



Research article

Care, not incarceration: exploring the carcerality of fisheries enforcement and potential decolonial futures in Hawai'i



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ABSTRACT

Current U.S. environmental management paradigms default to enforcement mechanisms that feed into the prison industrial complex, such as fines and jailing. To avoid contributing to and reinforcing mass incarceration and militarism, environmental management systems need to be transformed towards non-carceral forms. Additionally, working towards Indigenous sovereignty and decolonization, requires the strengthening of Indigenous relations with and governance over the land under the respective paradigms of Indigenous communities. This paper uses Hawai'i state fisheries law and programmatic efforts to address a central question: What is the extent and nature of carceral norms within conventional environmental management systems and how do they affect management outcomes? The study examines the current fisheries enforcement scheme in Hawai'i, tracing the embedded logic of carcerality, the degree to which ultimate sources of harm are addressed, and the concentration of governing powers. The results highlight how current fisheries enforcement is insufficient in caring for the seascape and, through its carceral approach, contributes to social injustices, particularly for Kānaka Maoli (Native Hawaiians). Additionally, this paper demonstrates how current efforts in Hawai'i – Community-Based Subsistence Fisheries Areas (CBSFAs), the 'Aha Moku system, and the Makai Watch Program – attempt to empower communities, but ultimately keep enforcement powers centralized within the State, thus perpetuating dependency on the criminal justice system. This study ends with a discussion on how future decarceral environmental governance systems could be designed to center Hawaiian relations & paradigms, particularly by prioritizing the values of re-education, repatriation, and restoration.

1. Introduction

The prevailing environmental management paradigms in the United States often prioritize environmental and economic outcomes over, or even at the expense of, social outcomes (Camacho, 1998; Williams and Holt-Giménez, 2017). Maximizing sociopolitical welfare, in addition to addressing environmental and economic matters, is progressively at the forefront of concern around environmental management arrangements, particularly within the fields of environmental racism and Indigenous studies (Camacho, 1998; De Santo et al., 2011; Halpern et al., 2013; Nishime and Hester Williams, 2018; Nixon, 2013). The urgency of transforming environmental management arrangements to promote environmental, economic, and social welfare is amplified by the looming climate apocalypse, which will increasingly exacerbate socioeconomic injustices and environmental degradation (Hayhoe et al., 2010; Hsiang, 2010; Keellings and Hernández Ayala, 2019; Lobell et al., 2011). In

addition to perpetuating socioeconomic injustices, current environmental management paradigms have been insufficient in fully addressing the sources of environmental harms and preventing further environmental degradation, as exemplified through continued defaunation, fisheries stock depletion, and habitat loss (Coleman, 2004; Dirzo et al., 2014; Foo et al., 2021; McCauley et al., 2015; Puigdefábregas, 1998; Young et al., 2016). Furthermore, despite evidence demonstrating the efficacy of decentralizing environmental management schemes, governing powers remain centralized, thus disenfranchising communities and diminishing the viability of management arrangements (Aswani et al., 2018; Fitzsimmons, 1998; Marshall, 2008; Olsson et al., 2004; Vaughan and Caldwell, 2015).

Hawai'i, in particular, requires special attention in ushering a paradigm shift to create more viable and sustainable environmental management arrangements. After over a century of colonization, extractive tourism, destructive development, and violent militarism, the lands of

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Hawai'i are in dire need for environmental management and restoration (Akaka et al., 2019; Beamer, 2014; Goodyear-Ka'ōpua, 2014; Trask, 1999). A consequence of the history of Hawai'i, the islands depend on imports for over 80% of locally consumed foods, making the islands remarkably food insecure and therein vulnerable to market fluctuations and impacts from extreme climate events (Akutagawa et al., 2012; Lipper et al., 2014; Loke and Leung, 2013). And yet, as minimal as they are, current local food systems place considerable burden on the 'āina (land, that which feeds), as exemplified by depleting fish stocks from pollution and overfishing (Foo et al., 2021; Friedlander and Parrish, 1997). As a case of investigating the holistic efficacy of environmental governance paradigms, this paper focuses on fisheries management in Hawai'i. More specifically, this study analyzes how the carceral nature of fisheries enforcement in Hawai'i is ineffective at addressing environmental harm and perpetuates social inequity, then explores new paradigms to craft more effective and restorative fisheries management schemes in Hawai'i. This study builds upon previous literature assessing the effects of power dynamics on the social and environmental outcomes of natural resource management arrangements (Blomquist and Schlager, 2005; De Schutter, 2017; Fabinyi et al., 2014; Fabinyi & Dalabajan, 2011). In doing so, this research adds a new lens to previous assessments of the discrepancies between contemporary and pre-colonial natural resource management in Hawai'i and aims to transform Hawai'i fisheries governance to promote social equity and community empowerment (Akutagawa et al., 2016; Friedlander et al., 2013; Higuchi, 2008; Johannes, 2002; Poepoe et al., 2005; Vaughan et al., 2016; Vaughan and Vitousek, 2013).

