

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

June 23, 2023

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

REQUEST FOR APPROVAL TO HOLD PUBLIC HEARINGS TO ADOPT A NEW CHAPTER AS HAWAII ADMINISTRATIVE RULES, TITLE 13, CHAPTER 60.11, “KĪPAHULU COMMUNITY-BASED SUBSISTENCE FISHING AREA, MAUI,” (KĪPAHULU CBSFA) TO: OUTLINE THE PURPOSE OF THE KĪPAHULU CBSFA AND ITS SUBZONES; PROVIDE DEFINITIONS FOR KEY TERMS THROUGHOUT THE CHAPTER; ESTABLISH AND DELINEATE THE BOUNDARIES FOR THE KĪPAHULU CBSFA AND THE KUKUI BAY SANCTUARY AND ‘OPIHI REST AREA SUBZONES; PRESCRIBE THE PERMITTED AND PROHIBITED ACTIVITIES WITHIN THE KĪPAHULU CBSFA, INCLUDING RESTRICTIONS ON TAKE AND/OR POSSESSION OF AKULE, ‘ŌMILU, KALA, KOLE, MOI, ‘OPIHI, ULA (SPINY LOBSTERS) AND ULA PĀPAPA (SLIPPER LOBSTERS), ‘ALAKUMA (7-11 CRAB), AND NATIVE LIMU SPECIES, RESTRICTIONS ON THE USE OF GILL NETS FOR SURROUND NET FISHING, BAG NETS, THROW NETS, AND FISHING POLES, LINES, AND HOOKS, PROHIBITIONS ON TAKING MARINE LIFE WITH SCUBA GEAR, NIGHT DIVING, TAKING ‘OPIHI WITHIN THE ‘OPIHI REST AREA SUBZONE, AND TAKING OF ANY MARINE LIFE WITHIN THE KUKUI BAY SANCTUARY; RECOGNIZE THAT NATIVE HAWAIIAN TRADITIONAL AND CUSTOMARY RIGHTS RECOGNIZED BY THE HAWAII STATE CONSTITUTION SHALL NOT BE ABRIDGED; CARVE OUT AN EXCEPTION FOR VESSELS WITH RESTRICTED SPECIES OR GEAR IN ACTIVE TRANSIT THROUGH THE KĪPAHULU CBSFA; ESTABLISH THE ADMINISTRATIVE AND CRIMINAL PENALTIES FOR VIOLATIONS OF THIS CHAPTER; AND RECOGNIZE THE STATE’S ASSET FORFEITURE AUTHORITY

At the May 26, 2023 Board of Land and Natural Resources (Board) meeting, the Division of Aquatic Resources (DAR) briefed the Board on this proposal. Since the briefing, based on review by the Department of the Attorney General, DAR has made a few minor typo corrections and one non-substantive amendment for clarity. **Exhibit 1**, attached, is a redline draft of the proposed HAR Chapter 13-60.11 drafted in Ramseyer format showing the changes made to the proposed rules since the briefing. A clean version of the proposed rules drafted in Ramseyer format is attached as **Exhibit 2**. DAR now requests approval from the Board to hold public hearings on the adoption of Hawaii Administrative Rules (HAR) chapter 13-60.11 to designate the Kīpahulu Community-Based Subsistence Fishing Area, Maui (Kīpahulu CBSFA), to ensure abundant stocks of priority species and high-quality fishing now and in the future for residents and visitors to

Kīpahulu and to reaffirm and perpetuate fishing practices that were customarily and traditionally exercised for Native Hawaiian subsistence, culture, or religion along the southeast coast of Maui.

OVERVIEW OF PROPOSED AMENDMENTS:

As a reminder, the proposed chapter consists of eight sections as follows:

Section 1 describes the purpose of the chapter.

Section 2 provides definitions of relevant terms as used in the chapter.

Section 3 delineates the boundaries of the Kīpahulu CBSFA, the Kukui Bay Sanctuary, and the ‘Opihi Rest Area.

Section 4 prescribes the permitted and prohibited activities within the Kīpahulu CBSFA. The regulations in Section 4 set stricter bag limits, size limits, and gear restrictions to prevent over-harvesting while allowing for the continuance of subsistence levels of take. Within the CBSFA it will be prohibited to:

- 1) Take or possess more than ten finfish per person per day;
 - a. Exception for akule and introduced or invasive fish species
- 2) Take any akule for commercial purposes;
- 3) Take or possess more than one ‘ōmilu per person per day;
- 4) Take or possess more than two kala per person per day;
- 5) Take or possess any kole less than five inches in length;
- 6) Take or possess any moi from May through September;
- 7) Take or possess any moi less than eleven inches in length or greater than eighteen inches in length;
- 8) Take or possess more than forty ‘opihi of any species per person per day;
- 9) Take or possess any ‘opihi with a shell diameter of less than one and one-fourth inches or greater than two inches;
- 10) Take or possess any ‘opihi within the ‘Opihi Rest Area;
- 11) Take or possess any ‘opihi while diving;
- 12) Take or possess any ula or ula pāpapa from May through September;
- 13) Take or possess a combined total of more than two ula or ula pāpapa;
- 14) Take or possess more than two spotted reef crabs per person per day;
- 15) Take or possess any native limu species with a holdfast or roots attached;
- 16) Engage in surround net fishing using a gill net with a stretched mesh of less than two and three-fourths inches;
- 17) Engage in surround net fishing to take any marine life, except akule and ta‘ape;
- 18) Take any marine life using a bag net;
- 19) Possess a throw net with a stretched mesh of less than three inches while in the water or on or about the shore where fish can be taken;
- 20) Use more than two poles, provided that each pole may have only one line, and each line may have no more than two hooks, with each hook having only one

- point while at or near the shoreline, except that double or treble hooks are allowed when using fishing lures;
- 21) Take any marine life while using SCUBA gear or to possess both SCUBA gear and marine life at the same time; provided that the use of SCUBA gear is allowed to engage in surround net fishing for akule or to take introduced or invasive species;
 - 22) Take or possess any marine life while diving at night (thirty minutes after sunset to thirty minutes before sunrise); and
 - 23) Take or possess any marine life while within the Kukui Bay Sanctuary.

This section also recognizes that native Hawaiian traditional and customary rights recognized under article XII, section 7, of the Hawaii State Constitution shall not be abridged.

