both in individual and large group formats (Miyazaki et al., 1998); melon-headed whales are the subject of one of the first mass strandings recorded in modern history, in fact: in Hilo Bay, Hawai‘i in 1841 (Peale, 1848). To gather details about strandings in sparsely populated coastlines, scientists and state regulators have long relied on informal networks of first responders (Ritts, 2017). In 1992, amendments to the MMPA led to the emergence of the Marine Mammal Health and Stranding Response program, led by NOAA Fisheries (AX-2 at 1-2; AX-3 at 2).⁹ First responders are to help “render care when possible,” and to determine when to “humanely euthanize sick or injured animals to reduce their suffering when recovery or rehabilitation is not feasible” (AX-3). They work in site-specific organizations that have been authorized by NOAA and trained through its learning modules. Ultimately, NOAA tasks its body of scientific experts to coordinate and perform the close handling of animal carcasses and stranded bodies.

Hawai‘i’s stranding response programs are unique in the United States for the attention they allocate to culturally sensitive practice (but see Ostertag et al., 2018 for comparative approaches in the Canadian Arctic). In 2005, NOAA formally commenced efforts to integrate Native Hawaiian cultural practitioners into authorized responses to marine mammal strandings (NOAA Fisheries, 2010; see, e.g. Tr. at 44–45, 114, 522–23, 585–86; AX-1 at 177–78; AX 3 at 1, 3–4; RX B). As a guidance document states: “Our overriding goal has been to handle marine mammals in a culturally appropriate manner to the maximum extent allowable considering the law and human safety” (see Walters, Exhibit 3: Guidance and FAQs). Cultural engagement can include NOAA agents liaising with kūpuna (elders) and kumu (teachers) to oversee and guide traditional and customary practices as well as to conduct various cultural protocols such as mele pule and/or oli (prayers and chants) for live and deceased marine mammals. This is supported by elaborate “incident command structures” which connect on-site “practitioners” to island coordinators and higher up administrators who, through various stages of verification and assessment, determine if a cultural act can be undertaken, and if so, how it should be executed. Other US regulatory agencies besides NOAA tout partnerships with Hawaiian “cultural practitioners” as “multi-agency community responses” (e.g. DNRL, 2017)^{10,11} And a specific local arm of NOAA, the Pacific Islands Regional Office (PIRO), develops engagements with Hawaiian cultural practitioners in specific ahupua‘a (land divisions) as well (Walters, Tr. at 44).

In 2011, David Schofield and Jeff Walters, NOAA officials centrally implicated in the Wānanalua lawsuit, co-published an article on monk seal recovery which provides some insight into NOAA’s conception of cetacean stranding (Watson et al., 2011).¹² Leading with the title “Culture, Conservation, and Conflict,” the article gives little attention to dynamics of cultural difference, save for general assertions (e.g. “Ideally, researchers should target information from a representative cross-section of individuals with different knowledge sets, resource use

patterns, perspectives, and expertise”) (Watson et al., 2011: 393). The article is nevertheless notable for the way it avoids arrogating power to local actors, preferring instead to delegate among a swathe of stakeholders. NOAA’s handling of the mass stranding of melon-headed whales on 3 July 2004 at Hanalei Bay captures its aspirational vision. After following up on eyewitness reports that an excess of 150 melon-headed whales were in a shallow area, three state authorities—NOAA, Kaua’i police, and Division of Conservation and Resources Enforcement (DOCARE)—arrived to order people away from the water. The following day, NOAA approved a decision to intervene. Official photographs show NOAA-contract veterinarian Dr. Bob Braun of Hawaiian Islands Stranding Response Group and Kainoa Forrest of Hanalei Canoe Club addressing the community volunteer participants, and working to coordinate the creation of a “lau,” or floating strands of woven vines, that can be used to herd animals out of the Bay via canoes and kayaks (Southall et al., 2006). Only one whale perished during the affair.

But “each stranding is different, and asks different things of us” (Kealohaa Pisciotta, 2017, Personal Communication). NOAA’s relative success in one site does not guarantee the general efficacy of its model. For Jason Turner, a Texas-born scientist who would form a deep relationship with Kai Palaoa, the underlying inflexibilities of NOAA’s approach had to be quietly negotiated even amid the practitioners’ most outwardly successful moments: “An ‘awa ceremony for instance, pouring ‘awa into the whale’s mouth. If that went to DC, the world would end. The further we got away from Hawai’i, the concepts that seemed to make sense . . . didn’t translate at all” (Jason Turner, 2018, Personal Communication). In the next section, we develop these ideas further by relating the institutional events leading to the stranding of Wānanalua at Kawaihae Harbor in 2014.

