

Amendments to Chapters 13-54 and 13-57, Repeal of
Chapter 13-60.3, Adoption of a new Chapter 13-60.4,
and Amendments to Chapter 13-75
Hawaii Administrative Rules

(6/24/2011)

1. The heading to Chapter 13-54, Hawaii Administrative Rules, is amended to read as follows:

"[PUAKO]PUAKŌ BAY AND [PUAKO]PUAKŌ REEF,
[HAWAII]HAWAI'I"

2. Section 13-54-1, Hawaii Administrative Rules, is amended by amending the definition of "Puako Bay and Puako Reef" to read:

"[Puako]Puakō Bay and [Puako]Puakō Reef" or the "Puakō Bay and [Puako]Puakō Reef fisheries management area" means that portion of the reef from the shoreline at the westernmost edge of the boat ramp, thence along a line drawn parallel with the boat ramp northwesterly (seaward) out to the edge of the fringing reef north of [Puako]Puakō Point, thence following the fringing reef in a southwesterly direction to a minimum seaward distance of two hundred fifty yards (228.6[0] meters) or to the seaward edge of the fringing reef if one occurs beyond two hundred fifty yards (228.6[0] meters) to a line drawn due west (seaward) of a small cove at the southern end of the [Puako]Puakō Beach [Road,]Drive, situated in [Lalamilo,]Lālāmilo, South Kohala, [Hawaii]island of Hawai'i, Hawai'i, as further delineated by shoreward and seaward GPS coordinates on the ["Map of Puako Bay and Puako Reef, Hawaii 9/4/84"]map entitled "Puakō Bay and Puakō Reef Fisheries Management Area" dated 09/21/11, located at the end of this chapter." [Eff: 1/28/1985, am] (Auth: HRS §188-53) (Imp: HRS §188-53)

3. Section 13-54-2, Hawaii Administrative Rules, is amended to read as follows:

"§13-54-2 Prohibited activities[.]. No person shall possess or use any [crossnet, gillnet,] cross net, gill net, draw[,] net, drag[,] net, seine, barrier net, hand net, or any other type of net [except thrownet,]within [Puako Bay and Puako Reef.]the Puakō Bay and Puakō Reef fisheries management area, except throw net with a stretched mesh size that is in compliance with section 13-75-10." [Eff 1/28/1985, am _____] (Auth: HRS §188-53) (Imp: HRS §188-53)

4. Section 13-54-3, Hawaii Administrative Rules, is amended to read as follows:

"§13-54-3 Permitted activities[.]. A person may, while transiting through [Puako] Puakō Bay and [Puako]Puakō Reef, possess aboard any boat or watercraft, any legal fishing gear, and any fish or other aquatic organism taken outside of [Puako] Puakō Bay and [Puako]Puakō Reef." [Eff 1/28/1985, am _____] (Auth: HRS §188-53) (Imp: HRS §188-53)

5. The map entitled "Map of Puako Bay and Puako Reef, Hawaii" dated 9/4/84 is changed to read "Map of Puakō Bay and Puakō Reef Fisheries Management Area (09/21/11)" with a slight change in boundaries, as indicated by GPS coordinates.

6. The heading to chapter 13-57, Hawaii Administrative Rules, is amended to read as follows:

"KEAUHOU BAY, [HAWAII] HAWAI'I"

7. Section 13-57-1, Hawaii Administrative Rules, is amended to read as follows:

"13-57-1 Definitions[.]. As used in this chapter unless otherwise provided: "Keauhou Bay["] fisheries management area" means that portion of the bay situated at Keauhou, North Kona, island of [Hawaii, Hawaii.]Hawai'i, Hawai'i, bounded by an imaginary straight line drawn between Haiku'ua Point and Kaukala'ela'e Point as delineated in the "Map of Keauhou Bay Fisheries Management Area, Hawai'i (09/21/11)" located at the end of this chapter." [Eff 9/18/92, am](Auth: HRS §188-53) (Imp: HRS §188-53)

8. Section 13-57-2, Hawaii Administrative Rules, is amended to read as follows:

"§13-57-2 Prohibited activities[.]. [(a)] No person shall engage in the following activities within [that portion of]the Keauhou Bay fisheries management area[bounded by a line as delineated in the "Map of Keauhou Bay Fisheries Management Area, Hawaii (7/10/92)", located at the end of this chapter]:

- (1) Fish with more than two lines[, or two poles or rods and lines]at the same time;
- (2) Snag or attempt to snag any fish;
- (3) Use or possess any type of net[s], except hand nets not exceeding three feet ([0.92]0.91 meter) in any dimension to take shrimp for bait purposes only, or to land fish already hooked, and except [thrownets] throw nets in the "Thrownetting Zone" [delineated]bounded by the shoreline, and a straight line starting at the north end stairs in the wall fronting the volleyball court [and along the shoreline] drawn to the base of the boundary of the [Fisheries Management Area at "Doc.Hill"; and]fisheries management area at "Doc Hill", as indicated in the "Map of Keauhou Bay Fisheries Management Area, Hawai'i (09/21/11)" located at the end of this chapter; or
- (4) Herd or chase any fish out of the area by

swimming, diving, or using a boat.

[(b) Nothing in this chapter shall be construed as allowing activities within any portion of the Keauhou Bay which may be otherwise prohibited by law or rules adopted by the department of transportation.] [Eff: 9/18/92; am]
(Auth: HRS §188-53) (Imp: HRS §188-53)

9. Section 13-57-3, Hawaii Administrative Rules, is amended to read as follows:

"§13-57-3 Permitted activities[.]. The department may issue special activity permits to engage in activities otherwise prohibited by law or section 13-57-2, for scientific, propagation, or other purposes as provided by [law]section 187A-6, Hawaii Revised Statutes, provided, however:

- (1) The board may revoke any permit for any infraction of the terms and conditions of the permit; and
- (2) A person whose permit is revoked shall not be eligible to apply for another permit until the expiration of [a specified period]one year from the date of revocation[as provided by law]." [Eff: 9/18/92; am]
(Auth: HRS §188-53) (Imp: HRS §§187A-6, 188-53)

10. The map entitled "Map of Keauhou Bay Fisheries Management Area, Hawaii (7/10/92)", is changed to read: "Map of Keauhou Bay Fisheries Management Area, Hawai'i (09/21/11)", with a slight change in boundaries.

