

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-60.9
Hawaii Administrative Rules

(Date of adoption)

1. Chapter 13-60.9, Hawaii Administrative Rules, entitled "Mo'omomi Community-Based Subsistence Fishing Area, Moloka'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 60.9

MO'OMOMI COMMUNITY-BASED SUBSISTENCE FISHING AREA,
MOLOKA'I

§13-60.9-1	Purpose
§13-60.9-2	Definitions
§13-60.9-3	Boundaries
§13-60.9-4	Permitted and prohibited activities

or freshwater or marine plants, including seeds, roots products, and other parts thereof.

"Area" means the Mo'omomi Community-Based Subsistence Fishing Area (Mo'omomi CBSFA), as encompassed within the boundaries described in section 13-60.9-3(a).

"Commercial purpose" means the taking of marine life for profit or gain or as a means of livelihood where the marine life is taken in or outside of the State, or where the marine life is sold, offered for sale, landed, or transported for sale anywhere in the State.

"Day" means a twenty-four hour period.

"Deep 7 bottomfish" means *Pristipomoides filamentosus* ('ōpakapaka), *Pristipomoides sieboldii* (kalekale), *Aphareus rutilans* (lehi), *Pristipomoides zonatus* (gindai), *Etelis coruscans* (onaga), *Etelis carbunculus* (ehu), and *Epinephelus quernus* (hāpu'upu'u).

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

"Diving" means any activity conducted in the water involving the use of an underwater breathing apparatus or a mask, goggles, or any other device that assists a person to see underwater while the person's face is submerged. Diving includes both extractive and non-extractive activities, such as SCUBA diving, free diving, and snorkeling.

"Fish" means any species of marine life with a backbone, gills, and with limbs that are fins, if any.

"Hand-harvest" means to gather directly with the hands only, and without the use of any net, spear, rake, or any other tool or implement.

"Hook-and-line" means a fishing line to which one or more hooks or other tackle are attached. A hook-and-line may include a fishing rod or reel or both to cast and retrieve the line.

"Kole" means any fish known as *Ctenochaetus strigosus* or any recognized synonym. Kole are also known as goldring surgeonfish.

"Kūmū" means any fish known as *Parupeneus porphyreus* or any recognized synonym. Kūmū are also known as whitesaddle goatfish.

"Limu" means any marine alga, including algae in the intertidal zone.

"Marine life" means any type or species of saltwater fish, shellfish, mollusks, crustaceans, coral, algae, or other marine animals, including any part, product, egg, or offspring thereof; or any type or species of seaweeds or other marine plants or algae, including any part, product, seed, holdfast, or root thereof.

"Moi" means any fish known as *Polydactylus sexfilis* or any recognized synonym. Moi are also known as Pacific threadfin.

"Ōpihi" means any mollusk of the genus *Cellana* or any recognized synonym. Ōpihi are also known as kō'ele, 'ālinalina, makaiauli, or limpets.

"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.

"Spear" means any device or implement that is designed or used for impaling marine life, whether propelled by hand or with the use of elastic bands or other means. Spears may include but are not limited to spear gun shafts, arbalettes, arrows, Hawaiian slings, or three-prong spears.

"Spiny lobster" means any crustacean in the family Palinuridae. These animals are also known as lobster, Hawaiian spiny lobster, red lobster, green lobster, or ula.

"Subsistence" means the customary and traditional native Hawaiian uses of renewable ocean resources for direct personal or family consumption or sharing.

"Take" means to fish for, catch, injure, kill, remove, capture, confine, or harvest, or to attempt to

fish for, catch, injure, kill, remove, capture, confine, or harvest.

"Throw net" means a circular net with a weighted outer perimeter designed to be deployed by manually casting or throwing the net over fish or other aquatic life.

"Trolling" means fishing by dragging artificial lures or bait behind a vessel that is under way at sufficient speed to produce a wake.

"Uhu 'ahu'ula" means any fish known as *Chlorurus perspicillatus* or any recognized synonym. Uhu 'ahu'ula are also known as spectacled parrotfish. The terminal phase of these fish is also known as "uhu uliuli".

"Uhu 'ele'ele" is any *Scarus rubroviolaceus* which has reached its terminal phase, indicated by a change in coloration from brownish-red and yellowish-gray, to green and blue. A predominantly green or blue-green body color and a green beak on a specimen of *Scarus rubroviolaceus* is prima facie evidence that the specimen is an uhu 'ele'ele. Both uhu 'ele'ele and uhu pālukaluka are known as redlip or ember parrotfish.

