

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

December 7, 2023

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

**Request for Final Approval to Adopt Proposed Amendments to and
Compilation of Hawaii Administrative Rules Chapters 13-31, "Molokini
Shoal Marine Life Conservation District, Maui," 13-230, "General
Provisions," and 13-257, "Day-Use Mooring Rules"**

Submitted for your consideration and approval is a request to adopt the proposed amendments to and compilation of:

- 1) **Hawaii Administrative Rules (HAR) chapter 13-31, "Molokini Shoal Marine Life Conservation District, Maui," (Molokini MLCD or MLCD)** to prohibit any commercial activity involving swimming, snorkeling, diving, kayaking, or paddling without a valid Molokini MLCD Use Permit, to prohibit anchoring within the Molokini MLCD, to update the Molokini MLCD Use Permit fee schedule, and to grant discretion to the Department of Land and Natural Resources (DLNR or Department) to waive permit fees in certain circumstances;
- 2) **HAR chapter 13-230, "General Provisions,"** to add necessary definitions;
- 3) **HAR chapter 13-257, "Day-Use Mooring Rules," Subchapter 1, "General Provisions,"** to set a maximum time limit of two and one half hours for use of any day-use mooring, to prohibit overnight use of day-use moorings, to clarify where anchoring is allowed, to add provisions guiding the installation of day-use moorings, to add a day-use mooring buoy site proposal requirement for DLNR, to require DLNR to maintain a public listing of sanctioned day-use mooring buoys, to prohibit rafting of vessels from any day-use mooring buoy, to clarify that any vessel owner or operator assumes the sole risk of using any day-use mooring, and to provide specific exemptions to the day-use mooring rules;
- 4) **HAR chapter 13-257, "Day-Use Mooring Rules," Subchapter 2, "Day-Use Moorings, Island of Hawai'i,"** to repeal the day-use mooring zones for the island of Hawai'i; and

- 5) **HAR chapter 13-257, “Day-Use Mooring Rules,” Subchapter 4, “Day-Use Mooring Area, Molokini Shoal Marine Life Conservation District,”** to clarify the boundaries and remove the mooring zones of the Molokini Island Day-Use Mooring Area, to update the fee schedule for commercial use of a day-use mooring within the Molokini Day-Use Mooring Area, to clarify that the commercial day-use mooring fees are in addition to fees required under HAR §13-31-5, to update rules for recreational day-use moorings within the Molokini Day-Use Mooring Area and recreational use of commercial day-use moorings, to prohibit all anchoring within the Molokini Day-Use Mooring Area, and to update the map for the Molokini Island Day-Use Mooring Area.

Additionally, the Division of Aquatic Resources (DAR), in collaboration with the Division of Boating and Ocean Recreation (DOBOR), has taken this opportunity to add other non-substantive, stylistic housekeeping amendments for clarity and consistency throughout each of the chapters listed above.

PURPOSE

The Molokini MLCD was initially established in 1977. The area is located about 3 miles from Maui in the middle of the ‘Alalākeiki Channel, and includes 77 acres of submerged basalt rocks, coral reefs, and sand channels. Although the area was established as a strict no-take reserve, there was no identified concern with non-extractive marine tourism activity at that time and therefore, no rules were established to control or set limits on this type of activity. Recent scientific peer-reviewed studies highlight the need to take a close look on crowding concerns within the Molokini MLCD.¹ To that end, DAR staff began a careful review of the commercial use patterns within the MLCD and began a process in 2018 to involve and consult with stakeholders in the development of updated rules that would better address the current situation within the MLCD and that would help reduce and/or prevent future impacts to the unique and fragile marine resources of the area. This rules package is a direct result of that extensive consultation process.

¹ In 2009, a comprehensive human use and social carrying capacity study found that over two thirds of all respondents reported feeling crowded by the number of people and boats while they were at Molokini. This same study suggested 50% of those surveyed felt an acceptable number of boats within the MLCD would be between twelve large vessels and seventeen small vessels.

In 2016 and 2017, a study was conducted to look into the movement patterns of key reef predators while collecting information on noise within the MLCD and correlating this with use data submitted by permitted commercial operators which found that 50% of the ‘ōmilu (Bluefin Trevally) were displaced from their preferred shallow reef habitat when there were more than twelve vessels within the MLCD. A follow up study was conducted in 2020 to evaluate the effects of the COVID-19 shutdown on commercial tours to Molokini and the subsequent return of visitors through early 2021 which found a rapid and significant increase in fish biomass within the MLCD during the COVID-19 shutdown; then, with the return of visitors to Molokini, the fish biomass rapidly dropped back to pre-pandemic levels.

BACKGROUND

At the May 26, 2023 Board of Land and Natural Resources (Board) Meeting, DAR and DOBOR briefed the Board on this proposal. Then, on July 13, 2023, the Board of Land and Natural Resources (Board) approved DAR's and DOBOR's joint request to hold a hybrid² statewide public rulemaking hearing pursuant to Hawaii Revised Statutes (HRS) chapter 91 to amend and compile HAR chapters 13-31, "Molokini Shoal Marine Life Conservation District, Maui," 13-230, "General Provisions," and 13-257 "Day-Use Mooring Rules."

The Department held a hybrid statewide public hearing via Zoom, with an in-person host site at the DAR-Maui Office,³ on Thursday, September 28, 2023 at 5:30 p.m., following publication of notice in the Honolulu Star-Advertiser on Sunday, August 27, 2023. Additionally, written testimony was accepted until Friday, October 13, 2023. Upon closing of the public comment period, the testimony was compiled, reviewed, analyzed, and summarized.

PUBLIC TESTIMONY

Four individuals provided virtual testimony at the public hearing and one individual attended the public hearing at the in-person host site, however, that person did not wish to provide testimony. The Department also received written comments from two individuals with comments and suggestions regarding the proposed amendments to the Day-Use Mooring Rules (HAR ch. 13-257).

Testimony regarding the Molokini MLCD was in support of enhanced management of the area, specifically increased enforcement and education of the rules. Testimony regarding the day-use mooring rules was in general support for the day-use mooring program and its benefits to the coral reefs, urging the continuance and expansion of the day-use mooring program. The minutes from the public hearing, the analysis of public testimony, 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=CWpihTprxKY>

² The format of the public hearing was a hybrid virtual/in-person format with an in-person host site for those wishing to provide in-person testimony on Maui as well as a virtual option via Zoom. The in-person site had a TV, speakers, microphone, and camera setup and was logged into the Zoom meeting that was shown on the TV for all in attendance to watch. Additionally, the Zoom meeting was broadcast onto DAR's YouTube channel for those wishing to view the meeting without providing testimony. The Zoom public hearing officer showed a pre-recorded public hearing presentation on the proposed rules and then collected testimony.

³ The DAR-Maui Office is located at 130 Mahalani Street, Wailuku, Hawai'i 96793.

KA PA'AKAI ANALYSIS

On September 11, 2000, the Hawaii Supreme Court (Court) ruled in *Ka Pa'akai O Ka 'Āina vs. Land Use Commission, State of Hawai'i*⁴ (Ka Pa'akai) that State and government agencies have an obligation to “preserve and protect traditional and customary Native Hawaiian rights” and that an appropriate analytical framework was needed to assess whether these rights were unduly violated.⁵ The Court developed a three-pronged test, dubbed the “Ka Pa'akai Analysis,” which is triggered when government agencies consider proposed uses of land and water resources that may impact the exercise of Native Hawaiian traditional and customary rights.

Although the Court stated that an agency's constitutional obligation to reasonably protect Native Hawaiian traditional and customary practices was widely applicable to all agency actions, the Court did not opine as to whether the Ka Pa'akai Analysis could or should be applied outside of contested case hearings. Then, on March 15, 2023, the Court ruled in *Flores-Case 'Ohana v. University of Hawai'i*⁶ (FCO) that the obligation described in Ka Pa'akai not only applied to contested case hearings, but also to rulemaking actions.⁷ In doing so, the Court provided a modified Ka Pa'akai Analysis to be used in rulemaking actions. The analysis outlined in FCO requires agencies to consider:

- (1) The identity and scope of Native Hawaiian traditional and customary rights affected by the rule, if any;
- (2) The extent to which Native Hawaiian traditional and customary rights will be affected or impaired by the rule; and
- (3) Whether the proposed rules reasonably protect Native Hawaiian traditional and customary rights, if they are found to exist, as balanced with the State's own regulatory right.

Subsequently, the Department has provided the following analysis on this proposal's effects on Native Hawaiian traditional and customary practices:

⁴ [Ka Pa'akai o ka 'Āina v. Land Use Comm'n \(Ka Pa'akai\), 94 Hawai'i 31, 7 p.3d 1068 \(2000\)](#) (Ka Pa'akai)

⁵ “Following up on PASH, we recognized in Ka Pa'akai that in contested case hearings, the State and its agencies have an ‘affirmative duty ... to preserve and protect traditional and customary native Hawaiian rights’ and provided a framework ‘to effectuate the State's obligation to protect native Hawaiian customary and traditional practices while reasonably accommodating competing private interests.” [Flores-Case 'Ohana v. University of Hawai'i, 153 Hawai'i 76, at 83 \(2023\)](#) (quoting Ka Pa'akai at 45-47, 1082-1084)

⁶ [Flores-Case 'Ohana v. University of Hawai'i, 153 Hawai'i 76, \(2023\)](#)

⁷ “In sum, the Ka Pa'akai framework applies to administrative rulemaking in addition to contested case hearings. Requiring the State and its agencies to consider Native Hawaiian traditional and customary rights in these contexts effectuate[s] the State's obligation to protect native Hawaiian customary and traditional practices[.]” [Flores-Case 'Ohana v. University of Hawai'i, 153 Hawai'i 76, at 84 \(2023\)](#)

1) Identity and Scope of Native Hawaiian Traditional and Customary Rights Affected by the Rule, if Any

The cultural significance of Molokini as a wahi pana (storied place) is undisputed and evidenced by the numerous references to Molokini throughout traditional Hawaiian mele ko'i honua (creation chants) and documented oral histories of the area that establish the traditional uses of Molokini to include subsistence fishing as well as bird and egg collecting. However, the current proposal updates rules for the commercial activity within the Molokini MLCD as well as rules for the day-use mooring program, which are not, in and of themselves, Native Hawaiian traditional and customary practices and do not directly affect any known Native Hawaiian traditional and customary practices.⁸ Additionally, in support of this conclusion, there was no feedback during preliminary scoping nor testimony received during the public comment period, conducted pursuant to Chapter 91, HRS, that indicated any traditional and customary practices affected by the proposed amendments to HAR chapters 13-31, 13-230, and 13-257.

2) Extent to Which Native Hawaiian Traditional and Customary Rights Will Be Affected or Impaired by the Rule

There were no Native Hawaiian traditional and customary practices identified that are affected by the proposal.⁹

3) Reasonable Protections for Native Hawaiian Traditional and Customary Rights, if They are Found to Exist, as Balanced with the State's Own Regulatory Right

There were no Native Hawaiian traditional and customary practices identified that are affected by the proposal.¹⁰

CHANGES TO PROPOSED RULE AMENDMENTS

Based on the comments received and on internal discussions, the Department has decided to move forward with the proposal without any substantive changes.

⁸ "When undertaking this analysis, the agency is not required to negative any and all native Hawaiian rights claims regardless of how implausible the claimed right may be." [Flores-Case 'Ohana v. University of Hawai'i, 153 Hawai'i 76, 85 \(2023\)](#) (quotation marks omitted) (quoting [State v. Hanapi, 89 Hawai'i 177, 184 \(1998\)](#)).

⁹ "Where no Native Hawaiian right or practice is identified or implicated, the agency may say so in a short statement and the need for analysis ends there." [Flores-Case 'Ohana v. University of Hawai'i, 153 Hawai'i at 85 \(2023\)](#).

¹⁰ "Where no Native Hawaiian right or practice is identified or implicated, the agency may say so in a short statement and the need for analysis ends there." [Flores-Case 'Ohana v. University of Hawai'i, 153 Hawai'i at 85 \(2023\)](#).

However, the Department has incorporated minor, non-substantive edits that were suggested by the Governor's office for clarity.

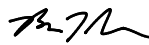
Redline versions of HAR chapters 13-31, 13-230, and 13-257 showing the changes made to the versions that were presented for public hearing are attached as **Exhibit 4**, **Exhibit 5**, and **Exhibit 6**, respectively. The final proposed amendment and compilation of HAR chapters 13-31, 13-230, and 13-257 drafted in Ramseyer format are attached as **Exhibit 7**, **Exhibit 8**, **Exhibit 9**, respectively.
RECOMMENDATIONS:

"That the Board approve the amendment and compilation of Hawaii Administrative Rules chapter 13-31, "Molokini Shoal Marine Life Conservation District, Maui," as set forth in **Exhibit 7** attached hereto."

"That the Board approve the amendment and compilation of Hawaii Administrative Rules chapter 13-230, "General Provisions," as set forth in **Exhibit 8** attached hereto."

"That the Board approve the amendment and compilation of Hawaii Administrative Rules chapter 13-257, "Day-Use Mooring Rules," as set forth in **Exhibit 9** attached hereto."

Respectfully submitted,



BRIAN J. NEILSON, Administrator,
Division of Aquatic Resources

APPROVED FOR SUBMITTAL



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

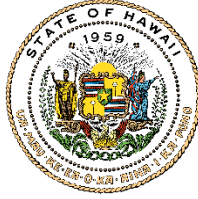
Attachments:

- Exhibit 1 – Public Hearing Minutes
- Exhibit 2 – Analysis of Testimony
- Exhibit 3 – Written Testimony
- Exhibit 4 – Draft HAR 13-31 (Redline Ramseyer Version)
- Exhibit 5 – Draft HAR 13-230 (Redline Ramseyer Version)
- Exhibit 6 – Draft HAR 13-257 (Redline Ramseyer Version)
- Exhibit 7 – Draft HAR 13-31 (Ramseyer Format)
- Exhibit 8 – Draft HAR 13-230 (Ramseyer Format)
- Exhibit 9 – Draft HAR 13-257 (Ramseyer Format)

Item F-2, Exhibit 1

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

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CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

LAURA H.E. KAAKUA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES
ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

PUBLIC HEARING MINUTES

Amendments to and Compilation of Hawaii Administrative Rules Chapters 13-31, "Molokini Shoal Marine Life Conservation District, Maui," 13-230, "General Provisions," and 13-257, "Day-Use Mooring Rules"

Hearing Date: September 28, 2023, 5:30 p.m.
Hearing Type: Hybrid Zoom with In-Person Host Site
Host Site Location: Division of Aquatic Resources-Maui Office
130 Mahalani Street
Maui, Hawai'i 96793

Please visit the DAR YouTube Channel at <https://youtu.be/Lf0J7snVFjM> for the full recording of the public hearing proceedings and all the testimony given at this public hearing

I. INTRODUCTION

A. Opening Remarks

1. Introductions
2. Call to order (5:32 p.m.)
3. Brief description of the proposal
4. Availability of draft rules for review
5. How to watch YouTube live stream

B. Purpose, Approval, and Notice

1. Purpose of the public hearing
2. Approval to conduct this public hearing was obtained from the Board of Land and Natural Resources at their board meeting on July 23rd, 2023.
3. The Legal Notice of this public hearing was published in the August 27, 2023 Sunday issue of the Honolulu Star Advertiser. Additionally, notice of this public hearing was posted on the Draft Rules and Public Notices page of the DAR website (where digital copies of the draft rules in Ramseyer format can be found) as well as posted on the Announcements page of the DAR website.

C. Hearing Procedures

1. Step-by-step overview of how the hearing will be conducted

2. Instructions on how to provide testimony
3. Step-by-step instructions on how testimony will be collected

II. PRE-RECORDED SLIDES WITH VOICE OVER

A. Proposed amendments to Hawaii Administrative Rules Chapter 13-31, “Molokini Shoal Marine Life Conservation District, Maui”

1. Brief description and summary of the proposed amendments to HAR chapter 13-31.

B. Proposed amendments to Hawaii Administrative Rules Chapter 13-230, “General Provisions”

1. Brief description and summary of the proposed amendments to HAR chapter 13-230.

C. Proposed amendments to Hawaii Administrative Rules chapter 13-257, “Day-Use Mooring Rules”

1. Brief description and summary of the proposed amendments to HAR chapter 13-257.

III. TESTIMONIES

A. Collection of Oral/Video Testimonies

1. YouTube live streaming reminder for those not wishing to provide testimony but still wish to view the proceedings
2. Reminder on how to provide testimony and the process that testimony will be collected
3. Collection of in-person testimony on **Maui** [No one wished to testify]
4. Collection of Zoom testimony [Names were called according to the order they registered for the Zoom link]
5. Last call for all others wishing to provide testimony who were not called or for those wishing to provide additional testimony

B. Written Testimony

1. Announcement of deadline to provide written testimony: **Friday, October 13, 2023**
2. Instructions on how to provide written testimony via postal mail or via e-mail

IV. NEXT STEPS AND ADJOURNMENT

C. Extended Timeline

1. Outline of the projected timeline of the rules
2. Last call for questions

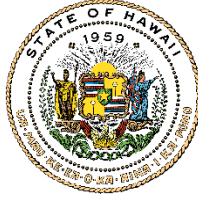
D. Adjournment

1. On behalf of the Board of Land and Natural Resources and DAR, mahalo for attending this public hearing. It is now **6:02 p.m.** and this public hearing is now adjourned. Thank you for taking time out from your day to participate in this public hearing.