1.1. Mass incarceration and its permeations

Before describing Hawai'i fisheries and their enforcement paradigms, this paper starts with an overview on mass incarceration to frame the subsequent analyses. Incarceration and imprisonment are relatively new forms of punishment, which, before the 1800s, were often used only during waiting periods before those convicted ultimately received punishment for their crimes (Alexander, 2012; Davis, 2003; Kaba, 2021). Mass incarceration, however, didn't appear in the U.S. until the mid- to late-1900s as a social progression flowing from slavery to Jim Crow – a system designed to uphold the power of white elites and control other social groups, especially along racial delineations (Alexander, 2012; Davis, 2003). Mass incarceration was never intended to truly prevent crime or rehabilitate those who have committed crimes, but rather maintain social stratification, generate a subservient workforce, and enact retribution on those deemed deviant or disposable (Alexander, 2012; Davis, 2003; Kaba, 2021). In a matter of several decades, prisons have become quietly accepted as an undeniable necessity to maintain social order (Alexander, 2012; Davis, 2003; Kaba, 2021). “As a society, we have been so indoctrinated with the idea that we solve problems by policing and caging people that many cannot imagine anything other than prisons and the police as solutions to violence and harm” (Kaba, 2021, p. 59).

Because mass incarceration never intended to actually address the roots of social tragedies or transgressions, nor to rehabilitate and re-educate those who have committed crimes, the carceral system has done far more harm than good in terms of achieving a more just society (Alexander, 2012; Davis, 2003). What mass incarceration has produced is the prison industrial complex:

“The term “prison industrial complex” was introduced by activists and scholars to contest prevailing beliefs that increased levels of crime were the root cause of mounting prison populations. Instead, they argued, prison construction and the attendant drive to fill these new structures with human bodies have been driven by ideologies of racism and the pursuit of profit.” (Davis, 2003, p. 84, p. 84)

This prioritization of profits and racial hierarchy over social welfare, and the normalization of carceral tactics, has permeated throughout

virtually every social institution in the United States, from education to media to health care (Davis, 2003; Kaba, 2021; Kushner, 2019). In addition to the carceral model being increasingly normalized worldwide, upending social structures abroad, it has also more deeply entrenched colonialism throughout the U.S. and its territories (Davis, 2003; Samudzi and Anderson, 2018; Walia et al., 2021). This is particularly true in Hawai'i, where the onset of U.S. colonialism and the illegal overthrow of Queen Lili'uokalani in 1893 is still within familial memory of many Kānaka Maoli (Native Hawaiians), and where U.S. colonization, especially through militarism, is still actively resisted (Akaka et al., 2019; Goodyear-Ka'ōpua, 2014; Maile, 2019; Silva, 2017; Trask, 1999). Pre-colonial resource management in Hawai'i was primarily governed by konohiki, “the agent who managed the chief's land” (Kosaki, 1954, p. 1), including the nearshore, for the benefit of the ali'i (chief), maka'āinana (commoners), and the 'āina itself (Kamakau, 1976; Kosaki, 1954). The main governing mechanism of the konohiki were kapu, prohibitions either on the catch of specific types of fish or on fishing activity within certain times of the year (Kosaki, 1954). Although konohiki fishing rights were preserved in the Organic Act of 1900 when Hawai'i became a U.S. territory, konohiki governance was systematically dismantled through the transfer of land ownership, case law diminishing konohiki rights, and the centralization of governing power (Hlawati, 2002; Kosaki, 1954). Current environmental management in Hawai'i is disparate from pre-colonial models, as colonial and capitalist norms have replaced Hawaiian relations with the land as the governing ontology (Friedlander et al., 2013; Goodyear-Ka'ōpua, 2009; Kosaki, 1954; Tamashiro, 2010; Winter et al., 2018). This paper focuses on fisheries management, particularly enforcement, in Hawai'i to understand the extent and nature of carceral norms within current governance paradigms and their ramifications for management efficacy, marine conservation, and social welfare.