11. Chapter 60.3 of Title 13, Hawaii Administrative Rules, is repealed.

12. Chapter 60.4 of Title 13, Hawaii Administrative Rules, entitled "WEST HAWAI'I REGIONAL FISHERY MANAGEMENT AREA, HAWAI'I" is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4

FISHERIES

PART II MARINE FISHERIES MANAGEMENT AREAS

CHAPTER 60.4

WEST HAWAI'I REGIONAL FISHERY MANAGEMENT AREA, HAWAI'I

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Historical note: Chapter 13-60.4 is based substantially upon chapter 13-60.3 and is simultaneously adopted upon repeal of that chapter. All rights, duties, penalties, and responsibilities incurred under chapter 13-60.3 are intended to be transferred to chapter 13-60.4 upon its adoption. [Eff 12/31/99; am, ren and comp 8/1/05; R]

§13-60.4-1 Intent and purpose. (a) The intent and purpose of this chapter regarding the West Hawai'i regional fishery management area shall be to:

- (1) Establish the West Hawai'i regional fishery management area for improved management of consumptive and nonconsumptive uses of aquatic resources;
- (2) Ensure the sustainability of the State's nearshore ocean resources;
- (3) Identify areas with resource and use conflicts;
- (4) Minimize user conflicts and resource depletion in the West Hawai'i regional fishery management area, by designating fish replenishment areas and identifying other regulated areas where aquarium fish collecting is prohibited, areas where the use of gill nets as set nets is prohibited, and establishing a portion of the fish replenishment areas as fish reserves where no fishing of reef-dwelling fish is allowed;
- (5) Establish a system of day-use mooring buoys in high-use coral reef areas and prohibit anchoring in some of these areas to prevent anchor damage to corals;
- (6) Identify areas and resources of statewide significance for protection;
- (7) Facilitate scientific research and monitoring of the nearshore resources and environment; and
- (8) Facilitate the substantive involvement of the community in resource management decisions for the West Hawai'i regional

fishery management area through dialogue with community residents and resource users.

(b) Native Hawaiian traditional and customary rights with regard to marine resources for subsistence, cultural, and religious purposes are recognized. Claims for traditional and customary rights will be decided by appropriate agencies when a claims procedure is established. [Eff]
(Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-2, 188F-3, 188F-4, 188F-6)

§13-60.4-2 Geographical jurisdiction of chapter provisions. (a) The provisions of this chapter shall apply to the West Hawai'i regional fishery management area, bounded by the west coast of Hawai'i Island, from Ka Lae, Ka'ū (South Point) to 'Upolu Point, North Kohala, and extending from the upper reaches of the wash of the waves on shore seaward to the limit of the State's police power and management authority.

- (b) The following fish replenishment areas and netting restricted areas shall be established within the boundaries of the West Hawai'i regional fishery management area (as depicted in "Map of Fish Replenishment Area and Netting Restricted Area Boundaries" (09/21/11) located at the end of this chapter):
- (1) North Kohala fish replenishment area, identified on shore to the north by Kamilo Gulch and to the south by the Kawaihae Lighthouse;
 - (2) Puakō-'Anaeho'omalu fish replenishment area, identified on shore to the north by the southern end of the Puakō Bay and Puakō Reef fisheries management area and to the south by the southern side of 'Anaeho'omalu Bay (Kapalaoa);
 - (3) Ka'ūpūlehu fish replenishment area, identified on shore to the north by the northern boundary of the Ka'ūpūlehu ahupua'a and to the south by the southern side of

- Kikaua Point (south of Kūki'o Bay);
- (4) Kaloko-Honokōhau fish replenishment area, identified on shore to the north by the southern boundary of Wāwālolli Zone (a Kona Coast fisheries management area defined in section 13-58-2) at Wawahiwa'a Point and to the south by Noio Point;
 - (5) Kailua-Keauhou fish replenishment area, identified on shore to the north by the southern boundary of Kailua Bay Zone, Kona Coast fisheries management area defined in section 13-58-2, and to the south by the northern boundary of the Keauhou Bay fisheries management area defined in section 13-57-1;
 - (6) Red Hill fish replenishment area, identified on shore to the north at Nenua Point and to the south by Keawakāheka Point;
 - (7) Nāpo'opo'o-Hōnaunau fish replenishment area, identified on shore to the north by the southern boundary of Kealakekua Bay marine life conservation district (Manini Beach Point) and to the south by the southern boundary of Pu'uhonua o Hōnaunau (Ki'ilae);
 - (8) Ho'okena fish replenishment area, identified on shore to the north by Loa Point and to the south by Ka'ū Loa Point;
 - (9) Ka'ohe Beach fish replenishment area (Pebble Beach), identified on shore to the north by signage south of Ka'ū Loa Point, and to the south by signage north of 'Au'au Point;
 - (10) Miloli'i fish replenishment area, identified on shore to the north by Makahiki Point and to the south by Kāki'o Point;
 - (11) Kikaua Point-Mākole'ā Point netting restricted area, identified on shore to the north by Kikaua Point (Kalae o Kikaua) and to the south by Mākole'ā Point (near Kekaha Kai State Park);
 - (12) Nenua Point-Kealakekua Bay netting restricted area, identified on shore to the

north by the northern boundary of the Red Hill fish replenishment area and to the south by the northern boundary of the Kealahakua Bay marine life conservation district;

- (13) Hanamalo Point-Kanewa'a Point netting restricted area, identified on shore to the north by Hanamalo Point, inclusive of Okoe Bay and Kapu'a Bay, and to the south by Kanewa'a Point, South Kona; and
- (14) Kanonone-Kalipoa netting restricted area, identified on shore to the north by Kanonone, inclusive of Pōhue Bay, Kahakahakea, and identified to the south by Kalipoa, Ka'ū.

Unless otherwise described, any area described in this chapter shall be described by four reference points identified by their latitude and longitude coordinates, as provided in the tables at the end of this chapter entitled "Table of Reference Coordinates to Fish Replenishment Area Boundaries" (09/21/11) and "Table of Reference Coordinates to Netting Restricted Area Boundaries" (09/21/11), and as may be further indicated by signage on or about the shoreline. The four points shall be identified as the landward northern point, the landward southern point, the seaward northern point, and the seaward southern point. The landward boundary for each of these areas shall be an imaginary line drawn along the highest wash of the waves between the landward northern point and the landward southern point. Should there be a stream or river flowing into the ocean, the landward boundary shall be an imaginary straight line drawn between the shoreline on either side of the stream or river, as if the stream or river was not there. Imaginary straight lines drawn through the landward and seaward northern points, and through the landward and seaward southern points, shall constitute the northern and southern boundary lines of each area. The seaward boundary of each area shall be determined by an imaginary line drawn along the 100 fathom (600 feet) depth contour, between the intersection of the

100 fathom depth contour and the northern and southern boundary lines. Seaward GPS reference points are for guidelines and the 100 fathom depth contour otherwise controls the seaward boundary. Any area designated in this chapter shall include the submerged lands and overlying waters within these four boundaries.