Merged protocol and the origins of the HMMRN

In Fall 2009, NOAA officials reached out to Jason Turner (who was based at the University of Hawai’i-Hilo) and Ho‘ouluhū Erika Perry about integrating Native Hawaiian cultural practices into a locally operating chapter of the NOAA response network, to be called the Hilo Marine Mammal Response Network (HMMRN). Perry in particular was aware of the longstanding tensions between NOAA and the Kānaka Maoli community when she signed her contract. “NOAA . . . had been having very challenging situations at the coastlines with a variety of different local folks” she noted in her 2015 courtroom appearance (Tr. at 586). Perry nevertheless recommended two well-regarded community members, Stewart and Pisciotta, as potentially amenable to NOAA’s bridge-building project, given their backgrounds in science and ‘Ōiwi practice. In interviews with us, Stewart and Pisciotta expressed hesitations, given NOAA’s “less than stellar reputation here” (Kealoha Pisciotta, 2018, Personal Communication; Roxane Stewart, 2018, Personal Communication). Ultimately, all three women agreed to partner with NOAA, and the local acting head of the HMMRN, Dr Jason Turner, out of “service of our Kanaloa” (Tr. at 718).

Biopolitical projects are always established through the “setting of norms for elaborating concepts and theories” (Foucault, 2000: 11). In order to participate in a NOAA-approved HMMRN, Stewart and Pisciotta were required to undertake training modules at University of Hawai’i at Hilo Cetacean Rehabilitation Facility (HCRF), where they covered such topics as the federal law governing responses to stranding events, chain of command, and marine mammal handling techniques (including during necropsies) (see AX-1 at 20, 120, 178; Tr. at 383–86, 415, 422–23, 588–89, 727; see also RX-E at 1; RX G). They had to acquire Institutional Animal Care and Use Committee certification (RX-Y). They were asked to remain polite in the face of exoticized representations of Hawaiian culture (“the whole dog

and pony show,” according to Stewart) (Roxane Stewart, 2018, Personal Communication). Biopower is often “liberated” through the retraining of bodily capacity, and Pisciotta recalled her unpaid efforts with NOAA-mandated reskilling efforts as both “intense” and “time-consuming” (Kealoha Pisciotta, 2019, Personal Communication). Stewart in particular took a “lead role” in HMMRN efforts to translate Kanaka practices into stranding responses and was known by many as a “regular volunteer” over HMMRN’s formative period (Jason Turner, 2019, Personal Communication).

In June 2009, Stewart and Pisciotta held ceremonies for the Hawaiian Cetacean Response Facility (HCRF), a newly consecrated institution for handling of stranded marine mammals on Hawai’i Island. In May 2010, they presented on cultural practices to federal scientists and personnel at the Fifth Annual Pacific Islands Regional Hawaiian Monk Seal and Cetacean Responders Meeting. According to NOAA documents, their work was supporting efforts to adopt new “cultural” protocols into institutional procedures at the Hilo Response Network and HCRF (see Tr. at 526, 529–30, 606–8; AX-1 at 177–78; RX-E at 1–2; RX G). References to “merged protocol” appear in a number of documents discussing the relationship-building efforts between the different actors (e.g. Tr. at 607; “Kia’i Kanaloa Partnership with HCRF/HMMRN”).¹³ “Merged protocol,” floating amid the exchanges between the agencies, suggested an openness to co-governance. An artifact of the emerging policy assemblage, it crystallizes the negotiation that was forming between NOAA and the cultural practitioners. If for NOAA “merged protocol” could offer the liberal promise of recognition, for Stewart and Pisciotta it could be interpreted otherwise: “as a real vision of what combining science and traditional knowledge could look like” (Roxane Stewart, 2019, Personal Communication). In Foucauldian terms, “merged protocol” is a *dispositif*—an arrangement which brings together relations of power/knowledge to produce useful effects, but which simultaneously expresses new tensions and limit conditions (Foucault, 2003).