Section 5 carves out an exception allowing vessels in possession of restricted gear or species to traverse through the CBSFA as long as they remain in active transit.

Section 6 establishes the administrative and criminal penalties that may be imposed for violations of this chapter.

Section 7 recognizes the State's asset forfeiture authority as an enforcement tool for violations of this chapter. This section will facilitate enforcement of this chapter by providing the Department with the appropriate range of tools to deter violations.

Section 8 is a severability clause, which is a standard inclusion when new administrative rules are proposed.

The proposed rules drafted in Ramseyer format have been reviewed and approved by the Department of the Attorney General.

RECOMMENDATIONS:

“That the Board:

1. Authorize and approve the holding of public hearing(s) on the island of Maui on the adoption of Hawaii Administrative Rules chapter 13-60.11, “Kīpahulu Community-Based Subsistence Fishing Area, Maui”; and
2. Delegate to the Chairperson the authority to appoint hearing officer(s) to conduct the aforementioned public hearing(s).”

Respectfully submitted,



BRIAN J. NEILSON, Administrator
Division of Aquatic Resources

APPROVED FOR SUBMITTAL



DAWN N. S. CHANG, Chairperson
Board of Land and Natural Resources

Attachments:

- Exhibit 1 – Redline Draft Proposed HAR chapter 13-60.11 (Ramseyer format)
- Exhibit 2 – Clean Draft Proposed HAR chapter 13-60.11 (Ramseyer format)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-60.11
Hawaii Administrative Rules

(Date of adoption)

1. Chapter 13-60.11, Hawaii Administrative Rules, entitled "Kīpahulu Community-Based Subsistence Fishing Area, Maui" is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART II MARINE FISHERIES MANAGEMENT AREAS

CHAPTER 60.11

KĪPAHULU COMMUNITY-BASED SUBSISTENCE FISHING AREA,
MAUI

§13-60.11-1	Purpose
§13-60.11-2	Definitions
§13-60.11-3	Boundaries
§13-60.11-4	Permitted and prohibited activities

- §13-60.11-5 Transit through the Kīpahulu Community-Based Subsistence Fishing Area with restricted gear and species
- §13-60.11-6 Penalty
- §13-60.11-7 Asset Forfeiture
- §13-60.11-8 Severability

§13-60.11-1 Purpose. The purposes for this chapter regarding the Kīpahulu Community-Based Subsistence Fishing Area are to:

- (1) Sustainably support the subsistence needs of the Kīpahulu Moku community on the island of Maui through culturally-rooted, community-based management;
- (2) Ensure the sustainability of nearshore ocean resources in the area through effective management practices, including the establishment of limits on the harvest of marine life;
- (3) Recognize and protect customary and traditional native Hawaiian fishing practices that are exercised for subsistence, cultural, and religious purposes in the area;
- (4) Facilitate the substantive involvement of the community in resource management decisions for the area through dialogue with community residents and resource users;
- (5) Establish the 'Ōpihi Rest Area to ensure stock health and to allow replenishment of this important food resource; and
- (6) Establish the Kukui Bay Sanctuary for the preservation and protection of critical nursery habitat for numerous marine species, including species traditionally relied upon for subsistence. [Eff]

(Auth: HRS §§188-22.6, 188-53, 190-3, ~~Haw. Const. art. XI, §6~~) (Imp: HRS §§188-22.6, 188-53, 190-3, Haw. Const. art. XI, §6)

§13-60.11-2 Definitions. As used in this chapter, unless otherwise provided:

"Akule" means any fish known as *Selar crumenophthalmus* or other recognized synonyms. Akule are also known as pā'ā'ā, halalū, hahalalū, goggle-eyed scad, or big-eyed scad.

"Area" means the Kīpahulu Community-Based Subsistence Fishing Area, Maui (Kīpahulu CBSFA) as encompassed within the boundaries described in section 13-60.11-3(a).

"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.

"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 visible and made of small mesh to prevent the fish from passing through the mesh.

"Department" means the Department of Land and Natural Resources.

"Community" means a *hoa'āina* relationship to place as demonstrably indicated through genealogy, practice, or residency.

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

"Double hook" means a hook having two points on a common shank.

"Finfish" means any of the various species of marine life that uses fins to swim, not including invertebrates, marine mammals, or sea turtles.

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

"Fishing" or "to fish" means catching, taking, or harvesting, or attempting to catch, take, or harvest, aquatic life. The use of a pole, line, hook, net, trap, spear, or other gear which is designed to catch, take, 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 caught, taken, or harvested, shall be deemed to be fishing.

"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.

"Fishing lure" means any device, including a fishing fly, which is designed to attract fish and which incorporates a fishing hook.

"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 generally large enough to permit the heads of fish to pass through, ensnaring them around the gills, fins, spines, or mid-section when they attempt to escape.

"Hoa'āina" means ahupua'a tenant.

"Holdfast" means a stalked organ by which limu is attached to a substrate.

"Introduced species" means any species that did not occur naturally in Hawai'i prior to introduction caused by human activity. Introduced species are also referred to as non-native species, alien species, or exotic species.

"Invasive species" means an introduced species of marine life that causes or is likely to cause economic or environmental harm or harm to human health.

"Kala" means any fish known as *Naso unicornis*, *Naso brevirostris*, *Naso annulatus*, or any recognized synonym. Kala are also known as bluespine unicornfish, short-nosed unicornfish, spotted unicornfish, or whitemargin unicornfish.

"Kō'ele" means any limpet known as *Cellana talcosa* or any recognized synonym. Kō'ele are also known as giant 'opihi, talc limpet, or turtle limpet.

"Kole" means any fish known as *Ctenochaetus strigosus* or any recognized synonym. Kole are also known as kole tang, spotted surgeonfish, goldring surgeonfish, or yellow-eyed tang.

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

"Makaiāuli" means any limpet known as *Cellana exarata* or any recognized synonym. Makaiāuli are also known as blackfoot 'opihi or Hawaiian blackfoot.

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

"Moi" means any fish known as *Polydactylus sexfilis* or any recognized synonym. Moi are also known as six-fingered threadfin or yellowthread threadfin.

"Native species" means a species that occurs naturally in Hawai'i. Native species include both endemic species and indigenous species.