(c) The following areas, designated and subject to additional regulations in other chapters, shall also be considered and regulated as part of the West Hawai'i regional fishery management area:

- (1) Lapakahi marine life conservation district, as described in chapter 13-33;
- (2) Kawaihae Harbor fisheries management area, as described in chapter 13-55;
- (3) Wailea Bay marine life conservation district, as described in chapter 13-35;
- (4) Old Kona Airport marine life conservation district, as described in chapter 13-37;
- (5) Kealahou Bay marine life conservation district, as described in chapter 13-29;
- (6) Puakō Bay and Puakō Reef fisheries management area, as described in chapter 13-54;
- (7) Kiholo Bay fisheries management area, as described in chapter 13-60;
- (8) Kailua Bay fisheries management area, as described in chapter 13-52;
- (9) Keauhou Bay fisheries management area, as described in chapter 13-57;
- (10) Kona Coast fisheries management area, as described in chapter 13-58;

Except for the area encompassed by the Kawaihae Harbor fisheries management area, Kawaihae commercial harbor shall not be regulated as part of the West Hawai'i regional fishery management area.

(d) Nothing in this chapter shall be construed as allowing within the West Hawai'i regional fishery management area any activity otherwise prohibited by law or rules adopted by the department of land and natural resource or any other department of the State.

[Eff] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-2, 188F-3,

188F-4, 188F-6)

§13-60.4-3 Definitions. As used in this chapter unless otherwise provided:

"Aquarium collecting gear" means any equipment or gear adapted, designed, or commonly used to collect, capture or maintain aquatic life alive in a state of captivity, including but not limited to hand nets, fence or barrier nets, fiberglass, plastic, wood or metal 'tickle sticks' (including spears or similar implements used to manipulate the movement of aquarium fish or animals), catch buckets, keeps, baskets or venting needles.

"Aquarium purposes" means to hold aquatic life alive in a state of captivity, whether as pets, for scientific study, for public exhibition, for public display, or for sale for these purposes. Aquatic life collected under a valid aquarium permit may not be used for human consumption, for bait, or for other consumptive purposes.

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

"Aquatic life" means any type or species of mammal, fish, amphibian, reptile, mollusk, crustacean, arthropod, invertebrate, coral, or other animal that inhabits the freshwater or marine environment and includes any part, product, egg, or offspring thereof; or freshwater or marine plants, including seeds, roots, products, and other parts thereof.

"Commercial purpose" means the taking of aquatic life for profit, gain, sale, purchase, barter, exchange, to offer for sale, or upon any offer to purchase.

"Department" means the department of land and natural resources.

"Fish feeding" means deliberately introducing into the water any food material, substance, or device used as an attractant, for any purpose except catching and removing marine life.

"Lay net" means a panel of net mesh that is suspended vertically in the water with the aid of a

float line that supports the top edge of the net upward towards the water surface and a lead line that keeps the bottom edge of the net downward towards the ocean bottom.

"Lay net fishing" or to "lay net fish" means deploying or attempting to deploy a lay net in a set location and in an open configuration, and retrieving the lay net from the same location after a certain time period has passed. This fishing method is also known as set netting, cross netting, pa'ipa'i, and moemoe netting. This term does not apply to the use of a lay net to completely encircle a pre-identified school of fish, where the net is constantly attended at all times while in the water, such as in the practice of surround netting.

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

"SCUBA gear" means any equipment adapted, designed, or commonly used to enable a diver to breathe while underwater, including, but not limited to, SCUBA regulators, high pressure cylinders, rebreathers, SNUBA, and hookah rigs.

"SCUBA spearfishing" means to take or to attempt to take aquatic life through the combined use of a spear and SCUBA gear.

"Set" when used as a noun with respect to the use of lay nets, means a sequential act beginning from when the lay net is fully deployed in the water and ending on the next complete removal of the lay net from the water.

"Spear" means any device or implement which is designed or used for impaling marine life. Spears may include, but are not limited to, spear gun shafts, arbaletes, arrows, bolts, Hawaiian slings, tridents or three-prong spears. A dive knife is not considered to be a spear.

"Speared" means pierced, impaled, penetrated, stuck, or run through by a sharp, pointed implement.

"Take" means to fish for, catch, or harvest, or to attempt to fish for, catch, or harvest, aquatic life. The use of any gear, equipment, tool, or any

means to fish for, catch, capture, or harvest, or to attempt to fish for, catch, capture, or harvest, aquatic life by any person who is in the water, or in a vessel on the water, or in the shoreline area where aquatic life can be fished for, caught, or harvested, shall be construed as taking.

"Total length" means the length of a fish measured from the tip of the snout to the tip of the longer lobe of the caudal (tail) fin. The length measurement shall be a straight-line measure, not measured over the curvature of the body of the fish.

"White list" means a list of species of marine life that may be taken for aquarium purposes.

[Eff _____] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6)

§13-60.4-4 Activities prohibited within the West Hawai'i regional fishery management area. While within the West Hawai'i regional fishery management area, no person shall:

(1) Take, kill, possess, sell, or offer for sale, any specimen of the following species: *Aetobatus narinari* (spotted eagle ray), *Carcharhinus amblyrhynchos* (gray reef shark), *Carcharhinus melanopterus* (blacktip reef shark), *Cassis cornuta* (horned helmet), *Charonia tritonis* (Triton's trumpet), *Dasyatis hawaiiensis* (Hawaiian stingray), *Dasyatis lata* (broad stingray), *Pteroplatytrygon violacea* (pelagic stingray), *Galeocerdo cuvier* (tiger shark), *Rhincodon typus* (whale shark), or *Triaenodon obesus* (whitetip reef shark);

(2) Possess more than five *Zebrasoma flavescens* (yellow tang) larger than 4.5 inches in total length, or possess more than five *Zebrasoma flavescens* smaller than 2 inches in total length;

(3) Possess aquarium collecting gear, or take or possess any specimen of aquatic life for aquarium purposes:

(A) Between sunset and sunrise, provided that collecting gear or collected aquatic life may be possessed after sunset or before sunrise if

notification by phone is made to the Division of Aquatic Resources West Hawai'i (DAR-Kona) office prior to sunset. Such notification must include the names of individuals who plan to possess such gear or aquatic life and the location where such possession will take place;

- (B) Without holding a valid West Hawai'i aquarium permit issued pursuant to subsection 13-60.4-7(a) of this chapter;
- (C) In violation of the terms and conditions of a West Hawai'i aquarium permit issued to that person; or
- (D) While occupying any vessel that does not conform to the registration and marking requirements of subsection 13-60.4-7(d) of this chapter;

(4) Possess or use any net or container employed underwater to capture or hold aquatic life alive for aquarium purposes, which is not labeled with the commercial marine license number or numbers of the person or persons owning, possessing or using such equipment;

(5) Possess a lay net or engage in lay net fishing in violation of the requirements of section 13-60.4-6 of this chapter; or

(6) Engage in or attempt to engage in SCUBA spearfishing, possess both SCUBA gear and a spear at the same time, or possess SCUBA gear and any specimen of speared aquatic life at the same time. [Eff
] (Auth: HRS §§187A-5, 188-53, 188F-6)(Imp: HRS
§§187A-5, 188-53, 188F-3)

§13-60.4-5 Activities prohibited within selected areas. (a) No person may engage in fish feeding while within any of the fish replenishment areas or netting restricted areas described in subsection 13-60.4-2(b) or any of the other areas listed in 13-60.4-2(c) of this chapter.