During his courtroom appearance, NOAA regional head Jeff Walters clarified the nature of NOAA’s adjustments to Kanaka Maoli protocol: “I’m not being given guidance that I am legally bound to provide an opportunity to incorporate Hawaiian culture” (Tr. at 93). Regardless of what initial dealings might have suggested, NOAA always presupposed itself as the acting authority. Unless they choose to operate from a scientifically determined distance from the animal, Hawaiian cultural practitioners would not be allowed from the start adamant on rites—including singing, chanting, and prayer—to stranded whales. It is not entirely clear, however, that the cultural practitioners ever agreed to these constraints. According to HMMRN volunteer Pat Richardson, Stewart in particular was instilling forms of sensitivity training that required close intimacies with the injured animals (Pat Richardson, 2019, Personal Communication). Adds Turner: “From a NOAA fisheries standpoint, this was an unprecedented expectation. The idea of placing hands on an animal and chanting seen as foreign and unnecessary” (Jason Turner, 2019, Personal Communication). If certain cultural protocols were straightforward—i.e. identify local cultural authorities in your area, establish and maintain good relations with practitioners—other stipulations, such as asking the mammal’s permission before arriving on the scene, quickly revealed the limits of their working model.¹⁴ Several of the interviews suggest that this resulted in significant confusions of authority. According to Sims:

What I know is that we were told to incorporate cultural practitioners in the work that we were doing. Where that mandate came from or how it originated, I do not know. All I know is that those were the instructions that were given to us. (Tr. at 526)

In 2010, *Hana Hou*, the Hawaiian Airlines magazine, published a glowing profile of the HMMRN that highlighted Stewart and Pisciotta's efforts (RX-D). According to Jason Turner, it had not been well-received by NOAA: "Things were almost working too well," he noted, "and they didn't like the local authority [Stewart and Pisciotta] were assuming" (Jason Turner, 2018, Personal Communication). In June 2010, Stewart and Pisciotta led the HMMRN's first response to the stranding of a striped dolphin named Waikini (see AX 1 at 121, 178; RX Eat 1; Tr. at 528, 572–73)—what was to be the "first trial run of the merged protocols" (Roxane Stewart, 2019, Personal Communication). It also marked the first time NOAA referenced a cetacean (e.g. a dolphin or a whale) with an identifiable name as opposed to simply a number. Nevertheless, while several of our interviewees suggest the handling of Waikini was a success (Pat Richardson, 2019, Personal Communication), it also revealed growing tensions between the Kanaka Maoli practitioners and NOAA. As Roxane Stewart recalled to us: "When Jason Turner did merged protocols [...] David Schofield had to *vet it*" (Roxane Stewart, 2019, Personal Communication). Stewart was also upset at the bureaucratic response to her request for Waikini's iwi (bones): sacred materials which Kānaka use for various customary purposes. In his testimony, David Schofield responded that

there needs to be a well-defined description of the use of those parts, the intended use of those parts, whether it's for, again, research, education or for ceremonial use and reinterment to the ocean and exactly how that's going to take place. (Tr. at 393)

The MMPA grants authorization for cultural practitioners to possess bones, but for still unknown reasons, the formal request Pisciotta and Stewart made never materialized, as Stewart told us in late 2018, "we were supposed to receive bone material, teeth, but still to this day, nothing has come back" (Roxane Stewart, 2018, Personal Communication).

Tensions between NOAA and the cultural practitioners were exacerbated in the handling of a subsequent stranding—this time involving a Blainville's Beaked Whale named kahokō. According to testimony, NOAA officials accused Stewart of "prevent[ing]" them from drawing blood samples, because Kamaui – a "high-ranking akua" (Tr. at 758; see also RX-A at 2)—was not ready (AX 1 at 20). In turn, Stewart noted her frustration at how personnel from the NOAA-approved agency, Hawai'i Pacific University (HPU), turned the handling facility from "a baptismal pool into an autopsy table" (Stewart, Decision Order, 2017: 8). HPU staff had left remnants of the necropsied animal packed in trash bags around the inside of the bloodied holding tank (Tr. at 760–61; see also RX-A at 8). For Jason Turner:

A practitioner should be included, that was relatively easy. The difficulty came in the tank. There was a dolphin in the water, Stewart would say this is what the next stage of our practice should be. From a NOAA fisheries standpoint, this was all unknown. The idea of placing hands on an animal and chanting [was] seen as foreign and unnecessary. (Jason Turner, 2018, Personal Communication)

In a 19 September 2010 letter to David Schofield, Pisciotta and Stewart expressed their "deep concern and sadness" regarding Kamaui's disposition (RX-A at 3). In response, Schofield chastised Pisciotta and Stewart for complaining about the incident in public (RX-B). Schofield reminded them that "working to include cultural sensitivity as part of the Marine Mammal Stranding and Response Network was a *programmatic decision rather than a responsibility* covered by the Marine Mammal Protection Act" (RX-B; emphasis ours).