"Native limu" means any limu that occurs naturally in Hawai'i, including but not limited to all species of limu, or any recognized synonyms, listed in Exhibit A entitled "Common Native Limu Species of Hawai'i", dated 4/20/23, located at the end of this chapter.

"'Ōmilu" means any fish known as *Caranx melampygus* or any recognized synonym. 'Ōmilu are also

known as bluefin trevally, blue ulua, bluefin jack, bluefin kingfish, bluefinned crevalle, and spotted trevally.

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

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

"Spotted reef crab" means any crab known as *Carpilius maculatus* or any recognized synonym. Spotted reef crabs are also known as seven-eleven crab, dark-finger coral crab, and large spotted crab.

"State" means the state of Hawai`i.

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

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

"Surround net fishing" 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 gill net. The main characteristics of surround 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.

"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.

"Ta`ape" means any fish known as *Lutjanus kasmira* or any recognized synonym. Ta`ape are also known as bluestripe snapper.

"Treble hook" means a hook having three points on a common shank.

"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.

"Ula" means any spiny lobster of the genus *Panulirus*. Ula are also known as lobster, Hawaiian spiny lobster, spiny lobster, red lobster, or green lobster.

"Ula pāpapa" means any crustacean of the species *Scyllarides squammosus* or *Scyllarides haanii*, or any recognized synonym. Ula pāpapa are also known as ula 'āpapapa, slipper lobster, ridgeback slipper lobster, or shovel-nosed lobster. [Eff] (Auth: HRS §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.6, 188-53, 190-3)

§13-60.11-3 Boundaries. (a) The Kīpahulu CBSFA includes that portion of the southeast coast of the island of Maui consisting of all state waters and submerged lands from Kālepa Gulch in the west to 'Ohe'o Gulch in the east, from the shoreline out to approximately 60 meters in depth. The boundaries of the Kīpahulu CBSFA are described by western and eastern boundary lines, landward and seaward boundary lines, and five reference points (A, G, H, I, and J) identified by their latitude and longitude coordinates as follows:

- (1) Point A is the westernmost point of the Kīpahulu CBSFA along the shoreline, located at 20.646167°, -156.086300.
- (2) Point G is the easternmost point of the Kīpahulu CBSFA along the shoreline, located at 20.667318°, -156.040689°.
- (3) The landward boundary of the Kīpahulu CBSFA is an imaginary line drawn along the shoreline from Point A to Point G.
- (4) The western boundary of the Kīpahulu CBSFA is an imaginary straight line drawn

perpendicular to the shore at Point A out to Point H, located on the 60-meter depth contour at 20.637752°, -156.080016°.

- (5) The seaward boundary of the Kīpahulu CBSFA consists three points along the 60-meter depth contour connected by imaginary straight lines beginning at Point H; then to Point I, located at 20.639762°, -156.049777°; then to Point J, located at 20.658495°, -156.028482°.
- (6) The eastern boundary of the Kīpahulu CBSFA consists of an imaginary straight line drawn perpendicular to the shore at Point G to Point J.

The foregoing boundaries and reference points are shown on Exhibit B entitled "Map of the Kīpahulu Community-Based Subsistence Fishing Area, Maui", dated 4/20/23, located at the end of this chapter.

(b) The following sub-zones are established within the Kīpahulu CBSFA:

- (1) The Kukui Bay Sanctuary, which includes all state waters and submerged lands bounded by the shoreline boundary of the Kīpahulu CBSFA from Puhilele Point in the west at 20.654171°, -156.045763° (Point B) to a point on the inside of Kukui Bay at 20.658259°, -156.045675° (Point D), a straight line from Point D to Submarine Point in the west at 20.656429°, -156.046071° (Point C), and a straight line from Submarine Point at Point C to Puhilele Point at Point B; as shown on Exhibit C entitled "Map of the Kukui Bay Sanctuary and 'Ōpihi Rest Area", dated 4/20/23, located at the end of this chapter.
- (2) The 'Ōpihi Rest Area, which includes all state waters and submerged lands within 300 feet from the shoreline between an imaginary line that extends seaward, perpendicular from the shoreline at Point E to 20.658366°, -156.043053° (Point EE) and an imaginary line that extends seaward, perpendicular

from the shoreline at Point F to 20.661982°, -156.039876° (Point FF); as shown on Exhibit C entitled "Map of Kīpahulu CBSFA Kukui Bay Sanctuary and 'Ōpihi Rest Area", dated 4/20/23, located at the end of this chapter.

(c) For the purposes of this chapter, the shoreline shall be determined by the upper reaches of the wash of the waves on shore, as indicated by the vegetation line. Should there be a stream or river flowing into the ocean, the shoreline shall be determined by an imaginary straight line drawn between the upper reaches of the wash of the waves on either side of the stream or river. [Eff

] (Auth: HRS §§188-22.6, 188-53, 190-3) (Imp: HRS §§187A-1.5, 188-22.6, 190-3)

§13-60.11-4 Permitted and prohibited activities.

(a) Nothing in this chapter shall be construed as abridging traditional and customary native Hawaiian rights or as allowing within the Kīpahulu CBSFA any activity or fishing gear otherwise prohibited by law or rules adopted by the Department of Land and Natural Resources or any other department of the State.

(b) The following restrictions apply within the Kīpahulu CBSFA:

- (1) It is unlawful to take or possess more than ten finfish per person per day; provided that akule and introduced or invasive fish species do not count towards the ten finfish bag limit.
- (2) It is unlawful to take any akule for commercial purposes.
- (3) It is unlawful to take or possess more than one 'ōmilu per person per day.
- (4) It is unlawful to take or possess more than two kala per person per day.
- (5) It is unlawful to take or possess any kole less than five inches in length.
- (6) It is unlawful to take or possess any moi:
 - (A) From May through September;

- (B) Less than eleven inches in length; or
 - (C) ~~g~~Greater than eighteen inches in length.
- (7) It is unlawful to take or possess:
- (A) More than forty 'opihi of any species per person per day;
 - (B) Any 'opihi with a shell diameter of less than one and one-fourth inches or greater than two inches;
 - (C) Any 'opihi within the 'Opihi Rest Area; or
 - (D) Any 'opihi while diving.
- (8) It is unlawful to take or possess:
- (A) Any ula or ula pāpapa from May through September; or
 - (B) A combined total of more than two ula or ula pāpapa per person per day.
- (9) It is unlawful to take or possess more than two spotted reef crabs per person per day.
- (10) It is unlawful to take or possess any native limu species with a holdfast or roots attached.
- (11) It is unlawful to engage in surround net fishing using a gill net with a stretched mesh of less than two and three-fourths inches.
- (12) It is unlawful to engage in surround net fishing to take any marine life, except akule and ta'ape.
- (13) It is unlawful to take any marine life using a bag net.
- (14) 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 stretched mesh of less than three inches.
- (15) It is unlawful for any person to use more than two fishing poles, provided that each fishing pole may have only one line, and each line may have no more than two hooks, with each hook having only one point, while at or near the shoreline, except that double

or treble hooks are allowed when using fishing lures.

