

State of Hawai‘i  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Aquatic Resources  
Honolulu, Hawai‘i 96813

November 10, 2022

Board of Land and Natural Resources  
State of Hawai‘i  
Honolulu, Hawai‘i

REQUEST FOR FINAL APPROVAL TO AMEND AND COMPILE HAWAII ADMINISTRATIVE RULES CHAPTERS 13-75, “RULES REGULATING THE POSSESSION AND USE OF CERTAIN FISHING GEAR”, AND 13-60.4, “WEST HAWAI‘I REGIONAL FISHERY MANAGEMENT AREA, HAWAI‘I”; TO AMEND: §13-75-1 (DEFINITIONS) TO ADD NEW DEFINITIONS FOR “FRESHWATER STREAM”, “MULTI-PANEL LAY NET”, “RESIDENT”, AND “THROW NET” AND TO CLARIFY AND UPDATE THE DEFINITIONS OF “AKULE”, “‘IAO”, “‘ŌPELU”, AND “PUA”; §13-60.4-3 (DEFINITIONS) TO ADD A NEW DEFINITION FOR “MULTI-PANEL LAY NET”; §13-75-8 (FIREARMS) TO PROHIBIT THE TAKE OF SHARKS WITH FIREARMS; §13-75-12 (GILL NETS) TO CLARIFY THAT IT IS UNLAWFUL TO LEAVE A GILL NET UNATTENDED FOR ANY AMOUNT OF TIME; §13-75-12.2 (AKULE NETS) TO CLARIFY THAT AKULE MAY BE TAKEN WITH LEGAL THROW NETS; §13-75-12.4 (LAY NETS) TO ESTABLISH A LAY NET PERMIT REQUIREMENT AND FEES FOR THE USE AND POSSESSION OF LAY NETS, TO REMOVE THE EXISTING LAY NET REGISTRATION REQUIREMENT, AND TO PROHIBIT LEAVING A LAY NET UNATTENDED FOR ANY AMOUNT OF TIME; §§13-75-12.5 (STATE WATERS AROUND MOLOKAI, SPECIAL RULES), 13-60.4-5 (ACTIVITIES PROHIBITED WITHIN SELECTED AREAS), AND 13-60.4-6 (LAY NET PERMIT AND USE REQUIREMENTS) TO MAKE CONFORMING AMENDMENTS TO SPECIAL LAY NET RULES THAT APPLY TO MOLOKAI AND WEST HAWAI‘I; §§13-75-2 (PENALTY) AND 13-60.4-8 (PENALTY) TO CLARIFY THE AUTHORIZED PENALTIES FOR VIOLATIONS OF THESE CHAPTERS; TO ADOPT §§13-75-2.5 (ASSET FORFEITURE) AND 13-60.4-8.5 (ASSET FORFEITURE) TO PROVIDE NOTICE OF THE STATE’S AUTHORITY TO UTILIZE CIVIL ASSET FORFEITURE AS AN ENFORCEMENT TOOL FOR VIOLATIONS OF THESE CHAPTERS; AND TO MAKE OTHER NON-SUBSTANTIVE AMENDMENTS FOR FORMATTING AND STYLE

Submitted for your consideration and approval is a request for final rulemaking action to:

1. Amend Hawaii Administrative Rules (HAR) §13-75-1 (Definitions) to amend the definition of “lay net” to add new definitions for “freshwater stream”, “multi-panel lay net”, “resident”, and “throw net” and to clarify and update the definitions of “akule”, “‘iao”, “‘ōpelu”, and “pua”;
2. Amend §13-60.4-3 (Definitions) to add a new definition for “multi-panel lay net”;

3. Amend §13-75-8 (Firearms) to prohibit the take of sharks with firearms;
4. Amend §13-75-12 (Gill nets) to clarify that it is unlawful to leave a gill net unattended for any amount of time;
5. Amend §13-75-12.2 (Akule nets) to clarify that akule may be taken with legal throw nets;
6. Amend §13-75-12.4 (Lay nets) to establish a lay net permit requirement and fees for the use and possession of lay nets, to remove the existing lay net registration requirement, and to prohibit leaving a lay net unattended for any amount of time;
7. Amend §§13-75-12.5 (State waters around Molokai, special rules), 13-60.4-5 (Activities prohibited within selected areas), and 13-60.4-6 (Lay net permit and use requirements) to make conforming amendments to special lay net rules that apply to Molokai and West Hawai‘i;
8. Amend §§13-75-2 (Penalty) and 13-60.4-8 (Penalty) to clarify the authorized penalties for violations of these chapters;
9. Adopt §§13-75-2.5 (Asset forfeiture) and 13-60.4-8.5 (Asset forfeiture) to provide notice of the State’s authority to utilize civil asset forfeiture as an enforcement tool for violations of these chapters;
10. Make other non-substantive amendments for formatting and style; and
11. Compile HAR chapters 13-75 and 13-60.4

### PURPOSE

The Department of Land and Natural Resources (Department) proposes to amend and compile HAR chapters 13-75, “Rules Regulating the Possession and Use of Certain Fishing Gear”, and 13-60.4, “West Hawai‘i Regional Fishery Management Area, Hawai‘i”. The primary purpose of these amendments is to establish a new annual lay net permit requirement for the use and possession of lay nets and to remove the existing one-time lay net registration requirement. Other proposed amendments are being included to strengthen the enforceability of the lay net rules, to bring the rules into conformity with other laws, and to address other housekeeping matters. The proposed amendments are described in detail in DAR’s May 13, 2022 Board submittal (Item F-2), available online at <https://dlnr.hawaii.gov/wp-content/uploads/2022/05/F-2.pdf>.

### BACKGROUND

On December 10, 2021, the Board of Land and Natural Resources (Board) approved the Department’ request to hold a public rulemaking hearing pursuant to Hawaii Revised Statutes (HRS) chapter 91 to amend and compile HAR chapters 13-75, “Rules Regulating the Possession and Use of Certain Fishing Gear”, and 13-60.4, “West Hawai‘i Regional Fishery Management Area, Hawai‘i.”

The Department held an online public hearing via Zoom on March 15, 2022, following publication of notice in the Honolulu Star-Advertiser on February 13, 2022. One individual participated in this hearing and offered comments in support of the proposed rules. The Department also received written comments from two individuals, one in support and one in opposition. Based on the comments received and internal discussions,

the Department decided to revise the proposed amendments to HAR chapter 13-75 to remove references to lobster nets prior to holding additional public hearings.

On May 13, 2022, the Board considered and approved the Department's revised request to hold public rulemaking hearings. On July 19, 2022, the Department mailed letters to all 1,219 registered lay net fishers, inviting them to an informational meeting on July 25, 2022 and encouraging them to participate in the public hearing on August 24, 2022.

The Department accepted public testimony on the proposed rules from July 24, 2022 to September 9, 2022 and held an online public hearing via zoom on August 24, 2022 with in-person host sites on Hawai'i Island (Hilo<sup>1</sup> and Kona),<sup>2</sup> Maui,<sup>3</sup> Moloka'i,<sup>4</sup> Lāna'i,<sup>5</sup> O'ahu,<sup>6</sup> and Kaua'i.<sup>7</sup> The Department received a total of 24 oral and written testimonies, 21 in opposition and 3 in support.

Testimony received was primarily in opposition to the proposed annual lay net permit and \$25 fee. Many of the testimonies in opposition were from a native Hawaiian or subsistence fishing perspective, which viewed the permit and proposed fee as an encroachment on their resource harvesting rights. The minutes from the public hearing, the public hearing summary, and the written testimonies are attached as **Exhibit 1**, **Exhibit 2**, and **Exhibit 3**, respectively. The recording of the public hearing can be viewed on the Division of Aquatic Resources' YouTube Channel at: <https://www.youtube.com/watch?v=3-lqrZcGl3E>

#### CHANGES TO PROPOSED RULE AMENDMENTS

In response to the overwhelming testimony in opposition to the \$25 lay net permit fee, the Department has amended the proposed HAR chapter 13-75 to waive the fee for Hawaii residents. Upon review by the Attorney General's office, it was advised that the fee must also be waived for active-duty military personnel and their family members. Nonresidents will be required to pay the \$25 lay net permit fee, although DAR does not anticipate many nonresident lay net permit applicants.

The Department also proposes to amend HAR chapter 13-75 to add a definition of "resident" to provide clear guidance on how residency is determined for the purpose of the lay net permit. The definition is consistent with recent legislation that establishes a nonresident recreational marine fishing license requirement. The Department also proposes to amend the definitions of "akule", "iao", "ōpelu", and "pua" to reflect current scientific nomenclature and make them consistent with other rule chapters. There are no changes being made to the proposed amendments to HAR chapter 13-60.4.

---

<sup>1</sup> Wailoa Fisheries Research Station, 1160 Kamehameha Avenue, Hilo, Hawai'i 96720

<sup>2</sup> DAR – Kona Office, 74-380B Kealahake Parkway, Kailua-Kona, Hawai'i 96740

<sup>3</sup> DAR – Maui Office, 130 Mahalani Street, Wailuku, Hawai'i 96793

<sup>4</sup> Kūlana 'Ōiwi, 600 Maunaloa Highway, Kaunakakai, Hawai'i 96748

<sup>5</sup> Division of Boating and Ocean Recreation Lāna'i Office, Mānele Small Boat Harbor, 12 Mānele Harbor Road, Lāna'i City, Hawai'i 96763

<sup>6</sup> DLNR – Kalanimoku Building, 1151 Punchbowl Street, Room 132, Honolulu, Hawai'i 96813

<sup>7</sup> Kaua'i State Building, 2nd Floor Conference Room, 3060 'Eiwa Street, Līhu'e, Hawai'i 96766


A redline version of HAR chapter 13-75 showing the changes made to the version that was presented for public hearing is attached as **Exhibit 4**. The final proposed amendment and compilation of HAR chapter 13-75 drafted in Ramseyer format is attached as **Exhibit 5**. The final proposed amendment and compilation of HAR chapter 13-60.4 drafted in Ramseyer format is attached as **Exhibit 6**.

RECOMMENDATIONS:

“That the Board approve the amendment and compilation of Hawaii Administrative Rules chapter 13-75, Rules Regulating the Possession and Use of Certain Fishing Gear, as set forth in Exhibit 5 attached hereto.”

“That the Board approve the amendment and compilation of Hawaii Administrative Rules chapter 13-60.4, West Hawai‘i Regional Fishery Management Area, Hawai‘i as set forth in Exhibit 6 attached hereto.”

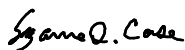
Respectfully submitted,



---

BRIAN J. NEILSON, Administrator  
Division of Aquatic Resources

APPROVED FOR SUBMITTAL



---

SUZANNE D. CASE, Chairperson  
Board of Land and Natural Resources

Attachments:

- Exhibit 1 – Public Hearing Minutes
- Exhibit 2 – Public Hearing Summary
- Exhibit 3 – Written Testimony
- Exhibit 4 – Draft HAR 13-75 (Redline Ramseyer Version)
- Exhibit 5 – Draft HAR 13-75 (Ramseyer Format)
- Exhibit 6 – Draft HAR 13-60.4 (Ramseyer Format)

Public Hearing Minutes  
Amendment of Hawaii Administrative Rules

CHAPTER 13-75  
Rules Regulating the Possession and Use of Certain Fishing Gear

*and*

CHAPTER 13-60.4  
West Hawai'i Regional Fishery Management Area, Hawai'i

Hearing Location: Statewide virtual hearing

Hearing Date: August 24, 2022

I. INTRODUCTION

A. Opening

1. Aloha and mahalo for joining. My name is David Sakoda, and I am the Fisheries Program Manager for the State of Hawai'i Department of Land and Natural Resources' Division of Aquatic Resources; I will be conducting tonight's public hearing. It is now 5:32 P.M. and this Public Hearing is called to order.
2. This is a formal Public Hearing on proposed amendments to Hawaii Administrative Rules (HAR) chapter 13-75, Rules Regulating the Possession and Use of Certain Fishing Gear and HAR chapter 13-60.4, West Hawai'i Regional Fishery Management Area, Hawai'i. The primary purpose of these amendments is to establish a required annual lay net permit and associated permit fee that would replace the existing one-time lay net registration. Other proposed amendments are being included to strengthen the enforceability of the lay net rules, to bring the rules into conformity with other laws, and to address other housekeeping matters.
3. As required by law, the proposed rules have been drafted in Ramseyer format, copies of which can be found in the "announcements" section of the DAR website, a link to which is included in the chat. Those attending the meeting in-person may ask the DAR staff member present for a copy.

B. Purpose

1. The purpose of this hearing is to offer the public the opportunity to provide comments in the form of oral and written testimony on these proposed amendments.

#### C. Approvals to Hold Public Hearing

1. Approval to conduct this public hearing was obtained from the Board of Land and Natural Resources at their board meeting on May 13, 2022.

#### D. Notice of Public Hearing

1. The Legal Notice of this public hearing was published in the July 24, 2022 Sunday issue of the Honolulu Star Advertiser.

#### E. Hearing Procedures

1. Everyone testifying via Zoom was required to pre-register in order to get the link to testify. Pre-registration to testify via Zoom closed one hour before this meeting at 4:30 p.m. However, if you missed to deadline to pre-register, you may still provide oral testimony at one of the in-person hearing locations listed in this slide or you may submit written testimony by following the directions at the bottom of this slide.
2. Everyone testifying in-person at one of the host sites should have written their information down on the sign in sheet provided at the host site. Those attending in-person who have not registered but would like to provide testimony can alert the DAR representative at this time and their name will be added to the list. It is important that everyone who wishes to testify provide their name and contact information so we have an accurate record of everyone providing testimony.
3. You will be called upon by a member of the DAR staff when it is your turn to testify. We ask that all individuals attending virtually keep their microphones muted when not speaking. We will take testimony in the following order:
  - First, we will take in-person testimony from people who have been signed up to testify beginning in Hilo, then Kona, then Maui, then Lānaʻi, then Molokaʻi, then Kauaʻi, then Oʻahu;
  - Second, we will take Zoom testimony;
  - Last, we will take anyone who arrived late or signed up late to testify in person at the host sites.
4. Please keep your testimony brief and on the subject to allow everyone the opportunity to testify. Each person providing testimony will be given three

minutes. Please be aware that if you go beyond three minutes, I will kindly ask you to conclude your testimony.