From this point on, relations between Pisciotta and Stewart, the HMMRN, and NOAA rapidly began to unravel. Communication exchanges between NOAA and Pisciotta and Stewart became staggered and cut short altogether (Tr. at 826–27, 829, 831–32, 844–46; RX Eat 2–3; RX G; RX-O, at 7). Transcripts suggest that Schofield had come to view Pisciotta and Stewart as “antagonistic towards NOAA’s efforts to deal with marine mammal strandings in a certain way” (Tr. at 381). For Malia Akutagawa, a prominent Kanaka Maoli lawyer based at the University of Hawai‘i, NOAA’s approach had shifted toward “punishing” Stewart and Pisciotta (Malia Akutagawa, 2018, Personal Communication). Exemplifying this stance, NOAA did not renew the contract giving them “official” authority as stranding responders.

Rejecting recognition biopolitics, affirming care at Kawaihae Harbor

Kawaihae Harbor, a stretch of graveled industrial space leading to rectangular spillway, appears as just another “non-place” (Auge, 2005) along Highway 19 on the west side of Hawai‘i Island. Long a munitions site for the US Navy, the Harbor’s open breakwaters serve multiple local day-use activities today, including fishing and swimming. But Kawaihae and Pu‘ukoholā (“At the Mound of the Whale”) are also dynamic sites of Hawaiian history that have long cultivated local Indigenous practices, identities, and articulations of sovereignty (Tengan, 2008). It was here, at approximately 7:00 a.m., 10 June 2014, that fisherman Russ Hemphill observed Wānanalua circling in shallow water. Afflicted with shark bites, the melon-headed whale eventually launched herself onto the rocks toward the easternmost edge of the spillway (Decision Order, 2017: 9). At approximately 2:00 p.m., Hemphill approached the stranded whale, wetting her with towels and splashing water on her backside (Decision Order, 2017: 9). Shortly thereafter, another observer to the scene called the NOAA hotline, which in turn notified the regional authority, David Schofield. From his office in Honolulu, Schofield dispatched a team of NOAA-authorized scientists, including NOAA veterinarian Bethany Doescher; Kristi West, director of the stranding response program at HPU; and Tricia Kehaulani Watson—who had replaced Ho‘oululahu Erika Perry as NOAA’s consultant on Native Hawaiian cultural issues. Volunteers with the West Hawaii Marine Mammal Response Network (“West Hawaii Response Network”) arrived shortly after them (Decision Order, 2017: 9). Before Pisciotta or Stewart arrived on the scene, an array of state-sanctioned response authorities was already present at Kawaihae Harbor.

Notably then, NOAA did not authorize Stewart, Pisciotta, or Dr Jason Turner to respond to the stranding. By Schofield’s own testimony, NOAA had sought to follow protocols regarding reaching out to those from the same ahupua‘a where the stranding occurred. He asked Dr Watson to try and find a cultural practitioner in the area. The effort was unsuccessful (Tr. at 422). But in actual fact, a relevant cultural authority would eventually arrive, and “Pua” Case would identify Pisciotta and Stewart, not NOAA, as the relevant authorities to engage Wānanalua. By the middle of the afternoon, various members of the West Island response were also present and working to assess Wānanalua’s condition, collecting observations, and keeping the animal wet. Volunteers noted the whale’s “seizure-like behavior,” which included “pounding her tail, arching her back, and breathing erratically” (Decision Order, 2017: 10). Community members called Roxy to respond to the stranding, who then contacted Kealoha and Pua Case. When they arrived, it was close to dusk. We could see “the Kanaloa near the water’s edge when we’re pulling up Wānanalua on the rocky embankment,” Stewart recalls. They quickly expressed to the gathering that they were going to perform cultural rituals, including