2. Methods

Before describing the methods used in this paper, it is pertinent that I first explain my relationality to this subject matter and how that informs the ontology and epistemology employed in this study's methodology. I am a malihini (stranger, foreigner) to Hawai'i, having moved to the islands several years ago and now calling these lands home. Understanding this positionality within the context of the history of Hawai'i, it is my kuleana (responsibility) to discern and undo the current of colonization here, which is a key motivator for the focus on carcerality, a consequence of capitalism and colonialism (Davis, 2003; Goodyear-Ka'ōpua, 2016; Kaba, 2021; Meyer, 2016). Additionally, I am involved in several aloha 'āina (love for the land) and Hawaiian culture organizations and efforts, and as such have additional kuleana to foster the restoration of Hawai'i as 'āina momona (verdant and abundant lands) and ea Hawai'i (Hawaiian sovereignty) (Goodyear-Ka'ōpua, 2016; Goodyear-Ka'ōpua, 2011; Meyer, 2016; Vaughan, 2016). In order to fulfil this kuleana, however, it is imperative to first understand the current social-environmental systems in place. “O ke kahua ma mua, ma hope ke kūkulu” (‘Ōlelo No'eau 2459) – first the foundation, then the building (Pukui, 1983). With this positionality, I pull from Hawaiian ontology which understands all life to be ancestor and kin, as demonstrated through the Kumulipo, a Hawaiian creation chant, which details how all life was born from pō (darkness) and a single uku ko'ako'a (coral polyp) (Beckwith, 1992). Recognizing this ontology as disparate to the currently dominant, anthropocentric ontology, this study focuses on the ideologies underpinning marine governance paradigms, as these ideologies are born from our collective ontologies (Fields and Fields, 2014; Meyer, 2016; Osorio, 2018).

Stemming from this ontology, this study uses mo'olelo (history, stories) as the grounding epistemology and mode of analysis to study contemporary stories of fisheries governance and enforcement in Hawai'i (Meyer, 2016; Watson, 2020a, 2020b). To discern the nature of carcerality in fisheries enforcement in Hawai'i, this paper focuses on two types

of stories within contemporary Hawai'i fisheries. This paper defines Hawai'i fisheries as the harvest of any marine life, fish or otherwise, within the exclusive economic zone of the main Hawaiian Islands, whether for subsistence, commerce, recreation, aquarium trade, or other purposes. Because this study focuses on governing systems and paradigms, rather than specific regulations, the expansive nature of this definition does not obscure the analysis. First, this paper puts State procedures for fisheries governance in Hawai'i in conversation with literature on mass incarceration and fisheries management to describe the four main fisheries enforcement outcomes in Hawai'i to general infractions and violations. Second, this study reviews the legislation and guiding documents to inspect the stories of three key attempts in Hawai'i to increase social equity and community empowerment in environmental governance: Community-based Subsistence Fishing Areas (CBSFAs), the 'Aha Moku system, and the Makai Watch Program. Within these stories, three themes are analyzed: the embedded logic of carcerality, the degree to which the ultimate source of harm is addressed, and the location where governing power is concentrated.

Building from literature detailing the functions of mass incarceration and its underlying cultural dynamics (Davis, 2003; Fields and Fields, 2014; Kaba, 2021; Walia et al., 2021), the *logic of carcerality* is understood as an ideology operating through three main elements: 1) prioritizing punitive measures as the metric of delivering justice, rather than care or restorative justice measures; 2) focusing on the proximate crime and criminal (matters of legality), rather than the ultimate source of harm, interpersonal or systemic (matters of justice); and 3) deferring to the police and the criminal justice system as the primary responsible parties for enforcement matters. Stemming from previous studies demonstrating the need to incorporate underlying social dynamics into environmental management analysis (Fabinyi et al., 2014, 2015; King, 2000; Nadasdy, 1999), discerning the degree to which the ultimate source of harm is addressed is employed as a means to assess the overall efficacy of existing fisheries governance schemes. Locating where the governing power is situated follows past research illustrating the effects of power distribution and concentration on environmental governance efficacy and issues of social equity (Akutagawa et al., 2016; Marshall, 2008; Nadasdy, 1999; Tipa and Welch, 2006). By focusing on where powers over enforcement lie, and how those with power over enforcement have agency to define what enforcement can look like, this element elucidates overarching power dynamics, particularly within the second set of stories of attempts to decentralize fisheries management in Hawai'i (Fabinyi & Dalabajan, 2011; Poeoe et al., 2005; Vaughan et al., 2016; Vaughan and Caldwell, 2015).

3. Results and discussion

3.1. Fisheries enforcement outcomes in Hawai'i

For the State of Hawai'i, HRS §26-15 establishes the Department of Land and Natural Resources (DLNR) as the State agency charged with the mission to "Enhance, protect, conserve and manage Hawaii's unique and limited natural, cultural and historic resources held in public trust for current and future generations of the people of Hawaii nei, and its visitors, in partnership with others from the public and private sectors." Within DLNR, there are 10 divisions devoted to various aspects of natural resource management, including the Division of Conservation and Resources Enforcement (DOCARE). DOCARE is responsible for upholding and enforcing all laws pertaining to natural resource protection and use in Hawai'i. Although there are occasional gray area situations where county law enforcement might be necessary, DOCARE's purview includes the entirety of fisheries management enforcement in Hawai'i. DOCARE, as well as the rest of the State agencies responsible for caring for natural resources in Hawai'i, is notoriously under-funded and under-resourced, hindering their ability to properly enforce fisheries management laws (Carrier et al., 2012; Hendrickson, 2020). Additionally, because of various structural and systemic issues, the State often leaves DOCARE

under-supported and has officers conducting tasks that don't directly pertain to conservation enforcement and can even exacerbate distrust from communities towards DOCARE (Hendrickson, 2020). These factors supplement the norms of carcerality within enforcement paradigms in making fisheries management enforcement in Hawai'i ineffective at addressing environmental harm and a propellant of social inequity. To elucidate the dynamics underlying the current fisheries enforcement paradigm, the stories of the four typical enforcement outcomes are detailed here, tracing particularly the themes of the embedded logic of carcerality and the degree to which the ultimate sources of harm are addressed.