Item F-2, Exhibit 2

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
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**ANALYSIS OF PUBLIC HEARINGS AND TESTIMONY ON PROPOSED
AMENDMENT AND COMPILATION OF HAR CHAPTERS
13-31, "MOLOKINI SHOAL MARINE LIFE CONSERVATION DISTRICT, MAUI,"
13-230, "GENERAL PROVISIONS," AND 13-257, "DAY-USE MOORING RULES"**

I. BACKGROUND

The Department held the hybrid statewide public hearing via Zoom, with an in-person host site at the Division of Aquatic Resources (DAR)-Maui Office,¹ on Thursday, September 28, 2023 at 5:30 p.m., following publication of notice in the Honolulu Star-Advertiser on Sunday, August 27, 2023. Four individuals provided virtual testimony at the public hearing and one individual attended the public hearing at the in-person host site, however, that person did not wish to provide testimony. The Department also received written comments from two individuals with comments and suggestions regarding the proposed amendments to the Day-Use Mooring Rules (HAR ch. 13-257). Testimony regarding the Molokini Marine Life Conservation District (MLCD) was in support of enhanced management of the area, specifically increased enforcement and education of the rules. Testimony regarding the day-use mooring rules was in general support for the day-use mooring program and its benefits to the coral reefs, urging the continuance and expansion of the day-use mooring program; however, there were some recommended edits to the day-use mooring rules that the Department believes are beyond the scope of this proposal and would require further statewide scoping and potentially a standalone rulemaking action in the future to properly address. The following analysis describes the comments and recommendations received in testimony and explains DAR's response, including rationale for moving forward without making any substantive changes to the proposal.

II. TESTIMONY REGARDING AMENDMENTS TO THE RULES RELATING TO THE MOLOKINI SHOAL MARINE LIFE CONSERVATION DISTRICT, MAUI

A. *Request for Increased Compliance and Enforcement Within the Molokini MLCD*

Two individuals that provided testimony via Zoom indicated the need for increased compliance and enforcement within the Molokini MLCD and one

¹ The DAR-Maui Office is located at 130 Mahalani Street, Wailuku, Hawai'i 96793.

individual stated that they had observed poaching within the Molokini MLCD on numerous occasions.

Department Response

One of the main goals of this current proposal is to increase the fee for an MLCD Use Permit in order to support the management needs within the Molokini MLCD. With the revenue from the increased fee for the MLCD Use permit, coupled with the anticipated revenue from the Ocean Stewardship User Fee beginning January 1, 2024, the Department will be able to better address compliance concerns through enhanced education, outreach, and enforcement as well as infrastructure concerns through day-use mooring establishment and maintenance. The Department believes that this comment would be best addressed through internal policy and not as a substantive addition into the rules package at this time. Therefore, we did not make any substantive edits to the proposal based on this comment.

B. Support for Better Stewardship Within the Molokini MLCD

One individual that provided testimony via Zoom indicated the overall need for better stewardship within the Molokini MLCD through increased monitoring with the goal of protecting Molokini from misuse in the future. They also recommended taking into account how noise levels affect the natural environment and incorporating those findings into management decisions within the Molokini MLCD.

Department Response

As mentioned in the informational briefing to the Board, preliminary studies on the effects of underwater noise levels at the Molokini MLCD served as one of the catalysts prompting the development of this proposal. Additionally, the increased revenues from the proposed new, tiered fee schedule for the MLCD Use permit and from the Ocean Stewardship User Fee, the Department will have more resources to contribute to monitoring the various effects of commercial activity within the Molokini MLCD, including noise levels. The Department believes that this comment would be best addressed through internal policy and not as a substantive addition into the rules package at this time. Therefore, we did not make any substantive edits to the proposal based on this comment.

III. TESTIMONY REGARDING AMENDMENTS TO THE DAY-USE MOORING RULES

A. Support for Continuance and Expansion of the Day-Use Mooring Program

One individual that provided testimony via Zoom expressed concern regarding the repeal of the Hawai'i Island day-use moorings; they expressed their support for the day-use mooring program.

Department Response

Although the proposal technically repeals the Hawai'i Island day-use moorings from the rules, the intent of the proposal is to streamline the day-use mooring program by taking the day-use moorings out of the rules and, instead, accounting for them in a publicly available list of day-use moorings that have been approved by the Board of Land and Natural Resources (BLNR). This will allow the Department to implement the day-use mooring program without having to undertake the arduous rulemaking process everytime the Department wishes to add a day-use mooring to the day-use mooring program.

B. *Concerns for Abuse of the Rules to Restrict Access*

One written testimony expressed concerns regarding potential abuse of the rules by private interests to indirectly restrict access to nearshore areas. The testimony highlighted the streamlined buoy installation and approval by the BLNR, coupled with the anchoring restriction 100 yards from an installed day-use mooring, as a potential avenue for reducing the amount of people fronting a beachfront property.

Department Response

The Department acknowledges the concern. However, the Department is confident that the checks and balances that are built into the proposal are sufficient to prevent such a hypothetical situation from becoming reality; the proposal requires anyone wishing to build day-use mooring to first create a day-use mooring management plan. Then, the management plan and mooring would need to be approved by the BLNR, who would be required to “take into account public input, impact upon aquatic resources, use patterns with respect to the proposed site, and any other information relevant to site selection and mooring buoy installation.”²

IV. TESTIMONY WITH COMMENTS AND SUGGESTIONS BEYOND THE SCOPE OF THIS RULEMAKING ACTION

The following comments and suggestions were collected in testimony received both via Zoom and through written testimony. However, the Department believes that addressing these comments require more extensive statewide scoping than what was initially scoped for the limited purposes of this proposal which were to:

- Update the rules for commercial use of the Molokini MLCD;
- Update the day-use mooring rules to align with the proposed amendments to the Molokini MLCD rules and implement the Ocean Stewardship User Fee; and
- Update the day-use mooring rules with the least amount of substantive changes as possible to ensure the rules are understandable and enforceable.

Therefore, the Department has respectfully chosen to not make any substantive changes to the proposal as a result of the comments and suggestion below with

² See **Exhibit 9**, Draft HAR 13-257 (Ramseyer Format) at §13-257-5.

the intent that they will be addressed in a future rulemaking action focused specifically on the Day-Use Mooring program.

A. *Opposition to the Removal of Exception to 2.5-hour Time Limit for Use of a Day-Use Mooring*

One testimony received via Zoom opposed the removal of the exception to the 2.5 time limit for when there is no boat waiting for the day-use mooring.

Department Response

The removal of this exception was included within this proposal based on feedback from the community as well as from the Division of Conservation and Enforcement (DOCARE). The current rule language requires a boat to be actively waiting for a day-use mooring for 2.5 hours before the person on the mooring must relocate; similarly, a DOCARE officer would need to witness a boat waiting for a day-use mooring for 2.5 hours before issuing a citation. Alternatively, the Department sees the value in having a reasonable time limit for the use of a day-use mooring to allow equitable and fair use for all boaters wishing to use a day-use mooring. The Department believes that the current proposal makes the least substantive change required to make the rule usable and enforceable.

B. *Opposition to the New Prohibition on Rafting*

One individual who provided written testimony opposed the prohibition on rafting because rafting promotes ocean safety by reducing the amount of “live” boats while swimmers and snorkelers are in the water and reduces the impact on the environment because if boats are able to raft, they are not forced to drop anchor.

Department Response

There are currently no restriction on rafting of vessels when using a day-use mooring. Due to the high variability in vessel sizes, rafting poses a potentially high risk of damage to day-use moorings. Additionally, the complex analysis required to safely establish a limited rafting allowance is beyond the scope of this proposal. Therefore, the Department has decided to not make any substantive changes to this proposal to address this concern and feels that the concern will be better addressed in the future when the Department undertakes a separate, standalone rulemaking action focused specifically on the Day-Use Mooring program.

B. *Opposition to the Prohibition on Anchoring Within 100 Yards of a Day-Use Mooring*

One individual who testified via Zoom and one written testimony opposed the prohibition on anchoring within 100 yards of a day-use mooring.

Department Response

This restriction was already within HAR chapter 13-257, "Day-Use Mooring Rules," and this proposal makes non-substantive changes to the section with this provision for clarity. Subsequently, a substantive change (i.e. removing the provision or reducing the distance) will likely require starting the Chapter 91 process over again. The concern will be noted for the future when the Department undertakes a separate, standalone rulemaking action focused specifically on the Day-Use Mooring program.

C. Request for Removal of Illegal Moorings and Preventing Future Moorings at Keahuolū, Kona, Hawai'i Island

One individual who provided written testimony expressed concerns on illegal moorings and lack of enforcement and/or management of who uses the day-use moorings and how they are used.

Department Response

The Department believes that this concern is better addressed through Department policy and not through rulemaking. However, the concern will be noted for the future when the Department undertakes a separate, standalone rulemaking action focused specifically on the Day-Use Mooring program.

Item F-2, Exhibit 3

From: [Paka Davis](#)
To: [DLNR.AR.Rulemaking](#)
Subject: [EXTERNAL] Written Testimony for Molokini MLCD and Day-Use Mooring Amendments
Date: Friday, October 13, 2023 11:45:02 AM

Aloha,

As an individual citizen, I would like to submit testimony against illegal moorings, on my own behalf.

There are moorings along the Kona Coastline, specifically offshore of Keahuolū Ahupua‘a, that are used inconsistent with adjacent uses, inconsistent with current conservation and monitoring efforts of Keahuolū ahupua‘a, and inconsistent with traditional practices.

Keahuolū ahupua‘a is used to support children and fulfill the mission of Lili‘uokalani Trust, established in 1909 by Queen Lili‘uokalani. Commercial boat uses, are inconsistent with those efforts. There have been naked snorkel tour boats using those moorings that have been sighted within near proximity to the shoreline where children are. This is absolutely unacceptable.

Keahuolū is undergoing active mālama from mauka to makai, including fish survey monitoring through a partnership. Moorings that are set in ko‘a are inconsistent with conservation efforts and the traditional practice of ‘ōpelu fishing through techniques specific to this ahupua‘a. The mālama work that is happening from mauka to makai is to support the eventual return of traditional practices, including ‘ōpelu fishing.

Removing illegal moorings and preventing future moorings along the coastline of Keahuolū would be great.

Mahalo,
Kevin Pakamiaiaea Davis

TESTIMONY REGARDING THE PROPOSED AMENDMENT AND COMPILATION OF HAR 13-31, "MOLOKINI SHOAL MARINE LIFE CONSERVATION DISTRICT, MAUI," 13-230, "GENERAL PROVISIONS," AND 13-257, "DAY-USE MOORING RULES"

Aloha DAR, and mahalo for the opportunity to provide testimony regarding these proposed rule changes. My name is Dane Knezek, and I have worked in the boating and tourism industry in Hawaii for over 15 years. During my career working in the near-shore marine environment, I have seen and respected the good work of the DAR, particularly those in the Kona office. I have supported your work and collaborated with you on several projects and initiatives. DAR has supported my work and study of our environment as well. In my experience, the DAR does a good job of adhering to and upholding the DLNR's mission of enhancing, protecting, conserving and managing Hawaii's resources in partnership with public and private sectors. I appreciate this partnership, and my ability to provide input. I write to contribute my thoughts about some parts of your proposed amendments to 13-257 "Day-Use Mooring Rules".

I am concerned that some of the rule changes proposed will be detrimental to the environment, decrease safety for ocean users, and infringe on the rights of all to access our shared resources. I ask that you reconsider some of your proposed rule changes relating to the use of Day-Use Moorings. Please consider whether the motivation behind these proposals serves all of our partners equally. Do they fulfill the DLNR mission, and other goals such as increasing safety? And if not, why adopt them?

The Time Limit: As it stands, there is a time limit in place "when another vessel is waiting for the use of that mooring buoy". The imposition of a time limit regardless of whether a vessel is waiting does nothing to fulfill the mission of the DLNR or promote human safety. There are many scenarios where this rule would unreasonably restrict the public's use of our shared environment. Recreational rebreather divers regularly dive from a boat longer than 2.5 hours. Commercial operators routinely conduct two tank dive charters, where they will dive a site for an hour, rest on the surface for an hour, and dive for another hour. Students and researchers spend several hours at a mooring conducting surveys and doing training. Your proposed time limit rule, regardless of whether anyone is waiting for the mooring, restricts the freedom of resource use without a good reason. Will you next limit the ability of the public to put their blanket on the beach for more than 2.5 hours?

The Anchoring Clarification: There is already a rule that states anchoring within 100 yards is prohibited. I understand that the proposed change here is simply to clean up the language considering that "day use moorings" are becoming "day-use moorings", etc. But, I am concerned that the existence of this rule is over-restrictive (echoing other public comments you have received), and if other rule changes in this proposal are passed, there is a risk that the public's access to their rightful lands and waters will be severely restricted.

The Provisions for Installation and Design: In and of themselves, these rule changes are good. I believe it should be easier for the partnership of DLNR/public/private to install day-use moorings, as this reduces the need to drop anchor and protects the reef. However, when taken in the context of some of these other proposed rules, this may have negative consequences. To illustrate: A sinister gazillionaire buys a bunch of land with a sandy bay in front of it. The gazillionaire doesn't want the community of boaters who have traditionally used the bay as an

occasional anchorage to be able to anchor their boats there anymore. The gazillionaire convinces an unprincipled state employee to get a mooring installed in the bay, which is now easier than before. Also unlike before, nobody can be on that mooring for more than 2.5hrs. Also, nobody can anchor near the mooring. DAR has given the sinister gazillionaire an easy way to keep the traditional local population away from what should be a shared resource. Will you next tell us that a picnic table on the beach can only be used for 2.5hrs, and that nobody can lay a towel on the sand within 100 yards of it? The gazillionaire would really appreciate that! Your proposed combination of rules do the same thing. They pave the way for violation of the right of public access. Public access is a core value in Hawaii that deserves protection.

Prohibition of Rafting: There are vessels in Kona that weigh over 30 tons, are over 60' long, stand over 15' high, and have engines that produce over 1200 horsepower. These vessels regularly use the day-use mooring system with success. Your rule would prohibit two vessels that are a COMBINED 10 tons, 42' long, 6' high, and produce less than 300 horsepower from tying to a mooring and rafting to each other. It just doesn't make sense. The reason vessels raft from each other is because more vessels want to use a space than there are moorings available. The boating industry has developed this method of rafting to increase safety and reduce the impact on the environment... When there are snorkelers and divers in the water, rafting means that there is less live boating and increases safety... When vessels raft, that means they don't have to anchor which reduces negative impact on the environment. There is no good reason to ban rafting. If you argue that this is for maintenance of the mooring, refer back to the beginning of this paragraph for debunking. Implementing this rule will reduce human safety and increase the destruction of the marine environment. It should not be included.

I have always considered our local DAR office to be an ally and some of the most pragmatic resource managers in Hawaii. I hope you can apply that quality to the evaluation of these proposed rules, and that you will consider only implementing rules that serve the partnership rather than restrict and damage it.

Mahalo,
Dane Knezek

Item F-2, Exhibit 4

Amendment and Compilation of Chapter 13-31
Hawaii Administrative Rules

(Date adopted)

1. Chapter 13-31, Hawaii Administrative Rules, entitled "Molokini Shoal Marine Life Conservation District, Maui", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART 1 MARINE LIFE CONSERVATION DISTRICTS

CHAPTER 31

MOLOKINI SHOAL MARINE LIFE CONSERVATION DISTRICT, MAUI

- §13-31-1 Definitions
- §13-31-2 Boundaries
- §13-31-3 Prohibited activities
- §13-31-4 Allowed activities
- §13-31-5 Exceptions; permits
- §13-31-6 Penalty

Historical note: Chapter 31 of title 13 is based substantially upon regulation 42 of the division of fish and game, department of land and natural resources, State of Hawaii. [Eff 7/8/77; R 5/26/81]

§13-31-1 Definitions. As used in this chapter unless otherwise provided:

~~["Trolling" means trailing a line attached to either a baited hook or artificial lure from a boat moving faster than slow-no-wake speed;~~

~~"Slow-no-wake" means as slow as possible without losing steerage way and so as to make the least possible wake. This would almost always mean speeds of less than five miles per hour;~~

~~"Demonstrate" as is used in section 13-31-5(3) means proof such as in any combination of documents including but not limited to copies of commercial licenses, excise tax reports, brochures, affidavits, etc. The burden of proof lies with the applicant.~~

~~"Active commercial vessel operation" as used in section 13-31-5(3) means use no less than two times every quarter over four quarters (12 months) and greater than eight times per year]~~

"Anchor" means to drop or deploy an anchor into the water. For the purposes of this section, "anchor" does not include attaching to a legal mooring.

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

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

"Slow-no-wake" means as slow as possible without losing steerage way and so as to make the least possible wake. This would almost always mean speeds of less than five miles per hour.

"Take" means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, or harvest, marine 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, marine life by any person who is in the water, or in a vessel on the water, or on or about the shore where marine life can be fished for, caught, captured, confined, or harvested, shall be construed as taking. Any gear, equipment, or tool possessed in the water shall be construed as being in use for the purposes of taking marine life.