blessings, prayers, and chants. Subsequently, they began preparations to enter into what they later describe to us as a heightened state—a sort of enhancement of their capacities for being in the world. “When we are trying to engage [the] space,” Stewart explained to us,

we are trying to tap into the frequencies of our surroundings. Dialing into the frequencies further, now we have to communicate. Trying to figure out what’s the situation and figure out what does the Kanaloa want... “This is what we are going to do, don’t get alarmed,” just briefly so they know how to function in the ceremonial space that we are creating with the Kanaloa. We were starting to receive communications from Wānanalua and go into various rituals that we were determining were appropriate for the context of the situation, holding her comfortably and listening. (Roxane Stewart, 2018, Personal Communication)

By the early evening, Pua Case and her group had assembled on the shore as Stewart and Pisciotta continued to perform rituals in the water. Sometimes, the bodies assembled in the water switched positions with the Kānaka Maoil community members gathered on the rocks. Meanwhile, the West Hawaii Response Network volunteers remained onshore, clearly apart from the group that had formed around Wānanalua. At approximately 7:15 p.m., NOAA-appointed scientists Drs Kristi West and Beth Doescher arrived at the harbor to assess Wānanalua. Their assessments, and the whale’s physical display of listing from side to side, suggested a rapidly deteriorating condition. Accordingly, at 8:00 p.m., Dr Doescher left to retrieve medical supplies to perform a euthanasia. In this circumstance, euthanasia represented a supreme expression of NOAA’s desire to claim authority over the management of both non-human lives and afterlives, e.g. the state administration of death (Foucault, 2003; Mbembe, 2003, 2019). Doescher communicated the request to Schofield over the phone, and he agreed euthanasia was the most “humane course of action” for the moribund whale (Decision Order, 2017: 12). But by this point, it had become apparent to observers that NOAA’s ability to complete the act might be challenged. Several members of the NOAA-authorized West Island stranding team described Pisciotta and Stewart as having taken “possession” of the animal, a political framing that appears over 40 times in the court proceedings and was also invoked by NOAA personnel not present at the scene (compare: Trester Tr. at 275 and Walters Tr. at 50). Another West Island member tried reaching out to the State of Hawaii, Department of Land and Natural Resources, DOCARE (Decision Order, 2017: 12). However, NOAA informed DOCARE that their presence would compromise an already tense situation, and DOCARE chose not to intervene.

At mid-evening, Dr. Doescher confronted Pua Case about NOAA’s plan to euthanize Wānanalua. According to several eyewitnesses, Case listened carefully to Doescher and then replied, “we firmly say no to euthanasia” (Decision Order, 2017: 13; Tr. at 219, 456). This affirmative “refusal” was a central moment in the community’s rejection of NOAA’s approach to the stranding (Simpson, 2014). According to Case, it proceeded on the basis of direct exchanges with Wānanalua: “A few of us had the ability to speak directly to the whale and communicate with the whale herself,” she would tell us later, adding that:

The connection between us and the whale was therefore established before any action could take place. This was on another level, the ancestral connectivity through the spirit world that we have over the past couple of generations in every society been discouraged from utilizing. As a sacred being, Wānanalua carried knowledge unfathomable to humans... Who are we to stop that process? (Pua Case, 2018, Personal Communication)

Here, Case suggests that NOAA's application of biopower lacks jurisdictional authority: at Kawaihae Harbor, Kānaka encounters with a stranded whale cannot be superseded for the sake of foreign institutional necessity.

By this point, Wānanalua was exhibiting more drastic behaviors. After remaining listless for several hours, she started to perform rapid circles in the shallows: "Going from zero, waiting until everyone had left, and then like a torpedo – I had not seen this in my life," Case recalls, "[Wānanalua] going faster, and faster and faster. Everybody was stunned" (Pua Case, 2018, Personal Communication). Cetologists sometimes describe this display as a "death circle": the final embodied act before the whale relinquishes their hold on life (Janie Wray, 2016, Personal Communication). In these circumstances, institutional responses shift from species protection to risk-mitigation, e.g. to ensuring the whale does not "inflict serious injury to nearby individuals" due to their "size, strength, and unpredictability" (Decision Order, 2017: 13). But as the cultural practitioners continued to chant and pray for Wānanalua and the authorized response team waited, NOAA chose not to interfere. At 9:40 p.m., David Schofield made the final decision for the NOAA scientists to leave. The last member of the West Island response team left the Harbor shortly afterward (10:30 p.m.), anticipating that Wānanalua's remains would be available for recovery in the morning.