5. We are recording this hearing to make a written record, so please state your full name before giving your testimony. Make sure to speak clearly so we accurately record your testimony for the record. Please turn off the live YouTube stream of this hearing while testifying as it will cause an echo.
6. Please remember to respect the opinions of all testifiers and that this hearing is not an opportunity for accusations or rebuttals. There may be differing opinions. Everyone will have an opportunity to voice their opinion for the department to consider.
7. All testimony should be directed to me, not to the audience.
8. Please note that this hearing is simultaneously being streamed on YouTube. The live stream will be recorded and preserved on YouTube as a matter of public record. Please be aware that by offering your oral testimony today, you are consenting to being audio and video recorded if your camera is on.

## II. BACKGROUND PRESENTATION

- A. Let's begin with a short video on the background explaining the proposed changes to the administrative rules.

\* A pre-recorded PowerPoint presentation including narration detailing the proposed amendments was then played for the audience. The presentation can also be viewed online at <https://www.youtube.com/watch?v=3-lqrZcGl3E&t=3358s>. A transcript of the PowerPoint presentation is included below:

*The primary change to the rules removes the existing lay net registration requirement and implements a new lay net permit for the use and possession of lay nets. The purpose of this change will be to promote better compliance, to enhance enforceability, to streamline management, and to provide stronger statistical data regarding usership. In 2021, the department successfully petitioned the Hawai'i State Legislature for expanded legislative authority allowing us to make these amendments to HAR Chapters 13-75 and 13-60.4. Further, since we are taking these chapters through the rulemaking process, we are using it as an opportunity to include additional, housekeeping amendments to each chapter that we have identified in order to get the rules up to date and relevant.*

*We'll start with Chapter 13-75, Rules Regulating the Possession and Use of Certain Fishing Gear.*

*Section 1: Definitions. The department has received inquiries about what constitutes a freshwater stream for the purposes of the lay net rule. The department has interpreted the existing rule to prohibit lay net fishing in any stream, canal, or other channelized body of surface water through which freshwater flows or is designed to flow regardless of the actual salinity of the water. We have also received inquiries regarding the definitions of throw net and multi-panel lay net. So, in response to these inquiries, we are proposing to add three definitions to this section: Definitions for freshwater stream, multi-panel lay net, and throw net.*

*Section 8: Firearms. The current rule includes a provision that allows the take of sharks with firearms in the state. However, the legislature passed Act 51 in 2021 that prohibits intentionally or knowingly killing a shark within state marine waters. Act 51 took effect on January 1 2022. So, the proposed amendment would delete sharks from the rule in order to comply with the new law.*

*Section 12: Gill nets. The proposed amendments to this section are to clarify that it is unlawful for any person to leave a gill net unattended for any amount of time and that the person using the gill net must visually inspect the net within two hours of deployment and must release any threatened, endangered, prohibited, or unwanted species. Here is what the original rule currently looks like and here are the proposed amendments. As you can see, the amendments essentially shift the wording around and clarify some of the the language within the rule. Also, this will apply to all gill nets including gill nets used for lay-net fishing, surround-net fishing, or other fishing methods requiring the use of a gill net.*

*This is what the final gill net rule would look like as amended.*

*Section 12.2: Akule Nets. The current rule prohibits non-commercial fishers from taking akule with any net, including throw nets, with a stretched mesh of less than 2 <sup>3</sup>/<sub>4</sub> inches.*

*The proposed amendment would allow the use of legal throw nets, which must have a stretch mesh of at least two inches, to take akule. It is uncommon to catch akule with a throw net, but it can occur and the department believes that this allowance would not result in adverse impacts to the resource.*

*Here is what the final akule net rule would look like as amended.*



*Section 12.4: Lay Nets. The current lay net rule requires all lay nets to be registered with the department. Registration is a one-time requirement. While the current rule requires net owners to report when a registered net is lost, destroyed, sold, traded, stolen, given away, or otherwise no longer the property of the registered owner, in practice this is rarely reported. As a result, the department does not have a good estimate of the number of lay nets in use or the number of fishers actively using their nets each year. In contrast, the proposed annual lay net permit would allow the department to track the number of permitted lay net fishers on a yearly basis.*

*The proposed lay net permit would also encourage increased compliance with lay net regulations and help the department to crack down on the illegal use of lay nets. Unlike a registration, a permit is revocable. For example, under the current rule, if a person has been convicted of a lay net violation, the department has no way of prohibiting them from registering and using a new lay net. However, under the proposed rule, lay net users could lose their permit if convicted of a violation, providing greater incentive to comply with the law. The department proposes charging a \$25 permit fee paid at first issuance of the permit and each year upon renewal of the lay net permit as well as a \$10 duplicate permit fee; These fees will be a means to offset costs of administering the lay net permit. However, fees may be waived upon request for Hawai'i residents eligible for benefits under the Supplemental Nutrition Assistance Program or SNAP.*

*Removing the lay net registration requirement would significantly reduce the burden on lay net fishers as well as DAR staff. Under the current rule, fishers must contact DAR to register each lay net they would like to use and DAR staff assign a unique registration number to each lay net that is registered and enter it into a database. Under the proposed amendment, a fisher would only need to obtain a permit once a year and they would be able to obtain and use multiple lay nets under their permit. So, rather than each net having a unique registration number, the proposed rule would require each lay net to be labeled with the lay net user's permit number.*

*The current lay net rule allows fishers to leave a lay net unattended for up to one half hour. This allowance makes enforcement difficult, as officers from the department's Division of Conservation and Resources Enforcement, or DOCARE, must observe an unattended lay net for 30 minutes before determining that a violation has occurred. Further, monk seals, turtles, and other marine life can become entangled and die during the half hour period of unattendance. The proposed amendments require the lay net to be attended for the entire time it is deployed and clarifies that a lay net will be considered unattended if the lay net or its attached*

*surface buoys are not within eyesight of the lay net permit holder using the net.*

*Section 12.5: State Waters around Moloka‘i, Special Rules. The proposed amendments are necessary to implement the statewide lay net permit requirement and remove the existing statewide lay net registration requirement. However, the amendments to this section will not change the unique place-based lay net regulations established for Moloka‘i.*

*Here are the proposed amendments. . .*

*. . . And here is what the final amended rule will look like.*

*Chapter 13-75 also includes a number of miscellaneous housekeeping amendments as mentioned earlier. Section 13-75-2 and -2.5 are being amended and added respectively for uniformity with other chapters to reflect current penalty authority and to recognize asset forfeiture as an enforcement tool for DOCARE officers. Further, we're also making other minor formatting and grammatical corrections throughout the chapter.*

*Moving on to the changes for Hawaii Administrative Rules Chapter 13-60.4, West Hawai‘i Regional Fishery Management Area, Hawai‘i, commonly referred to as the WHRFMA*

*Section 3: Definitions. Here, we're adding the same definition for multi-panel lay net as in the previous chapter discussed earlier in this presentation, HAR chapter 13-75.*

*Section 5, subsection (c)(6): Activities Prohibited Within the Kaloko-Honokōhau Fish Replenishment Area. The amendments to this section remove references to registered nets.*

*Here is what the final rule would look like as amended.*

*Section 6: Lay Net Registration and Use Requirements. Similar to the special lay net rules for Moloka‘i reviewed earlier in this presentation, these proposed amendments are necessary to implement the statewide lay net permit requirement and remove the existing statewide lay net registration requirement. But, they will not change the unique place-based regulations for West Hawai‘i. The original rule makes it unlawful to possess or use a lay net that has not been registered. The amended rule makes it unlawful to possess or use a lay net in state waters without first obtaining a lay net permit pursuant to HAR 13-75-12.4 that we also reviewed earlier in this presentation. The current rule requires identification tags with the lay net registration number and the amended rule requires tags with the lay net user's permit number. Additionally, tags*

*will no longer be provided by the department however, the department will provide instructions on how users can fashion their own tags to comply with the rule.*

*The current rule, allows lay net users to leave a lay net unattended for up to 30 minutes. Under the amended rule fishers will be prohibited from leaving a deployed lay net unattended for any period of time, mirroring the amendments to HAR chapter 13-75.*

*Also identical to Chapter 13-75, the proposed amendments to HAR 13-60.4 also include an amendment to Section 8 and an addition of a section 8.5 for uniformity with other chapters to reflect current penalty authority and to recognize asset forfeiture as an enforcement tool for DOCARE officers. Further, we're also making other minor formatting and grammatical corrections throughout the chapter.*

\*End of PowerPoint presentation

### III. PUBLIC TESTIMONY

- A. We have now reached the testimony portion of this presentation.
- B. You will be called upon by a member of the DAR staff when it is your turn to testify. We ask that all individuals attending virtually keep their microphones muted when not speaking. We will take testimony in the following order:
  - 1. First, we will take in-person testimony from people who have been signed up to testify beginning in Hilo, then Kona, then Maui, then Lānaʻi, then Molokaʻi, then Kauaʻi, then Oʻahu;
  - 2. Second, we will take Zoom testimony;
  - 3. Last, we will take anyone who arrived late or signed up late to testify in person at the host sites.
- C. As a reminder, please keep your testimony to 3 minutes in order to ensure that everyone who signed up has a chance to give testimony. If there is extra time at the end of everyone on the list and you would like more time to testify, we will allow those who already spoke to give additional testimony.
- D. We will begin with any in-person testifiers in Hilo.

*One in-person testimony given in opposition to the proposed amendments.*

- E. Next we will take any in-person testimony in Kona.

*DAR representative at host site indicated no requests for testimony there.*

F. Next we will take any in-person testimony in Maui.

*DAR representative at host site indicated no requests for testimony there.*

G. Next we will take any in-person testimony in Lānaʻi.

*DAR representative at host site indicated no requests for testimony there.*

H. Next we will take any in-person testimony in Molokaʻi.

*One in-person testimony given in opposition to the proposed amendments.*

I. Next we will take any in-person testimony in Kauaʻi.

*One in-person testimony given in opposition to the proposed amendments.*

J. Next we will take any in-person testimony in Oʻahu.

*DAR representative at host site indicated no requests for testimony there.*

K. Next we will take Zoom testimony.

*One virtual testimony was given in favor of the proposed amendments.  
Eight virtual testimonies were given in opposition to the proposed amendments.*

L. Persons unable to attend today or wishing to present additional comments, may mail written testimony to us by September 9, 2022.

1. Please mail testimonies to:  
Department of Land and Natural Resources  
Division of Aquatic Resources  
1151 Punchbowl Street, Room 330  
Honolulu, HI 96813
2. Written testimony may also be submitted by email to  
DLNR.aquatics@hawaii.gov

#### IV. DECISION MAKING

- A. Based on the testimonies presented, the Department will submit its findings and recommendations to the Board of Land and Natural Resources. If approved by the

Board, the Department of the Attorney General will conduct a final legal review. If approved, the proposed rules will be given to the Governor for his final approval. Should the Governor grant approval, certified copies will be filed with the Lt. Governor's office, and after 10 days, it becomes effective as law.

## V. ADJOURNMENT

- A. On behalf of the Board of Land and Natural Resources and DAR, thank you for attending this public hearing. It is now 6:34 p.m. and this public hearing is now adjourned. Thank you for taking time out from your day to participate in this public hearing.

# Lay net Public Hearing Summary

**In-person/virtual hearing held August 24, 2022, 5:30 PM**

## **Outreach:**

- **July 19, 2022:** Invitation letters sent to all previous lay net registrants (Total mailed = 1,219)
- **July 24, 2022:** Legal notice published in Star Advertiser
- **July 25, 2022:** Lay net virtual informational meeting
- **July 27, 2022:** Announcement posted on DAR website
- **August 11, 2022:** Informational presentation published on DAR YouTube account. Link added to DAR hearing announcement.
- **August 23, 2022:** Hearing reminders posted on DLNR Facebook and Instagram accounts

## **Meeting locations:**

- **Kaua'i:** Kaua'i State Building, 2<sup>nd</sup> Floor Conference Room, 3060 'Eiwa Street, Līhu'e, Hawai'i 96766
- **O'ahu:** DLNR – Kalanimoku Building, 1151 Punchbowl Street, Room 132, Honolulu, Hawai'i 96813
- **Moloka'i:** Kūlana 'Ōiwi, 600 Maunaloa Highway, Kaunakakai, Hawai'i 96748
- **Lāna'i:** Division of Boating and Ocean Recreation Lāna'i Office, Mānele Small Boat Harbor, 12 Mānele Harbor Road, Lāna'i City, Hawai'i 96763
- **Maui:** DAR – Maui Office, 130 Mahalani Street, Wailuku, Hawai'i 96793
- **West Hawai'i:** DAR – Kona Office, 74-380B Kealahou Parkway, Kailua-Kona, Hawai'i 96740
- **East Hawai'i:** Wailoa Fisheries Research Station, 1160 Kamehameha Avenue, Hilo, Hawai'i 96720

**\*Note:** This public hearing was a virtual/in-person hybrid meeting. In-person meeting locations were offered in addition to the virtual (Zoom) option.

## **In-person hearing attendance and testimony:**

- **Kaua'i:** 3 attending, 1 testimony (oppose)
- **O'ahu:** 0
- **Moloka'i:** 10 on sign-in sheet, 9 noting position on separate sheet (all oppose), 1 testimony (oppose)
- **Lāna'i:** 0
- **Maui:** 0
- **West Hawai'i:** 0
- **East Hawai'i:** 3 attending, 1 testimony (oppose)

## **Virtual hearing (Zoom) attendance and testimony:**

- 8 oppose
- 1 support

**YouTube stream views (published to DAR YouTube page simultaneously):**

- 37 views as of August 25, 2022, 8AM (morning following hearing)
- 50 views as of September 2, 2022

Entire hearing can be viewed at: <https://www.youtube.com/watch?v=3-lqrZcGl3E>

**Written testimony:**

- 1 oppose
- 2 support

\*Note: 9 Moloka'i in-person attendees stated their opposition in writing on the sign in sheet.

**Summary of testimony received:**

Oppose: 21 (3 in-person testimony, 8 virtual testimonies, 10 written including the Moloka'i sign-in sheet)  
Support: 3 (1 virtual testimony, 2 written)

Testimony received was primarily opposed to the proposed amendments, specifically to the \$25 annual lay net permit requirement. Many of the testimonies in opposition were from a native Hawaiian/subsistence fishing perspective, seeing the proposed permit fee as an encroachment on their resource harvesting rights. Testimony related to proposed amendments aside from the lay net permit was limited, though a question relating to the changes to the firearms section was raised.