(b) While within the fish replenishment areas

described in paragraphs 13-60.4-2(b)(1)-(10) of this chapter, or while within any of the areas listed in subsection 13-60.4-2(c) other than the Kīholo Bay fisheries management area, no person may:

- (1) Collect aquatic life for aquarium purposes;
or
- (2) Possess any aquarium collecting gear, or take or possess any specimen of aquatic life for aquarium purposes, except that aquarium collecting gear or aquatic life collected for aquarium purposes may be possessed while on-board a vessel in active transit through such areas, provided that no collecting gear is in the water during such transit. Boats which are adrift, anchored, or moored are not considered to be in active transit.

(c) No person may lay net fish while within the following areas, as described in subsection 13-60.4-2(b) and in the tables at the end of this chapter entitled "Table of Reference Coordinates to Fish Replenishment Area Boundaries", (09/21/11) and "Table of Reference Coordinates to Netting Restricted Area Boundaries", (09/21/11):

- (1) Puakō-‘Anaeho‘omalu fish replenishment area;
- (2) Ka‘ūpūlehu fish replenishment area;
- (3) Kikaua Point-Mākole‘ā netting restricted area (Kekaha Kai State Park);
- (4) Nenuē Point (Red Hill fish replenishment area)-Kealakekua Bay netting restricted area;
- (5) Hanamalo Point-Kanewa‘a Point netting restricted area;
- (6) Kanonohe-Kalīpoa netting restricted area;
and

(7) Kaloko-Honokōhau fish replenishment area, except that a person may lay net fish in the Kaloko-Honokōhau fish replenishment area using only a locally-constructed, handmade lay net of natural fibers, which is registered and used in compliance with section 13-60.4-6 of this chapter.

[Eff _____] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6)

§13-60.4-6 Lay net registration and use requirements. (a) It is unlawful for any person within the West Hawai'i regional fishery management area to:

- (1) Possess or use a lay net that has not been registered with the department;
- (2) Possess or use more than one lay net;
- (3) Possess or use a lay net:
 - (A) Longer than 125 feet in length or more than seven feet in stretched height;
 - (B) With less than two and three-fourths inches stretched mesh; and in Kailua Bay fisheries management area, with less than three inches stretched mesh; or
 - (C) With two or more joined lay nets with a combined total length of more than 250 feet;
- (4) Possess or use a multi-panel lay net; or
- (5) Possess or use a lay net that does not have at least four identification tags as specified or provided by the department. One identification tag must be attached at each end of both the net float line and the net lead line for a total of four attachment points on each lay net.

(b) It is unlawful for any person lay net fishing to:

- (1) Use a lay net that is not marked by buoys as specified or provided by the department. The buoys shall display the lay net registration number, be marked with reflective tape, and be visible above the surface of the water. The buoys shall be attached to each end of the float line for a total of two buoys for each lay net;
- (2) Use a lay net within 1,200 feet of any other lay net; provided that two or more individuals working together and using the lay net fishing method may use a joined net;

- (3) Use a lay net in water that is more than 80 feet in depth;
 - (4) Use a lay net for more than four hours during any one set; provided that after one set, the same lay net may not be set again within twenty-four hours after the ending of the set; and provided further that the same person shall not set any other lay net within that twenty-four hour period after the ending of the set;
 - (5) Leave a lay net unattended for more than one-half hour;
 - (6) Retrieve a lay net in such a manner as to cause coral to break from its attachment to the bottom or to break into smaller pieces. Any coral brought to the surface in the net shall be considered prima facie evidence of a violation of this section;
 - (7) Fail to complete inspection of an entire lay net within two hours after the beginning of the set. The person lay net fishing shall inspect the lay net and release any threatened, endangered, prohibited, or unwanted species; or
 - (8) Discard, abandon, or leave, any lay net, or portion thereof, in the water for longer than four hours;
- (c) It is unlawful for any person to falsely identify, with identification tags, any lay net that is not registered with the department as required in paragraphs (a)(1) and (a)(5) of this section, respectively.
- (d) Persons using a vessel or float may use a total maximum of 250 feet of lay net, provided that at least two persons are present and associated with the same vessel or float.
- (e) Should any registered lay net be lost, destroyed, sold, traded, stolen, given away, or otherwise no longer the property of, or no longer in the possession of the registered owner, then the registered owner shall be responsible for the lay net until a report is filed and confirmed by the

department.

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

(g) This section shall not apply to panel mesh nets with a stretched mesh size of less than two and three-fourths inches that are marked with commercial marine license numbers as required under section 13-60.4-4(4), and permitted for use and possession under an aquarium permit and a West Hawai'i aquarium permit issued under section 13-60.4-7(a). [Eff]
(Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6, 199-7, 712A-6)

§13-60.4-7 Aquarium collecting permit and vessel registration requirements. (a) West Hawai'i aquarium permit. The department may issue West Hawai'i aquarium permits authorizing persons to engage in aquarium collecting activities, for species listed in subsection (b) of this section and to use fine meshed traps and nets (other than throw nets) to collect such species in the West Hawai'i regional fishery management area notwithstanding section 13-75-14, subject to terms and conditions it deems necessary for the management of the area and its resources. No person, unless exempted from provisions of this chapter by issuance and possession of a valid special activity permit under section 187A-6, Hawaii Revised Statutes, shall engage in aquarium collecting activities within the West Hawai'i regional fishery management area without first having been issued and possessing a West Hawai'i aquarium permit in addition to a valid State of Hawai'i aquarium fish permit. Permits shall be valid for one year from the date of issuance unless revoked sooner, and are non-transferable. In addition to applying any other penalties provided by law, the

department may revoke any West Hawai'i aquarium permit for any infraction of these rules or the terms and conditions of the permit, and any person whose permit has been revoked shall not be eligible to apply for another West Hawai'i aquarium permit until the expiration of one year from the date of revocation.