3.1.1. Fisheries enforcement outcome 1: heavy enforcement

The first, more extreme, fisheries enforcement outcome is that of heavy enforcement. This is when managers and enforcers crack down hard on the violator, often to 'make an example' of them. This often results in punishments such as heavy fines, confiscation of fishing gear, and, depending on the severity, potentially even jail time. Such was the case February of this year when the Board of Land and Natural Resources (BLNR) voted to charge "record fines" of \$272,000 to two people caught engaging in illegal aquarium fishing in Kona, Hawai'i island (By Star-Advertiser Staff, 2021). In addition to fines over ten times the estimated retail value of the fish taken, which were successfully released back into the ocean, the two also face criminal charges (By Star-Advertiser Staff, 2021). Given that HRS §188-70, the section of State legal code that deals with fishing violation penalties, only sets minimum penalties but no maximum penalties, punishments can be as severe as BLNR or the courts deem fit. As demonstrated by the Kona case, the logic of carcerality manifests in this type of outcome through the sole focus on drastic punitive measures as a means of deterring future instances, despite evidence that severe punishments are a weak deterrent of future crime (Alexander, 2012; Kaba, 2021; Wellsmith, 2011). Similarly, the heavy punishment is due to a fixation on making an example of the proximate crime, leaving the systemic harm unaddressed. Those convicted are propelled into debt and potentially incarceration, perpetuating social injustices, while the ultimate sources of harm are left unchecked (Alexander, 2012; Davis, 2003). In the Kona case, the ultimate source of harm – the illegal aquarium fish trade, and, on a deeper level, marine harvests for the sake of profit rather than contributing to the food system – is left unchecked at a systems level, potentially deterred at most (Draheim et al., 2015). Therefore, by causing disproportionate harm to the convicted violator and failing to address the systemic issues in a way that would prevent future violations, let alone encourage more environmental care, the heavy enforcement outcome is both ineffective and heavily contributes to the carceral system.

3.1.2. Fisheries enforcement outcome 2: minimal enforcement

The second, much more common, fisheries enforcement outcome is that of minimal enforcement. The outcome of minimal enforcement is when enforcement is sought by DOCARE or local law enforcement, but, even when a case goes to court, the case is tossed out or pushed through with minimal consequences for the violator (Hendrickson, 2020; Tanaka et al., 2012; Wellsmith, 2011). Such is the prevalent outcome in Hawai'i where over one third of fishing citations are ultimately dismissed and over 65% of the cases where there is a conviction or sanction result in fines within or below the range of the lowest penalties allowed (Tanaka et al., 2012). Because the consequences are minimal – with fines often less than \$200, so nominal they could be made up for with a good day's catch – this outcome does little to truly deter future violations by the perpetrator, let alone other people in the area (Akella and Cannon, 2004; Carrier et al., 2012; Hendrickson, 2020; Tanaka et al., 2012; Wellsmith, 2011). In terms of the logic of carcerality embedded in this outcome, the measures taken are punitive in motive, but mild and insufficient even within carceral norms; rather than exploring accountability measures that are both temperate and based on care & harm prevention, the criminal justice system simply seeks the least punitive of the

commonplace punitive measures. Similarly, although the focus is on the proximate crime, this outcome does not adequately address the proximate crime nor the ultimate source of any harm related to these fisheries violations (Akella and Cannon, 2004; Tanaka et al., 2012; Wellsmith, 2011). One factor previous studies have noted as leading to this outcome is that the criminal justice system is not equipped – in terms of internal education, resources, or accountability mechanisms – to handle such cases with the attentiveness they deserve (Eliason, 2011; Hendrickson, 2020; Tanaka et al., 2012; Wellsmith, 2011). However, because of the logic of carcerality embedded within existing fisheries governance paradigms, the criminal justice system continues to be relied on for such infractions, despite the recognized ineffectiveness of this common outcome. By operating through a limited logic of carcerality, this outcome of minimal enforcement fails to repair the harm caused by the violation at hand and or properly deter future similar violations, thus rendering the enforcement ineffective at protecting the seascape while reinforcing the carceral system.