"Trolling" means trailing a line attached to either a baited hook or artificial lure from a boat moving faster than slow-no-wake speed. [Eff and comp 9/16/95; am and comp] (Auth: HRS §190-3) (Imp: §§190-3, 190-4.5)

§13-31-2 Boundaries. The Molokini shoal marine life conservation district shall include subzones A and B of that portion of the submerged lands and overlying waters surrounding Molokini islet, county of Maui, as follows:

- (1) Subzone A is defined as that portion of submerged lands and overlying waters within the crater, beginning at a point at the highwater mark of Lalilali Point, then along the highwater mark of the northern shoreline eastward until Pahe'e o Lono Point, then west along a straight line to the end of the submerged ridge (shoal) extending from Lalilali Point, then along the top of the shoal back to the point of beginning; and
- (2) Subzone B is defined as that portion of submerged lands and overlying waters outside the crater, encircling the islet out to 100 yards, seaward of the point of beginning at the highwater mark of Lalilali Point then eastward along the highwater mark of the

southern shoreline of the islet to Pahe'e o Lono Point, then west along a straight line from Pahe'e o Lono Point to the end of the shoal extending from Lalilali Point, then along the top of the shoal back to the point of beginning.

~~[Subzone areas]~~ Subzones A and B are illustrated in Exhibit A entitled "Map of Molokini Shoal Marine Life Conservation District, Maui [1/18/94" attached] ~~Exhibit A entitled "Map of Molokini Shoal Marine Life Conservation District, Maui"~~, dated June 24, 2019, located at the end of this chapter. [Eff 5/26/81; am, ren, and comp 9/16/95; am and comp] (Auth: HRS §190-3) (Imp: HRS §§190-1, 190-2, 190-3)

§13-31-3 Prohibited activities. ~~[No person shall engage in the following activities in]~~ Within the Molokini [shoal marine life conservation district] Shoal Marine Life Conservation District, county of Maui, no person shall:

- (1) ~~[Fish for, catch, take, injure, kill, possess, or remove any finfish, crustacean, mollusk including sea shell and opihi, live coral, algae or limu, or other marine life, or eggs thereof]~~ Take marine life except as provided for in section 13-31-4(1);
- (2) Have or possess in the water, any ~~[spear, trap, net, crowbar,]~~ gear, equipment, tool, or ~~[any]~~ other device that may be used for the taking or altering of ~~[marine life,]~~ any geological feature~~[,]~~ or specimen;
- (3) Take, alter, deface, destroy, possess, or remove any sand, coral, rock, or other geological feature~~[,]~~ or specimen;
- (4) Feed or deliberately introduce any food material, substance, or attractant, directly to or in the vicinity of any marine life, by any means for any purpose except as provided in section 13-31-4(1);

- (5) ~~[Moored boats for commercial activities]~~
Engage in commercial activity involving ocean users getting in or on the water, including but not limited to swimming, snorkeling, diving, kayaking, or paddling, except as provided for in section 13-31-5; or
- (6) Anchor a boat ~~[when a day use mooring system and management plan is established by this department]~~. [Eff 5/26/61; am, ren, and comp 9/16/95; am and comp]
(Auth: §§190-3, 190-4.5) (Imp HRS §§190-1, 190-3, 190-4.5)

§13-31-4 Allowed activities. A person ~~may~~ may ~~[may~~

- (1) ~~Fish for, catch, take, possess, or remove]~~
may take or possess any finfish by trolling in subzone B only ~~[only~~
- (2) ~~Possess in the water, any knife and any shark billy, bang stick, powerhead, or carbon dioxide (CO2) injector for the sole purpose of personal safety].~~ only. [Eff 5/26/81; am, ren, and comp 9/16/95; am and comp] (Auth: HRS §§190-3, 190-4.5) (Imp: HRS §§190-1, 190-3, 190-4.5)

§13-31-5 Exceptions; permits. (a) The

department may issue special activity ~~[permits]~~ special activity permits, not longer than one year in duration, to engage in activities otherwise prohibited by law ~~[and section 13-31-3, under such terms and conditions it deems necessary to carry out the purpose of chapter 190, Hawaii Revised Statutes:~~

- (1) ~~To take]~~ for scientific, educational, management, or propagation ~~[, or other]~~ purposes in conformance with chapter 190 and section 187A-6, Hawaii Revised Statutes ~~[,~~

~~any form of marine life or eggs thereof otherwise prohibited by law;].~~

[+2] (b) Except as provided in chapter 13-257, subchapter 4, the department may issue marine life conservation district commercial use permits to engage in commercial activity, excluding the taking of marine life, with [a marine life conservation district use permit.] the following conditions:

- (1) Each boat shall be required to obtain a separate permit[. An applicant for this permit shall pay a non-refundable permit fee of \$50 valid for a two-year duration.];
- (2) Upon adoption of this chapter, active permits with an expiration date of December 14, 2023, shall have a new expiration date of December 31, 2023. Thereafter, permits shall be valid for not longer than two years and shall expire on December 31 of each odd-numbered year;
- (3) Each permittee shall pay a permit fee at the time of renewal. The fee shall be set based on three categories of passenger capacity: Category 1 for vessels with passenger capacities lower than ~~twenty-five~~²⁵; Category 2 for vessels with passenger capacities ~~from between twenty-five~~²⁵ ~~to and seventy-four~~⁷⁴; and Category 3 for vessels with passenger capacities equal to 75 or more;
- (4) Permit renewal fees shall be set ~~as follows at the following~~: Category 1 = \$1,500; Category 2= \$3,000; and Category 3= \$6,000;
- (5) The department may establish permit terms and conditions that provide for the reduction or waiver of permit fees as the department deems appropriate;
- (6) Prior to [its] the expiration [~~r~~] of the permit, the permittee may apply for reissuance. Unless the permit is reissued,

it shall automatically expire on the expiration ~~date~~. ~~The permittee shall indemnify, defend, and hold harmless the State of Hawaii, its successors, assigns, officers, employees, contractors, and agents from and against any loss, liability, claim or demand for property damage, personal injury and death arising from any act or omission related to this permit~~; ~~date~~;

~~(3)~~ (7) An application for reissuance of this permit shall be accepted only from a commercial operator who ~~[can demonstrate active commercial vessel operation within the Molokini shoal marine life conservation district]~~ possesses a current permit within the twelve-month period immediately prior to the ~~[effective date of these rules]~~ expiration date of their current permit and who possesses a commercial vessel use permit for the use of state boating facilities issued in accordance with section ~~13-231-57~~ [7] 13-231-57 or a commercial vessel registration issued in accordance with section 13-256-4 ~~[. . . . [No application for a permit shall be accepted after ninety days of the effective date of these rules]~~; ~~+~~

(8) The permittee shall indemnify, defend, and hold harmless the State of Hawaii, its successors, assigns, officers, employees, contractors, and agents from and against any loss, liability, claim or demand for property damage, personal injury and death arising from any act or omission related to this permit;

~~(4)~~ (9) The permit shall be incorporated as an addendum to the commercial vessel use permit for the use of state boating facilities issued in accordance with section 13-231-57, or a commercial vessel registration issued in accordance with section 13-256-4;

- [~~(5)~~] (10) The permit shall be non-transferrable, except as [~~provided~~] provided by section 13-231-62; [~~and~~]
- (11) The ~~d~~Department may establish additional permit terms and conditions deemed necessary to minimize any adverse effect within the conservation district; provided that the department shall provide written notice of any change in permit conditions at least ninety calendar days prior to the effective date of the change, except, as determined by the department, when an immediate change in permit conditions is necessary to protect or preserve the conservation district or to protect the health and safety of the public; and
- [~~(6)~~] (12) The board may revoke any permit for any infraction of the terms and conditions of the permit, and a person whose permit is revoked shall not be eligible to renew a permit until the expiration of one year from the date of revocation. [Eff 5/26/81; am 3/2/87; am, ren, and comp 9/16/95; am and comp] (Auth: §§187A-6, 190-3, 190-4.5) (Imp: HRS §§90-3(b), 187A-6, 190-4)

§13-31-6 Penalty. A person violating the provisions of this chapter or the terms and conditions of any permit issued as provided by this chapter, shall be punished as provided by law." [Eff 5/26/81; am, ren, and comp 9/16/95; comp] (Auth: HRS §§190-3, 190-4.5) (Imp: HRS §190-5)

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. These amendments to and compilation of chapter 13-31, 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 (date), and filed with the Office of the Lieutenant Governor.

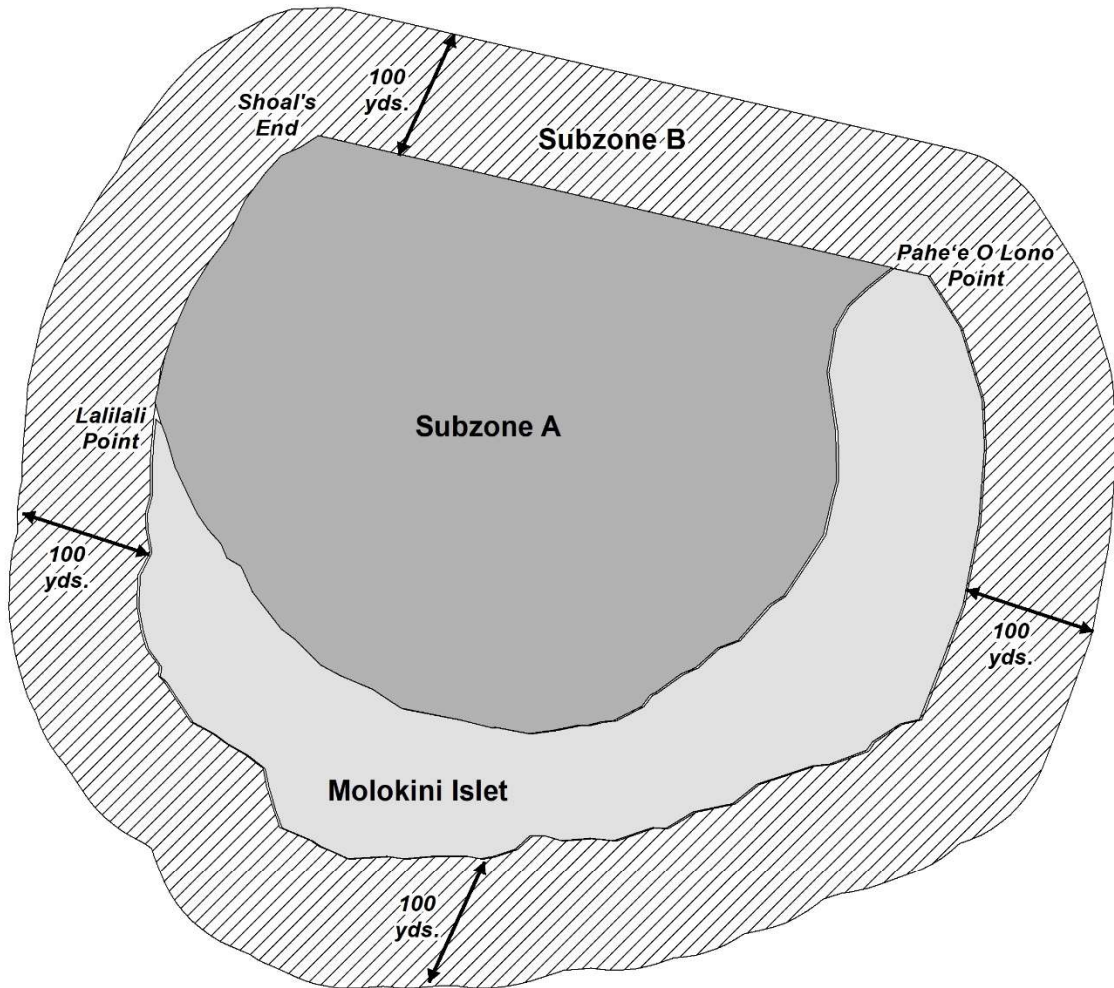
DAWN N. S. CHANG
Chairperson, Board of Land
and Natural Resources

APPROVED AS TO FORM:

Deputy Attorney General

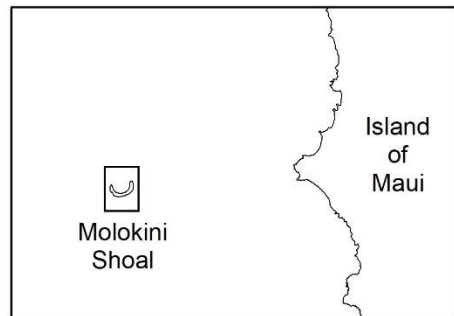
**Exhibit A. Map of Molokini Shoal
Marine Life Conservation District, Maui
June 24, 2019**

0 0.05 0.1 Miles



Legend

-  Molokini Shoal
MLCD: Zone A
-  Molokini Shoal
MLCD: Zone B



Item F-2, Exhibit 5

Amendment and Compilation of Chapter 13-230 Hawaii Administrative Rules

(Date adopted)

1. Chapter 13-230, Hawaii Administrative Rules, entitled "General Provisions", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 11

OCEAN RECREATION AND COASTAL AREAS

PART 1

SMALL BOAT FACILITIES AND PROVISIONS GENERALLY APPLICABLE TO ALL STATE NAVIGABLE WATERS

CHAPTER 230

GENERAL PROVISIONS

Historical note

Subchapter 1 Scope and Definitions

§13-230-1	Purpose and scope
§13-230-2	Interpretation
§13-230-3	Severability
§13-230-4	Penalties and prosecution
§13-230-5	Judicial review
§13-230-6	Notice

- | §13-230-7 Tampering with, defacing, or removing notices
- §13-230-8 Definitions
- §§13-230-9 to 13-230-19 (Reserved)

Subchapter 2 Determination of Residency

- §13-230-20 Purpose
- §13-230-21 Repealed
- §13-230-22 Twelve-month rule
- §13-230-23 Indications of residence
- §13-230-24 Rules of construction
- §13-230-25 Particular categories
- §13-230-26 Determination of residence procedure
- §13-230-27 Permittee required to report change of residence
- §13-230-28 Appeals
- §13-230-29 Misrepresentation

Historical note. This chapter is based on general provisions, definitions, and determination of residency of the small boat harbors rules, effective November 5, 1981, and as amended thereafter, under the jurisdiction of the Department of Transportation, Harbors Division. The administrative jurisdiction for recreational boating and related vessel activities was transferred to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, SLH 1991. [Eff 2/24/94; comp 12/7/13]

SUBCHAPTER 1

SCOPE AND DEFINITIONS

§13-230-1 Purpose and scope. The purpose of these rules is to secure the most effective control

and management of the small boat harbors and facilities of the State in order that the general public may enjoy safe, orderly, and convenient water recreation. These rules are intended to harmonize and coordinate the department's powers and duties with all applicable public laws, and are also intended to govern the use or operation of vessels and the activities of persons in the small boat harbors, shores, ocean waters, and navigable streams of the State. [Eff 2/24/94; comp 12/7/13; comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-230-2 Interpretation. If any section of these rules is inconsistent with any laws of the United States or any rule, or standard established pursuant thereto, such section shall be construed, superseded, or governed thereby. Nothing contained in these rules shall be construed to limit the powers of any state department or agency. Each provision of these rules is also intended to be construed most liberally in light of the purpose stated in section 13-230-1. [Eff 2/24/94; comp 12/7/13; comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-230-3 Severability. The provisions of these rules are declared to be severable and if any portion or the application thereof to any person or property is held invalid for any reason, the validity of the remainder of these rules or the application of such remainder to other persons or property shall not be affected. [Eff 2/24/94; comp 12/7/13; comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-230-4 Penalties and prosecution. (a) Violation of rules, penalty. Any vessel, its agent, owner, or crew that violates the rules of the

department, including vehicular parking or traffic movement and unauthorized discharge, dumping, or abandoning of any petroleum product, hazardous material, or sewage in violation of the state water quality standards established by the department of health, may be fined or deprived of the privilege of operating or mooring any vessel in state waters for a period of not more than thirty days, in accordance with section 200-14, Hawaii Revised Statutes.

(b) General administrative penalties. Except as otherwise provided by law, the board is authorized to set, charge, and collect administrative fines and to recover administrative fees and costs, including attorney's fees and costs, or bring legal action to recover administrative fines and fees and costs, including attorney's fees and costs, or payment for damages or for the cost to correct damages resulting from a violation of subtitle 8 of title 12 or any rule adopted thereunder in accordance with section 200-14.5, Hawaii Revised Statutes. Each day or instance of violation shall constitute a separate offense. [Eff 2/24/94; comp 12/7/13; am 12/31/18; comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-14, 200-14.5) (Imp: HRS §§200-2, 200-3, 200-4, 200-14, 200-14.5)

§13-230-5 Judicial review. Nothing contained in these rules shall be construed to preclude appropriate resort to judicial remedy or review. [Eff 2/24/94; comp 12/7/13; comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-230-6 Notice. Where notice to a permittee, co-owner, lien holder, owner, or any other party is required by this chapter, the department shall effect service by one of the following:

- (1) Posting the notice in a conspicuous place aboard the permittee's vessel or at the assigned berth;

(2) Mailing the notice to the person by certified mail, return receipt requested, at the person's last known address, provided that service by mail is deemed received and completed five days after the date of mailing; or

(3) Personal service;

provided that in an emergency, where life or property is endangered or if a vessel may interfere with other vessels, construction, or maintenance of berthing facilities, or with the free and proper navigation of a waterway unless immediate action is taken, remedial action may be taken by the department without prior notice. [Eff 2/24/94; comp 12/7/13; comp

] (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-230-7 Tampering with, defacing, or removing notices. No person shall tamper with, deface, or remove any notice posted by the department pursuant to section 13-230-6 except the owner of the vessel or the permittee assigned to the berth. [Eff 2/24/94; comp 12/7/13; comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-230-8 Definitions. When used in these rules promulgated pursuant to chapter 200, Hawaii Revised Statutes, unless otherwise specifically provided or the context clearly indicates otherwise:

"Abandon" when applied to animals, means to leave an animal at any location, whether intentionally, recklessly, or negligently, without the owner intending to return for the animal and without the permission of the public or private property owner.