(b) Aquarium species white list. In addition to other regulations deemed necessary for the management of the West Hawai'i regional fishery management area, an aquarium permit holder may only take or possess specimens of the following species of fish for aquarium purposes while within the West Hawai'i regional fishery management area: *Acanthurus achilles* (Achilles tang), *Acanthurus dussumieri* (eyestripe surgeonfish), *Acanthurus nigricans* (goldrim surgeonfish), *Acanthurus nigrofuscus* (brown surgeonfish), *Acanthurus olivaceus* (orangeband surgeonfish), *Acanthurus thompsoni* (Thompson's surgeonfish), *Anampses chrysocephalus* (psychedelic wrasse), *Canthigaster jactator* (whitespotted Toby), *Centropyge fisheri* (Fisher's angelfish), *Centropyge potteri* (Potter's angelfish), *Cephalopholis argus* (peacock grouper), *Chaetodon kleinii* (blacklip butterflyfish), *Chaetodon miliaris* (milletseed butterflyfish), *Chaetodon multicinctus* (multiband butterflyfish), *Chaetodon quadrimaculatus* (fourspot butterflyfish), *Chaetodon tinkeri* (Tinker's butterflyfish), *Cirrhitilabrus jordani* (flame wrasse), *Cirrhitops fasciatus* (redbarred hawkfish), *Coris gaimard* (yellowtail Coris), *Ctenochaetus hawaiiensis* (chevron tang), *Ctenochaetus strigosus* (goldring surgeonfish, kole), *Dascyllus albisella* (Hawaiian Dascyllus), *Forcipiger flavissimus* (forcepsfish), *Gomphosus varius* (bird wrasse), *Halichoeres ornatus* (ornate wrasse), *Hemitaurichthys polylepis* (pyramid butterflyfish), *Lutjanus kasmira* (bluestripe snapper), *Macropharyngodon geoffroy* (shortnose wrasse), *Melichthys niger* (black Durgon), *Naso lituratus* (orangespine unicornfish), *Ostracion meleagris* (spotted boxfish), *Paracirrhites forsteri* (blackside hawkfish), *Pseudanthias hawaiiensis* (Hawaiian longfin Anthias), *Pseudocheilinus octotaenia*

(eightline wrasse), *Pseudocheilinus tetrataenia* (fourline wrasse), *Pseudojuloides cerasinus* (smalltail wrasse), *Sufflamen bursa* (lei triggerfish), *Thalassoma duperrey* (saddle wrasse), *Xanthichthys auromarginatus* (gilded triggerfish), and *Zebrasoma flavescens* (yellow tang); provided further that:

- (1) No *Zebrasoma flavescens* (yellow tang) may be taken or possessed in violation of subsection 13-60.4-4(2) of this chapter;
- (2) No more than five *Ctenochaetus strigosus* (goldring surgeonfish or kole) larger than four inches in total length may be taken per day or possessed at any time;
- (3) No more than ten *Acanthurus achilles* (Achilles tang) may be taken per day, or possessed at any time.

(c) Aquarium collecting vessel registration and marking requirements. All aquarium collecting vessels shall:

- (1) Be registered every year with the Division of Aquatic Resources West Hawai'i (DAR-Kona) office to take aquatic life for aquarium purposes within the West Hawai'i regional fishery management area. Each registration shall be valid for one year from the date of registration. The current vessel identification number issued by either the department or the United States Coast Guard shall serve as the registration number for such vessels;
- (2) Clearly display the capital letters "AQ" permanently affixed to both sides of the vessel, either near the top of the gunwales or on the superstructure. Unless otherwise specified, the "AQ" letters shall be no less than six (6) inches high and three (3) inches wide in either black or a contrasting color to the background;
- (3) Fly a "stiffened" flag or pennant from the vessel with the letter "A" as specified by the department. The flag or pennant shall be provided at cost to aquarium permittees as

specified by the department. The flag or pennant shall be displayed and clearly visible from both sides of the vessel at all times while aquarium collecting gear or collected aquarium marine life or both are on-board;

- (4) Display a dive flag at all times when divers are in the water; and
- (5) In the event an aquarium collecting vessel becomes inoperable, the operator of the vessel shall immediately notify the department's division of conservation and resources enforcement or United States Coast Guard or both by VHF radio or by cellular phone or both.

(d) Control date. A control date was established in August 1, 2005 to possibly limit participation in the West Hawai'i regional fishery management area commercial aquarium fishery. Persons who begin fishing in the West Hawai'i regional fishery management area commercial aquarium fishery on or after the control date will not be assured continued participation if the department establishes an aquarium limited entry program in the future.

(e) Nothing in this chapter shall prevent the department from establishing another control date.
[Eff _____] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-3)

§13-60.4-8 Penalty. Any person violating any provision of this chapter, or any term or condition of any permit issued as provided by this chapter, shall be subject to the provisions of sections 187A-12.5 and 188-70, Hawaii Revised Statutes, or as may be otherwise provided by law. [Eff _____]
(Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-12.5, 188-53, 188-70)

§13-60.4-9 Severability. If any provision of this chapter, or the application thereof, to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of

the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

[Eff] (Auth: HRS §§1-23, 187A-5, 188-6, 188-53) (Imp: HRS §§1-23, 187A-5, 188-53, 188F-6)

13. Section 13-75-12.4, Hawaii Administrative Rules, is amended to read as follows:

"§13-75-12.4 Lay nets. (a) It is unlawful for any person within the jurisdiction of[in, on, or about State]state waters to:

- (1) Possess or use a lay net that has not been registered with the department;
 - (2) Possess or use a lay net which is, or lay nets which[when set end to end], except as provided in section 13-60.4-6, are:
 - (A) Longer than 125 feet in length when set end to end, and more than seven feet in stretched height[, except as provided in section 13-60.3-5]; and
 - (B) Of less than two and three-fourths inches stretched mesh, except as provided in [subsection]section 13-52-2(2)(A);
 - (3) Possess or use a multi-panel lay net;
 - (4) Possess or use a lay net that does not have at least four identification tags as specified or provided by the department. One identification tag must be attached at each end of both the net float line and the net lead line for a total of four attachment points on each lay net[.]; or
 - (5) Fish with more than one lay net at a time.
- (b) It is unlawful for any person using the lay net fishing method to:
- (1) Use a lay net that is not marked by surface buoys as specified or provided by the department. The buoys shall display the lay net registration number, be marked with reflective tape, and be visible above the

surface of the water. The buoys shall be attached to each end of the float line for a total of two buoys for each lay net;

- (2) Use a lay net within 250 feet of another lay net, except as provided in section [13-60.3-5;]13-60.4-6;
- (3) Use a lay net in water greater than 25 feet in depth; provided that a person with a commercial marine license may use a lay net in water depths up to 80 feet, except as provided in section [13-60.3-5;]13-60.4-6;
- (4) Use a lay net for more than four hours during any one set; provided that after one set, the same lay net may not be used again within twenty-four hours after the ending of the set; and provided further that [no]the same person shall not set any other lay net within that twenty-four hour period after the ending of the set;
- (5) Leave a lay net unattended for more than one-half hour;
- (6) Retrieve a lay net in such a manner as to cause any stony coral to break [either]from its attachment to the bottom or to break into smaller pieces. Any stony coral brought to the surface in the net shall be considered prima facie evidence of a violation of this section;
- (7) Fail to complete inspection of an entire lay net within two hours after the beginning of the set. The person lay net fishing shall inspect the lay net and release any threatened, endangered, prohibited, or unwanted species;
- (8) Discard, abandon, or leave, any lay net, or portion thereof, in the water for longer than four hours;
- (9) Use a lay net in freshwater streams or stream mouths;
- (10) Use a lay net during the period from one-half hour after sunset to one-half hour before sunrise.