3.1.3. Fisheries enforcement outcome 3: community enforcement

The third, less common but culturally prominent, fisheries enforcement outcome is community enforcement. On occasion, community members, frustrated by the lack of effective enforcement by State agencies, feel compelled to take matters of fisheries enforcement into their own hands. Such was the case in Moloka'i in 2014, when fishers from O'ahu fishing off the coast of Moloka'i had an altercation with several Moloka'i residents (Fujimoto, 2017). Moloka'i is an island highly dependent on their marine resources for sustenance, yet has a strong history of fishers from the neighboring islands, especially O'ahu and Maui, coming over to take from the Moloka'i waters (Akutagawa et al., 2016; Poepoe et al., 2005). In an effort to protect their waters from over-extraction by people with no relations with the waters of Moloka'i, these residents took upon the responsibility of caring for and defending their shores. The ethics and efficacy of how matters were handled aside, one thing is very clear – this altercation arose after decades of mismanagement and neglect by the State, spurring residents to protect their fisheries despite potential legal repercussions. As a consequence, the main “muscles” from Moloka'i was sentenced to six months in jail, \$8,250 in restitution, and four years of probation (Fujimoto, 2017). Rather than punitive measures, let alone restorative justice, being taken on the O'ahu fishers perceived as having harmed the fisheries of Moloka'i, they were instead enacted on the community members, focusing on their proximate crime of enforcing without the legal jurisdiction to do so. This punitive approach to the most proximate crime ignores the underlying social dynamics and inequities that led the community to feel compelled to enforce their waters, exacerbating these social inequities and mistrust in the governing bodies (Akella and Cannon, 2004; Draheim et al., 2015; Fabinyi & Dalabajan, 2011; Hendrickson, 2020). The strongest element within the logic of carcerality for this outcome is the unrelenting deference of enforcement to law enforcement and the criminal justice system, punishing community members who attempt to enact enforcement on their own terms. Through criminalizing community enforcement, this outcome not only fails to address but also further perpetuates two ultimate sources of harm: harms against the seascape due to exploitive fishing practices, which were overshadowed by the focus on the community enforcers, and harm through reinforced social inequities, particularly against Kānaka Maoli (Akutagawa et al., 2016; Draheim et al., 2015; Fabinyi & Dalabajan, 2011).

3.1.4. Fisheries enforcement outcome 4: no enforcement

The fourth fisheries enforcement outcome of no enforcement at all is the most common. Although there is no way to know the exact amount of fisheries infractions that go unenforced, it is estimated that less than 1% of environmental crimes result in a conviction (Akella and Cannon, 2004). In Hawai'i, this is frequent outcome is attributed to people avoiding DOCARE's limited hours, the inability of DOCARE to adequately patrol the coastline due to lack of funding and personnel, and insufficient

community reporting due to distrust in DOCARE and a lack of community education (Carrier et al., 2012; Hendrickson, 2020; Tanaka et al., 2012). No matter the reason, the end result is still the same – fisheries violations go unaddressed without consequence, punitive or otherwise, with the proximate crimes of fishing infractions and the ultimate harms of the degradation and exploitation of the seascape being allowed to continue with no accountability or change (Akella and Cannon, 2004; Carrier et al., 2012; Wellsmith, 2011). The fundamental element within the logic of carcerality that leads to this outcome is that DOCARE and the police are the sole parties relied upon for fisheries enforcement – unless the infraction is spotted while patrolling or a report is made within their operating hours, there is no opportunity for enforcement (Hendrickson, 2020; Tanaka et al., 2012). The governing power remains located within DOCARE and the police, despite their known limitations in enforcement capabilities, leaving communities with insufficient support for protecting the seascape and no power to enforce the fisheries within their area (Akella and Cannon, 2004; Tanaka et al., 2012; Wellsmith, 2011). The outcome of no enforcement is emblematic of how centralized fisheries enforcement power leaves the seascape subject to harm and communities unsupported in the matter.

These stories of the four typical fisheries enforcement outcomes demonstrate how the carceral norms within the existing environmental governance paradigm in Hawai'i are ineffective in addressing the ultimate sources of harm against the seascape and perpetuate social inequities. Although previous research has demonstrated the insufficiencies of current fisheries governance in Hawai'i, the main focus has remained on how to increase the capacity of the existing systems to conduct enforcement, rather than inspecting the impacts and efficacy of the underlying enforcement paradigms themselves (Hendrickson, 2020; Tanaka et al., 2012). However, there is a growing current of energy, particularly within the Hawaiian community, to transform fisheries governance to increase effectiveness, empower communities, and ground the fisheries management in Hawaiian culture (Akutagawa et al., 2016; Friedlander et al., 2013; Higuchi, 2008; Poepoe et al., 2005; Vaughan et al., 2016; Vaughan and Vitousek, 2013). The following section delves into three organizational and programmatic attempts to create such transformation and examines three themes: the embedded logic of carcerality within these attempts, the degree to which the shifts allow the ultimate source of harm to be addressed, and where the governing power resides within these efforts.