Support for the proposed amendments was limited. One written testimony cited mortality of non-target species including seals and turtles as their reason for support. One virtual testimony expressed support for all the rules proposed but focused their testimony mainly on support for those pertaining to civil asset forfeiture.

Date: August 12, 2022

Attn: The Department of Land and  
Natural Resources Aquatic Division

Subject: On the issue of lay net usage and paying a \$25 price for a tag for a year.

Aloha my name is Kawika David E. Cutcher. I live on the Department of Hawaiian homelands in Anahola, Kauai. I am a certified Hawaiian by blood and ancestry. I come from the Nana Ulu bloodline. I grew up fishing, hunting, planting, picking opihi and limu. My tutu Christina Malao of Koloa taught us about the moon, tides, stars, seasons etc. We have set net since I was six years old. We never broke the laws or killed for fun.

It was an ancestral practice and custom. My son and grandsons all have learned to use my nets. I throw net, lay net, paipai, pole, fish, pick opihi, limu etc. I served two tours in the US Army 8th military intelligence unit 1976-1980 as a Pathfinder.

I came in 1980, started fishing again with my father and cousins. We did not kill the reefs or steal others net. As a native Hawaiian I have ancestral rights to fish, hunt and gather by state law, without a license or payment. It seems that having our lands stolen, ceded lands, crown lands our language is not enough for this state coffers. This is a direct attack on my families way of life! I do not support a fishing license for my community or monitoring system to control my families ancestral rights.

My solution follows, \$25 license for all visitors from out of state. Use this money to enforce laws as they are. No new regulations! Hire more night enforcement officers. No non citizens allowed to fish our waters etc. No more regulations or changes to size or seasons of types of fishing. Open the turtle season by a tag system, one per family a year. Stop promoting the climate change agenda and using it as a weapon of disinformation against the Hawaiian community. In the name of ALOHA the state motto, you should read it!

*Kawika David E. Cutcher - 8/13/2020*  
*AT 1530 HRS*



**From:** [DLNR.AR.DLNR.Aquatics](#)  
**To:** [Kekoa, Edward L](#); [Okano, Ryan LY](#); [Sakoda, David](#)  
**Subject:** FW: [EXTERNAL] HAR 13-75, HAR 13-60.4  
**Date:** Thursday, August 25, 2022 7:09:56 AM

---

---

**From:** Dot Norris <dotnorris1@gmail.com>  
**Sent:** Wednesday, August 24, 2022 5:39 PM  
**To:** DLNR.AR.DLNR.Aquatics <dlnr.aquatics@hawaii.gov>  
**Subject:** [EXTERNAL] HAR 13-75, HAR 13-60.4

Hello - I am a concerned citizen of Kona Hawaii and I applaud your efforts to control the nets in our waters. I think the policies set forth in these two changes should be implemented and incorporated into all net fisheries in our waters. Lost nets account for a lot of known and unknown mortality of non-target species as well as endangered fauna such as monk seals and green sea turtles. With the permit numbers associated with these nets and continued monitoring, the responsibility of the fishing practices will be apparent while maintaining the fishing practices of the local community.

Mahalo for your foresighted approach to this situation.

Dorothy Norris  
Retired Marine Biologist

There's a crack in everything, that's how the light gets in - Leonard Cohan.

**From:** [DLNR.AR.DLNR.Aquatics](#)  
**To:** [Sagum, Nicholas K](#); [Taylor, Charles R](#)  
**Cc:** [Sakoda, David](#)  
**Subject:** FW: [EXTERNAL] Lay Net Public Hearing - Testimony Oahu Resident  
**Date:** Friday, September 9, 2022 7:45:25 AM  
**Attachments:** [Screen Shot 2022-09-08 at 9.44.54 PM.png](#)

---

---

**From:** Paul F <pjferrese@gmail.com>  
**Sent:** Thursday, September 8, 2022 9:47 PM  
**To:** DLNR.AR.DLNR.Aquatics <dlnr.aquatics@hawaii.gov>  
**Subject:** [EXTERNAL] Lay Net Public Hearing - Testimony Oahu Resident

Aloha, I live in Kahaluu and fish regularly around Kaneohe Bay. What I've seen from laynet users is atrocious. They do not follow the rules and there really should be an outright ban on all laynet usage. The laynets function indiscriminately and catch anything in their warpath. I've encountered these nets while diving and they always have dead undersized fish in them such as papio, awa, o'io, moi, etc. Furthermore, I've seen turtles and sharks die in these nets. We need to do something to properly regulate the usage of these nets.

These nets are routinely placed after legal laying hours and routinely left out longer than the legally allotted amount of time. The users of these nets need to be restricted.

As a Kahaluu resident, I would support a full ban of laynet usage in the nearshore waters of Kaneohe Bay and for all of Oahu.

If a full ban is not an option at this time, I fully support the permitting process that's proposed. Any regulation around the use of laynets is a positive in my mind.

I'm attaching a photo of the areas I would like to see an outright ban as well.

Mahalo,

Paul Ferrese  
Kahaluu Resident

Amendment and Compilation of Chapter 13-75  
Hawaii Administrative Rules

(date adopted)

1. Chapter 13-75, Hawaii Administrative Rules, entitled "Rules Regulating the Use and Possession of Certain Fishing Gear", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART IV FISHERIES RESOURCES MANAGEMENT

CHAPTER 75

RULES REGULATING THE POSSESSION AND USE  
OF CERTAIN FISHING GEAR

§13-75-1	Definitions
§13-75-2	Penalty
§13-75-2.5	Asset forfeiture
§13-75-3	Severability
§13-75-4	Disposal of fishing gear
§13-75-5	Explosives
§13-75-6	Electrofishing devices
§13-75-7	Poisonous substances

§13-75-8	Firearms
§13-75-9	Spears
§13-75-10	Throw nets
§13-75-11	Drift gill nets
§13-75-12	Gill nets
§13-75-12.2	Akule nets
§13-75-12.4	Lay nets
§13-75-12.5	State waters around Moloka'i, special rules
§13-75-13	Bullpen traps
§13-75-14	Nets, generally
§13-75-15	Traps

**§13-75-1 Definitions.** As used in this chapter, unless otherwise provided:

"Akule" means any fish identified as *Selar crumenophthalmus* or ~~[other]~~ any recognized ~~[synonyms.]~~ synonym. ~~[This fish is]~~ Akule are also known as ~~[pa'a'a, halalu, hahalalu, and]~~ pā'ā'ā, halalū, hahalalū, goggle-eyed scad, or big-eyed scad.

"Bag net" means a type of fishing net made into the shape of a pocket or pouch with an open end held open in the water with the aid of a net float line that supports the top edge of the net up towards the ocean surface and parallel to a net lead line that keeps the lower edge of the net down on the ocean bottom. The bag net is usually made of heavy gauge line to make the net very visible and made of small mesh to prevent the fish from passing through the mesh.

"Bag net fishing method" means a technique of fishing where a person or persons engage in the act of or attempt to engage in the act of deploying a fence net in the water in such a manner as to completely encircle the aquatic life. The fence net primarily acts like a barrier to hold or concentrate the aquatic life within the net. The mesh is smaller than the target species so as to prevent the smaller aquatic life from swimming through or entangling in the mesh. The aquatic life is then moved into the bag net for removal from the water. The main characteristics of

the bag net fishing method are the closed net configuration, the moving net, person or persons do not chase the aquatic life into the net, and most, if not all, of the aquatic life within the net are captured.

"Bullpen trap" means a type of fishing gear that has a pen and guide or guides of a length or lengths of net or material designed to guide aquatic life into the pen situated to prevent the escape of some or all of the aquatic life entering the pen, whether or not the guide or guides are connected to the pen.

"Closed net configuration" means a net that is deployed in a manner in which the net acts as a physical barrier that prevents or impedes the escape of aquatic life that are too large to pass through the mesh. A net so deployed in a series of baffles or in a complete circle will not allow large fish to escape capture, even if the fish are not entangled in the mesh.

"Commercial marine licensee" means any person that has been issued a commercial marine license pursuant to section 189-2, HRS, and section 13-74-20.

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

"Freshwater stream" means any river, creek, canal, ditch, or other natural or artificial watercourse with a defined bed or channel in which freshwater flows, either continuously or periodically. This includes portions of freshwater streams that may contain brackish water or saltwater periodically, such as at high tide or during times of low or no freshwater flow.

"Gill net" means a panel or curtain of net made of various materials, that is suspended vertically in the water with the aid of a net float line that supports the top edge of the net up towards the ocean surface and parallel to a net lead line that keeps the lower edge of the net down towards the ocean bottom. The gill net is usually made of transparent or semi-transparent materials to make the net seem invisible underwater, with mesh openings large enough to permit

the heads of fish to pass through, ensnaring them around the gills when they attempt to escape.

"Gold-spot herring" means any fish identified as *Herklotsichthys quadrimaculatus* or other recognized synonyms.

"Hand net" means a net consisting of a bag of mesh material attached to a frame to hold the bag open, and a handle. The net is small enough to use with one hand by one person.

"*Iao*" [~~or "*silversides*"~~] means any fish [~~identified~~] known as *Atherinomorus insularum* or [~~other~~] any recognized [~~synonyms~~.] synonym. 'Iao are also know as Hawaiian silverside or Hawaiian Islands silverside.

"Landing net" means a hand net that is used to further secure capture of marine life, after the marine life has been first hooked or otherwise detained, to prevent the marine life from becoming unhooked or lost.

"Lay net" means a gill net that is used in lay net fishing.

"Lay netting" or "lay net fishing method" means a technique of fishing where a person or persons engage in the act of or attempt to engage in the act of deploying a gill net in the water in a specific location, then retrieving the gill net from the same location, after a certain time period has passed to allow for the capture of aquatic life. The lay net primarily entangles aquatic life within the mesh of the net as the aquatic life swim or move into the stationary lay net. The lay net is most commonly deployed in a straight line or semi-circular configuration. The main characteristics of lay net fishing are the open net configuration, the stationary net, person or persons may chase the aquatic life into the net, and only aquatic life that becomes entangled in the net mesh are captured. This fishing method is also known as set netting, cross netting, pa'ipa'i netting, and moemoe netting.

"Makiawa" or "mikiawa" means any fish identified as *Etrumeus teres* or *Etrumeus micropus* or other recognized synonyms.

"Marquesan sardine" means any fish identified as *Sardinella marquensis* or other recognized synonyms.

"Multi-panel lay net" means a lay net consisting of two or more layers of netting, usually of different mesh size. This gear is also known as a trammel net.

"Nehu" means any fish identified as *Encrasicholina purpurea* or other recognized synonyms.

"Opae" or "shrimp" or other recognized synonyms means an invertebrate crustacean of the Order Decapoda, but other than lobsters, crabs, or crayfish.

~~["Opelu"] "Opelu" means any fish [identified as Decapterus macarellus or other recognized synonyms.] of the genus Decapterus. Opelu are also known as mackerel scad.~~

~~"Pua" means any juvenile fish [identified] of the species Mugil cephalus or [other] any recognized [synonyms. This fish is also known as young mullet.] synonym. Pua are also known as pua ama, pua ama ama, pua po'olā, or pua o'olā. Individuals of this species at other life stages are known as kahaha, ama ama, or anae. All life stages of this species are generally known as striped mullet.~~

~~"Resident" means an individual that has established the individual's primary residence and worked in the State continuously for a period of twelve months or longer immediately prior to applying for or obtaining a license or permit, or has filed or paid the individual's State income taxes for the previous tax period, or has established domicile in the State. Domicile may be established by providing documentation including a valid Hawai'i driver's license or identification card, a valid school identification card, or any other official document issued to the individual within the previous thirty days from a government agency, financial institution, insurance company, or utility company.~~

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

"Stretched mesh" means the straight line distance between two opposite inner edges of each eye of the

net mesh as measured when the eye is stretched to its maximum size.

"Surround gill netting or surround gill net fishing method" means a technique of fishing where a person or persons engage in the act of or attempt to engage in the act of deploying a gill net in the water in such a manner as to completely encircle the aquatic life. The gill net primarily entangles aquatic life within the mesh of the net as the aquatic life swim or move into the surround gill net. The main characteristics of surround gill net fishing are the closed net configuration, the moving net, person or persons chase the aquatic life into the net, and only the aquatic life that entangles in the net mesh are captured.

"Take" means to fish for, catch, capture, confine, 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, confine, or harvest, or to attempt to fish for, catch, capture, confine, or harvest, aquatic life by any person who is in the water, or in a vessel on the water, or on or about the shore where aquatic life can be fished for, caught, captured, confined, or harvested, shall be construed as taking.

"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. This gear is also known as a cast net.

"Using" means placing in the water or attempting to place in the water. [Eff 12/3/98; am 1/11/02; am and comp 3/2/07; am and comp ] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

**§13-75-2 Penalty.** (a) [A] Any person violating any provision of this chapter or the terms and conditions of any license or permit issued as provided by this chapter, shall be subject to:

- (1) [administrative] Administrative penalties as provided [under chapter 187A,] by section 187A-12.5, HRS[, as amended,];



(2) Criminal penalties as provided by sections 187A-13, 188-70, and 189-4, HRS; and

(3) [in addition to any] 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 12/3/98; am and comp 3/2/07; am and comp ] (Auth: HRS §§187A-5) (Imp: HRS §§187A-12.5, 187A-13, 188-70, 189-4)

**§13-75-2.5 Asset Forfeiture.** Any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of this chapter or the terms and conditions of any license or permit issued as provided by this chapter, may be seized and subject to forfeiture as provided by section 199-7 and chapter 712A, HRS. [Eff and comp ] (Auth: HRS §187A-5) (Imp: HRS §199-7, ch. 712A)

**§13-75-3 Severability.** If any provision of this chapter, or the application thereof to any person or circumstance is held invalid, the invalidity does 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 12/3/98; comp 3/2/07; comp ] (Auth: HRS §§187A-5, 1-23) (Imp: HRS §§187A-5, 1-23)

**§13-75-4 Disposal of fishing gear.** It is unlawful to discard or otherwise dispose of any fishing net, trap, or gear with netting, or parts thereof, in the waters of the State. Any person violating this section shall be subject to penalty under ~~[chapter 187A,]~~ sections 187A-12.5 and 188-70, HRS. [Eff 12/3/98; am and comp 3/2/07; am and comp ]

] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

**§13-75-5 Explosives.** (a) It is unlawful to possess or use on or near state waters, any explosives or blasting fuse caps, for the purpose of taking aquatic life, except under the terms and conditions of a permit first obtained by the user from the department.