- (16) Except as provided in subsection (c) of this section, it is unlawful for any person to:
- (A) Take any marine life while using SCUBA gear;
 - (B) Possess both SCUBA gear and marine life at the same time; or
 - (C) Possess both SCUBA gear and fishing gear at the same time.
- (17) During the time period beginning thirty minutes after sunset until thirty minutes before sunrise, it is unlawful to:
- (1A) Take or possess any marine life while diving; or
 - (2B) Possess any fishing gear while diving.
- (18) It is unlawful to take or possess any marine life within the Kukai Bay Sanctuary.

(c) The department may issue a permit to allow any action prohibited under subsection (b)(16) of this section for the purposes of:

- (1) Taking akule while surround net fishing; or
- (2) Taking introduced or invasive species of marine life. [Eff _____] (Auth: HRS §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.6, 188-53, 190-3)

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§13-60.11-5 Transit through Kīpahulu CBSFA with restricted gear and species. Prohibited gear and restricted species as described in section 13-60.11-4 may be possessed while onboard a vessel in active transit through the areas, provided that no prohibited gear is in the water during the transit. Boats that are adrift, anchored, or moored are not considered to be in active transit. [Eff _____] (Auth: HRS §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.6, 188-53, 190-3)

§13-60.11-6 Penalty. (a) Any person who violates any provision of this chapter or the terms and conditions of any permit issued as provided by this chapter, shall be subject to:

- (1) Administrative penalties as provided by section 187A-12.5, HRS;
- (2) Criminal penalties as provided by section 188-70, HRS; and
- (3) Any other penalty as provided by law.

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

§13-60.11-7 Asset forfeiture. Any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of this chapter, may be seized and subject to forfeiture as provided by section 199-7 and chapter 712A, HRS. [Eff ~~and comp~~ _____] (Auth: HRS §190-3) (Imp: HRS §199-7, ch. ~~712A~~)

§13-60.11-8 Severability. If any provision of this chapter, or the application thereof, to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable." [Eff _____] (Auth: HRS §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§1-23, 187A-5, 188-22.6, 188-53, 190-3)

2. The adoption of chapter 13-60.11, 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.

DAWN N.S. CHANG
Chairperson
Board of Land and Natural
Resources

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General

EXHIBIT A: "COMMON NATIVE LIMU SPECIES OF HAWAII" (4/20/23)

Phylum	Species	Hawaiian/Common Name
Rhodophyta	<i>Ahnfeltiopsis flabelliformis</i>	Nei, kō'ele'ele, kō'ele
Rhodophyta	<i>Ahnfeltiopsis concinna</i>	'Aki'aki, 'eleau (Maui)
Rhodophyta	<i>Asparagopsis taxiformis</i>	Kohu, līpehe, līpehu, līpa'akai
Rhodophyta	<i>Gracilaria coronopifolia</i>	Manaua, short ogo (Japanese)
Rhodophyta	<i>Gracilaria parvispora</i>	Manaua loloa, long ogo (Japanese)
Rhodophyta	<i>Grateloupia filicina</i>	Huluhuluwaena, pakeleawa'a
Rhodophyta	<i>Halymenia hawaiiiana</i>	Lepe-o-Hina, lehelehe'īlio, lepelepe-o-Hina, limu-pepe-o-Hina, pā'ū-o-Hi'iaka
Rhodophyta	<i>Laurencia dotyi</i>	Līpe'epe'e, līpēpē
Rhodophyta	<i>Laurencia nidifica</i>	Māne'one'o
Rhodophyta	<i>Laurencia succisa</i>	Līpe'epe'e, līpēpē
Rhodophyta	<i>Pyropia vietnamensis</i>	Pāhe'ehe'e, līpahe'e, līpahe'ehe'e, līpāhoe, pahe'e
Chlorophyta	<i>Codium edule</i>	Wāwae'iole
Chlorophyta	<i>Codium reediae</i>	'A'ala'ula
Chlorophyta	<i>Ulva lactuca</i>	Pālahalaha
Chlorophyta	<i>Ulva prolifera</i>	'Ele'ele
Ochrophyta (Class: Phaeophyceae)	<i>Dictyopteris australis</i>	Līpoa
Ochrophyta (Class: Phaeophyceae)	<i>Dictyopteris plagiogramma</i>	Līpoa
Ochrophyta (Class: Phaeophyceae)	<i>Sargassum aquifolium</i>	Kala
Unknown	Unknown (Description: Looks like limu kohu, except it flattens when taken out of the water; doesn't have a strong smell like limu kohu and tastes spicy)	Pehu

Exhibit B: "Map of the Kīpahulu Community-Based Subsistence Fishing Area, Maui"
(4/20/23)