According to testimony, Stewart and Pisciotta were not informed about the response team's departure or its rationale. There was no verbal threat or altercation. The next morning, at approximately 1:30 a.m., Wānanalua died (Decision Order, 2017: 14). Only Stewart and Pisciotta had remained with her. They covered her with a wet sheet, then took her to a deep-water location and used rocks to help her body sink, aiding Wānanalua's return to an appropriate spiritual realm: pō (Tr. at 782, 784). With no remaining members of any response team present, Stewart and Pisciotta left the Harbor.

Kai Palaoa on trial

Many of the individuals we interviewed for this project continue to regard NOAA's decision to cite Pisciotta and Stewart in 2015 as baffling. For both Malia Akutagawa, a lawyer at the University of Hawai'i (UH) and David Henkin, a lawyer at Earthjustice, "the question came down to if you want to use a technical violation to persecute people from their deeply felt cultural beliefs and practices" (David Henkin, 2018, Personal Communication). NOAA knew that Stewart and Pisciotta were "acting in the best interests of the mammal and their care, so why [commence] a lawsuit?" (David Henkin, 2018, Personal Communication). The answer that appears most compelling is a political answer—an institutional interest in disciplining the space of cultural practice so as to ensure no broader demand issues from it.

NOAA's prosecutors centered their arguments around the "strict liability offense" designation of a marine mammal take, wherein "take" requires no specific intent to stand as an illegal act: "We're going to ask that you find that they violated the *Marine Mammal Protection Act* in their actions that prevented NOAA from doing its job," prosecuting lawyer Duane Smith explained to the presiding judge (Tr. 1 at 35: 1–3). For NOAA, the case would be about convincing the judge that Stewart and Pisciotta's actions could not be characterized "as anything other than an illegal take and transportation of a marine mammal," given the strict facts in the record (Agency Br.: 15–16). The Respondents' argument, led by counsel Gary Zamber, was built on multiple arguments: that Stewart and Pisciotta did not violate the MMPA, insofar as the threshold of "harassment" had not been met; that the case activated the legal argument of "estoppel," since NOAA failed to

step in to assert its authority; that NOAA's claims that "a group of people" had "prevented" their appointed stranding team from accessing the animal was false; and most fundamentally, that unresolved sovereignty claims were in play (Zamber, 2016).

Not only did the Kanaka Maoli women have rights and protections under the *Admissions Act* (1959) and the *Constitution of the State of Hawai'i* (1840), argued Zamber, they had religious freedoms guaranteed under the *Religious Freedom Restoration Act* (1993). This detail returns us to the fundamental issue of trust, noted by Pisciotta near the outset of this paper. The Respondents sought to shift the central issue in the Wānanalua lawsuit from the technicalities of the MMPA to larger issues around trust relations between the different responder groups.¹⁵

In her decision, Judge Coughlin deliberated on the "good intentions" of Pisciotta and Stewart, but decided ultimately on the determining issue of the authority under the MMPA: "While the record contains credible evidence showing that Respondents Stewart and Pisciotta had good intentions for moving Wānanalua, such an act nevertheless constitutes a 'take' under the applicable law" (Decision Order, 2017: unpaginated). Coughlin concluded that Stewart and Pisciotta's actions satisfied the meaning of the term "take" under the MMPA. In determining the appropriate civil penalty, she cited multiple factors, including the "extent of harm done" to the local stranding program, the opportunity lost "to perform a scientifically valuable necropsy of a melon-headed whale," and the plausible claim that "Stewart and Pisciotta knew that they had not been authorized by Mr. Schofield to respond to the stranding" (2017 Decision: unpaginated). She noted as a mitigating factor her conviction "their conduct was motivated by their deeply-held beliefs and with good intentions." The refrain of "good intentions" is not surprising. If our foregoing analysis is correct, Coughlin's phrasing is entirely consistent with the paternalistic impulse of liberal recognition. If "good intentions" point to the tutelage individuals are to undergo to be accommodated into a functioning liberal society, upshot in the present case is to reveal an impasse. It is an impasse captured by the refusal of Stewart and Pisciotta: "Indigenous peoples can't change what we do. We've done it for millennia. So, we are going to continue" (Pisciotta, Tr. 3 at 52).