3.2. Attempts at decentralizing fisheries enforcement

A key issue within fisheries management in Hawai'i is *who* is doing the governance and enforcement. DOCARE and law enforcement have been noted as being under-resourced and under-supported, inhibiting effective fisheries enforcement (Carrier et al., 2012; Hendrickson, 2020; Tanaka et al., 2012). Additionally, the stories described above demonstrate how this centralization of governing power reinforces mass incarceration and perpetuates social inequities. The decentralization of powers into nested systems of governance has been promoted as a means to simultaneously improve the efficacy of environmental management arrangements and empower communities (Akutagawa et al., 2016; Berkes, 2009; Lukacs et al., 2016; Marshall, 2008; Tipa and Welch, 2006; Vaughan and Caldwell, 2015). Although formally handing off power to local organizations is possibility, opening up governing power to informal institutions, groups, and individuals has also been demonstrated as a means to improve environmental governance and care (Akutagawa et al., 2016; King, 2000; Lukacs et al., 2016; Vaughan and Caldwell, 2015). Hawai'i has made several such attempts to decentralize governance and empower communities, most notably through Community-based Subsistence Fishing Areas (CBSFAs), the 'Aha Moku system, and the Makai Watch Program.

In 1994, Hawai'i legislature enacted HRS §188-22.6, establishing the guidelines for creating CBSFAs “for the purpose of reaffirming and protecting fishing practices customarily and traditionally exercised for

purposes of native Hawaiian subsistence, culture, and religion.” Included in the act is a clause that specifies that CBSFA establishment plans must include methods of enforcement, but no specification is stated as to the extent of which the communities will be given governing authority over the CBSFAs. This vagueness in how power would be transferred has allowed the State to retain control over marine governance, even within CBSFAs (Poepoe et al., 2005; Vaughan et al., 2016; Vaughan and Caldwell, 2015). Additionally, because of bureaucratic hurdles and the under-resourcing of communities, after 25 years since the passage of the act, only one CBSFA, in Hā’ena, has been permanently established, despite dozens of communities seeking CBSFA designation (Vaughan et al., 2016). Streamlining the CBSFA establishment process is a crucial first step, but alone is insufficient (Higuchi, 2008). The legal framework opens the potential for communities to establish non-punitive enforcement measures that address both the proximate and ultimate sources of harm; however, as the governing power remains located within the State, not the communities, any such arrangements are subject to potential rejection by the State at any stage (Higuchi, 2008; Vaughan et al., 2016; Vaughan and Caldwell, 2015). Therefore, in order to increase the capacity of communities to establish decarceral forms of fisheries enforcement, the State would need to relinquish governing power over CBSFAs to the communities such that governance can take place within their own contexts, goals, and knowledges (Akutagawa et al., 2016; Poepoe et al., 2005; Vaughan et al., 2016). Additionally, to increase the decentralization of power and reduce the logic of carcerality within CBSFAs, and therein increase their efficacy and social equity, communities would need to be granted enforcement powers, given the inadequacy of the current model of monitoring and reporting to State bodies (Akella and Cannon, 2004; Akutagawa et al., 2016; Wellsmith, 2011).

In 2007, Hawai’i legislature passed Senate Bill 1853, establishing the ‘Aha Kiole Advisory Committee, a committee responsible for “Explor[ing], examin[ing], and deriv[ing] best practice models for the creation of an ‘aha moku council system” that would advise state and county agencies as to the best “indigenous resource management practices of each moku [land district]” in Hawai’i. In addition to responsibilities such as community education and developing best practices for natural resource management, the bill charged the ‘Aha Moku system with “Participat[ing] in the protection and preservation of the State’s natural resources.” However, nothing in the legislation establishing the ‘Aha Moku council system actually grants the council any direct power over governance, enforcement, or the delegation of enforcement. Although the ‘Aha Moku system was intended to be an avenue to decentralize governance and transform the paradigms underpinning environmental management in Hawai’i, governing power has ultimately remained within the State, only affording the ‘Aha Moku council advisory powers. Additionally, the ability of the ‘Aha Moku council to function well within their constrained realm of advisory power has been restricted due to under-funding. Granting the ‘Aha Moku council system explicit powers over governance of natural resources and enforcement of regulations, rather than solely advisory powers, would not only help decentralize fisheries governance, but also open up avenues for exploring alternative, decarceral forms of environmental management grounded in Hawaiian culture (Arnstein, 1969; Tamashiro, 2010; Winter and McClatchey, 2009).