(b) The department may issue permits for the use of explosives consistent with other legal requirements.

(c) Any person found to have violated subsection (a) shall be guilty of a class C felony as provided under 188-70(b), HRS. [Eff 12/3/98; am and comp 3/2/07; comp ] (Auth: HRS §§187A-5, 188-23) (Imp: HRS §§187A-5, 188-23)

**§13-75-6 Electrofishing devices.** (a) It is unlawful to possess or use on or near state waters, any electrofishing devices or any source of electrical energy with appurtenant devices for the introduction of electricity into the water for the purpose of taking aquatic life, except under the terms and conditions of a permit first obtained by the user from the department.

(b) The department may issue permits for the use of electrofishing devices consistent with other legal requirements.

(c) Any person found to have violated subsection (a) of this provision shall be guilty of a class C felony as provided under 188-70(b), HRS. [Eff 12/3/98; am and comp 3/2/07; comp ] (Auth: HRS §§187A-5, 188-23) (Imp: HRS §§187A-5, 188-23)

**§13-75-7 Poisonous substances.** (a) It is unlawful to deposit in, permit to pass into, or place

where it can pass into the state waters for the purpose of taking aquatic life, any of the following:

- (1) Any petroleum, coal or oil tar, lampblack, aniline, asphalt, bitumen, or residuary product of petroleum or carbonaceous material or substance;
- (2) Hypochlorous acid or any of its salts, including bleaches commonly sold under various trade names, such as Clorox and Purex, and bleaching powders;
- (3) Preparations containing rotenone, tephrosin, or plant materials from *Barringtonia asiatica*, *Cocculus ferrandianus*, *Hura crepitans*, *Piscidia erythrina*, *Tephrosia purpurea*, *Wikstroemia* spp.; or
- (4) Any other substance or material deleterious to aquatic life; except under the terms and conditions of a permit first obtained by the user from the department.

(b) The department may issue permits to allow the possession or use of stated amounts of these substances poisonous to aquatic life if the department deems the amount in possession is for legitimate purposes or in quantities too small to harm aquatic life.

(c) The possession of these substances without a permit issued by the department by any person on or near the water where fish can be taken, or aboard any fishing vessel or boat is prima facie evidence of a violation of this section.

(d) Any person found to have violated subsection (a) of this provision shall be guilty of a class C felony as provided under 188-70(b), HRS. [Eff 12/3/98; am and comp 3/2/07; comp ]  
(Auth: HRS §§187A-5, 188-23) (Imp: HRS §§187A-5, 188-23)

**§13-75-8 Firearms.** (a) No person shall pursue, take, or kill any turtle, crustacean, mollusk, aquatic mammal, or fish, except tuna and billfish that have

been caught and gaffed, [~~and sharks,~~] in the State with firearms as defined in section 134-1, HRS.

(b) Any crustacean, mollusk, aquatic mammal, or fish taken or killed in violation of this section, or offered for sale after being taken or killed in violation of this section, shall be confiscated and offered as evidence.

(c) Any person violating this provision shall be subject to penalty as provided under [~~chapter 187A,~~] sections 187A-12.5 and 188-70, HRS. Evidence of each specimen may constitute a separate offence.

Enforcement of any offense under this section shall not preclude any prosecution under chapter 134, HRS. [Eff 12/3/98; am and comp 3/2/07; am and comp

] (Auth: HRS §187A-5) (Imp: HRS

§187A-5)

**§13-75-9 Spears.** (a) No person shall pursue, take, or kill any crustacean (except introduced freshwater prawns), turtle, or aquatic mammal in the State with a spear.

(b) Any crustacean, mollusk, aquatic mammal, or fish taken or killed or offered for sale in violation of this section shall be confiscated and offered as evidence.

(c) No person shall take any fish by the use of spears, or possess any speared fish which is smaller than the minimum size for the fish as specified in chapter 13-95, HAR, or any rule adopted under section 187A-5, HRS. Any person violating this provision for the first time shall receive a citation. Evidence of each specimen may constitute a separate offense. Any subsequent violation shall be punished as provided for in sections 187A-12.5 and [~~187A-13,~~] 188-70, HRS; provided that the first subsequent violation shall be considered a first violation for the purposes of section 187A-13, HRS. [Eff 12/3/98; am and comp 3/2/07; am and comp ] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

**§13-75-10 Throw nets.** (a) It is unlawful for any person who is in the water or on or about the shore where fish can be taken to have in the person's possession a throw net with a mesh of less than two inches stretched mesh.

(b) It shall be unlawful for any person to sell or to offer for sale any throw net with a mesh of less than two inches stretched mesh.

(c) Any person violating this provision shall be subject to penalty as provided under ~~[chapter 187A,]~~ sections 187A-12.5 and 188-70, HRS. [Eff 12/3/98; am and comp 3/2/07; am and comp ] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

**§13-75-11 Drift gill nets.** (a) It is unlawful for any person to possess or use any drift gill net in the waters of the State.

~~[(a)]~~ (b) Any person violating this section shall be subject to penalty as provided under ~~[chapter 187A,]~~ sections 187A-12.5 and 188-70, HRS. [Eff 12/3/98; am and comp 3/2/07; am and comp ] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

**§13-75-12 Gill nets.** (a) It is unlawful for any person engaged in gill net fishing to:

~~[(a)]~~ (1) Leave the person's net unattended ~~[without visually inspecting the net every two hours and releasing or removing any undersized, illegal, or unwanted catch;]~~ for any amount of time; or

~~[(b)]~~ (2) Leave the net in the water for a period of more than four hours in any twenty-four hour period.

(b) A person engaged in gill net fishing shall complete a visual inspection of the entire net within two hours after the net is first deployed and shall release any threatened, endangered, prohibited, or unwanted species.

(c) Any person violating this section shall be subject to penalty as provided under ~~[chapter 187A]~~ sections 187A-12.5 and 188-70, HRS. [Eff 12/3/98; am and comp 3/2/07; am and comp ] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

**§13-75-12.2 Akule nets.** (a) It is unlawful for any person without a valid commercial marine license to take akule with any net that has less than two and three-fourths inches stretched mesh, except as provided in subsection (e) or as may be otherwise provided by law.

(b) It is unlawful for any person without a valid commercial marine license to take akule while using the bag net fishing method.

(c) Except as provided in subsection (e) or as may be otherwise allowed by law, it is unlawful for any commercial marine licensee to take akule while using the:

- (1) Lay net fishing method with a net that has less than two and three-fourths inches stretched mesh;
- (2) Surround net fishing method with a net that has less than two and one-half inches stretched mesh; or
- (3) Bag net fishing method with a net that has less than one and one-half inches stretched mesh.

(d) It is unlawful for any commercial marine licensee to keep akule within a bag net in the ocean for more than three days without notifying the department. The person must explain the reasons for keeping the akule and when the bag net will be removed. The chairperson or an authorized representative of the department may require the immediate removal of the akule from the bag net if the action is necessary to prevent the unacceptable waste of the akule or to alleviate an unacceptably high public safety risk.

(e) Notwithstanding the provisions of subsections (a) through (d), and section 13-75-14(7), a person may use:

- (1) ~~[a]~~ A landing net of any mesh size; provided that the opening of the landing net is less than four feet in any dimension, excluding the handle~~[=]~~; or
- (2) A throw net with a mesh of two inches or greater.

(f) Anyone violating any provision of this section shall be subject to penalty under ~~[chapter 187A,]~~ sections 187A-12.5 and 188-70, HRS. Each violation may constitute a separate offense. [Eff 1/11/02; am and comp 3/2/07; am and comp

] (Auth: HRS §187A-5) (Imp: HRS

§187A-5)

**§13-75-12.4 Lay nets.** (a) No person shall use or possess any lay net in State waters without first obtaining a lay net permit. Lay net permits shall be non-transferrable and shall expire on June 30 of each year.

(b) The fee for issuance or renewal of a lay net permit shall be \$25, provided that the fee shall be waived for Hawai'i residents and members of the armed forces of the United States on active duty in the State and their spouse and minor children. The fee for a duplicate permit shall be \$10. ~~Upon request and verification, fees shall be waived for Hawaii residents eligible for benefits under the Supplemental Nutrition Assistance Program.~~

(c) The department may revoke, suspend, or withhold issuance or renewal of a lay net permit for any violation of this section, provided that any revocation, suspension, or withholding of a lay net permit shall not exceed three months unless a longer period not to exceed two years is approved by the board.

~~[(a)]~~ (d) It is unlawful for any person within the jurisdiction of state waters to:

- ~~[(1) Possess or use a lay net that has not been registered with the department;~~
- ~~(2)]~~ (1) Possess or use a lay net ~~[which is, or lay nets which,]~~ that, except as provided in section 13-60.4-6, ~~[are]~~ is:
- (A) Longer than one hundred twenty-five feet in length when set end to end, ~~[and]~~ or more than seven feet in stretched height; ~~[and]~~ or
- (B) Of less than two and three-fourths inches stretched mesh, except as provided in section 13-52-2(2)(A);
- ~~[(3)]~~ (2) Possess or use a multi-panel lay net;
- ~~[(4)]~~ (3) Possess or use a lay net that does not have at least four identification tags as specified ~~[or provided]~~ by the department. Each identification tag must legibly display the lay net permit number of the person possessing or using the net. ~~[One]~~ At least one identification tag must be attached at each end of both the net float line and the net lead line for a total of at least four attachment points on each lay net; or
- ~~[(5)]~~ (4) Fish with more than one lay net at a time.
- ~~[(b)]~~ (e) 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 legibly display the lay net ~~[registration]~~ permit number ~~[7]~~ of the person using the lay net, 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 two hundred fifty feet of another lay net, except as provided in section 13-60.4-6;
- (3) Use a lay net in water greater than twenty-five feet in depth; provided that a person with a commercial marine license may use a



- lay net in water depths up to eighty feet, except as provided in section 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]~~ the same person shall not set any other lay net within ~~[that]~~ twenty-four ~~[hour period]~~ hours after the ending of the set;
  - (5) Leave a lay net unattended for ~~[more than one-half hour;]~~ any amount of time, provided that a lay net shall be considered unattended if the lay net or surface buoys are not within eyesight of the person using the lay net;
  - (6) Retrieve a lay net in such a manner as to cause any stony coral to break 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; or
  - (10) Use a lay net during the period from one-half hour after sunset to one-half hour before sunrise.

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

~~[(f)]~~ (h) 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; "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; or
- (4) Kane'ohe Bay, O'ahu.

~~[(g)]~~ (i) Any person violating any subsection of this provision shall be subject to penalty as provided under ~~[chapter 187A]~~ sections 187A-12.5 and 188-70, HRS. Each violation may constitute a separate offense.<sup>[u]</sup> [Eff and comp 3/2/07; am 12/26/13; am and comp ] (Auth: HRS §§187A-5, 188-53)  
(Imp: HRS §§187A-5, 188-53)

**§13-75-12.5 State waters around Moloka'i, special rules.** (a) Notwithstanding the provisions of section 13-75-12.4, it is unlawful for any person ~~[on~~

~~or about the~~ in State waters of the island of Moloka'i to use a lay net ~~[or lay nets:]~~:

- (1) ~~[that exceed]~~ That is longer than 750 feet in length [and] when set end to end, or more than seven feet in stretched height; or
- (2) ~~[that have]~~ That has a stretched mesh of less than two and three-fourths inches.

(b) Notwithstanding the provisions of section 13-75-12.4, any person ~~[who uses]~~ using a lay net ~~[or lay nets on or about the]~~ in State waters of the island of Moloka'i shall:

- (1) ~~[register and obtain identification tags from the department for those lay nets,]~~ First obtain a lay net permit from the department;
- (2) Attach at least four identification tags to each lay net as specified by the department. Each identification tag must legibly display the lay net permit number or numbers of the person or persons using the net. At least one identification tag must be attached at each end of both the net float line and the net lead line for a total of at least four attachment points on each lay net;

~~[(2)]~~ (3) ~~[when set, mark]~~ Mark each lay [nets] net with at least two surface buoys, one at each end of its total length[, and those]. The surface buoys shall display the [department registration] lay net permit number[,] or numbers of the person or persons using the lay net, be marked with reflective tape, and be large enough to be visible to the naked eye from a distance of 1,320 feet;

~~[(3)]~~ (4) ~~[set the lay nets not to exceed twelve hours, and that once finished, that nets cannot be used again for at least twenty-four hours,]~~ Not set a lay net for more than twelve hours during any one set; provided that the same person shall not set any other lay net within twenty-four hours after the ending of the set;

~~[(4)]~~ (5) ~~[leave]~~ Leave a distance of at least 1,320 feet from any other lay nets that are already set; and

~~[(5)]~~ (6) ~~[complete]~~ Complete at least two inspections of the entire length of lay net set, and shall release any unwanted, prohibited, threatened or endangered species.

(c) Any person violating any subsection of this provision shall be subject to penalty as provided under ~~[chapter 187A,]~~ sections 187A-12.5 and 188-70, HRS. Each violation may constitute a separate offense. [Eff 7/12/07; am and comp ]  
(Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

**§13-75-13 Bullpen traps.** (a) It is unlawful for any person to use bullpen traps with a stretched mesh of less than two inches.

(b) It is unlawful for any person to capture or attempt to capture aquatic life with a bullpen trap which exceeds two thousand feet in total length. The total length of a bullpen trap shall include the length of the guide or guides and pen.

(c) It is unlawful for any person engaged in bullpen trap fishing to leave the trap in the same place for a period of more than sixteen hours.

(d) It is unlawful for any person to capture or attempt to capture aquatic life with a bullpen trap within one thousand yards from the shoreline, except as provided in subsection (e).

(e) Notwithstanding subsection (d), it is lawful to capture or to attempt to capture aquatic life with a bullpen trap in the area seaward from five hundred yards from the shoreline of the island of Moloka'i west of Kaunakakai wharf and in the area seaward from two hundred yards from the shoreline of the island of Moloka'i east of Kaunakakai wharf; provided that the department may designate other areas of similar characteristics in which the use of bullpen traps

within one thousand yards from the shoreline may be allowed under this subsection.