"Adult" means a person who has reached majority.

"Agreement" means the agreement between the boat owner and the State as required by section 13-231-2.

"Anchoring" means to secure a vessel temporarily to submerged land by dropping an anchoring device from a vessel.

"Anchoring device" means a device made of metal or similar material, attached by rope or chain to a vessel, which can be deployed to submerged land to secure the vessel in a particular place.

"Approved" means that a fitting, appliance, apparatus, or item of equipment to be fitted or carried in a vessel, or by any particular arrangement, is sanctioned by the commandant of the Coast Guard, unless otherwise stated by the department.

"Approved backflow prevention device" means a backflow prevention device that meets the requirements contained in standard 1001, American Society of Sanitary Engineers or the Uniform Plumbing Code adopted by the Uniform Plumbing Code adopted by the International Association of Plumbing and Mechanical Officials (IAPMO).

"Approved marine surveyor" means a person who has been approved by the chairperson to inspect a vessel for an owner seeking a permit to moor a vessel in a small boat harbor in accordance with section 13-231-45(h) and (i).

"Approved vessel inspector" means an employee of the department who has been designated by the chairperson to inspect a vessel for compliance with criteria necessary to obtain a mooring permit.

"Assigned berth" means a berth that is assigned to a permittee by a valid regular mooring permit.

"Background" means that portion of the hull or superstructure, or a specially provided backing plate, upon which the numbers are placed, but shall not include any border, trim, outlining, or shading of the numerals or letters.

"Barge" means a non-self-propelled vessel.

"Berth" means any place where a vessel is anchored, moored, or made fast or laid alongside a dock, quay, catwalk, or pier.

"Bicycle" means every device propelled by human power upon which any person may ride, having two tandem wheels which are sixteen inches in diameter or greater, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels.

"Boat" means a small vessel propelled by oars or paddles or by sail or power.

"Boat dealer" means a person engaged wholly or partly, for gain or compensation, in the business of selling vessels or offering vessels for sale, buying or taking in vessels for the purpose of resale, or exchanging vessels.

"Boat livery" means a person or entity who is engaged in the business of renting, leasing, or chartering vessels.

"Boat manufacturer" means a person engaged in:

- (1) The manufacture, construction, or assembly of boats or associated equipment;
- (2) The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly; or
- (3) The importation into the United States for sale of boats, associated equipment, or components thereof.

"Boat owner" means the legal owner of a vessel where there is no security interest held by anyone on the vessel, a buyer under a purchase money security interest, a debtor under any security interest, a demise charterer of a vessel, or a lessee or charterer of a vessel under lease or charter which provides the lessee or charterer with exclusive right to possession of the vessel to the exclusion of the lessor or the person from whom the vessel is chartered. The documentation of ownership must meet the requirements of section 13-241-5(c).

"Recreational boating accident":

- (1) Means a collision, accident, or other casualty involving:
 - (A) A person's death;
 - (B) Complete loss of a vessel;
 - (C) Damage to a vessel amounting to \$2,000 or more;
 - (D) The disappearance of a person from a vessel under circumstances indicating death or injury to that person; or

- (E) The injury to a person requiring medical treatment beyond first aid.
- (2) Includes damage to a vessel or its equipment, loss of life, or injury to any person or object:
 - (A) Caused by a moving vessel's wake, wash, or waves, or by a vessel's capsizing, or collision with another vessel or object;
 - (B) Caused by flooding, fire, or explosion;
 - (C) Caused when a person falls overboard; or
 - (D) On board a vessel.

"Bona fide fishing tournament" means a fishing tournament sponsored by a boat club, fishing club or yacht club, or a business or non-profit organization formed for the primary purpose of sponsoring a fishing tournament where participation is invited from the general public.

"Buoy" means any floating aids to navigation moored to the seabed and used to convey a message.

"Business" means any and all activities engaged in or caused to be engaged in by any person or legal entity, including, but not limited to, solicitations and advertisements, with the object of making a profit or obtaining an economic benefit either directly or indirectly.

"C.F.R." means the Code of Federal Regulations.

"Camping" means the use and occupation of any portion of a state small boat harbor, boat launching facility, or any other property managed by the department as a temporary or permanent dwelling place or sleeping place (including the laying down of bedding for the purpose of sleeping). Camping includes being in possession of a backpack, tents, blankets, tarpaulins, or other obvious camping paraphernalia, or storing personal belongings, or making any fire, or using any tents, shelter, or other structure or vehicle for sleeping or doing any digging or earth breaking or carrying on cooking activities. The above-listed activities constitute camping when it reasonably appears, in light of the circumstances,

that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging.

"Canoe" means outrigger canoe.

"Carrying passengers for hire" means the carriage of any person or persons by a vessel for compensation flowing, whether directly or indirectly, to the owner, charterer, operator, agent, or any other person interested in the vessel.

"Catamaran" means a multi-hulled vessel with a broad, flat deck that is affixed on top of closed cylinders which are used for buoyancy, the basic design of which is usually implemented with two rows of floats as a catamaran or with three rows of floats as a trimaran.

"Certificate" means a certificate of number issued by the department for an undocumented vessel.

"Chairperson" means the chairperson of the board of land and natural resources of the State of Hawaii or the chairperson's duly authorized representative or subordinate.

"Civil union" means a union between two individuals established pursuant to chapter 572B, Hawaii Revised Statutes.

"Civil union partner" means an individual who is a party to a civil union established pursuant to chapter 572B, Hawaii Revised Statutes.

"Coast Guard" means the United States Coast Guard, or its successor agency.

"Colony" means a collective of free-roaming, abandoned, stray, or feral cats.

"Commercial activity" means to engage in any action or attempt to engage in any action designed for profit, which includes, but is not limited to, the exchange or buying and selling of commodities; the providing of services relating to or connected with trade, traffic, or commerce in general; any activity performed by the commercial operator or its employees or agents in connection with the delivery of such commodities or services; and the soliciting of

business, including the display or distribution of notices, business cards, or advertisements for commercial promotional purposes.

"Commercial fishing motorboat" means a motorboat used for taking fish for profit or gain or as a means of livelihood.

"Commercial high speed boating" means the use of an open ocean racing boat to provide high speed rides to passengers who pay compensation for the rides.

"Commercial high speed boating" does not include:

- (1) The use of an open ocean racing boat during an official racing competition; or
- (2) The use of an open ocean racing boat while practicing for a racing competition; provided that no passenger pays compensation for riding the boat during the practice.

"Commercial motorboat" means any motorboat used for hire, profit, or gain.

"Commercial ocean recreation activities" means any ocean recreation activity offered for a fee.

"Commercial purposes" includes the staging, loading, and discharge of passengers or supplies at a state boating facility for further transport to a vessel's offshore location by means of a water taxi or any other vessel, or provisioning a vessel before or after a voyage involving the carriage of passengers for hire.

"Commercial vessel" means a vessel engaged in any trade, business, or commercial activity, including, but not limited to, carrying passengers for hire, charter fishing, bare boat (demise) or any type of charter maintenance, harvesting coral or similar resources, construction, towing, tow-boating, or other trade or business wherein the vessel is used in any manner to promote the venture, or is registered with the State or documented by the United States Coast Guard for commercial use.

"Compensation" means any valuable consideration.

"Contrivance" means any man-made object or artificial arrangement not used or intended to be used for transportation which may be floated upon or suspended within or on the water.

"Day-use mooring buoy" means a mooring buoy that can be used for a maximum of two and one-half hours at a time and overnight mooring is prohibited.

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

"Dinghy" means a small open boat under thirteen feet in length, which may be propelled by oars, sails, or an outboard motor and carried on or towed by a larger boat or yacht.

"Display area" means the area on a sign or buoy used for display of a waterway marker symbol.

"Diver's flag" means a red flag with a white diagonal running from the masthead to lower outside corner.

"Division" means the department of land and natural resources division of boating and ocean recreation.

"Documented vessel" means any vessel which has a valid marine document issued by the Coast Guard, in accordance with the Code of Federal Regulations, Subchapter G, Part 67, Documentation of Vessels.

"Dormant vessel" means a vessel or contrivance, other than a houseboat, that has not been navigated from or has not vacated an assigned mooring or facility within or offshore of a state small boat harbor at least once within a ninety-day period, or cannot be made seaworthy upon thirty days' notice to the owner.

"Enforcement officer" means a police officer and any other state or county officer charged with the enforcement of state laws.

"Federal laws and requirements" means all statutes, regulations, and other laws of the United States, which may be applicable to these rules.

"Feral" means having escaped or been released from domestication and reverted to a wild state and any offspring resulting therefrom.

"Firm" includes a business organization such as a sole proprietorship, partnership, or corporation which is licensed to engage in or conduct business in the State.

"Foreign built vessel" means any vessel whose hull was constructed in a country other than the United States.

"Forward half of the vessel" means any portion of the vessel in front of a point equidistant from the stem and stern of the vessel.

"Free diver" means a person who is using a mask and snorkel, other than for SCUBA diving, who submerges under water or breaks the surface of the water.

"Global Positioning System" (GPS) means the method of terrestrial navigation using a GPS electronic instrument, receiving data from a network of orbiting satellites to locate one's position by latitude and longitude.

"Gross receipts" means all moneys paid or payable to the account of the commercial use permittee or catamaran registration certificate holder, for services rendered, or resulting from trade, business, commerce, or sales by the vessel or water sports equipment owner when the services, trade, business, commerce, or sales have a direct relationship to the vessel or permitted activity.

"Guardian" means a person invested by a court of law with the power, and charged with the duty, of taking care of a person and of managing the property of that person.

["Hanai"] "Hānai" means a child who is taken permanently to be reared, educated, and loved by someone other than natural parents--traditionally a grandparent or other relative. The child is given outright; natural parents renounce all claims to the child. Usually the child is given at infancy.

"Handboard" means any type of surf riding board that is:

- (1) With or without skegs;
- (2) Worn on one or both of the operator's hands;
- (3) Is less than sixteen inches in overall length; and
- (4) Is used for the sport of wave riding.

"Harbor resident" means the owner, co-owner, or their spouse and their legal dependents authorized by

the department to reside on board a vessel used as the principal habitation of the owner.

"Hearing officer" means a person appointed by the chairperson to hear appeals.

"High seas" means all parts of the sea that are not included in the exclusive economic zone, in the territorial sea, or in the internal waters of the United States.

"Highway" means "street" as defined in this section.

"Houseboat" means any vessel which is fitted for use as a permanent or temporary place of habitation, and is either stationary or capable of being moved by oars, sweeps, or towing.

"Hull" means the shell, frame, or body of a vessel, exclusive of masts, yards, sails, riggings, machinery, and equipment.

"Immediate family" means any person ~~[and his or her]~~, the person's spouse, and the person's dependent children under twenty-one years of age.

"Inland waters" mean the waters shoreward of the territorial sea baseline.

"Interest" includes any claim of right, title, ownership of stock, shares, profit, benefit, or gain in a corporation, partnership, joint venture, or any other business entity that has a use permit.

"Kayak" means a watercraft that has an open or covered top and is designed to hold one or more participants and propelled by use of a single- or double-bladed paddle.

"Launch" means a small motorboat that is open or that has the forepart of the hull covered.

"Legal dependent" or "dependent" means those persons who are defined as dependents by law, e.g., a spouse or minor child, or who are defined as dependents under Internal Revenue Service regulations or by the Armed Forces of the United States, or any of the following persons who are dependent upon a permittee for all or a substantial portion of the person's living expenses:

- (1) Spouse;
- (2) A son or daughter who is:

- (A) Unmarried and under eighteen years;
 - (B) Unmarried and under twenty years if a full-time student at a high school, business school, or technical school;
 - (C) Unmarried and under twenty-two years if a full-time undergraduate student at a college; or
 - (D) Unmarried and physically handicapped so as to be incapable of self-support;
- (3) A parent or grandparent if physically handicapped so as to be incapable of self-support; or
- (4) A grandchild, brother, or sister under eighteen years of age.

"Legal owner" includes a person who holds unencumbered title to a vessel or is a secured party under a security interest for the vessel.

"Length" when applied to vessels covered by these rules, means the measurement of a vessel from end to end over the deck. It is a straight-line measurement of the overall length from the foremost part of the vessel measured parallel to the centerline. Bowsprits, boomkins, rudders, motor brackets, and similar fittings or attachments or sheer are not to be included in the measurement. In case of a vessel of an open type or with a cockpit, the measurement is taken between the foremost and aftermost extremities of the hull exclusive of sheer.

In vessels having more than one deck, it is the length measured from the foremost part of the bow to the aftermost part at the stern exclusive of sheer.

"Lienholder" means a person holding a recorded security interest in a vessel.

"Lifeboat" means a boat carried aboard a vessel and used solely for lifesaving purposes, but not including dinghies, tenders, speedboats, or other types of craft carried aboard a vessel and used for other than lifesaving purposes.

"Liquor" or "intoxicating liquor" shall mean the same as defined in section 281-1, Hawaii Revised Statutes.

"Litter" means any and all types of debris and substances, whether liquid or solid, and materials such as garbage, refuse, rubbish, glass, cans, bottles, paper, wrappings, fish or animal carcasses, or any other nauseating or offensive matter or any machinery, appliance, or automobile, or parts thereof, or any other substances which render small boat harbor lands or facilities unsightly, noxious, or otherwise unwholesome to the detriment of the public health and welfare or the enjoyment of the small boat harbor for recreational purposes.

"Livery boat" means a vessel which is rented, leased, or chartered by a person who is engaged in the business of renting, leasing, or chartering vessels.

"Living aboard" means the substantial use of a vessel as a place of abode, dwelling, living quarters, or residence, including, but not limited to, the regular use for such purposes during weekends.

"Machinery" means all internal combustion engines located within the vessel and all motor or mechanical devices capable of propelling vessels.

"Majority" means the age specified under section 577-1, Hawaii Revised Statutes.

"Minor" means a person who has not reached the age of majority.

"Moor" means to secure a boat by making it fast with cables, lines, or anchors.

"Mooring" means a buoy attached by rope or chain to a permanently placed weight or structure situated within a submerged land area and to which a vessel can be made permanently or temporarily secured. "Mooring~~s~~" isare also referred to as a "mooring buoys".

"Motorboat" means any vessel [which] that is equipped with propulsion machinery, including steam. This term includes, but is not limited to, wet bikes, motorized surfboards, and any other vessel temporarily or permanently equipped with a motor.

"Navigable streams" means the waters of estuaries and tributaries of the streams of each island of the State, where boating and water related activities, recreational or commercial, may be carried on, whether the mouths of the streams are physically opened or not

to ocean waters for [~~intra~~] intrastate or interstate commerce or navigation.

"Nonresident" means a person who is not a resident of the State of Hawaii.

"Ocean recreation management area" (ORMA) means ocean waters of the State that have been designated for specific activities as described in chapter 13-256, Ocean Recreation Management Rules and Areas.

"Ocean waters" means all waters seaward of the shoreline within the jurisdiction of the State.

"Open ocean racing boat" means a motorized vessel which:

- (1) Is designed, modified, or restored for the primary purpose of high speed board racing; and
- (2) Has the capacity to carry not more than the operator and five passengers.

"Operate" means to navigate or otherwise use a vessel on or in the waters of the State.

"Operator" means a person who operates, or who has charge of the navigation or use of, a vessel.

"Operator permit" means the permit issued by the department [~~which~~] that authorizes either the direct operation or the offering for a fee of surfboards and sailboards or any vessel, watercraft or water sports equipment on the ocean waters and navigable streams of the State.

"Outrigger canoe" means a canoe having the inclusion of a rig known as an outrigger which acts as a counterpoise or balance, rigged out from the side of the canoe. A number of spars (iako), usually two but up to as many as ten depending on the canoe's origin and purpose, are lashed across and to the canoe gunwales, extending outwards for a given distance and truncating with the attachment of a flotation device (ama).

"Owner" shall be synonymous with the word "boat owner" as defined in this section.

"Paddleboard" means any type of board that [~~is~~]:

- (1) [~~Without~~] Is without skegs;
- (2) Does not exceed four feet in length; and
- (3) Is used for the sport of surfriding.

"Paipo board" shall be synonymous with the word "paddleboard" as defined in this section.

"Parasailing" means the activity in which an individual is transported or carried aloft by a parachute, sail, or other material attached to a towline, which is towed by a vessel.

"Parent" includes legal guardian and legal adoptive parent, except where the guardianship or adoption was acquired primarily to obtain resident status for the ward or adopted child. ~~[It]~~ "Parent" shall also include a person who can legally claim an unmarried minor as a dependent for federal income tax purposes, but only when the person has been in loco parentis to the minor for the twelve-month period immediately preceding the residence determination date.

"Park" or "parking" means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers.

"Passenger" means every person carried on board a vessel other than:

- (1) The owner or the owner's representative;
- (2) The operator;
- (3) Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and are paid for their services; or
- (4) Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for the guest's carriage.

"Person" means any individual, firm, partnership, corporation, trust, association, joint venture, organization, institution, or any other legal entity.

"Personal flotation device" is a technical term for a life preserver that has been approved and certified by the United States Coast Guard and capable of providing at least ninety per cent of factory-rated flotation capacity.

"Pet owner" means any person owning, harboring, or keeping a dog, cat, or other domestic pet, or having custody thereof.

"Power driven catamaran" means a catamaran propelled by machinery whether under sail or not.

"Power-driven vessel" means any vessel propelled by machinery.

"Pram" means a small lightweight nearly flat-bottomed boat with a broad transom and usually square-bow often used as a dinghy.

"Principal owner" means a person whose name appears on a certificate of number as the primary owner or who is named as managing owner of a Coast Guard documented vessel.