The Makai Watch Program is a program established through DLNR to create an avenue for “citizens and NGOs [to] become directly involved... in the management of marine resources through promoting compliance to rules, education, and monitoring” (*Makai Watch*, n.d.). Makai Watch allows community members to take on a more official and active role in monitoring their environment and upholding the existing government regulations, but participants have no governing power. The only power participating communities have is within the relationship they form with DOCARE and other state agencies, who they report observed violations to. Unlike CBSFA arrangements, where communities are given at least some power in designing customized regulations, the Makai Watch

Program extends no such power to communities. Therefore, the Makai Watch program, in an effort to strengthen community relations and increase monitoring capacity, still perpetuates the logic of carcerality as described in the stories of fisheries typical enforcement outcomes. Without the transference of enforcement powers to participating communities, the governing power remains centralized within the State and its agencies operating under carceral paradigms, thus perpetuating current social inequities (Akella and Cannon, 2004; Arnstein, 1969; Kaba, 2021; Wellsmith, 2011). The Makai Watch program offers an avenue to increase monitoring capabilities, a noted lack within current fisheries management in Hawai’i (Carrier et al., 2012; Hendrickson, 2020; Tanaka et al., 2012), but to ensure the environmental efficacy and social equity of enforcement, it would need to be nested within a governing system that does not reproduce the logic of carcerality and addresses the ultimate sources of environmental harm (Akella and Cannon, 2004; Kaba, 2021; Wellsmith, 2011). Such a model could exist through the expansion of the ‘Aha Moku council, which could oversee the creation and management of CBSFAs that employ decarceral enforcement mechanisms grounded in restorative justice practices, utilizing the Makai Watch program to enhance monitoring capabilities (Akella and Cannon, 2004; Dixon and Piepzna-Smarasinha, 2020; Higuchi, 2008; Tamashiro, 2010; Vaughan et al., 2016; Winter et al., 2018). However, as noted through the stories of the shortcomings of these three programs, decentralizing fisheries governance in order to empower communities, divest from carceral systems, and therein increase the environmental and social benefits of management arrangements will require the transfer of governing power to these community-based programs (Akella and Cannon, 2004; Akutagawa et al., 2016; Wellsmith, 2011).

3.3. Shifting enforcement paradigms

As demonstrated through the stories of the four typical fisheries enforcement outcomes and the three attempts to decentralize fisheries governance in Hawai’i, the logic of carcerality pervades existing management paradigms, diminishing the effectiveness of local fisheries management as well as perpetuating social inequities and contributing to mass incarceration. These stories highlighted how, beyond any resource or personnel insufficiencies within the governing bodies, the carceral norms within the current paradigm inhibits the success of fisheries enforcement in Hawai’i. Therefore, a paradigm shift will be necessary to transform fisheries management in Hawai’i towards a decarceral model. To avoid falling trap to carceral norms, this paradigm shift must be a turn away from punishment and retribution as the guiding mechanisms and instead towards the values of re-education, rematriation, and restoration (Dixon and Piepzna-Smarasinha, 2020; Freire, 2000; Goodyear-Ka’ōpua, 2009; Kaba, 2021; Samaran, 2019; Tuck, 2011; Tuck and Yang, 2012).

Critical to the success of this paradigm shift is the implementation of an intersectional restorative justice framework, counter to the punitive measures highlighted within the logic of carcerality (Crenshaw, 1991; Dixon and Piepzna-Smarasinha, 2020; Kaba, 2021). An intersectional fisheries enforcement framework grounded in restorative justice means understanding how fisheries law and enforcement in Hawai’i affects those who are more marginalized, centering those at the ‘fringes’ of society – understanding what led to their infractions in the first place, both contextually and structurally, and how to heal those wounds on individual and systemic scales (Crenshaw, 1991; Kaba, 2021). Going beyond measures that focus on the punishing for the proximate crime, this framework would work to address the ultimate sources of harm at a personal and systemic level, therein preventing future infractions with greater efficacy than current punitive enforcement models (Akella and Cannon, 2004; Dixon and Piepzna-Smarasinha, 2020; Kaba, 2021; Wellsmith, 2011). Consider houseless individuals illegally fishing to get sustenance or perhaps sell for some income – what would it mean if, instead of criminalizing them, enforcement mechanisms entailed assisting them in finding shelter, public housing, and employment? Consider undocumented immigrants struggling to make a living in a society that

deems them illegal – what would it mean if, instead of taking them to court for an infraction, with the potential of deportation, enforcement mechanisms helped grant them amnesty or citizenship? Consider those suffering from addiction, illegally fishing to afford more drugs – what would it mean if, instead of fining or potentially incarcerating them, enforcement mechanisms connected them with free and accessible rehabilitation and harm-reduction programs? An enforcement paradigm that centers the ‘edges’ of society, prioritizing addressing the ultimate sources of environmental and social harm, can help inform the design of fisheries management arrangements that prioritize care, not punishment, and reparations, not retribution (Crenshaw, 1991; Dixon and Piepzna-Smarasinha, 2020; Kaba, 2021; Wellsmith, 2011). Additionally, given that these non-carceral routes of enforcement are largely detached from the criminal justice system, they open opportunity for communities to play a larger role in governing their seascape, therein also facilitating the decentralization of governance powers (Akella and Cannon, 2004; Dixon and Piepzna-Smarasinha, 2020; Schenwar et al., 2016; Wellsmith, 2011).