(c) It is unlawful for any person to falsely identify, with identification tags, any lay net that is not registered with the department as required in subsection (a).

(d) Should any registered net be lost, destroyed, sold, traded, stolen, given away, or otherwise no longer the property of, or no longer in the possession of the registered owner, then the registered owner shall be responsible for the lay net until a report is filed and confirmed by the department.

(e) Any lay net, within the jurisdiction of state waters [in, on, or about the water], that is not registered or that does not have proper identification tags or surface buoys as required in subsections (a) and (b), shall be considered contraband and subject to immediate seizure by the department.

(f) It is unlawful for any person to use a lay net in the following areas as provided in the table describing the boundary coordinates or locations for the prohibited fishing areas, located at the end of this chapter, entitled, "Table of Descriptions of Lay Net Fishing Prohibited Areas" dated April 19, 2006, and in the maps located at the end of this chapter, entitled, "Map of Lay Net Fishing Prohibited Area: Maui" dated April 19, 2006, and "Map of Lay Net Fishing Prohibited Areas: O'ahu" dated April 19, 2006, and "Map of Lay Net Fishing Prohibited Area: Kane'ohe Bay, O'ahu" dated April 19, 2006:

- (1) Island of Maui;
- (2) Kawaihoa Point to Keahi Point, O'ahu;
- (3) Mokapu Point to Wailea Point, O'ahu;
- (4) Kane'ohe Bay, O'ahu.

(g) Any person violating any subsection of this provision shall be subject to penalty as provided under chapter 187A, HRS. Each violation may constitute a separate offense." [Eff and comp 3/2/07; am](Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

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

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

16. These amendments to chapters 13-54, 13-57, the repeal of chapter 13-60.3, and the adoption of the new chapter 13-60.4, and the amendments to chapter 13-75, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

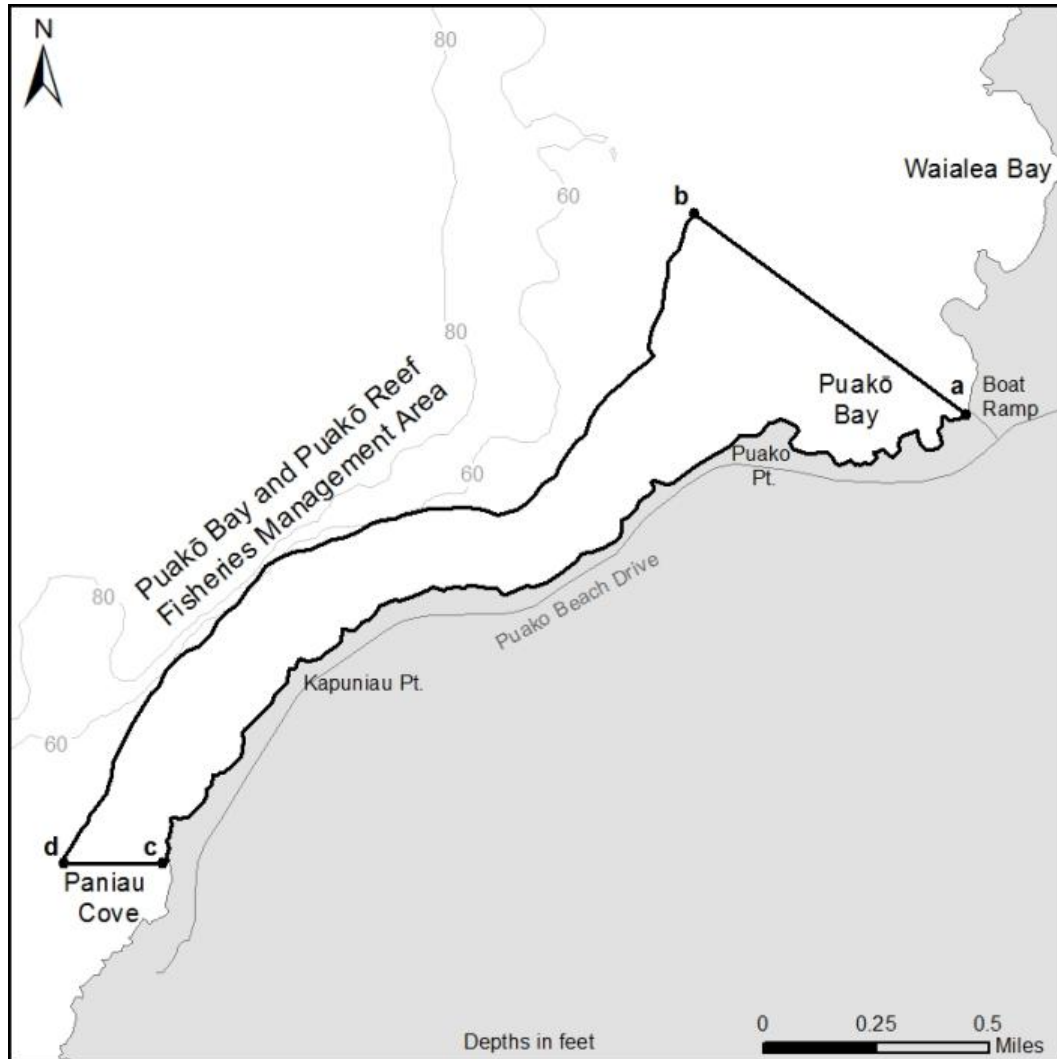
I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

William J. Ailā, Jr., Chairperson
Board of Land and Natural
Resources

APPROVED AS TO FORM:

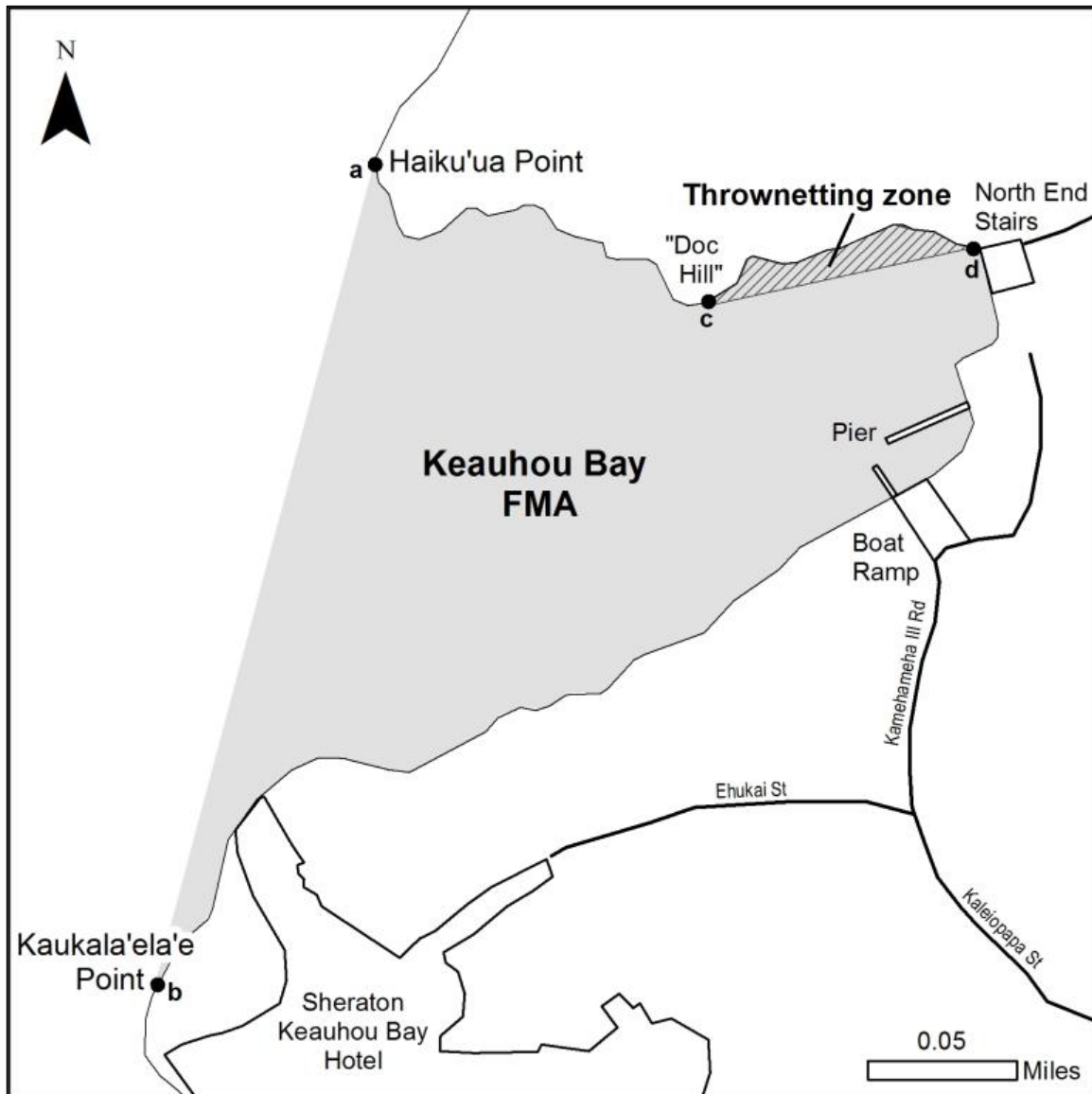
 /s/ Colin J. Lau
Deputy Attorney General

Map of Puakō Bay and Puakō Reef Fisheries Management Area (09/21/11)



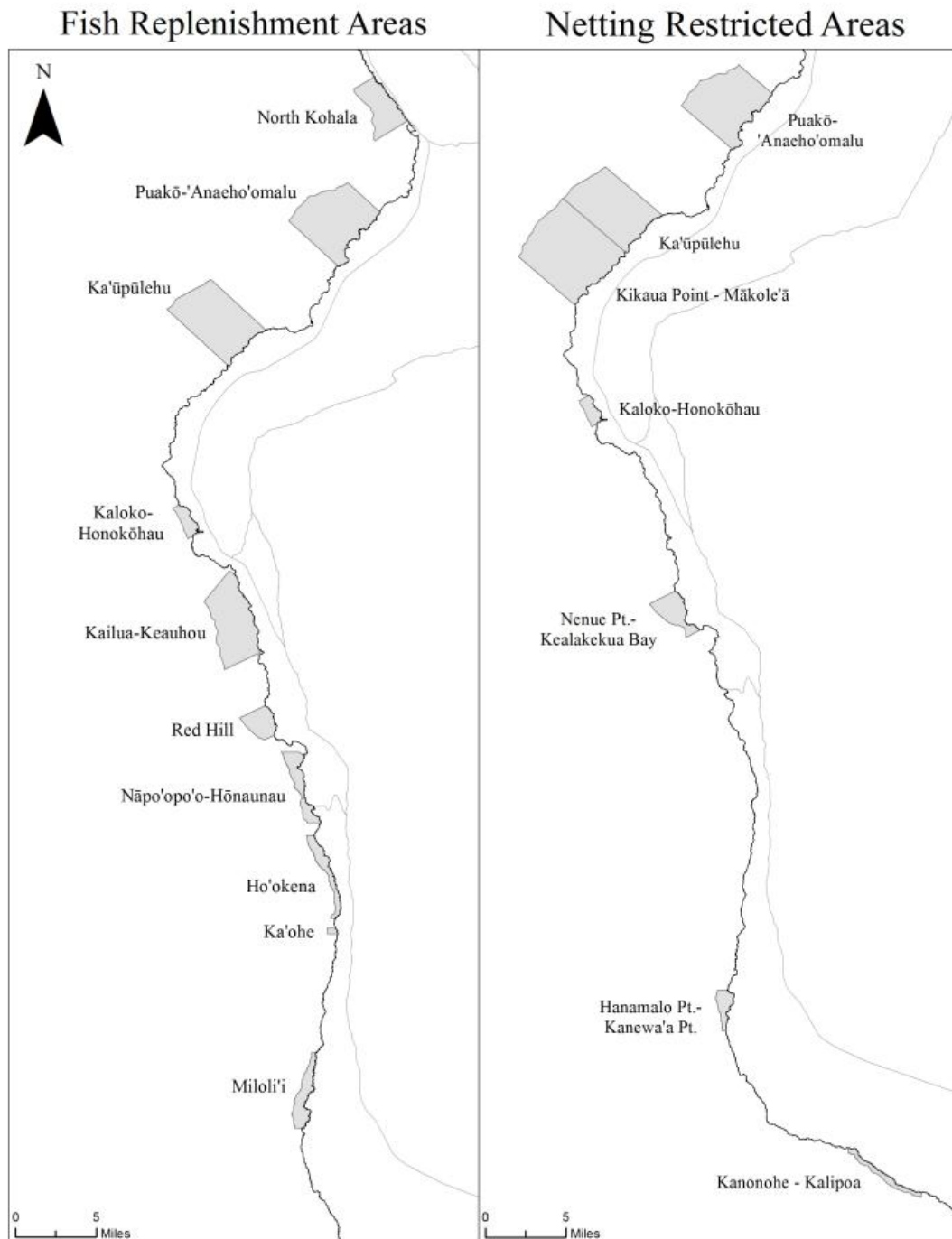
Point	Boundary	Latitude	Longitude
a	N shoreward	19°58.4411'N	155°49.8943'W
b	N seaward	19°58.8208'N	155°50.4560'W
c	S shoreward	19°57.5471'N	155°51.5218'W
d	S seaward	19°57.5462'N	155°51.6534'W