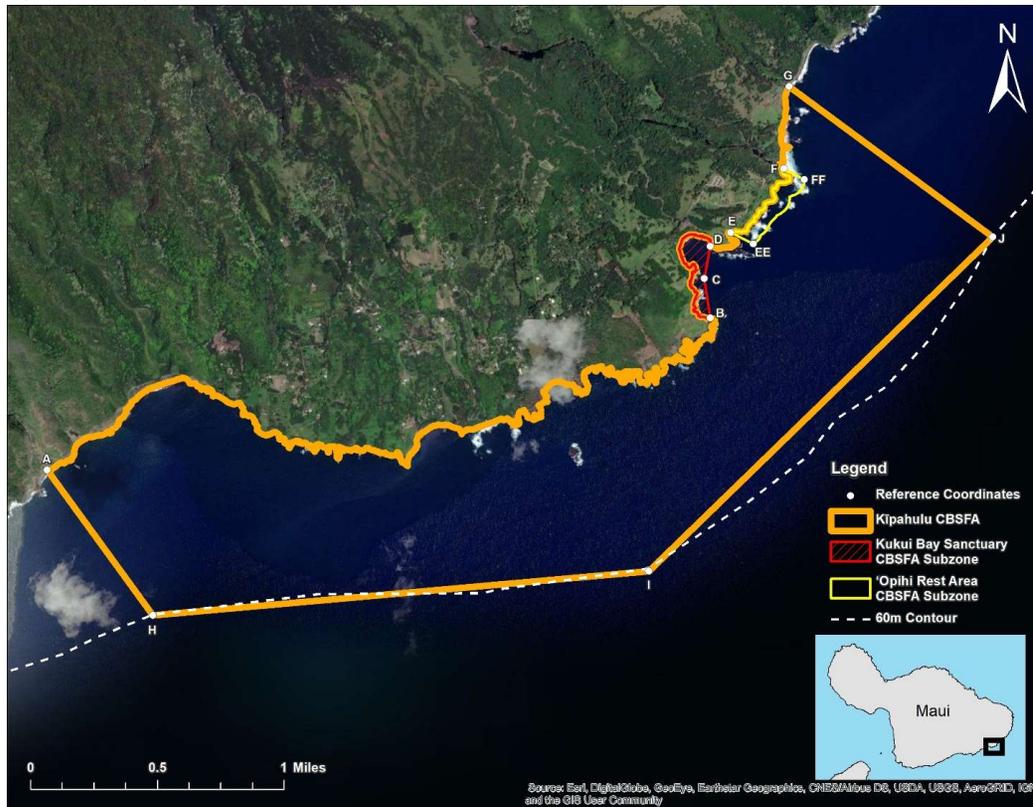
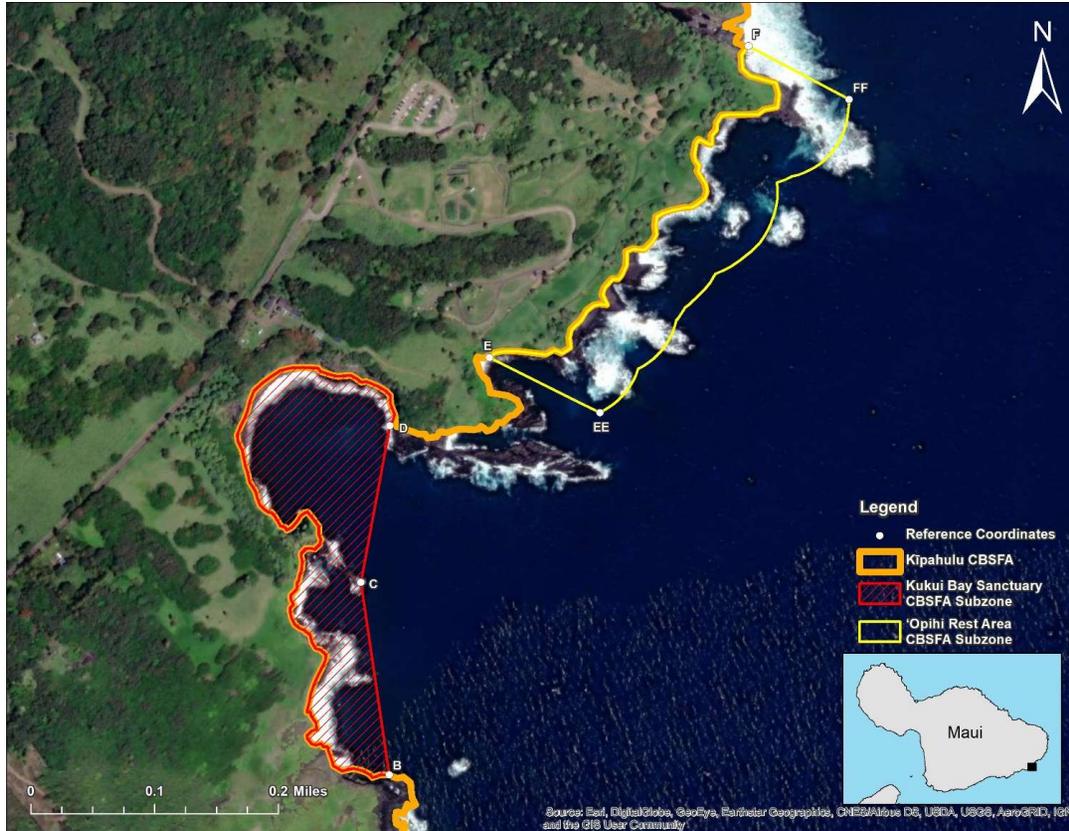


Exhibit C: "Map of the Kukui Bay Sanctuary and the 'Opihi Rest Area" (4/20/23)



DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-60.11
Hawaii Administrative Rules

(Date of adoption)

1. Chapter 13-60.11, Hawaii Administrative Rules, entitled "Kīpahulu Community-Based Subsistence Fishing Area, Maui" is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART II MARINE FISHERIES MANAGEMENT AREAS

CHAPTER 60.11

KĪPAHULU COMMUNITY-BASED SUBSISTENCE FISHING AREA,
MAUI

§13-60.11-1	Purpose
§13-60.11-2	Definitions
§13-60.11-3	Boundaries
§13-60.11-4	Permitted and prohibited activities

§13-60.11-5	Transit through the Kīpahulu Community-Based Subsistence Fishing Area with restricted gear and species
§13-60.11-6	Penalty
§13-60.11-7	Asset Forfeiture
§13-60.11-8	Severability

§13-60.11-1 Purpose. The purposes for this chapter regarding the Kīpahulu Community-Based Subsistence Fishing Area are to:

- (1) Sustainably support the subsistence needs of the Kīpahulu Moku community on the island of Maui through culturally-rooted, community-based management;
- (2) Ensure the sustainability of nearshore ocean resources in the area through effective management practices, including the establishment of limits on the harvest of marine life;
- (3) Recognize and protect customary and traditional native Hawaiian fishing practices that are exercised for subsistence, cultural, and religious purposes in the area;
- (4) Facilitate the substantive involvement of the community in resource management decisions for the area through dialogue with community residents and resource users;
- (5) Establish the 'Opihi Rest Area to ensure stock health and to allow replenishment of this important food resource; and
- (6) Establish the Kukui Bay Sanctuary for the preservation and protection of critical nursery habitat for numerous marine species, including species traditionally relied upon for subsistence. [Eff]
(Auth: HRS §§188-22.6, 188-53, 190-3) (Imp: HRS §§188-22.6, 188-53, 190-3, Haw. Const. art. XI, §6)

§13-60.11-2 Definitions. As used in this chapter, unless otherwise provided:

"Akule" means any fish known as *Selar crumenophthalmus* or other recognized synonyms. Akule are also known as pā`ā`ā, halalū, hahalalū, goggle-eyed scad, or big-eyed scad.