(f) Any person violating any portion of this section shall be subject to penalty as provided under ~~[chapter 187A,]~~ sections 187A-12.5 and 188-70, HRS. Each violation may constitute a separate offense. [Eff 12/3/98; am and comp 3/2/07; am and comp ] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

**§13-75-14 Nets, generally.** (a) It is unlawful for any person to use nets made of or using netting with a stretched mesh of less than two inches, except that:

- (1) Pond owners or operators who hold a valid license issued under section 13-74-40, may use nets of smaller mesh to take young mullet or pua for stocking their fish ponds;
- (2) Commercial marine licensees who hold a valid bait license issued under section 13-74-22, may use nets of smaller mesh to take nehu, 'iao, marquesan sardine, gold-spot herring, or any other species for which an open season may be declared by the department for use as bait;
- (3) All persons may use nets of smaller mesh to take shrimp or 'opae, ~~['ōpelu,]~~ 'ōpelu, makiawa, or mikiawa;
- (4) Aquarium fish collectors with a valid aquarium fish permit issued pursuant to section 188-31, HRS, may use traps and nets for aquarium fish and other aquatic life in conformance with the conditions of the permit, provided that non-commercial aquarium fish collectors shall be limited to a combined total of five fish or aquatic life specimens per person per day;
- (5) All persons may use a net with mesh of not less than one and one-half inches to take akule; provided that no akule measuring less than eight and one-half inches in total

length from the tip of the snout to the tip of the tail shall be taken with a net during the months of July, August, September, and October;

- (6) All persons engaged in surround net fishing with scuba, may use nets with mesh of not less than one and one-half inches only to bag and transport the fish captured with legal gear to the shore or the boat; and
- (7) All persons may use hand nets or scoop nets of smaller mesh to take fish or other marine life for noncommercial purposes only; provided that the net, including any handle and other attachment thereto, shall not exceed three feet in any dimension.

~~[(8)]~~ (b) Any person violating this provision shall be subject to penalty as provided under ~~[chapter 187A,~~ sections 187A-12.5 and 188-70, HRS. Each violation may constitute a separate offense. [Eff 12/3/98; am and comp 3/2/07; am and comp

] (Auth: HRS §187A-5) (Imp: HRS

§187A-5)

**§13-75-15 Traps.** (a) It is unlawful for any person to use any type of trap which is not portable or which is more than ten feet in length or six feet in height or width.

(b) Except for traps of smaller mesh to take shrimp or 'opae, and for the entrance cone, it shall also be unlawful to use traps:

- (1) With netting having a stretched mesh of less than two inches; or
- (2) Made with plastic, wire, coated wire, or any other stiff material with a rigid mesh of less than two inches long by one inch wide.

(c) Any person violating any portion of this provision shall be subject to penalty as provided under ~~[chapter 187A,~~ sections 187A-12.5 and 188-70, HRS." [Eff 12/3/98; am and comp 3/2/07; am and comp

] (Auth: HRS §187A-5) (Imp: HRS

§187A-5)

2. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes and other notes to reflect these amendments and compilation are not underscored.

4. The amendments to and compilation of 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.

\_\_\_\_\_  
SUZANNE D. CASE  
Chairperson, Board of Land  
and Natural Resources

APPROVED AS TO FORM:

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

Hawaii Administrative Rule Chapter 13-75  
Table of Descriptions of  
Lay Net Fishing Prohibited Areas

April 19, 2006



Location	Area Description/Boundary Definition
Maui (island)	State waters out to 3 nautical miles around the entire island.
Kane'ohe Bay, O'ahu	State waters out to 3 nautical miles and bounded by the nearest landward limits of the Sampan and Ship channels and further bounded landward by that portion of the Ship channel that connects North and South portions of the Bay.
Kailua Bay, O'ahu	State waters out to 3 nautical miles and bounded by the latitude coordinates 21°27.5'1"N (Mokapu Point) and 21°22.8'1"N (Wailea Point).
South O'ahu	State waters out to 3 nautical miles and bounded by the longitude coordinates 157°42.6'W (Kawaihoa Point) and 157°58.8'W (Keahi Point).



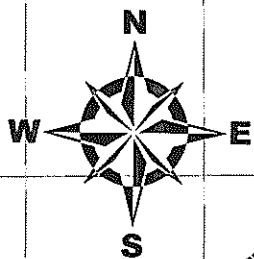
# Map of Lay Net Fishing Prohibited Area: Maui

April 19, 2006

## Legend

-  State Waters (3-Miles)
-  Prohibit Lay Net Zones

0 2 4 8 Nautical Miles






Molokini

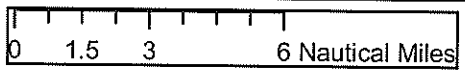


Division of Aquatic Resources  
Department of Land and Natural Resources  
State of Hawaii  
"Fish for the Future"

Revised 4/19/06 (MKL)

# Legend

-  State Waters (3-Miles)
-  Land & Islands
-  Prohibit Lay Net Zones



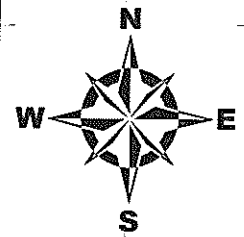
## Map of Lay Net Fishing Prohibited Areas: O'ahu

April 19, 2006

Kane'ohe Bay  
(see attached map)

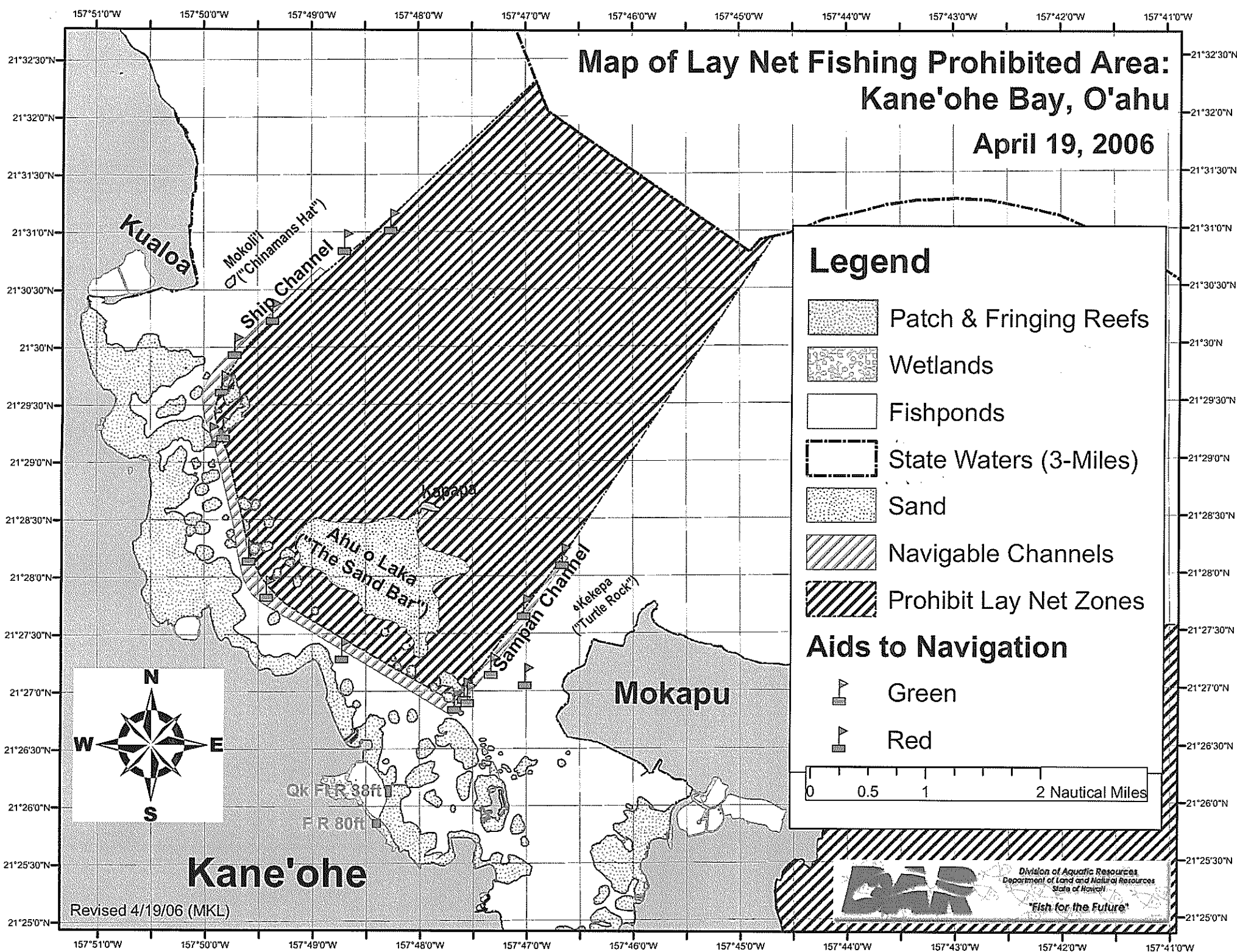
Kaunua Bay

South O'ahu



Division of Aquatic Resources  
Department of Land and Natural Resources  
State of Hawaii  
*"Fish for the Future"*

Revised 4/19/06 (MKL)



Amendment and Compilation of Chapter 13-75  
Hawaii Administrative Rules

(date adopted)

1. Chapter 13-75, Hawaii Administrative Rules, entitled "Rules Regulating the Use and Possession of Certain Fishing Gear", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART IV FISHERIES RESOURCES MANAGEMENT

CHAPTER 75

RULES REGULATING THE POSSESSION AND USE  
OF CERTAIN FISHING GEAR

§13-75-1	Definitions
§13-75-2	Penalty
§13-75-2.5	Asset forfeiture
§13-75-3	Severability
§13-75-4	Disposal of fishing gear
§13-75-5	Explosives
§13-75-6	Electrofishing devices
§13-75-7	Poisonous substances

§13-75-8	Firearms
§13-75-9	Spears
§13-75-10	Throw nets
§13-75-11	Drift gill nets
§13-75-12	Gill nets
§13-75-12.2	Akule nets
§13-75-12.4	Lay nets
§13-75-12.5	State waters around Moloka'i, special rules
§13-75-13	Bullpen traps
§13-75-14	Nets, generally
§13-75-15	Traps

**§13-75-1 Definitions.** As used in this chapter, unless otherwise provided:

"Akule" means any fish identified as *Selar crumenophthalmus* or ~~[other]~~ any recognized ~~[synonyms.]~~ synonym. ~~[This fish is]~~ Akule are also known as ~~[pa'a'a, halalu, hahalalu, and]~~ pā'ā'ā, halalū, hahalalū, goggle-eyed scad, or big-eyed scad.

"Bag net" means a type of fishing net made into the shape of a pocket or pouch with an open end held open in the water with the aid of a net float line that supports the top edge of the net up towards the ocean surface and parallel to a net lead line that keeps the lower edge of the net down on the ocean bottom. The bag net is usually made of heavy gauge line to make the net very visible and made of small mesh to prevent the fish from passing through the mesh.

"Bag net fishing method" means a technique of fishing where a person or persons engage in the act of or attempt to engage in the act of deploying a fence net in the water in such a manner as to completely encircle the aquatic life. The fence net primarily acts like a barrier to hold or concentrate the aquatic life within the net. The mesh is smaller than the target species so as to prevent the smaller aquatic life from swimming through or entangling in the mesh. The aquatic life is then moved into the bag net for removal from the water. The main characteristics of

the bag net fishing method are the closed net configuration, the moving net, person or persons do not chase the aquatic life into the net, and most, if not all, of the aquatic life within the net are captured.

"Bullpen trap" means a type of fishing gear that has a pen and guide or guides of a length or lengths of net or material designed to guide aquatic life into the pen situated to prevent the escape of some or all of the aquatic life entering the pen, whether or not the guide or guides are connected to the pen.

"Closed net configuration" means a net that is deployed in a manner in which the net acts as a physical barrier that prevents or impedes the escape of aquatic life that are too large to pass through the mesh. A net so deployed in a series of baffles or in a complete circle will not allow large fish to escape capture, even if the fish are not entangled in the mesh.

"Commercial marine licensee" means any person that has been issued a commercial marine license pursuant to section 189-2, HRS, and section 13-74-20.

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

"Freshwater stream" means any river, creek, canal, ditch, or other natural or artificial watercourse with a defined bed or channel in which freshwater flows, either continuously or periodically. This includes portions of freshwater streams that may contain brackish water or saltwater periodically, such as at high tide or during times of low or no freshwater flow.

"Gill net" means a panel or curtain of net made of various materials, that is suspended vertically in the water with the aid of a net float line that supports the top edge of the net up towards the ocean surface and parallel to a net lead line that keeps the lower edge of the net down towards the ocean bottom. The gill net is usually made of transparent or semi-transparent materials to make the net seem invisible underwater, with mesh openings large enough to permit



the heads of fish to pass through, ensnaring them around the gills when they attempt to escape.

"Gold-spot herring" means any fish identified as *Herklotsichthys quadrimaculatus* or other recognized synonyms.

"Hand net" means a net consisting of a bag of mesh material attached to a frame to hold the bag open, and a handle. The net is small enough to use with one hand by one person.

"'Iao" [~~or "silversides"~~] means any fish [~~identified~~] known as *Atherinomorus insularum* or [~~other~~] any recognized [~~synonyms~~] synonym. 'Iao are also know as Hawaiian silverside or Hawaiian Islands silverside.

"Landing net" means a hand net that is used to further secure capture of marine life, after the marine life has been first hooked or otherwise detained, to prevent the marine life from becoming unhooked or lost.

"Lay net" means a gill net that is used in lay net fishing.

"Lay netting" or "lay net fishing method" means a technique of fishing where a person or persons engage in the act of or attempt to engage in the act of deploying a gill net in the water in a specific location, then retrieving the gill net from the same location, after a certain time period has passed to allow for the capture of aquatic life. The lay net primarily entangles aquatic life within the mesh of the net as the aquatic life swim or move into the stationary lay net. The lay net is most commonly deployed in a straight line or semi-circular configuration. The main characteristics of lay net fishing are the open net configuration, the stationary net, person or persons may chase the aquatic life into the net, and only aquatic life that becomes entangled in the net mesh are captured. This fishing method is also known as set netting, cross netting, pa'ipa'i netting, and moemoe netting.