Conclusion

On 22 December 2017, Stewart and Pisciotta filed a petition for review of the Coughlin decision. To the surprise of many, the review was granted on 13 April 2018, by Secretary Timothy Gallaudet, who found that the court had improperly dismissed the Respondents' two statutory claims—the RFRA and *Admissions Acts* claims (NOAA, 2018). Two months later, NOAA dropped its charges altogether—a move Zamber attributes to the decision's precedent-setting potential (Gary Zamber, 2019, Personal Communication).¹⁶ However, as we were completing this paper in Fall 2019, Pisciotta informed us that NOAA was again seeking to press charges against her and others for their unlawful implementation of Kanaka Maoli or Native Hawaiian stranding response practices (Kealoha Pisciotta, 2019, Personal Communication; c.f. Hurley, 2019).

Wānanalua's stranding exposed the "absolute difference" between Indigenous and non-Indigenous care practices in Hawai'i—that fact that laws governing life cannot "limit life to the confines of an individual subject or body" (Campbell, 2008: xxxviii). NOAA's vacillating response to Pisciotta and Stewart's suggests that the legal landscape regarding stranding response remains uncertain. Key issues, such as the arrogation of legal requirements to honor the rights and freedoms of many Kānaka Maoli—sanctioned under the *Admission Act*—and federal demands that Native Hawaiians attain permission to encounter animals

that materialize these very rights and freedoms, remain unresolved. NOAA's recent efforts to "enhance" the cultural provisions permitted under the MMPA (e.g. US Senate Committee on Commerce, Science, and Transportation, 2018) proceed at the same time that the US Navy seeks to expand its destructive capacity over the same marine areas, suggesting that the likelihood of new conflicts.¹⁷

Here, we have argued that interspecies care solicits a biopolitical power that seeks to generate truth claims in the name of liberal recognition. Marine mammal stranding response is biopolitical in the way it scales from efforts to control individuals to statistically managing them as entire populations. It is "recognition-based" in that it carries the liberal promise to manage stranding in culturally sensitive and even culturally affirming ways. What we have provided is in many ways only a first attempt at making sense of this domain of Indigenous sovereignty politics. Other contexts invite further consideration and analysis. In November 2018, for instance, 140 pilot whales stranded on a remote beach in Aotearoa (New Zealand) (Roy, 2019). As Western scientists sought to grasp the event within measurements of marine biological indicators, Māori elders insisted on orienting toward a more foundational problem: "Man's greed in the ocean is hurting the whales," insisted Hori Parata, an elder of the Ngātiwai tribe (Roy, 2019). The experiences in Aotearoa and Hawai'i are interconnected, as are the interspecies care practices that unite many Pacific Island peoples and their calls for reduced industrial activity in marine space.

In many variants of liberal recognition theory, the normative expectation of being treated respectfully is being treated unlike an animal or a "mere" object (Honneth, 1996). But cross-cultural respect is not so easily attained—especially when the very determination of "animal" is productive of an epistemology which conceives the world in terms of conceptually bounded entities (Nadasdy, 2005). Future political ecology work might probe the interspecies dynamics sketched out here, and the way prevailing models of "animal rights" are infused with notions of value pluralism that do not assume power relations or different cosmologies (e.g. Singer, 2011). "Burial at sea is the most appropriate cultural practice that we have," Stewart told a packed courtroom in 2016 (cf. Tr. 3: 30). If burial at sea is an act that many Kānaka Maoli regard as essential for their cultural wellbeing, and an act whose biological value marine scientists are increasingly coming to appreciate, we must ask why it should continue to operate outside an accepted conservation purview (Higgs et al., 2011). Given our interest in the "policy assemblages" that guide interspecies care in Hawai'i, it is fitting to close with a policy recommendation: NOAA must exempt Kanaka Maoli/Native Hawaiian cultural practitioners from the "take provisions" of the MMPA. Decriminalization does not resolve the problematic persistence of colonial occupation, but for many of the individuals we spoke with, it constitutes an important step for Kanaka Maoli self-determination. At a time of noted increases in whale strandings in Hawai'i,¹⁸ Kānaka Maoli/Native Hawaiian-led care efforts point to collaborative response models attentive to the co-production of knowledge and place, and the complex interdependence of many living things. But whether or not they garner institutional imprimatur, it appears evident that Kanaka Maoli cultural practitioners will continue to respond to whales in accordance with their relational beliefs and customs to ensure the continuance of life in Hawaiian waters.