"Area" means the Kīpahulu Community-Based Subsistence Fishing Area, Maui (Kīpahulu CBSFA) as encompassed within the boundaries described in section 13-60.11-3(a).

"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.

"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 visible and made of small mesh to prevent the fish from passing through the mesh.

"Department" means the Department of Land and Natural Resources.

"Community" means a hoā`āina relationship to place as demonstrably indicated through genealogy, practice, or residency.

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

"Double hook" means a hook having two points on a common shank.

"Finfish" means any of the various species of marine life that uses fins to swim, not including invertebrates, marine mammals, or sea turtles.

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

"Fishing" or "to fish" means catching, taking, or harvesting, or attempting to catch, take, or harvest, aquatic life. The use of a pole, line, hook, net, trap, spear, or other gear which is designed to catch, take, 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 caught, taken, or harvested, shall be deemed to be fishing.

"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.

"Fishing lure" means any device, including a fishing fly, which is designed to attract fish and which incorporates a fishing hook.

"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 generally large enough to permit the heads of fish to pass through, ensnaring them around the gills, fins, spines, or mid-section when they attempt to escape.

"Hoa`āina" means ahupua`a tenant.

"Holdfast" means a stalked organ by which limu is attached to a substrate.

"Introduced species" means any species that did not occur naturally in Hawai`i prior to introduction caused by human activity. Introduced species are also referred to as non-native species, alien species, or exotic species.

"Invasive species" means an introduced species of marine life that causes or is likely to cause economic or environmental harm or harm to human health.

"Kala" means any fish known as *Naso unicornis*, *Naso brevirostris*, *Naso annulatus*, or any recognized synonym. Kala are also known as bluespine unicornfish, short-nosed unicornfish, spotted unicornfish, or whitemargin unicornfish.

"Kō'ele" means any limpet known as *Cellana talcosa* or any recognized synonym. Kō'ele are also known as giant 'opihi, talc limpet, or turtle limpet.

"Kole" means any fish known as *Ctenochaetus strigosus* or any recognized synonym. Kole are also known as kole tang, spotted surgeonfish, goldring surgeonfish, or yellow-eyed tang.

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

"Makaiāuli" means any limpet known as *Cellana exarata* or any recognized synonym. Makaiāuli are also known as blackfoot 'opihi or Hawaiian blackfoot.

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

"Moi" means any fish known as *Polydactylus sexfilis* or any recognized synonym. Moi are also known as six-fingered threadfin or yellowthread threadfin.

"Native species" means a species that occurs naturally in Hawai'i. Native species include both endemic species and indigenous species.

"Native limu" means any limu that occurs naturally in Hawai'i, including but not limited to all species of limu, or any recognized synonyms, listed in Exhibit A entitled "Common Native Limu Species of Hawai'i", dated 4/20/23, located at the end of this chapter.

"'Ōmilu" means any fish known as *Caranx melampygus* or any recognized synonym. 'Ōmilu are also

known as bluefin trevally, blue ulua, bluefin jack, bluefin kingfish, bluefinned crevalle, and spotted trevally.

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

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

"Spotted reef crab" means any crab known as *Carpilius maculatus* or any recognized synonym. Spotted reef crabs are also known as seven-eleven crab, dark-finger coral crab, and large spotted crab.

"State" means the state of Hawai`i.

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

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

"Surround net fishing" 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 gill net. The main characteristics of surround 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.

"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.

"Ta`ape" means any fish known as *Lutjanus kasmira* or any recognized synonym. Ta`ape are also known as bluestripe snapper.

"Treble hook" means a hook having three points on a common shank.

"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.

"Ula" means any spiny lobster of the genus *Panulirus*. Ula are also known as lobster, Hawaiian spiny lobster, spiny lobster, red lobster, or green lobster.

"Ula pāpapa" means any crustacean of the species *Scyllarides squammosus* or *Scyllarides haanii*, or any recognized synonym. Ula pāpapa are also known as ula 'āpapapa, slipper lobster, ridgeback slipper lobster, or shovel-nosed lobster. [Eff] (Auth: HRS §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.6, 188-53, 190-3)

§13-60.11-3 Boundaries. (a) The Kīpahulu CBSFA includes that portion of the southeast coast of the island of Maui consisting of all state waters and submerged lands from Kālepa Gulch in the west to 'Ohe'o Gulch in the east, from the shoreline out to approximately 60 meters in depth. The boundaries of the Kīpahulu CBSFA are described by western and eastern boundary lines, landward and seaward boundary lines, and five reference points (A, G, H, I, and J) identified by their latitude and longitude coordinates as follows:

- (1) Point A is the westernmost point of the Kīpahulu CBSFA along the shoreline, located at 20.646167°, -156.086300.
- (2) Point G is the easternmost point of the Kīpahulu CBSFA along the shoreline, located at 20.667318°, -156.040689°.
- (3) The landward boundary of the Kīpahulu CBSFA is an imaginary line drawn along the shoreline from Point A to Point G.
- (4) The western boundary of the Kīpahulu CBSFA is an imaginary straight line drawn

perpendicular to the shore at Point A out to Point H, located on the 60-meter depth contour at 20.637752°, -156.080016°.

- (5) The seaward boundary of the Kīpahulu CBSFA consists three points along the 60-meter depth contour connected by imaginary straight lines beginning at Point H; then to Point I, located at 20.639762°, -156.049777°; then to Point J, located at 20.658495°, -156.028482°.
- (6) The eastern boundary of the Kīpahulu CBSFA consists of an imaginary straight line drawn perpendicular to the shore at Point G to Point J.