"Principally used" means a measurement of the time when a vessel is on the waters of the United States, a state, territory, province, or country and includes the time when the vessel is not in motion, as, for instance, when the vessel is moored or at anchor, as well as the time when the vessel is being navigated.

"Rafting" means tying up or otherwise attaching one vessel to another vessel that is already attached to a mooring or similar device, or to another vessel that is already anchored.

"Reciprocal beneficiary" means an adult who is a party to a valid reciprocal beneficiary relationship and meets the requisites for a valid reciprocal beneficiary relationship as set forth in chapter 572C, Hawaii Revised Statutes.

"Recreation" means activities in which there is direct and intimate contact with water including, but not limited to, fishing, swimming, surfing, boating, water skiing, and viewing or enjoying historical, archeological, scenic, or scientific sites.

"Recreational vessel" means any vessel that is being used for pleasure and not for conducting commercial activity.

"Regatta" or "marine parade" means an organized water event of limited duration which is conducted according to a prearranged schedule.

"Registration sticker" means a pair of stickers, plates, tabs, or other devices issued by the department with certificates of number and renewals thereof to be affixed to the vessel to indicate that the vessel's certificate of number is current and valid.

"Regular permittee" means a person holding a valid regular mooring permit.

"Regulatory marker" means a waterway marker [which] that indicates the existence of regulatory areas, speed zones, or restricted areas and which has no equivalent in the United States Coast Guard system of navigational aids.

"Residence" or "residence status" means a combination of physical presence in a place and the intent to make such place one's permanent home.

"Residency determination date" means:

- (1) The date a person applies for a use permit or for application renewal;
- (2) The date of issuance or renewal of a use permit;
- (3) The date the department makes a residency status determination following the receipt of a completed questionnaire submitted by a person classified as a nonresident pursuant to section 13-230-27; or
- (4) The date of a hearing officer's decision on a petition submitted to the department as prescribed in section 13-230-28.

"Roadway" means that portion of a street or highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term "roadway" shall refer to each roadway separately but not to all such roadways collectively.

"Rules" means the rules governing small boat harbors, facilities under the jurisdiction of the division, and State ocean waters as set forth in Title 13, Subtitle 11 - Ocean Recreation and Coastal Areas.

"Rules of the road" means the federal statutory and regulatory rules governing navigation of vessels.

These rules are published by the Coast Guard in pamphlet form and known as Navigation Rules - International - Inland COMDTINST [~~M16672.2B.~~] M16672.2D.

"Sailboard" means any type of board that exceeds four feet in length and is propelled by a detachable sail apparatus.

"Sailing vessel" means any vessel propelled by sail only. Every power-driven vessel which is under sail and not under power is to be considered a sailing vessel, and every vessel under power, whether under sail or not, is to be considered a power-driven vessel.

"SCUBA" means self-contained underwater breathing apparatus and includes all forms of self-contained underwater breathing apparatuses, e.g., re-breathers, open-circuit, semi-closed or closed circuit or surface-supplied breathing apparatuses.

"Security interest" means an interest in a vessel reserved or created by agreement and which secures payment or performance of an obligation. The term includes the interest of a lessor under a lease intended for security. A security interest is "perfected" when it is valid against third parties generally, subject only to specific statutory exceptions contained in article 9, chapter 490 and section 490:1-201, Hawaii Revised Statutes.

"Sheer" means the longitudinal upward curve of the deck, gunwales, and lines of a vessel, when viewed from the side.

"Shore waters" or "shores" means any shores or waters between the three nautical mile limit and the shoreline of the islands of the State of Hawaii.

"Shoreline" means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.

"Sign" means any device for carrying a message which is attached to another object such as a piling, buoy, structure, or land itself.

"Skeg" means any fin-like projection.

"Sleeping place" means a place used by a person for the purpose of sleeping, where the person is or may be asleep inside a tent, sleeping bag, or some form of temporary shelter or is or may be asleep atop of or covered by materials such as a cot, mat, bedroll, bedding, sheet, blanket, pillow, bag, cardboard, or newspapers.

"Slow-no-wake" means as slow as possible without losing steerage way and so as to make the least possible wake. This would almost always mean speeds of less than five miles an hour.

"Small boat harbor" means those harbors or portions of harbors, and any interest in property, whether real, personal, or mixed connected therewith under the care and control of the department, which are used as described in section 200-9, Hawaii Revised Statutes.

"Snorkeler" shall be synonymous with the word "free diver" as used in this section.

"Spouse" means a marriage partner, reciprocal beneficiary, or civil union partner of an individual.

"Stand" or "standing" means the halting of a vehicle whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

"State" means the State of Hawaii.

"State aid to navigation" means a waterway marker which is the equivalent of a United States Coast Guard aid to navigation.

"Stay aboard" or "staying aboard" means a person or persons aboard any vessel with prior notice to the department or a stay aboard permit between the hours of 12:00 midnight and 6:00 A.M., while the vessel is moored in a state small boat harbor or offshore mooring area.

"Stop" or "stopping", when prohibited, means any halting, even momentarily, of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control sign or signal.

"Stray" means any dog, cat, or other animal without a microchip or other registered owner-identifier or that is living or roaming off its owner's property without permission to be on other public or private property. Strays may also be feral or abandoned.

"Street" means the entire width between boundary lines of every way publicly maintained in any small boat harbor when any part thereof is open to the public for purposes of vehicular traffic.

"Surfboard" means any type of board that exceeds four feet in length and is used for the sport of surf riding.

"Symbols" means geometric figures such as a diamond, circle, or rectangle, used to convey a basic message.

"Tahiti moor" means the mooring of a vessel where one end of the vessel is moored by a rope or chain attached to a buoy that is attached to a pile or device that includes, but is not limited to, an anchor, concrete block or similar device placed or dropped on submerged land. The other end of the vessel is moored to the facility that includes, but is not limited to, breakwaters, catwalk, piers, and docks where direct access can be made from the facility to the vessel either by gangway, plank, or stepping onto the vessel.

"Temporarily assigned berth" means a berth that is allocated to a permittee by a valid temporary mooring permit for interim use of the facility.

"Temporary mooring" means mooring pursuant to a temporary use permit. Calculation of the allowable period for temporary mooring shall include cumulative days moored with and without a permit.

"Temporary permittee" means a person holding a valid temporary mooring permit for the interim use of a berth or offshore mooring.

"Tender" means a dinghy or a larger launch used to carry persons and supplies to and from large vessels.

"Territorial sea baseline" means the line from which the territorial sea is measured, which is

generally the low water line along the coasts including the coasts of islands and special closing lines drawn tangent to the headlands across the mouths of rivers, bays, inlets, and other similar indentations.

"Thrill craft" means any motorized vessel that falls into the category of personal watercraft, which:

- (1) Is generally less than thirteen feet in length as manufactured;
- (2) Is generally capable of exceeding a speed of twenty miles per hour;
- (3) Can be operated by a single operator, but may have the capacity to carry passengers while in operation; or
- (4) Is designed to provide similar operating performance as a personal watercraft through a combination of small size, power plant, and hull design.

The term includes, but is not limited to, a jet ski, waverunner, wet bike, surf jet, miniature speed boat, hovercraft, and every description of vessel which uses an internal combustion engine powering a water jet pump as its primary source of motive propulsion, and is designed to be operated by a person or persons sitting, standing, or kneeling on, or being towed behind the vessel.

"Tow-in surfing" means utilizing a surfboard, often equipped with foot straps, to surf waves with the assistance of a thrill craft that is equipped with a rescue sled, bow tow-line, and a tow-in-rope.

"Transient vessel" means any vessel visiting the State for a period of less than ninety days.

"Ultralight or experimental float equipped aircraft" means an aircraft of light weight construction and limited range, generally carrying not more than two individuals, able to land on water surfaces using floats.

"Unassigned berth" means a berth that is not assigned to a permittee by a regular mooring permit.

"Underway" means the vessel is not at anchor, aground, or made fast to shore.

"Undocumented vessel" means any vessel [which] that does not have a valid marine document issued by the Coast Guard, in accordance with the Code of Federal Regulations, Subchapter G, Part 67, Documentation of Vessels.

"Use permit" as used in these rules, means the authorization by the department to utilize state boating facilities, offshore mooring areas, offshore moorings, state ocean waters, and navigable streams, as evidenced by the fully executed "agreement" described in section 13-231-2.

"Vacation" means a period spent away from home or business in travel or recreation.

"Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, but excludes mopeds, devices moved by human power, or devices used exclusively upon stationary rails or tracks.

"Vessel" means all description of watercraft, used or capable of being used as a means of transportation on or in the water, except a seaplane.

"Vessel carrying passengers for hire" means any vessel which carries any person or persons for a valuable consideration that goes directly or indirectly to the owner, charterer, operator, agent, or any person who has an interest in the vessel.

"Vessel engaged in fishing" means any vessel fishing with nets, lines, trawls, or other fishing apparatus which restrict maneuverability, but does not include a vessel fishing with trolling lines or other fishing apparatus which do not restrict maneuverability.

"Vessel length" means the end-to-end measurement of a vessel, taken over the deck, parallel to the waterline from the foremost part of the bow to the aftermost part of the stern; provided [7] that hull platings, plankings, and extensions aside from the hull proper, such as a bowsprit, are not to be included in the measurement; provided further [7] that an open-type vessel or one with a cockpit shall be measured as if a complete deck existed at the upper level of the hull.

"Vessel length overall" means the distance between the fore-and-aft extremities of a vessel including hull platings, plankings, and any extensions beyond the hull proper, such as bowsprit, boomkin, steering device, or other extensions.

"Vessel used as a place of principal habitation" means a vessel on which any person remains overnight ninety times or more in a calendar year while the vessel is moored in a state small boat harbor.

"Visiting vessel" means a vessel temporarily moored in a state small boat harbor while having a use permit applicable to a different state small boat harbor or other boating facility under the jurisdiction of the division.

"Water sledding" means the activity in which an individual is transported or carried over the surface of the water on an apparatus attached to a towline and towed by a vessel.

"Water sports equipment" means any equipment, contrivance, frame, or other device that one or more persons may wear, lie, sit, or stand upon or in, and which is primarily for use in or on the water for pleasure, recreation, or sports, and not necessarily for transportation.

~~["Waters of the State" means any waters within the jurisdiction of the State, the marginal seas adjacent to the State, and the high seas when navigated as part of a journey or ride to or from the shores of the State.]~~

"Water taxi operations" means the shuttling of persons or cargo to or from the small boat harbor facility or a shoreside location authorized for such use under chapter 13-256 to a destination or vessel located outside the small boat harbor boundary.

"Waters of the State" means any waters within the jurisdiction of the State, the marginal seas adjacent to the State, and the high seas when navigated as part of a journey or ride to or from the shores of the State.

"Waterway marker" means any device designed to be placed in, or near, the water to convey an official message to a boat operator on matters ~~[which]~~ that may

affect health, safety, or well-being, except that such devices of the United States or an agency of the United States are excluded from the meaning of the definition.

"Wildlife" means any member of any non-domesticated species of the animal kingdom, and game mammals and game birds living in a wild and non-domesticated state, whether reared in captivity or not, including any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof. [Eff 2/24/94; am 4/27/02; am 6/16/03; am and comp 12/7/13; am 12/31/18; am and comp]
(Auth: HRS §§200-2, 200-4, 200-10, 200-22, 200-24)
(Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§§13-230-9 to 13-230-19 (Reserved)

SUBCHAPTER 2

DETERMINATION OF RESIDENCY

§13-230-20 Purpose. The purpose of this subchapter is to provide a procedure whereby a determination of residence status shall be made for all persons who own a vessel moored in a state small boat harbor or who apply for such moorage to assure that they are assessed the proper fees and charges as established by these rules; to provide an appeals mechanism for those persons who believe their residency classification is in error; and to provide sanctions for misrepresentation by a petitioner. [Eff 2/24/94; comp 12/7/13; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-230-21 REPEALED. [R 12/31/18]

§13-230-22 Twelve-month rule. (a) Status as a Hawaii resident must be acquired, and not subsequently lost at least twelve months prior to the residence determination date to avoid payment of the nonresidence fee differential prescribed in section 200-34, Hawaii Revised Statutes. This twelve-month rule also applies to the person whose residency is determined by the fact of residency of another.

(b) While residency shall be lost if it is interrupted during the twelve months immediately preceding the residence determination date, resident status derived from two or more successive periods of domicile in Hawaii may be joined together to compute the twelve-month period. [Eff 2/24/94; am and comp 12/7/13] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-230-23 Indications of residence. Because determination of residence in Hawaii requires a finding of subjective fact (intent to make a permanent home) as well as of objective fact (and physical presence), the following objective indications of a person's intent will be considered when determining the person's status. No single index is decisive.

- (1) Primary indications.
 - (A) Voter registration in Hawaii.
 - (B) Voting in Hawaii.
 - (C) Possession and use of Hawaii motor vehicle license plates.
 - (D) Payment of Hawaii personal income tax.
 - (E) Presence of spouse, children, and other close relatives in Hawaii.
- (2) Secondary indications.
 - (A) Membership in voluntary organizations in Hawaii.
 - (B) Licensing from the State for professional practice.

- (C) Carrying on of a business or the holding of a position in Hawaii.
- (D) Ownership of residential property or continuous letting of an apartment on a lease basis in Hawaii. [Eff 2/24/94; comp 12/7/13; comp]
 (Auth: HRS §§200-2, 200-4, 200-10)
 (Imp: HRS §§200-2, 200-4, 200-10)

§13-230-24 Rules of construction. The following rules of construction shall be applied in all cases:

- (1) Residence in Hawaii and residence in another place cannot be held simultaneously.
- (2) Presence in Hawaii primarily to attend an institution of higher learning does not create resident status.
- (3) Resident status, once acquired, will be lost by future voluntary actions of the resident inconsistent with such status ~~[. However,]~~; provided that Hawaii residence will not be lost solely because of absence from the State while employed in the service of the United States, while engaged in navigation, or while a student at any institution of learning. [Eff 2/24/94; comp 12/7/13; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-230-25 Particular categories. (a) Adults. The resident status of every adult shall be established by the adult's own acts and intentions and shall not be derived from any other person, except as specifically provided otherwise in these rules.

- (b) Minors.
 - (1) Unemancipated minor. The residence of an unemancipated minor is the residence of the minor's father, if living, or the residence of the minor's mother, if the father is deceased.

- (2) Divorced parents. If the parents of an unemancipated minor are divorced, the minor's residence is that of the person to whom the minor's custody has been awarded by the court. If no award of custody has been made, the minor's residence is that of the father. However, if the minor maintains the minor's primary abode with the parent not having legal custody, residence of the minor is determined by that parent with whom the minor's primary abode is maintained.
- (3) Separated parents. If the parents of an unemancipated minor are separated, without a divorce having been granted or custody award having been made, the minor's residence is that of the father if the minor is not living with either parent. If the minor maintains primary abode with a parent, the minor's residence is the residence of that parent.
- (4) Death of a parent who had custody. The residence of an unemancipated minor becomes that of the surviving parent upon the death of the parent who had the minor's custody.
- (5) Both parents deceased. If both parents are deceased, the residence of the unemancipated minor remains that of the last parent to die until changed by court order. Upon court appointment of a guardian for the minor, the residence of the minor becomes that of the guardian.
- (6) A nonresident unemancipated minor attending an institution of higher learning outside of Hawaii or on active duty with the United States Armed Forces, whose parents become residents of Hawaii, and who would reach majority before deriving Hawaiian residence from the minor's parents' new status, may be classified as a resident for fee purposes when the minor's parents have completed twelve consecutive months of residence; provided that such classification will be

lost if actions inconsistent with resident status are taken after leaving such institution or discharge from the military (e.g., failure to promptly make a home in Hawaii).

- (7) If an unemancipated minor's parents lose their Hawaii residence, the minor will be classified as a nonresident at the next residence determination date. However, if the parents' change of residence is due to obedience to active-duty military orders, the minor shall continue to pay only resident fees and charges as long as one of the minor's parents remain on active duty and in a Hawaii resident status.
- (8) Emancipated minors. An emancipated minor shall be considered an adult for purposes of residence hereunder. The following shall constitute indications of emancipation, no one of which is controlling:
 - (A) Financially independent or self-supporting.
 - (B) Subsistence not provided by parent or legal guardian.
 - (C) Prior military service.
 - (D) Other primary and secondary indications of residence enumerated under section 13-230-24.
 - (E) Any other conduct inconsistent with parental control and custody.

- (9) ~~[Hānai.]~~ A person may base the person's residency on that of other than the parent or legal guardian~~[7]~~; provided that the relationship between the person and the person or persons other than the parent or legal guardian is [that of "hānai".] a hānai relationship.

(c) Aliens. In addition to all other requirements herein, an alien shall be classified as a resident only upon the alien's admission to the United States for permanent residence (immigration visa). Residence of a minor alien can only be derived from

another person (e.g., a parent) when both that person and the minor achieve resident status.

(d) Military personnel. Service in the armed forces of the United States shall not of itself negate establishment of residence in Hawaii. For instance, a nonresident member of the United States Armed Forces whose last duty station is in Hawaii and who does all other things necessary to establish a bona fide Hawaiian domicile, including discharge from the military in Hawaii, may be classified as a resident. In addition, a person who establishes a Hawaiian domicile but who enters the military service prior to the expiration of twelve months from the date of such establishment may add the period of the person's military service on to the former period to satisfy the twelve-month rule.