"Makiawa" or "mikiawa" means any fish identified as *Etrumeus teres* or *Etrumeus micropus* or other recognized synonyms.

"Marquesan sardine" means any fish identified as *Sardinella marquensis* or other recognized synonyms.

"Multi-panel lay net" means a lay net consisting of two or more layers of netting, usually of different mesh size. This gear is also known as a trammel net.

"Nehu" means any fish identified as *Encrasicholina purpurea* or other recognized synonyms.

"Opae" or "shrimp" or other recognized synonyms means an invertebrate crustacean of the Order Decapoda, but other than lobsters, crabs, or crayfish.

["Opelu"] "Opelu" means any fish [identified as *Decapterus macarellus* or other recognized synonyms.] of the genus *Decapterus*. 'Opelu are also known as mackerel scad.

"Pua" means any juvenile fish [identified] of the species *Mugil cephalus* or [other] any recognized [synonyms. This fish is also known as young mullet.] synonym. Pua are also known as pua 'ama, pua 'ama'ama, pua po'olā, or pua 'o'olā. Individuals of this species at other life stages are known as kahaha, 'ama'ama, or 'anae. All life stages of this species are generally known as striped mullet.

"Resident" means an individual that has established the individual's primary residence and worked in the State continuously for a period of twelve months or longer immediately prior to applying for or obtaining a license or permit, or has filed or paid the individual's State income taxes for the previous tax period, or has established domicile in the State. Domicile may be established by providing documentation including a valid Hawai'i driver's license or identification card, a valid school identification card, or any other official document issued to the individual within the previous thirty days from a government agency, financial institution, insurance company, or utility company.

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

"Stretched mesh" means the straight line distance between two opposite inner edges of each eye of the



net mesh as measured when the eye is stretched to its maximum size.

"Surround gill netting or surround gill net fishing method" means a technique of fishing where a person or persons engage in the act of or attempt to engage in the act of deploying a gill net in the water in such a manner as to completely encircle the aquatic life. The gill net primarily entangles aquatic life within the mesh of the net as the aquatic life swim or move into the surround gill net. The main characteristics of surround gill net fishing are the closed net configuration, the moving net, person or persons chase the aquatic life into the net, and only the aquatic life that entangles in the net mesh are captured.

"Take" means to fish for, catch, capture, confine, 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, confine, or harvest, or to attempt to fish for, catch, capture, confine, or harvest, aquatic life by any person who is in the water, or in a vessel on the water, or on or about the shore where aquatic life can be fished for, caught, captured, confined, or harvested, shall be construed as taking.

"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. This gear is also known as a cast net.

"Using" means placing in the water or attempting to place in the water. [Eff 12/3/98; am 1/11/02; am and comp 3/2/07; am and comp ] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

**§13-75-2 Penalty.** (a) [A] Any person violating any provision of this chapter or the terms and conditions of any license or permit issued as provided by this chapter, shall be subject to:

- (1) [administrative] Administrative penalties as provided [under chapter 187A,] by section 187A-12.5, HRS[, as amended,];

(2) Criminal penalties as provided by sections 187A-13, 188-70, and 189-4, HRS; and  
(3) [in addition to any] 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 12/3/98; am and comp 3/2/07; am and comp  
] (Auth: HRS §§187A-5) (Imp: HRS §§187A-12.5, 187A-13, 188-70, 189-4)

**§13-75-2.5 Asset Forfeiture.** Any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of this chapter or the terms and conditions of any license or permit issued as provided by this chapter, may be seized and subject to forfeiture as provided by section 199-7 and chapter 712A, HRS. [Eff and comp  
] (Auth: HRS §187A-5) (Imp: HRS §199-7, ch. 712A)

**§13-75-3 Severability.** If any provision of this chapter, or the application thereof to any person or circumstance is held invalid, the invalidity does 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 12/3/98; comp 3/2/07; comp  
] (Auth: HRS §§187A-5, 1-23) (Imp: HRS §§187A-5, 1-23)

**§13-75-4 Disposal of fishing gear.** It is unlawful to discard or otherwise dispose of any fishing net, trap, or gear with netting, or parts thereof, in the waters of the State. Any person violating this section shall be subject to penalty under [chapter 187A,] sections 187A-12.5 and 188-70, HRS. [Eff 12/3/98; am and comp 3/2/07; am and comp

] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

**§13-75-5 Explosives.** (a) It is unlawful to possess or use on or near state waters, any explosives or blasting fuse caps, for the purpose of taking aquatic life, except under the terms and conditions of a permit first obtained by the user from the department.

(b) The department may issue permits for the use of explosives consistent with other legal requirements.

(c) Any person found to have violated subsection (a) shall be guilty of a class C felony as provided under 188-70(b), HRS. [Eff 12/3/98; am and comp 3/2/07; comp ] (Auth: HRS §§187A-5, 188-23) (Imp: HRS §§187A-5, 188-23)

**§13-75-6 Electrofishing devices.** (a) It is unlawful to possess or use on or near state waters, any electrofishing devices or any source of electrical energy with appurtenant devices for the introduction of electricity into the water for the purpose of taking aquatic life, except under the terms and conditions of a permit first obtained by the user from the department.

(b) The department may issue permits for the use of electrofishing devices consistent with other legal requirements.

(c) Any person found to have violated subsection (a) of this provision shall be guilty of a class C felony as provided under 188-70(b), HRS. [Eff 12/3/98; am and comp 3/2/07; comp ] (Auth: HRS §§187A-5, 188-23) (Imp: HRS §§187A-5, 188-23)

**§13-75-7 Poisonous substances.** (a) It is unlawful to deposit in, permit to pass into, or place

where it can pass into the state waters for the purpose of taking aquatic life, any of the following:

- (1) Any petroleum, coal or oil tar, lampblack, aniline, asphalt, bitumen, or residuary product of petroleum or carbonaceous material or substance;
- (2) Hypochlorous acid or any of its salts, including bleaches commonly sold under various trade names, such as Clorox and Purex, and bleaching powders;
- (3) Preparations containing rotenone, tephrosin, or plant materials from *Barringtonia asiatica*, *Cocculus ferrandianus*, *Hura crepitans*, *Piscidia erythrina*, *Tephrosia purpurea*, *Wikstroemia* spp.; or
- (4) Any other substance or material deleterious to aquatic life; except under the terms and conditions of a permit first obtained by the user from the department.

(b) The department may issue permits to allow the possession or use of stated amounts of these substances poisonous to aquatic life if the department deems the amount in possession is for legitimate purposes or in quantities too small to harm aquatic life.

(c) The possession of these substances without a permit issued by the department by any person on or near the water where fish can be taken, or aboard any fishing vessel or boat is prima facie evidence of a violation of this section.

(d) Any person found to have violated subsection (a) of this provision shall be guilty of a class C felony as provided under 188-70(b), HRS. [Eff 12/3/98; am and comp 3/2/07; comp ]  
(Auth: HRS §§187A-5, 188-23) (Imp: HRS §§187A-5, 188-23)

**§13-75-8 Firearms.** (a) No person shall pursue, take, or kill any turtle, crustacean, mollusk, aquatic mammal, or fish, except tuna and billfish that have

been caught and gaffed, [~~and sharks,~~] in the State with firearms as defined in section 134-1, HRS.

(b) Any crustacean, mollusk, aquatic mammal, or fish taken or killed in violation of this section, or offered for sale after being taken or killed in violation of this section, shall be confiscated and offered as evidence.

(c) Any person violating this provision shall be subject to penalty as provided under [~~chapter 187A,~~] sections 187A-12.5 and 188-70, HRS. Evidence of each specimen may constitute a separate offence.

Enforcement of any offense under this section shall not preclude any prosecution under chapter 134, HRS. [Eff 12/3/98; am and comp 3/2/07; am and comp

] (Auth: HRS §187A-5) (Imp: HRS

§187A-5)

**§13-75-9 Spears.** (a) No person shall pursue, take, or kill any crustacean (except introduced freshwater prawns), turtle, or aquatic mammal in the State with a spear.

(b) Any crustacean, mollusk, aquatic mammal, or fish taken or killed or offered for sale in violation of this section shall be confiscated and offered as evidence.

(c) No person shall take any fish by the use of spears, or possess any speared fish which is smaller than the minimum size for the fish as specified in chapter 13-95, HAR, or any rule adopted under section 187A-5, HRS. Any person violating this provision for the first time shall receive a citation. Evidence of each specimen may constitute a separate offense. Any subsequent violation shall be punished as provided for in sections 187A-12.5 and [~~187A-13,~~] 188-70, HRS; provided that the first subsequent violation shall be considered a first violation for the purposes of section 187A-13, HRS. [Eff 12/3/98; am and comp 3/2/07; am and comp ] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

**§13-75-10 Throw nets.** (a) It is unlawful for any person who is in the water or on or about the shore where fish can be taken to have in the person's possession a throw net with a mesh of less than two inches stretched mesh.

(b) It shall be unlawful for any person to sell or to offer for sale any throw net with a mesh of less than two inches stretched mesh.

(c) Any person violating this provision shall be subject to penalty as provided under ~~[chapter 187A,~~ sections 187A-12.5 and 188-70, HRS. [Eff 12/3/98; am and comp 3/2/07; am and comp ] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

**§13-75-11 Drift gill nets.** (a) It is unlawful for any person to possess or use any drift gill net in the waters of the State.

~~[(a)]~~ (b) Any person violating this section shall be subject to penalty as provided under ~~[chapter 187A,~~ sections 187A-12.5 and 188-70, HRS. [Eff 12/3/98; am and comp 3/2/07; am and comp ] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

**§13-75-12 Gill nets.** (a) It is unlawful for any person engaged in gill net fishing to:

~~[(a)]~~ (1) Leave the person's net unattended ~~[without visually inspecting the net every two hours and releasing or removing any undersized, illegal, or unwanted catch;]~~ for any amount of time; or

~~[(b)]~~ (2) Leave the net in the water for a period of more than four hours in any twenty-four hour period.

(b) A person engaged in gill net fishing shall complete a visual inspection of the entire net within two hours after the net is first deployed and shall release any threatened, endangered, prohibited, or unwanted species.

(c) Any person violating this section shall be subject to penalty as provided under [~~chapter 187A,~~ sections 187A-12.5 and 188-70, HRS. [Eff 12/3/98; am and comp 3/2/07; am and comp ] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

**§13-75-12.2 Akule nets.** (a) It is unlawful for any person without a valid commercial marine license to take akule with any net that has less than two and three-fourths inches stretched mesh, except as provided in subsection (e) or as may be otherwise provided by law.

(b) It is unlawful for any person without a valid commercial marine license to take akule while using the bag net fishing method.

(c) Except as provided in subsection (e) or as may be otherwise allowed by law, it is unlawful for any commercial marine licensee to take akule while using the:

- (1) Lay net fishing method with a net that has less than two and three-fourths inches stretched mesh;
- (2) Surround net fishing method with a net that has less than two and one-half inches stretched mesh; or
- (3) Bag net fishing method with a net that has less than one and one-half inches stretched mesh.

(d) It is unlawful for any commercial marine licensee to keep akule within a bag net in the ocean for more than three days without notifying the department. The person must explain the reasons for keeping the akule and when the bag net will be removed. The chairperson or an authorized representative of the department may require the immediate removal of the akule from the bag net if the action is necessary to prevent the unacceptable waste of the akule or to alleviate an unacceptably high public safety risk.

(e) Notwithstanding the provisions of subsections (a) through (d), and section 13-75-14(7), a person may use:

(1) [a] A landing net of any mesh size; provided that the opening of the landing net is less than four feet in any dimension, excluding the handle[-]; or

(2) A throw net with a mesh of two inches or greater.

(f) Anyone violating any provision of this section shall be subject to penalty under ~~[chapter 187A,]~~ sections 187A-12.5 and 188-70, HRS. Each violation may constitute a separate offense. [Eff 1/11/02; am and comp 3/2/07; am and comp

] (Auth: HRS §187A-5) (Imp: HRS

§187A-5)

**§13-75-12.4 Lay nets.** (a) No person shall use or possess any lay net in State waters without first obtaining a lay net permit. Lay net permits shall be non-transferrable and shall expire on June 30 of each year.

(b) The fee for issuance or renewal of a lay net permit shall be \$25, provided that the fee shall be waived for Hawai'i residents and members of the armed forces of the United States on active duty in the State and their spouse and minor children. The fee for a duplicate permit shall be \$10.

(c) The department may revoke, suspend, or withhold issuance or renewal of a lay net permit for any violation of this section, provided that any revocation, suspension, or withholding of a lay net permit shall not exceed three months unless a longer period not to exceed two years is approved by the board.

~~[-a-]~~ (d) It is unlawful for any person within the jurisdiction of state waters to:

~~[-(1) Possess or use a lay net that has not been registered with the department;~~



- ~~(2)~~ (1) Possess or use a lay net ~~[which is, or lay nets which,]~~ that, except as provided in section 13-60.4-6, ~~[are:]~~ is:
- (A) Longer than one hundred twenty-five feet in length when set end to end, ~~[and]~~ or more than seven feet in stretched height; ~~[and]~~ or
  - (B) Of less than two and three-fourths inches stretched mesh, except as provided in section 13-52-2(2) (A);
- ~~(3)~~ (2) Possess or use a multi-panel lay net;
- ~~(4)~~ (3) Possess or use a lay net that does not have at least four identification tags as specified ~~[or provided]~~ by the department. Each identification tag must legibly display the lay net permit number of the person possessing or using the net. ~~[One]~~ At least one identification tag must be attached at each end of both the net float line and the net lead line for a total of at least four attachment points on each lay net; or
- ~~(5)~~ (4) Fish with more than one lay net at a time.
- ~~(b)~~ (e) 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 legibly display the lay net [registration] permit number[7] of the person using the lay net, 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 two hundred fifty feet of another lay net, except as provided in section 13-60.4-6;
  - (3) Use a lay net in water greater than twenty-five feet in depth; provided that a person with a commercial marine license may use a lay net in water depths up to eighty feet, except as provided in section 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]~~ the same person shall not set any other lay net within ~~[that]~~ twenty-four ~~[hour period]~~ hours after the ending of the set;
- (5) Leave a lay net unattended for ~~[more than one-half hour;]~~ any amount of time, provided that a lay net shall be considered unattended if the lay net or surface buoys are not within eyesight of the person using the lay net;
- (6) Retrieve a lay net in such a manner as to cause any stony coral to break 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; or
- (10) Use a lay net during the period from one-half hour after sunset to one-half hour before sunrise.