The foregoing boundaries and reference points are shown on Exhibit B entitled "Map of the Kīpahulu Community-Based Subsistence Fishing Area, Maui", dated 4/20/23, located at the end of this chapter.

(b) The following sub-zones are established within the Kīpahulu CBSFA:

- (1) The Kukui Bay Sanctuary, which includes all state waters and submerged lands bounded by the shoreline boundary of the Kīpahulu CBSFA from Puhilele Point in the west at 20.654171°, -156.045763° (Point B) to a point on the inside of Kukui Bay at 20.658259°, -156.045675° (Point D), a straight line from Point D to Submarine Point in the west at 20.656429°, -156.046071° (Point C), and a straight line from Submarine Point at Point C to Puhilele Point at Point B; as shown on Exhibit C entitled "Map of the Kukui Bay Sanctuary and 'Ōpihi Rest Area", dated 4/20/23, located at the end of this chapter.
- (2) The 'Ōpihi Rest Area, which includes all state waters and submerged lands within 300 feet from the shoreline between an imaginary line that extends seaward, perpendicular from the shoreline at Point E to 20.658366°, -156.043053° (Point EE) and an imaginary line that extends seaward, perpendicular

from the shoreline at Point F to 20.661982°, -156.039876° (Point FF); as shown on Exhibit C entitled "Map of Kīpahulu CBSFA Kukui Bay Sanctuary and 'Opihi Rest Area", dated 4/20/23, located at the end of this chapter.

(c) For the purposes of this chapter, the shoreline shall be determined by the upper reaches of the wash of the waves on shore, as indicated by the vegetation line. Should there be a stream or river flowing into the ocean, the shoreline shall be determined by an imaginary straight line drawn between the upper reaches of the wash of the waves on either side of the stream or river. [Eff

] (Auth: HRS §§188-22.6, 188-53, 190-3) (Imp: HRS §§187A-1.5, 188-22.6, 190-3)

§13-60.11-4 Permitted and prohibited activities.

(a) Nothing in this chapter shall be construed as abridging traditional and customary native Hawaiian rights or as allowing within the Kīpahulu CBSFA any activity or fishing gear otherwise prohibited by law or rules adopted by the Department of Land and Natural Resources or any other department of the State.

(b) The following restrictions apply within the Kīpahulu CBSFA:

- (1) It is unlawful to take or possess more than ten finfish per person per day; provided that akule and introduced or invasive fish species do not count towards the ten finfish bag limit.
- (2) It is unlawful to take any akule for commercial purposes.
- (3) It is unlawful to take or possess more than one 'ōmilu per person per day.
- (4) It is unlawful to take or possess more than two kala per person per day.
- (5) It is unlawful to take or possess any kole less than five inches in length.
- (6) It is unlawful to take or possess any moi:
 - (A) From May through September;

- (B) Less than eleven inches in length; or
 - (C) Greater than eighteen inches in length.
- (7) It is unlawful to take or possess:
- (A) More than forty 'opihi of any species per person per day;
 - (B) Any 'opihi with a shell diameter of less than one and one-fourth inches or greater than two inches;
 - (C) Any 'opihi within the 'Opihi Rest Area; or
 - (D) Any 'opihi while diving.
- (8) It is unlawful to take or possess:
- (A) Any ula or ula pāpapa from May through September; or
 - (B) A combined total of more than two ula or ula pāpapa per person per day.
- (9) It is unlawful to take or possess more than two spotted reef crabs per person per day.
- (10) It is unlawful to take or possess any native limu species with a holdfast or roots attached.
- (11) It is unlawful to engage in surround net fishing using a gill net with a stretched mesh of less than two and three-fourths inches.
- (12) It is unlawful to engage in surround net fishing to take any marine life, except akule and ta'ape.
- (13) It is unlawful to take any marine life using a bag net.
- (14) 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 stretched mesh of less than three inches.
- (15) It is unlawful for any person to use more than two fishing poles, provided that each fishing pole may have only one line, and each line may have no more than two hooks, with each hook having only one point, while at or near the shoreline, except that double

or treble hooks are allowed when using fishing lures.

- (16) Except as provided in subsection (c) of this section, it is unlawful for any person to:
 - (A) Take any marine life while using SCUBA gear;
 - (B) Possess both SCUBA gear and marine life at the same time; or
 - (C) Possess both SCUBA gear and fishing gear at the same time.
- (17) During the time period beginning thirty minutes after sunset until thirty minutes before sunrise, it is unlawful to:
 - (A) Take or possess any marine life while diving; or
 - (B) Possess any fishing gear while diving.
- (18) It is unlawful to take or possess any marine life within the Kukui Bay Sanctuary.

(c) The department may issue a permit to allow any action prohibited under subsection (b)(16) of this section for the purposes of:

- (1) Taking akule while surround net fishing; or
- (2) Taking introduced or invasive species of marine life. [Eff _____] (Auth: HRS §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.6, 188-53, 190-3)

§13-60.11-5 Transit through Kīpahulu CBSFA with restricted gear and species. Prohibited gear and restricted species as described in section 13-60.11-4 may be possessed while onboard a vessel in active transit through the areas, provided that no prohibited gear is in the water during the transit. Boats that are adrift, anchored, or moored are not considered to be in active transit. [Eff _____] (Auth: HRS §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.6, 188-53, 190-3)

§13-60.11-6 Penalty. (a) Any person who violates any provision of this chapter or the terms and conditions of any permit issued as provided by this chapter, shall be subject to:

- (1) Administrative penalties as provided by section 187A-12.5, HRS;
- (2) Criminal penalties as provided by section 188-70, HRS; and
- (3) Any other penalty as provided by law.