Pre-colonial models of environmental governance should be restored in time, but care needs to be taken as these social-environmental systems are recultivated. The mo‘olelo (oral history) of Kū‘ula-kai and ‘Ai‘ai show us that failing to care for fisheries, and especially actively causing their degradation and overexploitation, was often punishable by death (Manu, 1992). This might seem severe, but when sustainability dictated whether communities would thrive or starve, strong enforcement was needed to uphold strong community norms. These community and societal norms were established in and reinforced by Hawaiian cosmology, particularly through kōnāwai (natural laws) and kapu (laws imposed by people) (Friedlander et al., 2013; Kamakau, 1976; Kosaki, 1954; Manu, 1992; Poepoe et al., 2005). Decolonization entails the return of land and governance over land to Indigenous peoples under our respective paradigms (Corntassel, 2008; Tuck and Yang, 2012), therefore a key step in decolonizing Hawai‘i, particularly in relation to fisheries governance, will be the restoration of the kōnāwai and kapu systems. However, the restoration of kōnāwai and kapu as societal norms in Hawai‘i will require sustained and enduring effort to overcome the social inertia established and reinforced through colonialism, both local and global (Corntassel, 2012; Morishige et al., 2018; Simpson, 2017). It would be infeasible, and I would argue unjust, to enforce kōnāwai and kapu with the same severity as they were in wā kahiko (olden times) given that the norms and social-environmental systems that once upheld these laws are no longer the standard. This doesn’t mean, though, that the laws of old should not be enforced – rather, a key priority will need to be re-education and a rematriation of Hawaiian relations with the environment (Freire, 2000; Nelson, 2017; Osorio, 2018; Tuck, 2011; Watson, 2020a). By implementing fisheries enforcement mechanisms that prioritize re-education and the rematriation of Hawaiian relations with land – through actions such as community service, outreach events, and community-based classes – enforcement can be a method to both ensure accountability and actively address the incongruity between colonial and decolonial norms (Freire, 2000; Hendrickson, 2020; Morishige et al., 2018; Nelson, 2017; Simpson, 2014). In abandoning the carceral norm of punitive measures, fisheries enforcement can be a mechanism for enacting principles of social-environmental restoration.

To better fulfill this transformation of fisheries enforcement in Hawai‘i – as well as environmental care as a whole – there are several areas of research that need further exploring. One needed area of study is the place-based analysis of mo‘olelo to learn more about different kōnāwai and kapu related to fisheries management and the seascape. The analyses of these mo‘olelo would help inform what fisheries management should evolve to in Hawai‘i, and therein inform how fisheries enforcement should look like – focusing not just on the logistics of the kōnāwai and kapu, but more so the underlying reasons and philosophies (Watson, 2020a). Additionally, there need to be more case studies of regions outside of Hawai‘i that are implementing decarceral and restorative approaches to environmental care. These case studies would provide

models for what could be implemented in or adapted to Hawai‘i. Lastly, a critical approach that needs to be taken is collaborating with communities in Hawai‘i to explore and pilot different decarceral and restorative approaches to fisheries enforcement, including the revival of kōnōhiki fisheries management (Kosaki, 1954; Manu, 1992; Poepoe et al., 2005). This is a far more daunting endeavor, but the insight gained would be invaluable, and the alternative is maintaining the current flawed fisheries management paradigms. There are countless unknowns in terms of both decarcerating and decolonizing fisheries management in Hawai‘i, and across the globe as well, but the potential reward is more socio-ecologically just and abundant oceans than we can currently imagine.

4. Conclusion

Due to colonialism, capitalism, and white supremacist racial hegemony, mass incarceration has permeated as the norm throughout virtually every aspect of governance in the United States (Alexander, 2012; Davis, 2003; Kaba, 2021; Walia et al., 2021). This paper has demonstrated how current fisheries enforcement paradigms and practices in Hawai‘i are embedded with carceral norms that reduce their efficacy in caring for the seascape and perpetuate social inequities. Additionally, the carceral norms within the existing fisheries paradigm have rendered the attempts thus far to decentralize power and transfer governance to the community level insufficient, with the carceral norms maintained in these alternative programs. Transforming fisheries management in Hawai‘i will require exploring and establishing decarceral paradigms for environmental enforcement, as well as decentralizing governance power away from State agencies and the criminal justice system to empower communities. To counter the carceral norms within existing fisheries governance, particularly those of punishment and retribution that exacerbate social injustices, decarceral enforcement mechanisms should prioritize the values of re-education, rematriation, and restoration. Today’s fisheries in Hawai‘i are a drastic departure from the pre-colonial kōnōhiki fisheries, but operationalizing decarceral fisheries enforcement paradigms offers an opportunity to not only better care for the seascape and local communities but also support ea Hawai‘i.

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Author contribution statement

Jonathan James Fisk: Conceived and designed the experiments; Performed the experiments; Analyzed and interpreted the data; Contributed reagents, materials, analysis tools or data; Wrote the paper.

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