(e) Married persons and persons in other legal relationships. A married person or reciprocal beneficiary or civil union partner may establish resident status, either on the basis of indications of residence, or on the basis of the indications of residence of the person's spouse. However, the person must clearly state intent to make Hawaii the person's permanent residence. For purposes of the liveaboard fee, the person holding a principal habitation permit may rely on the residency indications of a reciprocal beneficiary who lives on board the vessel. [Eff 2/24/94; am and comp 12/7/13; am 12/31/18; comp] (Auth: HRS §§200-2, 200-4, 200-10)
(Imp: HRS §§200-2, 200-4, 200-10)

§13-230-26 Determination of residence procedure.

(a) These rules establish a fee structure in which nonstate residents in specified instances shall pay an application and permit fee differential. Therefore, any person seeking to be classified as a Hawaii resident for fee purposes shall, at the time of application for or prior to being issued a permit, complete and submit to the department a questionnaire provided by the department designed to elicit facts which will aid the department in determining the

applicant's resident, nonresident, or Armed Forces status. The applicant shall answer all pertinent questions and shall attest to the truth of the answers with the applicant's signature. The department may also require the applicant to produce certified copies of documents or other relevant proof as may be necessary for the determination of residency status.

(b) A nonresident who believes that the nonresident's residency status has changed so that the nonresident has achieved Hawaii residency status may seek reclassification as a resident by submitting a completed questionnaire as prescribed in subsection (a) on or following the date the nonresident believes that the change in residency status occurred. [Eff 2/24/94; comp 12/7/13; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-230-27 Permittee required to report change of residence. A resident permittee who subsequently takes up residence outside of the State and continues to moor the permittee's vessel in a state small boat harbor shall advise the department in writing within seven days of the permittee's change of residence. In such a case, nonresident fees and charges shall be payable following the change of residence. A permittee who intends to assume residence outside of the ~~[state]~~ State or relocate to another island yet retain a permitted vessel and assigned mooring shall cause all applicable harbor use permits to be revised to identify the individual that agrees to assume the vessel owner's obligations under the use permit and these rules during the period of the permittee's absence. This individual shall reside on the same island that the vessel is moored. [Eff 2/24/94; am and comp 12/7/13; comp] (Auth: HRS §§200-2, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-10, 200-22, 200-24)

§13-230-28 Appeals. (a) Classification as a nonresident by the department may be appealed by the aggrieved person by filing a petition for a declaratory ruling in accordance with section 13-1-27.

(b) No petition for appeal shall be accepted by the department unless:

- (1) The petitioner has paid the nonresident fees and fees and charges and filing fee for residency status appeal.
- (2) The petitioner has submitted with the petition documentary evidence tending to establish that the petitioner has, for a period of twelve months prior to the residency determination date, been physically present in the State of Hawaii with the intent to make Hawaii the petitioner's home. The documentary evidence to be furnished shall support the claim of residency by establishing acceptable indicia of residency as provided under section 13-230-23.
- (3) The petition is filed with the department within thirty days following receipt by certified mail, return receipt requested, or personal delivery, as the case may be, of the department's determination of the petitioner's nonresident status.

(c) The petition shall be signed by the petitioner. The petition shall be filed at any division of boating and ocean recreation district office on or before the thirtieth day following receipt by certified mail, return receipt requested or personal delivery, of the department's determination of the petitioner's nonresident status. The district manager receiving the appeal shall promptly forward ~~it~~ the appeal to the administrator of the division of boating and ocean recreation.

(d) The administrator of the division of boating and ocean recreation shall promptly review any petition filed with the department and take appropriate action as follows within fifteen days after the filing of the petition:

- (1) Return the petition to the concerned district manager if the administrator of the division of boating and ocean recreation determines the petition should not have been accepted under subsection (b) with an explanation of the basis for rejection, a copy of which shall be forwarded to the petitioner;
- (2) Reverse the department's prior determination that the petitioner is a nonresident if the administrator of the division of boating and ocean recreation determines that the petitioner has submitted adequate proof that the petitioner is a resident of the State of Hawaii; or
- (3) Forward the petition to the chairperson for a declaratory ruling in accordance with section 13-1-27.

(e) The nonstate resident fee differential and filing fee for residency status appeal shall be promptly refunded if the department reverses the determination of nonresident status, as provided in section 13-234-24. [Eff 2/24/94; am and comp 12/7/13; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-230-29 Misrepresentation. It is a violation of these rules for any person to misrepresent any fact upon any form or document intended for or used in determination of resident status for fees and charges purposes or for any person to misrepresent any fact at an appellant hearing hereunder." [Eff 2/24/94; am and comp 12/7/13; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

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. These amendments to and compilation of chapter 13-31, 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 (date), and filed with the Office of the Lieutenant Governor.

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

APPROVED AS TO FORM:

Deputy Attorney General

Item F-2, Exhibit 6

Amendment and Compilation of Chapter 13-257
Hawaii Administrative Rules

INSERT DATE OF ADOPTION

1. Chapter 13-257, Hawaii Administrative Rules,
entitled "Day-Use Mooring Rules", is amended and
compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 11

OCEAN RECREATION AND COASTAL AREAS

PART 3

OCEAN WATERS, NAVIGABLE STREAMS AND BEACHES

CHAPTER 257

DAY-USE MOORING RULES

Subchapter 1 General Provisions

§13-257-1	Purpose and scope
§13-257-2	Day-use mooring permit
§13-257-3	Day-use mooring buoy limitations
§13-257-4	Anchoring restrictions
§13-257-5	Day-use mooring installation
§13-257-6	Day-use mooring locations
§13-257-7	Rafting prohibited
§13-257-8	Liability
§13-257-9	Safety and enforcement

§§13-257-10 to 13-257-15 (Reserved)

Subchapter 2 Day-Use Moorings, Island of Hawai'i

§§13-257-16 to 13-257-24 Repealed

§§13-257-25 to 13-257-35 (Reserved)

Subchapter 3 Day-Use Moorings, Island of Maui

§§13-257-36 to 13-257-50 (Reserved)

Subchapter 4 Day-Use Mooring Area, Molokini Shoal
Marine Life Conservation District

§13-257-51 Molokini day-use mooring area

§13-257-52 Commercial-use restrictions

§13-257-53 Commercial day-use mooring permit fee

§13-257-54 Recreational vessel use of Molokini day-
use moorings

§13-257-55 Speed Restrictions

§13-257-56 Anchoring restrictions

§§13-257-57 to 13-257-60 (Reserved)

Subchapter 5 Day-Use Moorings, Island of Lāna'i

§§13-257-61 to 13-257-70 (Reserved)

Subchapter 6 Day-Use Moorings, Island of Moloka'i

§§13-257-71 to 13-257-80 (Reserved)

Subchapter 7 Day-Use Moorings, Island of O'ahu

§§13-257-81 to 13-257-90 (Reserved)

Subchapter 8 Day-Use Moorings, Island of Kaua'i
§§13-257-91 to 13-257-120 (Reserved)

SUBCHAPTER 1

GENERAL PROVISIONS

§13-257-1 Purpose and scope. (a) The purpose of ~~[the day-use]~~ day-use mooring rules and zones is to reduce damage to coral and other marine life as a result of continuous use of anchors by commercial and recreational vessels in zones of high dive and mooring activity statewide.

(b) ~~[The rules describe the]~~ This chapter contains provisions for mooring at state [day-use] day-use mooring [buoys and the zones where the buoys are located.] buoys. [Eff 9/16/95; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

§13-257-2 [Day-use] Day-use mooring permit. An owner or operator of a vessel using a ~~[day-use]~~ state day-use mooring [established under] buoy installed pursuant to this chapter shall not be required to apply for a ~~[day-use]~~ day-use mooring permit from the department, except as otherwise provided in this chapter. ~~[Any use of a state day use mooring shall be at the sole risk of the owner or operator of the vessel using the mooring.]~~ [Eff 9/16/95; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

§13-257-3 [Time limit.] State day-use mooring buoy limitations. (a) ~~[The time limit for use of a~~

~~day use]~~ A vessel using a state day-use mooring buoy
~~[by any one vessel]]~~ A vessel using a state day-use
mooring buoy shall not exceed two and one half hours
~~[when another vessel is waiting for the use of that~~
~~mooring buoy,~~] of use, except as provided by section
13-37-3 for the [old Kona airport marine life
conservation district.] Old Kona Airport Marine Life
Conservation District, Hawai'i.

(b) Overnight mooring is ~~[prohibited except in~~
~~case of emergency or by enforcement or rescue craft.]~~
prohibited. [Eff 9/16/95; am and comp
] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp:
HRS §200-10)

§13-257-4 Anchoring restrictions. [Anchoring]
Unless otherwise provided in this chapter, anchoring
is allowed only in areas of sand, rock, or rubble
bottom types where no live corals exist; provided
further that anchoring is prohibited within one
hundred yards of any ~~[day use mooring buoy, except as~~
~~otherwise provided in these rules. Anchoring elsewhere~~
~~in a day use mooring zone is permitted in areas of~~
~~sand, rock, or rubble bottom types where no live~~
~~corals exist.]~~ state day-use mooring buoy. [Eff
9/16/95; am and comp] (Auth:
HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

§13-257-5 [Day use] Day-use mooring buoy
installation. (a) Design guidelines for [a typical
day use] state day-use mooring buoy installation is as
shown on Exhibits "DM-00", "DM-00-A", and "DM-00-
B", dated December 16, 1994, located at the end of
this subchapter. The department shall adhere to the
design guidelines specified in this subsection, and
the bBoard shall have the discretion to approve
mooring buoy designs that differ from the guidelines
in this section if the bBoard finds that:

- (1) A specific design offers environmental or structural advantages over those specified in the day-use mooring buoy guidelines; and
- (2) Such environmental or structural advantages outweigh any negative impacts to aquatic resources.

(b) For each state day-use mooring buoy site, the department shall develop a day-use mooring buoy site proposal, subject to approval and modification by the bBoard, which shall consider:

- (1) Public input;
- (2) Impact upon aquatic resources;
- (3) Use patterns with respect to the proposed site; and
- (4) Any other information relevant to site selection and mooring buoy installation.

[Eff 9/16/95; am and comp]
 (Auth: HRS §§200-2, 200-3, 200-4, 200-10)
 (Imp: HRS §200-10)

§13-257-6 Day-use mooring buoy locations. The department shall maintain a listing of sanctioned day-use mooring buoys installed in waters of the State. The listing shall be available on the division's website, may be maintained in print form, and shall provide GPS coordinates for the location of each mooring buoy. The department shall make a reasonable effort to ensure that the GPS coordinates on the listing provide an accurate location for each state-owned day-use mooring buoy. [Eff]
 (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

§13-257-7 Rafting prohibited. Rafting of vessels from any day-use mooring buoy is prohibited. [Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

§13-257-8 Liability. By using a state day-use mooring buoy, a vessel owner or operator assumes the sole risk of using the mooring. The State assumes no liability or responsibility associated with the use of any day-use mooring buoys, except as otherwise provided in this chapter. [Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

§13-257-9 Safety and enforcement. The restrictions cited in this chapter do not apply to the following:

- (1) Emergency situations;
- (2) Law enforcement, patrol, or rescue craft;
- (3) Department vessels and personnel performing official duties;
- (4) Vessels and personnel performing authorized homeland security training operations; and
- (5) The ~~United States~~ Coast Guard. [Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-10)

§§13-257-10 to 13-257-15 (Reserved)

SUBCHAPTER 2

[~~DAY-USE MOORING,~~] DAY-USE MOORINGS, ISLAND OF
[~~HAWAII~~] HAWAI`I

~~§13-257-16 Kaiholena to Malae Point day use mooring zone.~~ (a) ~~Kaiholena to Malae Point day use mooring zone is encompassed by the boundaries as shown~~

~~on Exhibit "DM-01" dated November 15, 1990, located at the end of this subchapter and described as follows:~~

~~Beginning at a point at the high water mark at the tip of Malae Point and measured by azimuth clockwise from True South; 050 degrees for a distance of four hundred seventy five feet; 161 degrees for a distance of four thousand eight hundred fifty feet; 150 degrees for a distance of two thousand feet; 167.5 degrees for a distance of seven thousand three hundred thirty feet; 246.5 degrees to the high water mark at the shoreline; then along the shoreline to the point of beginning.~~

~~(b) The following buoys are within the mooring zone described in this section.~~

~~(1) Buoy "DM-01" located at a point on the water measured by azimuth clockwise from True South, 152.5 degrees for a distance of four thousand four hundred fifty feet from the southwest tip of Keaweula Bay.~~

~~(2) Buoy "DM-02" located at a point on the water measured by azimuth clockwise from True South, 143 degrees for a distance of two thousand eight hundred ten feet from the southwest tip of Keaweula Bay.~~

~~(3) Buoy "DM-03" located at a point on the water measured by azimuth clockwise from True South, 154 degrees for a distance of five hundred ninety feet from the southwest tip of Keaweula Bay.] [Eff 9/16/95; R~~

~~] (Auth: HRS §§200- 2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)~~

~~[§13-257-17 **Malae Point to Kaiopae Point day use mooring zone.** (a) Malae Point to Kaiopae Point day use mooring zone is encompassed by the boundaries as shown on Exhibit "DM-02" dated November 15, 1990, located at the end of this subchapter and described as follows:~~

~~Beginning at a point at the high water mark at the tip of Kaiopae Point and measured by azimuth clockwise from True South; 056 degrees for a distance of six hundred ten feet; 137 degrees for a distance of six thousand five hundred eighty feet; 151 degrees for a distance of forty thousand six hundred feet; 148 degrees for a distance of six thousand nine hundred ninety-five feet; then in a straight line to the high water mark at the Malae Point shoreline; then along the shoreline to the point of beginning.~~

~~(b) The following buoys are within the mooring zone described in this section.~~

- ~~(1) Buoy "DM-04" located at a point on the water measured by azimuth clockwise from True South, 354 degrees for a distance of one thousand feet from the northwest tip of Kalala Gulch Cove.~~
- ~~(2) Buoy "DM-05" located at a point on the water measured by azimuth clockwise from True South, 333 degrees for a distance of two thousand six hundred feet from the northwest tip of Kalala Gulch Cove.~~
- ~~(3) Buoy "DM-06" located at a point on the water measured by azimuth clockwise from True South, 113.5 degrees for a distance of one thousand one hundred feet from the southeast tip of Kamilo Gulch Cove.~~
- ~~(4) Buoy "DM-07" located at a point on the water measured by azimuth clockwise from True South, 001 degrees for a distance of one thousand one hundred feet from the southeast tip of Kamilo Gulch Cove.~~
- ~~(5) Buoy "DM-08" located at a point on the water measured by azimuth clockwise from True South, 314 degrees for a distance of two thousand six hundred fifty feet from the southeast tip of Kamilo Gulch Cove.~~
- ~~(6) Buoy "DM-09" located at a point on the water measured by azimuth clockwise from True South, 095 degrees for a distance of one~~

~~thousand one hundred ten feet from the northwest tip of Keawewai Gulch Cove.] [Eff 9/16/95; R] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)~~

~~[§13-257-18 Paoua Bay to Honokaope Bay day use mooring zone. (a) Paoua Bay to Honokaope Bay day use mooring zone is encompassed by the boundaries as shown on Exhibit "DM-03" dated November 15, 1990, located at the end of this subchapter and described as follows:~~

~~Beginning at a point at the high water mark at the tip of Lae o Panipou Point and measured by azimuth clockwise from True South; 124 degrees for a distance of one thousand two hundred feet; 060 degrees for a distance of two thousand nine hundred twenty feet; 044 degrees for a distance of seven thousand two hundred fifty feet; then in a straight line to the high water mark at the Anachoolu "trig" shoreline; then along the shoreline to the point of the beginning.~~

~~(b) The following buoys are within the mooring zone described in this section.~~

~~(1) Buoy "DM-10" located at a point on the water measured by azimuth clockwise from True South, 081.5 degrees for a distance of one thousand one hundred fifty feet from Keanapukalua Point.~~

~~(2) Buoy "DM-11" located at a point on the water measured by azimuth clockwise from True South, 057 degrees for a distance of two thousand feet from Keanapukalua Point.] [Eff 9/16/95; R] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)~~

~~[§13-257-19 Kaauau Point to Kapalaoa Point day use mooring zone. (a) Kaauau Point to Kapalaoa Point~~

~~day use mooring zone is encompassed by the boundaries as shown on Exhibit "DM-04" dated November 15, 1990, located at the end of this subchapter and described as follows:~~

~~Beginning at a point at the high water mark at the tip of Kaauau Point and measured by azimuth clockwise from True South; 053 degrees for a distance of four thousand one hundred eighty feet; then in a straight line to the high water mark at Kapalaoa Point shoreline; then along the shoreline to the point of beginning.~~

~~(b) The following buoy is within the mooring zone described in this section.~~

~~(1) Buoy "DM-12" located at a point on the water measured by azimuth clockwise from True South, 219 degrees for a distance of three thousand fifty feet from Kapalaoa Point.]~~

~~[Eff 9/16/95; R] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)~~

~~**[§13-257-20 Makako Bay to Kalihi Point day use mooring zone.** (a) Makako Bay to Kalihi Point day use mooring zone is encompassed by the boundaries as shown on Exhibit "DM-05" dated November 15, 1990, located at the end of this subchapter and described as follows:~~

~~Beginning at a point at the high water mark at the tip of Kalihi Point and measured by azimuth clockwise from True South; 062 degrees for a distance of five hundred fifty feet; 150 degrees for a distance of two thousand nine hundred seventy five feet; 012.5 degrees for a distance of one thousand three hundred twenty five feet; 040 degrees for a distance of three thousand four hundred feet; 270 degrees to the high water mark of the shoreline; then along the shoreline to the point of beginning.~~