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

§13-60.11-7 Asset forfeiture. Any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of this chapter, may be seized and subject to forfeiture as provided by section 199-7 and chapter 712A, HRS. [Eff _____] (Auth: HRS §190-3) (Imp: HRS §199-7, ch. 712A)

§13-60.11-8 Severability. If any provision of this chapter, or the application thereof, to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable." [Eff _____] (Auth: HRS §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§1-23, 187A-5, 188-22.6, 188-53, 190-3)

2. The adoption of chapter 13-60.11, 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.

DAWN N.S. CHANG
Chairperson
Board of Land and Natural
Resources

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General

EXHIBIT A: "COMMON NATIVE LIMU SPECIES OF HAWAI'I" (4/20/23)

Phylum	Species	Hawaiian/Common Name
Rhodophyta	<i>Ahnfeltiopsis flabelliformis</i>	Nei, kō'ele'ele, kō'ele
Rhodophyta	<i>Ahnfeltiopsis concinna</i>	'Aki'aki, 'eleau (Maui)
Rhodophyta	<i>Asparagopsis taxiformis</i>	Kohu, līpehe, līpehu, līpa'akai
Rhodophyta	<i>Gracilaria coronopifolia</i>	Manauea, short ogo (Japanese)
Rhodophyta	<i>Gracilaria parvispora</i>	Manauea loloa, long ogo (Japanese)
Rhodophyta	<i>Grateloupia filicina</i>	Huluhuluwaena, pakeleawa'a
Rhodophyta	<i>Halymenia hawaiiiana</i>	Lepe-o-Hina, lehelehe'īlio, lepelepe-o-Hina, limu-pepe-o-Hina, pā'ū-o-Hi'iaka
Rhodophyta	<i>Laurencia dotyi</i>	Līpe'epe'e, līpēpē
Rhodophyta	<i>Laurencia nidifica</i>	Māne'one'o
Rhodophyta	<i>Laurencia succisa</i>	Līpe'epe'e, līpēpē
Rhodophyta	<i>Pyropia vietnamensis</i>	Pāhe'ehe'e, līpahe'e, līpahe'ehe'e, līpāhoe, pahe'e
Chlorophyta	<i>Codium edule</i>	Wāwae'iole
Chlorophyta	<i>Codium reediae</i>	'A'ala'ula
Chlorophyta	<i>Ulva lactuca</i>	Pālahalaha
Chlorophyta	<i>Ulva prolifera</i>	'Ele'ele
Ochrophyta (Class: Phaeophyceae)	<i>Dictyopteris australis</i>	Līpoa
Ochrophyta (Class: Phaeophyceae)	<i>Dictyopteris plagiogramma</i>	Līpoa
Ochrophyta (Class: Phaeophyceae)	<i>Sargassum aquifolium</i>	Kala
Unknown	Unknown (Description: Looks like limu kohu, except it flattens when taken out of the water; doesn't have a strong smell like limu kohu and tastes spicy)	Pehu

Exhibit B: "Map of the Kīpahulu Community-Based Subsistence Fishing Area, Maui"
(4/20/23)

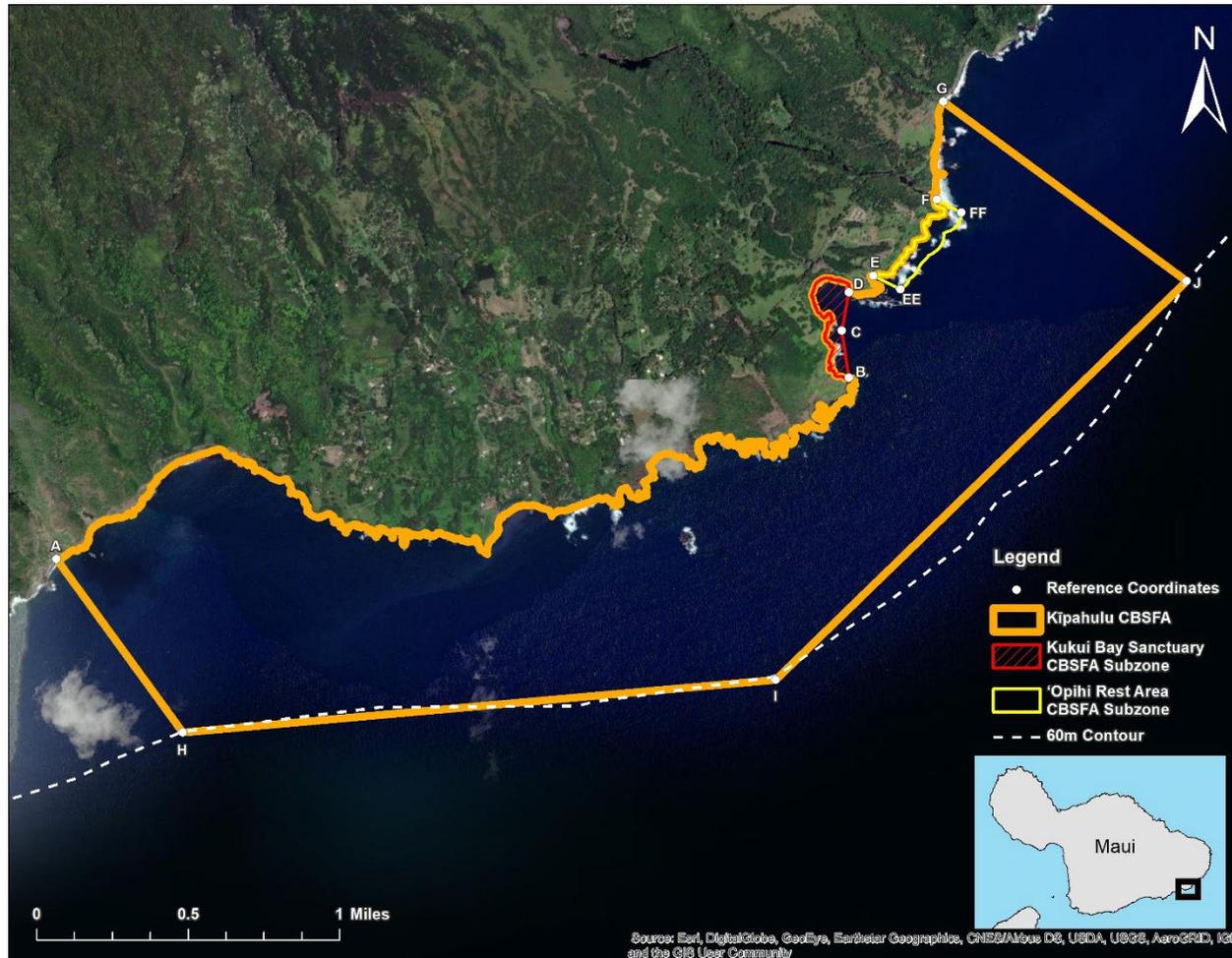


Exhibit C: "Map of the Kukui Bay Sanctuary and the 'Opihi Rest Area" (4/20/23)