"Uhu pālukaluka" means any fish known as *Scarus rubroviolaceus* or any recognized synonym. Uhu pālukaluka are also known as redlip or ember parrotfish. The terminal phase of these fish is also known as "uhu 'ele'ele".

"Uhu uliuli" is any *Chlorurus perspicillatus* which has reached its terminal phase, indicated by a change in coloration from a grayish brown body with a broad white band at the base of the tail, to a blue green body with a dark band across the top of the snout. A predominantly blue-green body color and the lack of a white tail band on a specimen of *Chlorurus perspicillatus* is prima facie evidence that the specimen is an uhu uliuli. Both uhu uliuli and uhu 'ahu'ula are known as spectacled parrotfish.

"Underwater breathing apparatus" means any apparatus that allows a person to breathe while the person's face is below the surface of the water.

"Vessel" means any craft used or capable of being used as a means of transportation on or in the water.

[Eff] (Auth: HRS §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.6, 188-53, 190-3)

§13-60.9-3 Boundaries. (a) The Mo'omomi Community-Based Subsistence Fishing Area includes that portion of the northwestern coast of Moloka'i consisting of all state waters and submerged lands between 'Īlio Point in the west and Nihoa Flats in the east, from the shoreline out to approximately one mile. The boundaries of the Mo'omomi CBSFA are described by eastern and western boundary lines, landward and seaward boundary lines, and seven reference points (A, B, C, D, E, F, and G) identified by their latitude and longitude coordinates as follows:

- (1) The western boundary of the Mo'omomi CBSFA is an imaginary straight line drawn along 157°15'14.73"W longitude.
- (2) Point A is the point along the western boundary line at the high water mark on shore, located at approximately 21°13'26.00"N, 157°15'14.73"W.
- (3) Point B is a point approximately one mile due north of Point A, located along the western boundary line at 21°14'16.41"N, 157°15'14.73"W.
- (4) The seaward boundary of the Mo'omomi CBSFA consists of a series of points connected by imaginary straight lines beginning at Point B; then to Point C, located at 21°14'4.93"N, 157°12'31.36"W; then to point D, located at 21°13'23.01"N, 157°11'2.85"W; then to Point E, located at 21°12'56.24"N, 157°9'16.14"W; then to point F, located at 21°11'51.77"N, 157°1'0.47"W.
- (5) Point F is a point along the eastern boundary line located approximately one mile seaward of the shoreline.

- (6) The eastern boundary of the Mo'omomi CBSFA is an imaginary straight line drawn contiguous with the western boundary of Kalaupapa National Park that intersects 21°10'50.18"N, 157°1'12.13"W and 21°11'15.36"N, 157°1'6.80"W.
- (7) Point G is the point along the eastern boundary line at the high water mark on shore, located at approximately 21°11'1.54"N, 157°1'9.69"W.
- (8) The landward boundary of the Mo'omomi CBSFA is an imaginary line drawn along the shoreline at the highest wash of the waves between Point A and Point G.

The foregoing boundaries and reference points are shown on Exhibit A entitled "Map of the Mo'omomi Community-Based Subsistence Fishing Area, Moloka'i", dated September 28, 2017, located at the end of this chapter.

(b) The Kawa'aloa Bay Protected Area is established as a subzone within the Mo'omomi CBSFA, and includes all state waters and submerged lands bounded by a line drawn starting from the shoreline at Kaiehu Point on the western side of Kawa'aloa Bay, located at approximately 21°12'4.50"N, 157°9'26.03"W, to the northernmost submerged rocks offshore of the eastern side of Kawa'aloa Bay, located at approximately 21°12'2.94"N, 157°9'8.47"W; then southeast to the submerged rocks located at approximately 21°12'1.55"N, 157°9'6.30"W; then due south to a point on the shoreline at the eastern boundary of Kawa'aloa Bay, located at approximately 21°11'54.46"N, 157°9'6.30"W, as shown on Exhibit B entitled "Map of the Kawa'aloa Bay Protected Area", dated September 28, 2017, located at the end of this chapter.

(c) For the purposes of this chapter, the shoreline shall be determined by the upper reaches of the wash of the waves on shore. Should there be a stream or river flowing into the ocean, the shoreline shall be determined by an imaginary straight line

drawn between the upper reaches of the wash of the waves on either side of the stream or river. [Eff
] (Auth: HRS §§188-22.6, 188-53, 190-3) (Imp: HRS §§187A-1.5, 188-22.6, 190-3)

§13-60.9-4 Permitted and prohibited activities.