~~(b) The following buoys are within the mooring zone described in this section.~~

- ~~(1) Buoy "DM-13" located at a point on the water measured by azimuth clockwise from True South, 214 degrees for a distance of three thousand two hundred fifty feet from Keahole Lighthouse.~~
- ~~(2) Buoy "DM-14" located at a point on the water measured by azimuth clockwise from True South, 178 degrees for a distance of one thousand three hundred forty feet from Keahole Lighthouse.] [Eff 9/16/95; R] (Auth HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)~~

~~[§13-257-21 Wawaloli Beach to Maliu Point day use mooring zone. (a) Wawaloli Beach to Maliu Point day use mooring zone is encompassed by the boundaries as shown on Exhibit "DM-06" dated November 15, 1990, located at the end of this subchapter and described as follows:~~

~~Beginning at a point at the high water mark at the tip of Maliu Point and measured by azimuth clockwise from True South; 140 degrees for a distance of ten thousand five hundred feet; 158.5 degrees for a distance of four thousand five hundred forty feet; 180 degrees for a distance of two thousand two hundred fifty feet; 151 degrees for a distance of three thousand ninety feet; 242 degrees to the high water mark of the shoreline; then along the shoreline to the point of beginning.~~

~~(b) The following buoys are within the mooring zone described in this section.~~

- ~~(1) Buoy "DM-15" located at a point on the water measured by azimuth clockwise from True South, 172 degrees for a distance of four thousand three hundred seventy five feet from Puhili Point.~~
- ~~(2) Buoy "DM-16" located at a point on the water measured by azimuth clockwise from True South, 170 degrees for a distance of two~~

- ~~thousand six hundred twenty-five feet from Puhili Point.~~
- ~~(3) Buoy "DM-17" located at a point on the water measured by azimuth clockwise from True South, 152 degrees for a distance of one thousand one hundred fifty feet from Puhili Point.~~
 - ~~(4) Buoy "DM-18" located at a point on the water measured by azimuth clockwise from True South, 002 degrees for a distance of nine hundred eighty feet from Puhili Point.~~
 - ~~(5) Buoy "DM-19" located at a point on the water measured by azimuth clockwise from True South, 121 degrees for a distance of one thousand six hundred feet from Wawahiwaa Point (Heiau).~~
 - ~~(6) Buoy "DM-20" located at a point on the water measured by azimuth clockwise from True South, 073 degrees for a distance of seven hundred fifty feet from Wawahiwaa Point (Heiau).~~
 - ~~(7) Buoy "DM-21" located at a point on the water measured by azimuth clockwise from True South, 005 degrees for a distance of seven hundred fifty feet from Wawahiwaa Point (Heiau).~~
 - ~~(8) Buoy "DM-22" located at a point on the water measured by azimuth clockwise from True South, 312 degrees for a distance of one thousand four hundred fifty feet from Wawahiwaa Point (Heiau).~~
 - ~~(9) Buoy "DM-23" located at a point on the water measured by azimuth clockwise from True South, 143 degrees for a distance of one thousand seven hundred feet from Kaloko Point.~~
 - ~~(10) Buoy "DM-24" located at a point on the water measured by azimuth clockwise from True South, 069 degrees for a distance of one thousand one hundred twenty-five feet from Kaloko Point.] [Eff 9/16/95; R~~

] (Auth: HRS §§200-2, 200-3, 200-4,
200-10) (Imp: HRS §200-10)

~~§13-257-22 Kaiwi Point to Kukailimoku Point day use mooring zone.~~ (a) ~~Kaiwi Point to Kukailimoku Point day use mooring zone is encompassed by the boundaries as shown on Exhibit "DM-07" dated November 15, 1990, located at the end of this subchapter and described as follows:~~

~~Beginning at a point at the high water mark at the tip of Kukailimoku Point and measured by azimuth clockwise from True South; 000 degrees for a distance of nine hundred fifty feet; 117.5 degrees for a distance of seven thousand three hundred eighty feet; 099 degrees for a distance of two thousand five hundred feet; 140 degrees for a distance of three thousand eighty feet; 159 degrees for a distance of one thousand nine hundred feet; 270 degrees to the high water mark of the shoreline; then along the shoreline to the point of beginning.~~

~~(b) The following buoys are within the mooring zone described in this section.~~

- ~~(1) Buoy "DM-25" located at a point on the water measured by azimuth clockwise from True South, 001 degrees for a distance of seven hundred feet from Kaiwi Point.~~
- ~~(2) Buoy "DM-26" located at a point on the water measured by azimuth clockwise from True South, 351 degrees for a distance of one thousand six hundred ninety feet from Kaiwi Point.~~
- ~~(3) Buoy "DM-27" located at a point on the water measured by azimuth clockwise from True South, 115 degrees for a distance of one thousand five hundred fifty feet from Keahuolu Point.~~
- ~~(4) Buoy "DM-28" located at a point on the water measured by azimuth clockwise from True~~

- ~~South, 010 degrees for a distance of five hundred feet from Keahuolu Point.~~
- ~~(5) Buoy "DM-29" located at a point on the water measured by azimuth clockwise from True south, 288 degrees for a distance of one thousand three hundred feet from Keahuolu Point.~~
 - ~~(6) Buoy "DM-30" located at a point on the water measured by azimuth clockwise from True South, 293 degrees for a distance of three thousand three hundred eighty feet from Keahuolu Point.~~
 - ~~(7) Buoy "DM-31" located at a point on the water measured by azimuth clockwise from True south, 113 degrees for a distance of four thousand three hundred ninety feet from Kukailimoku Point.~~
 - ~~(8) Buoy "DM-32" located at a point on the water measured by azimuth clockwise from True South, 107 degrees for a distance of two thousand three hundred fifty feet from Kukailimoku Point.~~
 - ~~(9) Buoy "DM-33" located at a point on the water measured by azimuth clockwise from True South, 039 degrees for a distance of six hundred feet from Kukailimoku Point.] [Eff 9/16/95; R] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)~~

~~[§13-257-23 **Kuamoo Bay to Paaao Bay day use mooring zone.** (a) Kuamoo Bay to Paaao Bay day use mooring zone is encompassed by the boundaries as shown on Exhibit "DM-08" dated November 15, 1990, located at the end of this subchapter and described as follows:~~

~~Beginning at a point at the high water mark at the Keauhou Coast "trig station" and measured by azimuth clockwise from True South; 090 degrees for a distance of eight hundred thirty feet; 335 degrees for a distance of eight thousand four~~

~~hundred feet; 270 degrees to the shoreline of the northwest tip of Paaaoa Bay; then along the shoreline to the point of beginning.~~

~~(b) The following buoys are within the mooring zone described in this section.~~

~~(1) Buoy "DM-34" located at a point on the water measured by azimuth clockwise from True South, 025 degrees for a distance of eight hundred fifteen feet from the Keauhou Coast "trig station"~~

~~(2) Buoy "DM-35" located at a point on the water measured by azimuth clockwise from True South, 087 degrees for a distance of one thousand one hundred feet from Kalanui Point.~~

~~(3) Buoy "DM-36" located at a point on the water measured by azimuth clockwise from True South, 073 degrees for a distance of seven hundred feet from Kuamoo Point.~~

~~(4) Buoy "DM-37" located at a point on the water measured by azimuth clockwise from True South, 115 degrees for a distance of one thousand seventy-five feet from Leinokano Point.] [Eff 9/16/95; R]~~

~~(Auth: HRS §§200-2, 200-3, 200-4, 200-10)~~

~~(Imp: HRS §200-10)~~

~~[§13-257-24 Paaaoa Bay to Cook Point day use mooring zone. (a) Paaaoa Bay to Cook Point day use mooring zone is encompassed by the boundaries as shown on Exhibit "DM-09" dated November 15, 1990, located at the end of this subchapter and described as follows:~~

~~Beginning at a point at the high water mark at the northwest tip of Paaaoa bay and measured by azimuth clockwise from True South; 090 degrees for a distance of one thousand seventy-five feet; 015.5 degrees for a distance of five thousand nine hundred fifty-five feet; 329 degrees for a distance of eight thousand five hundred fifty feet; 009 degrees for a distance of three~~

~~thousand three hundred feet; 335 degrees for a distance of one thousand nine hundred feet; 295 degrees for a distance of four thousand six hundred ninety feet; 213 degrees to the high water mark at Cook Point; then along the shoreline to the point of beginning.~~

~~(b) The following buoys are within the mooring zone described in this section.~~

- ~~(1) Buoy "DM-38" located at a point on the water measured by azimuth clockwise from True South, 156 degrees for a distance of nine hundred eighty feet from Paaaoa Point.~~
- ~~(2) Buoy "DM-39" located at a point on the water measured by azimuth clockwise from True South, 090 degrees for a distance of eight hundred feet from Paaaoa Point.~~
- ~~(3) Buoy "DM-40" located at a point on the water measured by azimuth clockwise from True South, 155 degrees for a distance of eight hundred feet from Kekeiwaha Point.~~
- ~~(4) Buoy "DM-41" located at a point on the water measured by azimuth clockwise from True South, 069 degrees for a distance of seven hundred fifty feet from Keikiwaha Point.~~
- ~~(5) Buoy "DM-42" located at a point on the water measured by azimuth clockwise from True South, 130 degrees for a distance of two thousand seven hundred ten feet from the Puu Ohau "trig station".~~
- ~~(6) Buoy "DM-43" located at a point on the water measured by azimuth clockwise from True South, 075 degrees for a distance of one thousand six hundred seventy five feet from the Puu Ohau "trig station".~~
- ~~(7) Buoy "DM-44" located at a point on the water measured by azimuth clockwise from True South, 000 degrees for a distance of two thousand one hundred feet from the Keaouhou Coast "trig station".~~
- ~~(8) Buoy "DM-45" located at a point on the water measured by azimuth clockwise from True South, 181 degrees for a distance of two~~

~~thousand nine hundred ninety feet from Keawekaheha Point.~~

- (9) ~~Buoy "DM-46" located at a point on the water measured by azimuth clockwise from True South, 168 degrees for a distance of one thousand three hundred fifty feet from Keawekaheha Point.] [Eff 9/16/95; R~~
] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

§§13-257-25 to 13-257-35 (Reserved)

SUBCHAPTER 3

~~[DAY-USE]~~ DAY-USE MOORINGS, ISLAND OF MAUI

§§13-257-36 to 13-257-50 (Reserved)

SUBCHAPTER 4

~~[DAY-USE]~~ DAY-USE MOORING AREA, MOLOKINI SHOAL MARINE LIFE CONSERVATION DISTRICT

§13-257-51 Molokini ~~[island day use mooring area.]~~
Island Day-Use Mooring Area. The boundary of the Molokini ~~[island day use mooring area]~~ Island Day-Use Mooring Area is contiguous with the boundary of Subzone A of the Molokini ~~[shoal marine life conservation district,]~~ Shoal Marine Life Conservation District, as described in section 13-31-2, and as shown on ~~[Exhibit "DM-10",]~~ Exhibit A, entitled "Map of Molokini Shoal Marine Life Conservation District,

Maui", dated ~~[March 3, 1994,]~~ June 24, 2019, located at the end of this subchapter and described as follows:

Beginning at a point at the high water mark ~~[at Pahe'e o Lono Point; then in a straight line to the end of the shoal at the northwest point of Molokini island; then in a counter-clockwise direction along the shoreline of Molokini island]~~ of Lalilali Point, then along the high water mark of the northern shoreline eastward until Pahe'e o Lono Point, then west along a straight line to the end of the submerged ridge (shoal) extending from Lalilali Point, then along the top of the shoal back to the point of beginning. [Eff 9/16/95; am and comp]
(Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

§13-257-52 Commercial use restrictions. (a) No vessel shall use a ~~[day use]~~ state day-use mooring for commercial purposes unless the owner has been issued a marine life conservation district use permit by the department pursuant to section 13-31-5, as evidenced by its inclusion as an addendum to a commercial vessel use permit for the use of state boating facilities issued in accordance with section 13-231-57, or a commercial vessel registration issued in accordance with section 13-256-4 for that vessel.

(b) ~~[Mooring zone "A" is designated for use by commercial vessels carrying twelve or more passengers. Mooring zone "B" is designated for use by commercial vessels carrying less than twelve passengers.]~~ The use of any one particular mooring shall be on a first-come, first-served basis. ~~[Mooring zones "A" and "B" as shown on exhibit "DM-10" located at the end of this subchapter are generalized locations intended to reflect current mooring practices and are subject to revision, pending development of a final mooring plan prior to installation of permanent moorings.]~~

(c) ~~The department may authorize the owner of a commercial vessel not having a marine life~~

~~conservation district use permit occasional or infrequent use of the day use moorings, not to exceed eight times a year, when application is made and approved not less than seven days in advance of the date of intended use.] [Eff 9/16/95; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)~~

§13-257-53 Commercial ~~[day use]~~ day-use mooring [permit] fee. ~~[The commercial day use mooring permit] Beginning January 1, 2024, the fee for [a] commercial use of a Molokini [day use] day-use mooring [shall be the greater of \$100] is \$200 per month [or two per cent of gross receipts~~,]; provided that this fee ~~[shall be]~~ is waived for commercial operators who are presently paying ~~[commercial vessel user fees for the use of state boating facilities in accordance with section 13-234-5.]~~ the ocean stewardship user fee required by section 187A-52, [HRS Hawaii Revised Statutes](#). ~~[This fee [shall be]~~ is in addition to the commercial use permit fee required under section 13-31-5~~[-]~~ This fee is in addition to the commercial use permit fee required under section 13-31-5. and any commercial fees charged pursuant to chapter 13-234. [Eff 9/16/95; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

§13-257-54 Recreational vessel use of Molokini ~~[day use]~~ day-use moorings. ~~[Mooring zone "C" is designated for primary use by recreational vessels, and is shown on exhibit "DM-10" located at the end of this subchapter.] Recreational vessels shall have exclusive use of designated recreational state day-use moorings. All designated recreational state day-use moorings shall be indicated with a surface float. Recreational vessels may also use vacant commercial state day-use moorings [located in zones "A" and "B"] except [during the period] from [8:30 a.m. to 11:30 a.m.] 7:30 a.m. to 9:30 a.m. [Eff 9/16/95; am and comp~~

] (Auth: HRS §§200-2, 200-3, 200-4,
200-10) (Imp: HRS §200-10)

§13-257-55 Speed ~~[Restrictions.]~~ restrictions.

No vessel shall operate at a speed in excess of "slow-no wake" within the [~~Subzone A, as defined in section 13-257-51 and shown on exhibit "DM-10".~~] Molokini Island Day-Use Mooring Area. [Eff 9/16/95; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

§13-257-56 Anchoring restrictions. [(a)]

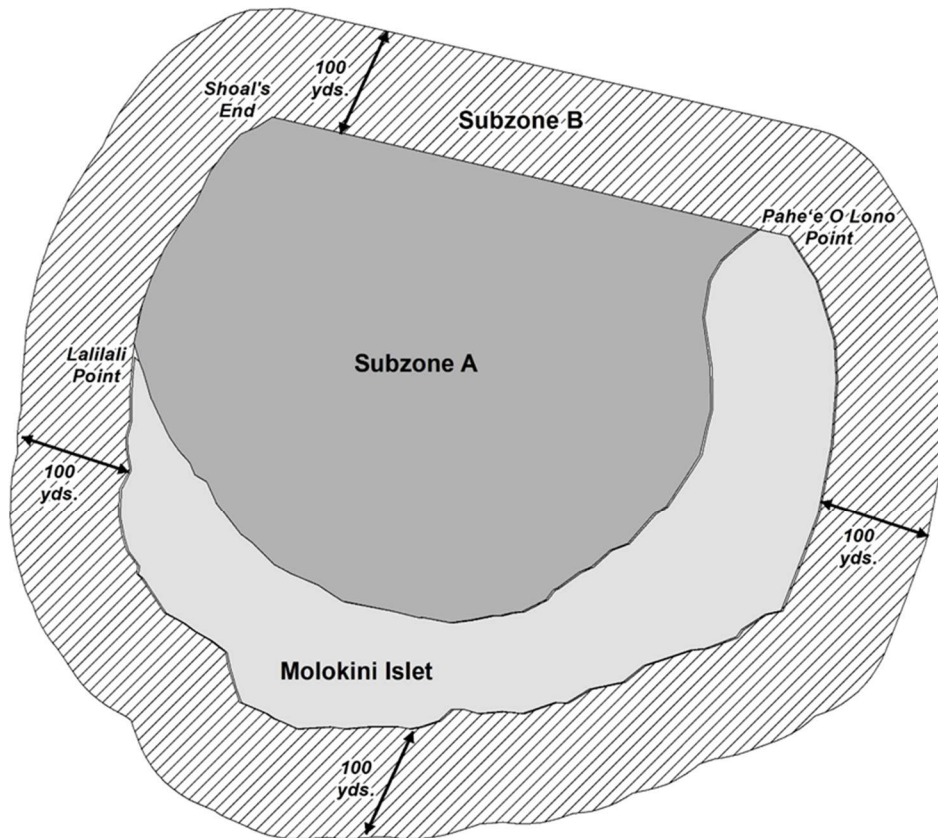
Anchoring is prohibited within the Molokini [~~island day use mooring area, provided that anchoring is permitted within the designated area at locations of sand, rock, or rubble bottom types where no live corals exist until such time as new day use moorings are installed.~~

~~(b) Anchoring is prohibited within Subzone B of the Molokini shoal marine life conservation district.] Island Day-Use Mooring Area. [Eff 9/16/95; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)~~