Highlights

- The paper develops and elaborates on a novel site of political ecological interest: marine mammal stranding response.

- The paper offers in-depth case study involving environmental governance in Hawai‘i, a region that remains underrepresented in political ecology.
- The paper engages and combines critical literatures of interest to many critical environmental studies scholars: most notably political ecology interests in biopolitics whereas critical Indigenous studies interests in liberal recognition theory.

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Notes

1. Note that “Kānaka Maoli” is plural whereas “Kanaka Maoli” is singular.
2. In its filing, NOAA claimed that Pisciotta and Stewart’s actions had obscured NOAA’s federally mandated response efforts, which included conducting a necropsy on the whale.
3. Hawai‘i is the accepted term. We use “Hawaii” when referring to misspellings in government materials.
4. Kai Palaoa upholds an ethic of *Ola I kea o a Kanaloa*, meaning “life to the realms of Kanaloa” [whales], “life to the sea” or “giving breath and spirit to the kanaloa” (Decision Order, 2017: 6). Our engagement with Kai Palaoa commenced in December 2017. We sought to inform this research with an aloha ‘āina ethic and respectful practices of participatory scholarship. Empirical materials include archival texts, case exhibits, formal interviews, and extensive informal dialogue over an 18-month span (December 2017–June 2019).
5. Jane Au (2018: 9) suggests that Hawaiians understand Kanaloa experientially, from knowledges gathered from “island to island, ahupua‘a to ahupua‘a” (a land division that run from the mountain to the sea), as well as through familial and professional perspectives.
6. Perry’s notable statement reads: “NOAA must be careful not to leave the community feeling patronized or more disenfranchised than they already do” (see RX-R).
7. See Goldberg-Hiller and Silva (2011), which discusses the fraying politics around monk seal pup treatment along the Island chain, and Casumbal-Salazar (2017) which discusses the state’s “rhetoric of inclusion, participation, and recognition” (11) at Mauna Kea (see also Silva, 2017).
8. Statement from AX3 at 1 can be found at <https://www.fisheries.noaa.gov/pacific-islands/marine-life-distress/pacific-islands-marine-mammal-response>. Strandings in Hawai‘i vary in size.
9. Approximately 120 NOAA-partnered organizations operate across the United States, drawn from universities, educational organizations, aquariums, state agencies, and non-profits (NOAA Fisheries, 2010).
10. See https://dlnr.hawaii.gov/blog/2017/10/13/nr17_0161/.

11. For examples, see the Main Hawaiian Islands Monk Seal Management Plan, PIRO Strategic Plan, and 2015 and 2016 Annual Operating Plans.
12. We reached out to Walters and Schofield several times and were not able to secure interviews with either.
13. Relatedly, Perry's 2016 testimony describes a 2010 conversation between herself, Turner, and Stewart about the possibility of drafting "a skeleton of a protocol that would allow for Native Hawaiian cultural practice to take place within the context of marine mammal strandings and responses" (Tr. 607).
14. Many of the principles Stewart and Pisciotta sought to introduce appear in "Pulama Kanaloa: A model for integrated and collaborative marine mammal response program," a document written by Turner and Stewart (RX G).
15. Interestingly, the defense also argued that the charge against them arose from cultural conflicts and not regulatory violations, and that the proper assessment of their actions should be related to the protection of marine mammals rather than a post hoc "moral judgment" (Reply Br. at 5).
16. "When briefed on the constitutional issues, NOAA backed down, dismissed the case," Zamber told us.
17. See <https://www.commerce.senate.gov/public/index.cfm/2018/4/enhancing-the-marine-mammal-protection-act>.
18. Hawai'i has been the site of many reported strandings in recent years. In 2019 alone, see <https://www.hawaii.newsnow.com/2019/08/29/live-whales-stranded-maui-beach-noaa-team-responds/>; <https://www.staradvertiser.com/2019/08/30/hawaii-news/4-whales-die-in-mass-stranding-on-maui-beach/>; <http://www.marinemammalcenter.org/about-us/News-Room/2019-news-archives/gray-whales.html>.

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