(a) Nothing in this chapter shall be construed as abridging traditional and customary native Hawaiian rights or as allowing within the Mo'omomi Community-Based Subsistence Fishing Area any activity or fishing gear otherwise prohibited by law or rules adopted by the department of land and natural resources or any other department of the State.

(b) It is unlawful for any person to sell or offer for sale any marine life taken from within the area, or to otherwise take marine life from within the area for commercial purposes, provided that:

- (1) Any fish may be taken by trolling for commercial purposes and may be sold or offered for sale; and
- (2) Deep 7 bottomfish species may be taken in waters deeper than forty fathoms for commercial purposes and may be sold or offered for sale.

(c) It is unlawful for any person to take or possess marine life while diving within the area between 6:00 p.m. and 6:00 a.m.

(d) It is unlawful for any person within the area to engage in or attempt to engage in SCUBA spearfishing, to possess both SCUBA gear and a spear at the same time, or to possess both SCUBA gear and speared aquatic life at the same time.

(e) The following restrictions apply within the Mo'omomi Community-Based Subsistence Fishing Area:

- (1) No person may take or possess any uhu 'ele'ele or uhu uliuli at any time;
- (2) From April 1 through June 30, no person may take or possess any uhu pālupaluka or uhu 'ahu'ula;

- (3) From July 1 through March 31, no person may take more than a total of two uhu pālukaluka or uhu 'ahu'ula per day, or possess more than a total of two uhu pālukaluka or uhu 'ahu'ula at any one time;
- (4) From January 1 through March 31, no person may take or possess any kūmū;
- (5) From April 1 through December 31, no person may take more than two kūmū per day, or possess more than two kūmū at any one time;
- (6) No person may take or possess any kūmū greater than sixteen inches fork length;
- (7) From April 1 through June 30, no person may take or possess any kole;
- (8) From July 1 through March 31, no person may take more than twenty kole, or possess more than twenty kole at any one time;
- (9) No person may take or possess any kole less than five inches in fork length;
- (10) No person may take or possess any moi greater than eighteen inches fork length;
- (11) Moi may only be taken by hook-and-line, spear, or throw net;
- (12) No person may take more than two spiny lobster per day, or possess more than two spiny lobster at any one time;
- (13) Spiny lobster may only be taken by hand harvest or by hook;
- (14) No person may take any 'ōpihi while diving; and
- (15) No person may take or possess any limu with holdfasts or roots attached. [Eff
] (Auth: HRS §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§187A-5, 187A-6, 188-22.6, 188-53, 190-3)

§13-60.9-5 Kawa'aloa Bay Protected Area. (a) It is unlawful for any person to engage in swimming, surfing, body boarding, snorkeling, diving, fishing, operating a vessel, or any other activity that may

§13-60.9-6

otherwise disturb the marine environment within the Kawa'aloa Bay Protected Area. This subsection shall not apply:

- (1) In the case of an emergency requiring such action as may be necessary to prevent loss of life or destruction of property;
 - (2) To authorized law enforcement or rescue operations; or
 - (3) To persons engaged in subsistence activities as provided in subsection (c).
- (b) It is unlawful for any person to take or possess any marine life within the Kawa'aloa Bay Protected Area, except as provided in subsection (c).
- (c) Subsections (a) and (b) notwithstanding, any person may engage in the following activities within the Kawa'aloa Bay Protected Area for subsistence purposes only:

- (1) Take and possess any fish species using a throw net from the shoreline between 6:00 a.m. and 6:00 p.m.;
- (2) Take and possess 'a'ama crab by hand-harvest from the shoreline at any time;
- (3) Take and possess limu from the shoreline between 6:00 a.m. and 6:00 p.m., provided that no person shall take limu with the holdfast or roots attached; and
- (4) Take and possess any fish with hook-and-line from the shoreline between 6:00 a.m. and 6:00 p.m., provided that only artificial lures may be used. [Eff _____]
(Auth: HRS §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.6, 188-53, 190-3)

§13-60.9-6 Penalty. (a) Any person who violates any provision of this chapter or the terms and conditions of any permit issued as provided by this chapter, shall be subject to:

- (1) Administrative penalties as provided by section 187A-12.5, HRS;

(2) Criminal penalties as provided by section 188-70, HRS; and

(3) Any other penalty as provided by law.

(b) Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State. [Eff] (Auth: HRS §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§187A-12.5, 188-22.6, 188-70, 190-5)

§13-60.9-7 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 this 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 §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§1-23, 187A-5, 188-22.6, 188-53, 190-3)

2. The adoption of chapter 13-60.9, 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.

SUZANNE D. CASE
Chairperson
Board of Land and Natural
Resources

APPROVED AS TO FORM:

Deputy Attorney General