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

~~[(f)]~~ (h) 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; "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; or
- (4) Kane'ohe Bay, O'ahu.

~~[(g)]~~ (i) Any person violating any subsection of this provision shall be subject to penalty as provided under ~~[chapter 187A,~~ sections 187A-12.5 and 188-70, HRS. Each violation may constitute a separate offense.["] [Eff and comp 3/2/07; am 12/26/13; am and comp ] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

**§13-75-12.5 State waters around Moloka'i, special rules.** (a) Notwithstanding the provisions of section 13-75-12.4, it is unlawful for any person ~~[on or about the]~~ in State waters of the island of Moloka'i to use a lay net ~~[or lay nets:]~~:

- (1) ~~[that exceed]~~ That is longer than 750 feet in length ~~[and]~~ when set end to end, or more than seven feet in stretched height; or
  - (2) ~~[that have]~~ That has a stretched mesh of less than two and three-fourths inches.
- (b) Notwithstanding the provisions of section 13-75-12.4, any person ~~[who uses]~~ using a lay net ~~[or lay nets on or about the]~~ in State waters of the island of Moloka'i shall:
- (1) ~~[register and obtain identification tags from the department for those lay nets;]~~ First obtain a lay net permit from the department;
  - (2) Attach at least four identification tags to each lay net as specified by the department. Each identification tag must legibly display the lay net permit number or numbers of the person or persons using the net. At least one identification tag must be attached at each end of both the net float line and the net lead line for a total of at least four attachment points on each lay net;
- ~~[-(2)-]~~ (3) ~~[when set, mark]~~ Mark each lay [nets] net with at least two surface buoys, one at each end of its total length~~[, and those]~~. The surface buoys shall display the [department registration] lay net permit number~~[,]~~ or numbers of the person or persons using the lay net, be marked with reflective tape, and be large enough to be visible to the naked eye from a distance of 1,320 feet;
- ~~[-(3)-]~~ (4) ~~[set the lay nets not to exceed twelve hours, and that once finished, that nets cannot be used again for at least twenty-four hours;]~~ Not set a lay net for more than twelve hours during any one set; provided that the same person shall not set any other lay net within twenty-four hours after the ending of the set;

~~[-(4)-]~~ (5) ~~[leave]~~ Leave a distance of at least 1,320 feet from any other lay nets that are already set; and

~~[-(5)-]~~ (6) ~~[complete]~~ Complete at least two inspections of the entire length of lay net set, and shall release any unwanted, prohibited, threatened or endangered species.

(c) Any person violating any subsection of this provision shall be subject to penalty as provided under ~~[chapter 187A,]~~ sections 187A-12.5 and 188-70, HRS. Each violation may constitute a separate offense. [Eff 7/12/07; am and comp ]  
(Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

**§13-75-13 Bullpen traps.** (a) It is unlawful for any person to use bullpen traps with a stretched mesh of less than two inches.

(b) It is unlawful for any person to capture or attempt to capture aquatic life with a bullpen trap which exceeds two thousand feet in total length. The total length of a bullpen trap shall include the length of the guide or guides and pen.

(c) It is unlawful for any person engaged in bullpen trap fishing to leave the trap in the same place for a period of more than sixteen hours.

(d) It is unlawful for any person to capture or attempt to capture aquatic life with a bullpen trap within one thousand yards from the shoreline, except as provided in subsection (e).

(e) Notwithstanding subsection (d), it is lawful to capture or to attempt to capture aquatic life with a bullpen trap in the area seaward from five hundred yards from the shoreline of the island of Moloka'i west of Kaunakakai wharf and in the area seaward from two hundred yards from the shoreline of the island of Moloka'i east of Kaunakakai wharf; provided that the department may designate other areas of similar characteristics in which the use of bullpen traps

within one thousand yards from the shoreline may be allowed under this subsection.

(f) Any person violating any portion of this section shall be subject to penalty as provided under ~~[chapter 187A,]~~ sections 187A-12.5 and 188-70, HRS. Each violation may constitute a separate offense. [Eff 12/3/98; am and comp 3/2/07; am and comp ] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

**§13-75-14 Nets, generally.** (a) It is unlawful for any person to use nets made of or using netting with a stretched mesh of less than two inches, except that:

- (1) Pond owners or operators who hold a valid license issued under section 13-74-40, may use nets of smaller mesh to take young mullet or pua for stocking their fish ponds;
- (2) Commercial marine licensees who hold a valid bait license issued under section 13-74-22, may use nets of smaller mesh to take nehu, 'iao, marquesan sardine, gold-spot herring, or any other species for which an open season may be declared by the department for use as bait;
- (3) All persons may use nets of smaller mesh to take shrimp or 'opae, ~~['ōpelu,]~~ 'ōpelu, makiawa, or mikiawa;
- (4) Aquarium fish collectors with a valid aquarium fish permit issued pursuant to section 188-31, HRS, may use traps and nets for aquarium fish and other aquatic life in conformance with the conditions of the permit, provided that non-commercial aquarium fish collectors shall be limited to a combined total of five fish or aquatic life specimens per person per day;
- (5) All persons may use a net with mesh of not less than one and one-half inches to take akule; provided that no akule measuring less than eight and one-half inches in total

length from the tip of the snout to the tip of the tail shall be taken with a net during the months of July, August, September, and October;

- (6) All persons engaged in surround net fishing with scuba, may use nets with mesh of not less than one and one-half inches only to bag and transport the fish captured with legal gear to the shore or the boat; and
- (7) All persons may use hand nets or scoop nets of smaller mesh to take fish or other marine life for noncommercial purposes only; provided that the net, including any handle and other attachment thereto, shall not exceed three feet in any dimension.

~~[-(8)]~~ (b) Any person violating this provision shall be subject to penalty as provided under ~~[chapter 187A,~~ sections 187A-12.5 and 188-70, HRS. Each violation may constitute a separate offense. [Eff 12/3/98; am and comp 3/2/07; am and comp

] (Auth: HRS §187A-5) (Imp: HRS

§187A-5)

**§13-75-15 Traps.** (a) It is unlawful for any person to use any type of trap which is not portable or which is more than ten feet in length or six feet in height or width.

(b) Except for traps of smaller mesh to take shrimp or 'opae, and for the entrance cone, it shall also be unlawful to use traps:

- (1) With netting having a stretched mesh of less than two inches; or
- (2) Made with plastic, wire, coated wire, or any other stiff material with a rigid mesh of less than two inches long by one inch wide.

(c) Any person violating any portion of this provision shall be subject to penalty as provided under ~~[chapter 187A,~~ sections 187A-12.5 and 188-70, HRS." [Eff 12/3/98; am and comp 3/2/07; am and comp

] (Auth: HRS §187A-5) (Imp: HRS

§187A-5)

2. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material is underscored.

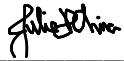
3. Additions to update source notes and other notes to reflect these amendments and compilation are not underscored.

4. The amendments to and compilation of 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.

\_\_\_\_\_  
SUZANNE D. CASE  
Chairperson, Board of Land  
and Natural Resources

APPROVED AS TO FORM:



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



Hawaii Administrative Rule Chapter 13-75  
Table of Descriptions of  
Lay Net Fishing Prohibited Areas



April 19, 2006

Location	Area Description/Boundary Definition
Maui (island)	State waters out to 3 nautical miles around the entire island.
Kane'ohe Bay, O'ahu	State waters out to 3 nautical miles and bounded by the nearest landward limits of the Sampan and Ship channels and further bounded landward by that portion of the Ship channel that connects North and South portions of the Bay.
Kailua Bay, O'ahu	State waters out to 3 nautical miles and bounded by the latitude coordinates 21°27.5'1"N (Mokapu Point) and 21°22.8'1"N (Wailea Point).
South O'ahu	State waters out to 3 nautical miles and bounded by the longitude coordinates 157°42.6'W (Kawaihoa Point) and 157°58.8'W (Keahi Point).

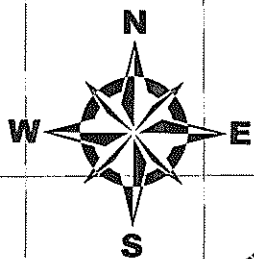
# Map of Lay Net Fishing Prohibited Area: Maui

April 19, 2006

## Legend

-  State Waters (3-Miles)
-  Prohibit Lay Net Zones

0 2 4 8 Nautical Miles






Molokini



Division of Aquatic Resources  
Department of Land and Natural Resources  
State of Hawaii  
"Fish for the Future"

Revised 4/19/06 (MKL)

# Legend

-  State Waters (3-Miles)
-  Land & Islands
-  Prohibit Lay Net Zones

0 1.5 3 6 Nautical Miles

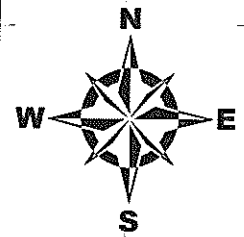
## Map of Lay Net Fishing Prohibited Areas: O'ahu

April 19, 2006

Kane'ohe Bay  
(see attached map)

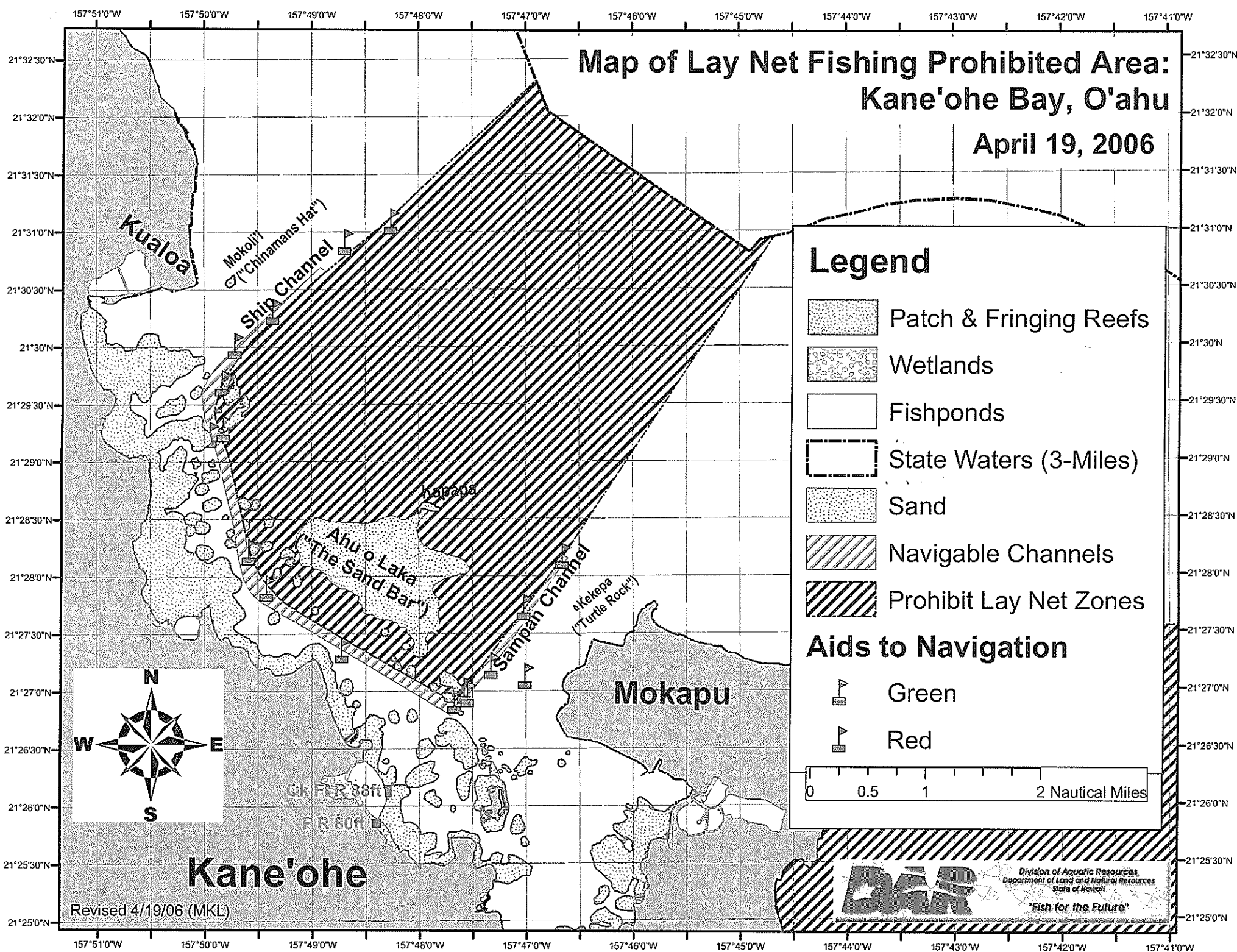
Kaunua Bay

South O'ahu



Division of Aquatic Resources  
Department of Land and Natural Resources  
State of Hawaii  
*"Fish for the Future"*

Revised 4/19/06 (MKL)



Amendment and Compilation of Chapter 13-60.4  
Hawaii Administrative Rules

(date adopted)

1. Chapter 13-60.4, Hawaii Administrative Rules, entitled "West Hawai'i Regional Fishery Management Area, Hawai'i", is amended and compiled 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

§13-60.4-1	Intent and purpose
§13-60.4-2	Geographical jurisdiction of chapter provisions
§13-60.4-3	Definitions
§13-60.4-4	Activities prohibited within the West Hawai'i regional fishery management area
§13-60.4-5	Activities prohibited within selected areas

§13-60.4-1

§13-60.4-6	Lay net permit and use requirements
§13-60.4-7	Aquarium collecting permit and vessel registration requirements
§13-60.4-8	Penalty
§13-60.4-8.5	Asset forfeiture
§13-60.4-9	Severability

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 12/26/13; comp ] (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 marine reserves, 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 the exhibit entitled "Map of Marine Reserve, Fish Replenishment Area, and Netting Restricted Area Boundaries", dated 12/12/12, located at the end of this chapter):

- (1) Ka'ūpūlehu marine reserve, 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);
- (2) North Kohala fish replenishment area, identified on shore to the north by Kamilo Gulch and to the south by the Kawaihae Lighthouse;
  - (3) 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);
  - (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 Nenu 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) Nenu Point-Kealahou 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 Kealahou Bay marine life conservation district;
  - (13) Hanalei Point-Kanewā'a Point netting restricted area, identified on shore to the north by Hanalei Point, inclusive of Okoe Bay and Kapu'a Bay, and to the south by Kanewā'a Point, South Kona; and
  - (14) Kanonone-Kalihoa netting restricted area, identified on shore to the north by Kanonone, inclusive of Pōhue Bay, Kahakāhaka, and identified to the south by Kalihoa, 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 located at the end of this chapter entitled "Table of Reference Coordinates to Marine Reserve and Fish Replenishment Area Boundaries", dated 12/12/12, and "Table of Reference Coordinates to Netting Restricted Area Boundaries", dated 12/12/12, 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 one hundred fathom (six hundred feet) depth contour, between the intersection of the one hundred fathom depth contour and the northern and southern boundary lines. Seaward GPS reference points are for guidelines and the one hundred 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) Kīholo 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 12/26/13; am 7/29/16; comp ]

(Auth: HRS §§187A-5, 188-53, 188F-6, 190-3) (Imp: HRS §§187A-5, 188-53, 188F-2, 188F-3, 188F-4, 188F-6, 190-3)

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

"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.