**Map of Keauhou Bay Fisheries Management Area,
Hawai'i (09/21/11)**



Point	Boundary	Latitude	Longitude
a	Haiku'ua Point	19° 33.773'N	155° 57.914'W
b	Kaukala'ela'e Point	19° 33.528'N	155° 57.989'W
c	"Doc Hill"	19° 33.731'N	155° 57.812'W
d	North End Stairs	19° 33.745'N	155° 57.730'W

Map of Fish Replenishment Area and Netting Restricted Area Boundaries* (09/21/11)



*Maps and tables do not reflect regulated areas and their specific prohibitions (including gear restrictions) that are defined in other chapters, as described in subsection 13-60.4-5(c) of this chapter

**Table of Reference Coordinates to Fish Replenishment Area Boundaries
(09/21/11)**

Fish Replenishment Area	Landward dGPS Coordinates		Seaward dGPS Coordinates (600 ft.)				
	Northern Point	Southern Point	Northern Point	D (nm)	Southern Point	D (nm)	@
North Kohala	20° 04.826' N	20° 02.471' N	20° 04.378' N	1.40	20° 01.654' N	1.94	225°
	155° 51.934' W	155° 49.988' W	155° 53.344' W		155° 51.875' W		225°
Puakō – ‘Anaeho‘omalū	19° 57.529' N	19° 54.641' N	19° 59.206' N	2.40	19° 57.034' N	3.54	300°
	155° 51.553' W	155° 53.893' W	155° 53.383' W		155° 56.658' W		300°
Ka‘ūpūlehu	19° 51.011' N	19° 49.209' N	19° 53.817' N	3.91	19° 51.724' N	4.39	300°
	155° 58.111' W	156° 00.132' W	156° 00.994' W		156° 03.947' W		300°
Kaloko - Honokōhau	19° 41.442' N	19° 40.059' N	19° 41.368' N	0.35	19° 39.844' N	0.46	240°
	156° 02.350' W	156° 01.741' W	156° 03.031' W		156° 02.169' W		240°
Kailua – Keauhou	19° 37.903' N	19° 33.716' N	19° 37.089' N	2.02	19° 32.801' N	2.21	245°
	155° 59.472' W	155° 57.829' W	156° 01.449' W		156° 00.004' W		245°
Red Hill	19° 30.823' N	19° 29.252' N	19° 30.166' N	1.41	19° 28.991' N	0.51	235°
	155° 57.630' W	155° 57.068' W	155° 58.953' W		155° 57.536' W		235°
Nāpo‘opo‘o - Hōnaunau	19° 28.230' N ¹	19° 24.559' N	19° 28.350' N ²	1.13	19° 24.725' N	0.79	270°
	155° 55.370' W	155° 54.343' W	155° 56.898' W		155° 55.162' W		270°
Ho‘okena	19° 23.796' N	19° 19.458' N	19° 23.690' N	0.40	19° 19.403' N	0.25	240°
	155° 54.685' W	155° 53.426' W	155° 55.095' W		155° 53.688' W		240°
Ka‘ohe	19° 18.954' N	19° 18.714' N	19° 18.947' N	0.44	19° 18.706' N	0.48	270°
	155° 53.362' W	155° 53.296' W	155° 53.824' W		155° 53.806' W		270°
Miloli‘i	19° 12.179' N	19° 08.098' N	19° 12.179' N	0.15	19° 08.160' N	0.36	270°
	155° 54.369' W	155° 55.132' W	155° 54.599' W		155° 55.510' W		270°

^{1,2} Northern Boundary runs 0.25nm along existing Kealahou Bay MLCD southern boundary to 19° 28.443' N/155° 55.708' W and then 270° to seaward northern point.

D (nm) = distance in nautical miles from the landward points to the seaward points

@ = compass heading from landward coordinates to seaward coordinates

**Table of Reference Coordinates to Netting Restricted Area Boundaries
(09/21/11)**

Netting Restricted Area**	Landward dGPS Coordinates		Seaward dGPS Coordinates (600 ft.)				
	Northern Point	Southern Point	Northern Point	D (nm)	Southern Point	D (nm)	@
Puakō – ‘Anaeho‘omalu	19° 57.529’ N	19° 54.641’ N	19° 59.206’ N	2.40	19° 57.034’ N	3.54	300°
	155° 51.553’ W	155° 53.893’ W	155° 53.383’ W		155° 56.658’ W		300°
Ka‘ūpūlehu	19° 51.011’ N	19° 49.209’ N	19° 53.817’ N	3.91	19° 51.724’ N	4.39	300°
	155° 58.111’ W	156° 00.132’ W	156° 00.994’ W		156° 03.947’ W		300°
Kikaua Point - Mākole‘ā	19° 49.130’ N	19° 46.356’ N	19° 52.100’ N	4.41	19° 49.000’ N	3.98	300°
	156° 00.063’ W	156° 03.024’ W	156° 03.566’ W		156° 06.164’ W		300°
Kaloko - Honokōhau	19° 41.442’ N	19° 40.059’ N	19° 41.368’ N	0.35	19° 39.844’ N	0.46	240°
	156° 02.350’ W	156° 01.741’ W	156° 03.031’ W		156° 02.169’ W		240°
Nenue Pt. - Kealakekua Bay	19° 30.823’ N	19° 28.699’ N	19° 30.166’ N	1.41	19° 28.316’ N	0.90	235°
	155° 57.630’ W	155° 56.114’ W	155° 58.953’ W		155° 56.983’ W		235°
Hanamalo Pt. - Kanewa‘a Pt.	19° 09.273’ N	19° 07.091’ N	19° 09.275’ N	0.55	19° 07.093’ N	0.18	260°
	155° 54.973’ W	155° 55.115’ W	155° 55.564’ W		155° 55.313’ W		260°
Kanonone - Kalīpoa	19° 00.662’ N	18° 58.180’ N	19° 00.409’ N	0.25	18° 57.941’ N	0.24	200°
	155° 48.302’ W	155° 44.182’ W	155° 48.302’ W		155° 44.183’ W		200°

****Netting restrictions may also apply in fisheries replenishment areas (see map above) and in areas designated under separate chapters, as described in subsection 13-60.4-2(c)**

D (nm) = distance in nautical miles from the landward points to the seaward points

@ = compass heading from landward coordinates to seaward coordinates