"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.

"Deploy" means to place the specified gear in the water, in whole or in part.

"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.

"Fishing gear" means any net, spear, rod, reel, hook-and-line, slurp gun, or any other equipment or gear adapted, designed, or commonly used to take or capture aquatic life.

"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 deploy and retrieve the line, and the use of a landing net to land hooked fish.

"Kona crab net" means a mesh net encircled by a rigid frame no more than three feet in length in any direction.

"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.

"Marine reserve" means an area where any and all extraction of reef-related marine life, either alive or dead, or any portion of the reef structure, including coral, rocks, plants, algae, sand, shells, or any feature of the natural reef, shall be prohibited, except as allowed in this chapter.

"Multi-panel lay net" means a lay net consisting of two or more layers of netting, usually of different mesh size. This gear is also known as a trammel net.

"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 12/26/13; am 7/29/16; am and comp ]

(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 two 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. The notification shall include the names of individuals who plan to possess the gear or aquatic life and the location where the possession will take place;

- (B) Without holding a valid West Hawai'i aquarium permit issued pursuant to section 13-60.4-7(a);
  - (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 section 13-60.4-7(d);
- (4) Possess or use any net or container employed underwater to capture or hold aquatic life alive for aquarium purposes, that is not labeled with the commercial marine license number or numbers of the person or persons owning, possessing or using the equipment;
  - (5) Possess a lay net or engage in lay net fishing in violation of the requirements of section 13-60.4-6; 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 12/26/13; comp ] (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 marine reserves, fish replenishment areas, or netting restricted areas described in section 13-60.4-2(b) or any of the other areas listed in section 13-60.4-2(c).

§13-60.4-5

(b) While within the fish replenishment areas described in section 13-60.4-2(b)(2) to (10), or while within any of the areas listed in section 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 onboard a vessel in active transit through the areas, provided that no collecting gear is in the water during the transit. Boats that 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 section 13-60.4-2(b) and in the tables located at the end of this chapter entitled "Table of Reference Coordinates to Marine Reserve and Fish Replenishment Area Boundaries", dated 12/12/12, and "Table of Reference Coordinates to Netting Restricted Area Boundaries", dated 12/12/12:

- (1) Puakō-'Anaeho'omalu fish replenishment area;
  - (2) Kikaua Point-Mākole'ā netting restricted area (Kekaha Kai State Park);
  - (3) Nenua Point (Red Hill fish replenishment area)-Kealahou Bay netting restricted area;
  - (4) Hanamalo Point-Kanewa'a Point netting restricted area;
  - (5) Kanonohe-Kalīpoa netting restricted area; and
  - (6) 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, that is ~~[registered and]~~ used in compliance with section 13-60.4-6.
- (d) Except as provided in subsection (e), and



subject to all other applicable laws, while within the Ka'ūpūlehu marine reserve no person may:

- (1) Take or attempt to take any specimen of aquatic life, provided that the following species may be taken by hook-and-line seaward of the twenty fathom (120 feet) depth contour: *Pristipomoides filamentosus* ('ōpakapaka), *Pristipomoides sieboldii* (kalekale), *Aphareus rutilans* (lehi), *Pristipomoides zonatus* (gindai), *Etelis coruscans* (onaga), *Etelis carbunculus* (ehu), *Epinephelus quernus* (hāpu'upu'u), *Aprion virescens* (uku), *Lutjanus kasmira* (ta'ape), *Cephalopholis argus* (roi), *Lutjanus fulvus* (toau), *Iniistius pavo* (nabeta), *Katsuwonus pelamis* (aku), *Thunnus spp.* (ahi and tombo), Family Istiophoridae (a'u), *Acanthocybium solandri* (ono), *Coryphaena spp.* (mahimahi); and provided further that *Ranina ranina* (kona crab) may be taken by kona crab nets only, while seaward of the twenty fathom (120 feet) depth contour;
- (2) Possess any specimen of marine life other than the species listed in subsection (d)(1) above;
- (3) Possess or use any fishing gear other than hook-and-line or kona crab nets or both; or
- (4) Deploy any fishing gear (including hook-and-line or kona crab nets) shoreward of the twenty fathom (120 feet) depth contour.

(e) The department may issue permits in accordance with sections 187A-6 and 188-53, Hawaii Revised Statutes, for the take of non-native or invasive species of fish and invasive algae from the Ka'ūpūlehu Marine Reserve.

(f) Subsections (d) and (e) of this section shall be effective until June 30, 2026, or until the effective date of rules implementing a comprehensive fisheries management plan as developed by the department in consultation with the Ka'ūpūlehu community and other interested parties, whichever occurs later. [Eff 12/26/13; am 7/29/16; am and comp

§13-60.4-5

] (Auth: HRS §§187A-5, 188-53, 188F-6, 190-3) (Imp: HRS §§187A-5, 188-53, 188F-6, 190-3)

**§13-60.4-6 Lay net ~~[registration]~~ permit 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;~~] without first obtaining a lay net permit pursuant to section 13-75-12.4;
- (2) Possess or use more than one lay net;
- (3) Possess or use a lay net:
  - (A) Longer than one hundred twenty-five 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 two hundred fifty 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. Each identification tag must legibly display the lay net permit number of the person possessing or using the net. 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 legibly display the lay net ~~[registration]~~ permit number[~~7~~] of the

- person using the lay net, 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 one thousand two hundred 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 eighty 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]~~ hours after the ending of the set;
  - (5) Leave a lay net unattended for ~~[more than one-half hour;]~~ any amount of time, provided that a lay net shall be considered unattended if the lay net or surface buoys are not within eyesight of the person using the lay net;
  - (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 subsection (a)(1) and (a)(5)].~~

(d) Persons using a vessel or float may use a total maximum of two hundred fifty 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)]~~ (e) Any lay net within the West Hawai'i regional fishery management area that ~~[is not registered or]~~ does not have proper identification tags~~[,]~~ or surface buoys, as required in [subsection] subsections [(a)(1) and] (a)(5)[,] and (b)(1), shall be subject to immediate seizure according to section 199-7, HRS, and subject to forfeiture by the department under ~~[procedures similar to chapter 712A, Hawaii Revised Statutes.]~~ section 13-60.4-8.5.

~~[(g)]~~ (f) 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 12/26/13; am and comp ] (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) and to use fine meshed traps and nets (other than throw nets) to collect those species in

the West Hawai'i regional fishery management area, notwithstanding section 13-75-14, subject to terms and conditions the department deems necessary for the management of the area and its resources. No person, unless exempted from provisions of this chapter by the 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 section 13-60.4-4(2);
  - (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; and
  - (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 each vessel;

- (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 inches high and three inches wide in either black or a color that contrasts with 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 onboard;
- (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 12/26/13; comp ] (Auth: HRS

§13-60.4-7

§§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-3)

**§13-60.4-8 Penalty.** (a) Any person violating any provision of this chapter~~[7]~~ or ~~[any term or condition]~~ the terms and conditions of any permit issued ~~[pursuant to]~~ 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.]~~:

- (1) Administrative penalties as provided by section 187A-12.5, HRS;
- (2) Criminal penalties as provided by sections 187A-13 and 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 12/26/13; am and comp ]  
(Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-12.5, 188-53, 188-70)

**§13-60.4-8.5 Asset forfeiture.** Any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of this chapter or the terms and conditions of any permit issued as provided by this chapter, may be seized and subject to forfeiture as provided by section 199-7 and chapter 712A, HRS. [Eff and comp ] (Auth: HRS §188-53) (Imp: HRS §199-7, ch. 712A)

**§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  
12/26/13; comp ] (Auth: HRS §§187A-5,  
188-53, 188F-6) (Imp: HRS §§1-23, 187A-5, 188-53,  
188F-6)

2. Material, except source notes and other  
notes, to be repealed is bracketed and stricken. New  
material is underscored.

3. Additions to update source notes and other  
notes to reflect these amendments and compilation are  
not underscored.

4. The amendments to and compilation of chapter  
13-60.4, 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:

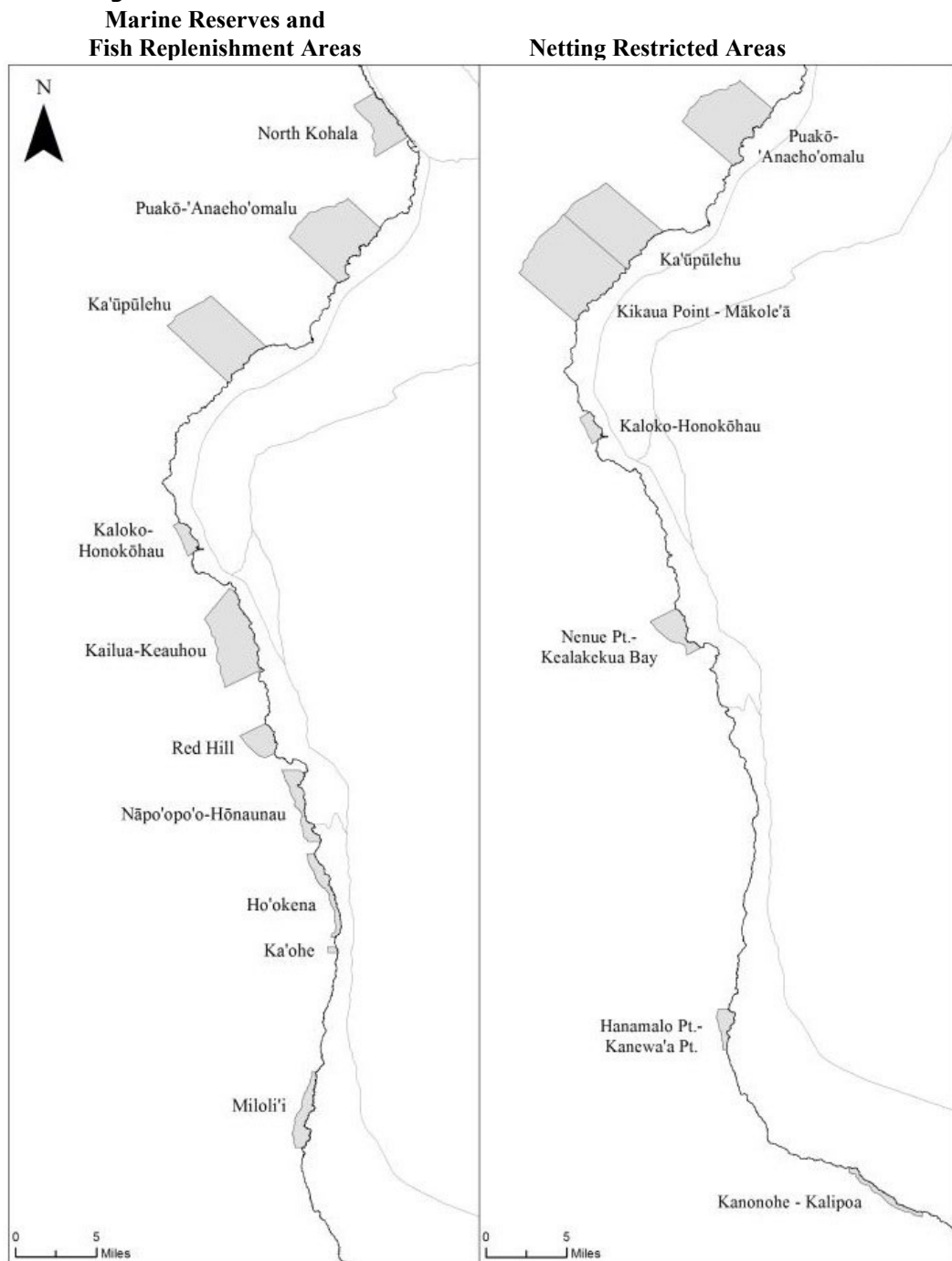


---

Deputy Attorney General



**Map of Marine Reserve, Fish Replenishment Area, and  
Netting Restricted Area Boundaries\* (12/12/12)**



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

**Table of Reference Coordinates to Marine Reserve and Fish Replenishment Area Boundaries  
(12/12/12)**

Area	Landward dGPS Coordinates		Seaward dGPS Coordinates (600 ft.)				
	Northern Point	Southern Point	Northern Point	D (nm)	Southern Point	D (nm)	@
North Kohala FRA	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 FRA	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 Marine Reserve	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 FRA	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 FRA	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 FRA	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 FRA	19° 28.230' N <sup>1</sup>	19° 24.559' N	19° 28.350' N <sup>2</sup>	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 FRA	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 FRA	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 FRA	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°

<sup>1,2</sup> Northern Boundary runs 0.25nm along existing Kealakekua Bay MLCD southern boundary to 19° 28.443' N/155° 55.708' W and then 270° to seaward northern point.

FRA = Fish Replenishment Area

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  
(12/12/12)**

Netting Restricted Area**	Landward dGPS Coordinates		Seaward dGPS Coordinates (600 ft.)				
	Northern Point	Southern Point	Northern Point	D (nm)	Southern Point	D (nm)	@
Puakō - ‘Anacho‘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°
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°
Nenuē 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 marine reserves and fish replenishment areas (see map entitled “Map of Marine Reserve, Fish Replenishment, and Netting Restricted Area Boundaries”, dated 12/12/12) and in areas designated under separate chapters, as described in section 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