§§13-257-57 to 13-257-60 (Reserved)

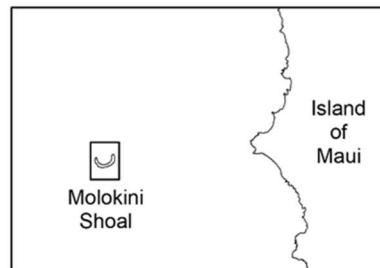
**Exhibit A. Map of Molokini Shoal
Marine Life Conservation District, Maui
June 24, 2019**

0 0.05 0.1 Miles



Legend

- Molokini Shoal
MLCD: Zone A
- Molokini Shoal
MLCD: Zone B



SUBCHAPTER 5

~~[DAY-USE]~~ DAY-USE MOORINGS, ISLAND OF ~~[LANAI]~~ LĀNA`I

§§13-257-61 to 13-257-70 (Reserved)

SUBCHAPTER 6

~~[DAY-USE]~~ DAY-USE MOORINGS, ISLAND OF ~~[MOLOKAI]~~
MOLOKA`I

§§13-257-71 to 13-257-80 (Reserved)

SUBCHAPTER 7

~~[DAY-USE]~~ DAY-USE MOORINGS, ISLAND OF ~~[OAHU]~~ O`AHU

§§13-257-81 to 13-257-90 (Reserved)

SUBCHAPTER 8

~~[DAY-USE]~~ DAY-USE MOORINGS, ISLAND OF ~~[KAUAI]~~ KAUA`I

§§13-257-91 to 13-257-120 (Reserved) "

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 13-257, 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

Item F-2, Exhibit 7

Amendment and Compilation of Chapter 13-31
Hawaii Administrative Rules

(Date adopted)

1. Chapter 13-31, Hawaii Administrative Rules, entitled "Molokini Shoal Marine Life Conservation District, Maui", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART 1 MARINE LIFE CONSERVATION DISTRICTS

CHAPTER 31

MOLOKINI SHOAL MARINE LIFE CONSERVATION DISTRICT, MAUI

- §13-31-1 Definitions
- §13-31-2 Boundaries
- §13-31-3 Prohibited activities
- §13-31-4 Allowed activities
- §13-31-5 Exceptions; permits
- §13-31-6 Penalty

Historical note: Chapter 31 of title 13 is based substantially upon regulation 42 of the division of fish and game, department of land and natural resources, State of Hawaii. [Eff 7/8/77; R 5/26/81]

§13-31-1 Definitions. As used in this chapter unless otherwise provided:

~~["Trolling" means trailing a line attached to either a baited hook or artificial lure from a boat moving faster than slow-no-wake speed;~~

~~"Slow-no-wake" means as slow as possible without losing steerage way and so as to make the least possible wake. This would almost always mean speeds of less than five miles per hour;~~

~~"Demonstrate" as is used in section 13-31-5(3) means proof such as in any combination of documents including but not limited to copies of commercial licenses, excise tax reports, brochures, affidavits, etc. The burden of proof lies with the applicant.~~

~~"Active commercial vessel operation" as used in section 13-31-5(3) means use no less than two times every quarter over four quarters (12 months) and greater than eight times per year]~~

"Anchor" means to drop or deploy an anchor into the water. For the purposes of this section, "anchor" does not include attaching to a legal mooring.

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

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

"Slow-no-wake" means as slow as possible without losing steerage way and so as to make the least possible wake. This would almost always mean speeds of less than five miles per hour.

"Take" means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, or harvest, marine 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, marine life by any person who is in the water, or in a vessel on the water, or on or about the shore where marine life can be fished for, caught, captured, confined, or harvested, shall be construed as taking. Any gear, equipment, or tool possessed in the water shall be construed as being in use for the purposes of taking marine life.

"Trolling" means trailing a line attached to either a baited hook or artificial lure from a boat moving faster than slow-no-wake speed. [Eff and comp 9/16/95; am and comp] (Auth: HRS §190-3) (Imp: §§190-3, 190-4.5)

§13-31-2 Boundaries. The Molokini shoal marine life conservation district shall include subzones A and B of that portion of the submerged lands and overlying waters surrounding Molokini islet, county of Maui, as follows:

- (1) Subzone A is defined as that portion of submerged lands and overlying waters within the crater, beginning at a point at the highwater mark of Lalilali Point, then along the highwater mark of the northern shoreline eastward until Pahe'e o Lono Point, then west along a straight line to the end of the submerged ridge (shoal) extending from Lalilali Point, then along the top of the shoal back to the point of beginning; and
- (2) Subzone B is defined as that portion of submerged lands and overlying waters outside the crater, encircling the islet out to 100 yards, seaward of the point of beginning at the highwater mark of Lalilali Point then eastward along the highwater mark of the

southern shoreline of the islet to Pahe'e o Lono Point, then west along a straight line from Pahe'e o Lono Point to the end of the shoal extending from Lalilali Point, then along the top of the shoal back to the point of beginning.

~~[Subzone areas]~~ Subzones A and B are illustrated in Exhibit A entitled "Map of Molokini Shoal Marine Life Conservation District, Maui [1/18/94" attached], dated June 24, 2019, located at the end of this chapter.

[Eff 5/26/81; am, ren, and comp 9/16/95; am and comp] (Auth: HRS §190-3) (Imp: HRS §§190-1, 190-2, 190-3)

§13-31-3 Prohibited activities. ~~[No person shall engage in the following activities in]~~ Within the Molokini [shoal marine life conservation district] Shoal Marine Life Conservation District, county of Maui, no person shall:

- (1) ~~[Fish for, catch, take, injure, kill, possess, or remove any finfish, crustacean, mollusk including sea shell and opihi, live coral, algae or limu, or other marine life, or eggs thereof]~~ Take marine life except as provided for in section 13-31-4(1);
- (2) Have or possess in the water, any ~~[spear, trap, net, crowbar,~~ gear, equipment, tool, or ~~[any]~~ other device that may be used for the taking or altering of ~~[marine life,~~ any geological feature[~~τ~~] or specimen;
- (3) Take, alter, deface, destroy, possess, or remove any sand, coral, rock, or other geological feature~~[~~τ~~]~~ or specimen;
- (4) Feed or deliberately introduce any food material, substance, or attractant, directly to or in the vicinity of any marine life, by any means for any purpose except as provided in section 13-31-4(1);
- (5) ~~[Moor boats for commercial activities]~~ Engage in commercial activity involving

ocean users getting in or on the water, including but not limited to swimming, snorkeling, diving, kayaking, or paddling, except as provided for in section 13-31-5;
or

- (6) Anchor a boat [~~when a day use mooring system and management plan is established by this department~~]. [Eff 5/26/61; am, ren, and comp 9/16/95; am and comp]
(Auth: §§190-3, 190-4.5) (Imp HRS §§190-1, 190-3, 190-4.5)

§13-31-4 Allowed activities. A person may[÷

- (1) ~~Fish for, catch, take, possess, or remove]~~
take or possess any finfish by trolling in subzone B only[÷
(2) ~~Possess in the water, any knife and any shark billy, bang stick, powerhead, or carbon dioxide (CO2) injector for the sole purpose of personal safety].~~ [Eff 5/26/81; am, ren, and comp 9/16/95; am and comp] (Auth: HRS §§190-3, 190-4.5) (Imp: HRS §§190-1, 190-3, 190-4.5)

§13-31-5 Exceptions; permits. (a) The department may issue special activity permits, not longer than one year in duration, to engage in activities otherwise prohibited by law [~~and section 13-31-3, under such terms and conditions it deems necessary to carry out the purpose of chapter 190, Hawaii Revised Statutes:~~

- (1) ~~To take]~~ for scientific, educational, management, or propagation[÷ or other] purposes in conformance with chapter 190 and section 187A-6, Hawaii Revised Statutes[÷ ~~any form of marine life or eggs thereof otherwise prohibited by law;].~~

~~[(2)]~~ (b) Except as provided in chapter 13-257, subchapter 4, the department may issue marine life conservation district commercial use permits to engage in commercial activity, excluding the taking of marine life, with [a marine life conservation district use permit.] the following conditions:

- (1) Each boat shall be required to obtain a separate permit[. An applicant for this permit shall pay a non-refundable permit fee of \$50 valid for a two-year duration.];
- (2) Upon adoption of this chapter, active permits with an expiration date of December 14, 2023, shall have a new expiration date of December 31, 2023. Thereafter, permits shall be valid for not longer than two years and shall expire on December 31 of each odd-numbered year;
- (3) Each permittee shall pay a permit fee at the time of renewal. The fee shall be set based on three categories of passenger capacity: Category 1 for vessels with passenger capacities lower than twenty-five; Category 2 for vessels with passenger capacities from twenty-five to seventy-four; and Category 3 for vessels with passenger capacities equal to 75 or more;
- (4) Permit renewal fees shall be set as follows: Category 1 = \$1,500; Category 2= \$3,000; and Category 3= \$6,000;
- (5) The department may establish permit terms and conditions that provide for the reduction or waiver of permit fees as the department deems appropriate;
- (6) Prior to ~~its~~ the expiration~~]~~ of the permit, the permittee may apply for reissuance. Unless the permit is reissued, it shall automatically expire on the expiration date[. The permittee shall indemnify, defend, and hold harmless the State of Hawaii, its successors, assigns,

~~officers, employees, contractors, and agents from and against any loss, liability, claim or demand for property damage, personal injury and death arising from any act or omission related to this permit];~~

~~[(3)]~~ (7) An application for reissuance of this permit shall be accepted only from a commercial operator who ~~[can demonstrate active commercial vessel operation within the Molokini shoal marine life conservation district]~~ possesses a current permit within the twelve-month period immediately prior to the ~~[effective date of these rules,]~~ expiration date of their current permit and who possesses a commercial vessel use permit for the use of state boating facilities issued in accordance with section 13-231-57~~[7]~~ or a commercial vessel registration issued in accordance with section 13-256-4~~[7]~~. ~~No application for a permit shall be accepted after ninety days of the effective date of these rules];~~

(8) The permittee shall indemnify, defend, and hold harmless the State of Hawaii, its successors, assigns, officers, employees, contractors, and agents from and against any loss, liability, claim or demand for property damage, personal injury and death arising from any act or omission related to this permit;

~~[(4)]~~ (9) The permit shall be incorporated as an addendum to the commercial vessel use permit for the use of state boating facilities issued in accordance with section 13-231-57, or a commercial vessel registration issued in accordance with section 13-256-4;

~~[(5)]~~ (10) The permit shall be non-transferrable, except as ~~[provided]~~ provided by section 13-231-62; ~~[and]~~

(11) The department may establish additional permit terms and conditions deemed necessary to minimize any adverse effect within the

conservation district; provided that the department shall provide written notice of any change in permit conditions at least ninety calendar days prior to the effective date of the change, except, as determined by the department, when an immediate change in permit conditions is necessary to protect or preserve the conservation district or to protect the health and safety of the public; and

[~~(6)~~] (12) The board may revoke any permit for any infraction of the terms and conditions of the permit, and a person whose permit is revoked shall not be eligible to renew a permit until the expiration of one year from the date of revocation. [Eff 5/26/81; am 3/2/87; am, ren, and comp 9/16/95; am and comp] (Auth: §§187A-6, 190-3, 190-4.5) (Imp: HRS §§90-3(b), 187A-6, 190-4)

§13-31-6 Penalty. A person violating the provisions of this chapter or the terms and conditions of any permit issued as provided by this chapter, shall be punished as provided by law." [Eff 5/26/81; am, ren, and comp 9/16/95; comp] (Auth: HRS §§190-3, 190-4.5) (Imp: HRS §190-5)

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. These amendments to and compilation of chapter 13-31, 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 (date), and filed with the Office of the Lieutenant Governor.

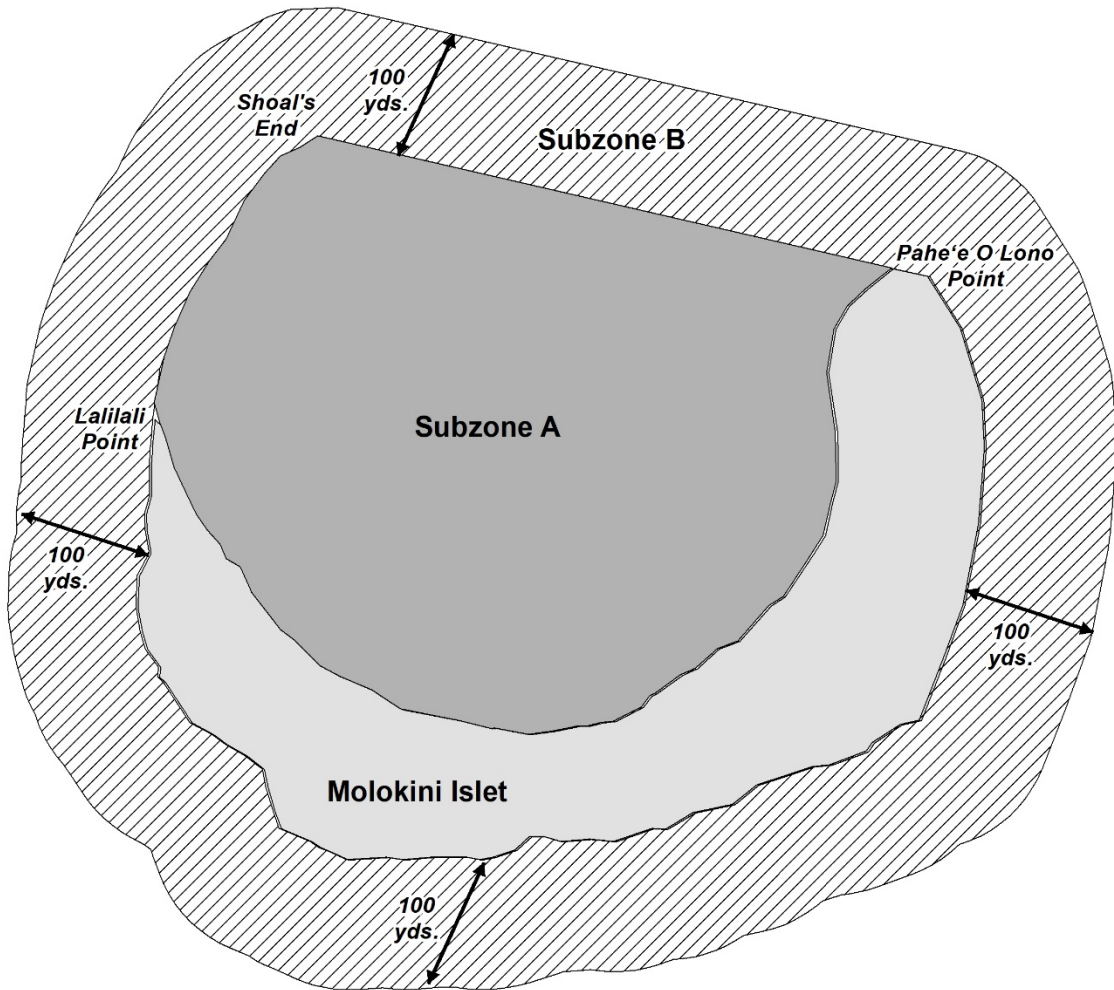
DAWN N. S. CHANG
Chairperson, Board of Land
and Natural Resources

APPROVED AS TO FORM:



Deputy Attorney General

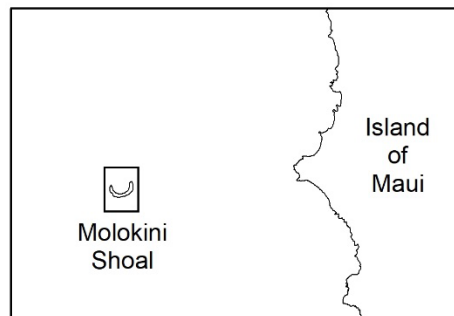
**Exhibit A. Map of Molokini Shoal
Marine Life Conservation District, Maui
June 24, 2019**

0 0.05 0.1 Miles



Legend

-  Molokini Shoal MLCD: Zone A
-  Molokini Shoal MLCD: Zone B



Item F-2, Exhibit 8

Amendment and Compilation of Chapter 13-230 Hawaii Administrative Rules

(Date adopted)

1. Chapter 13-230, Hawaii Administrative Rules, entitled "General Provisions", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 11

OCEAN RECREATION AND COASTAL AREAS

PART 1

SMALL BOAT FACILITIES AND PROVISIONS GENERALLY APPLICABLE TO ALL STATE NAVIGABLE WATERS

CHAPTER 230

GENERAL PROVISIONS

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Historical note. This chapter is based on general provisions, definitions, and determination of residency of the small boat harbors rules, effective November 5, 1981, and as amended thereafter, under the jurisdiction of the Department of Transportation, Harbors Division. The administrative jurisdiction for recreational boating and related vessel activities was transferred to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, SLH 1991. [Eff 2/24/94; comp 12/7/13]

SUBCHAPTER 1

SCOPE AND DEFINITIONS

§13-230-1 Purpose and scope. The purpose of these rules is to secure the most effective control

and management of the small boat harbors and facilities of the State in order that the general public may enjoy safe, orderly, and convenient water recreation. These rules are intended to harmonize and coordinate the department's powers and duties with all applicable public laws, and are also intended to govern the use or operation of vessels and the activities of persons in the small boat harbors, shores, ocean waters, and navigable streams of the State. [Eff 2/24/94; comp 12/7/13; comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-230-2 Interpretation. If any section of these rules is inconsistent with any laws of the United States or any rule, or standard established pursuant thereto, such section shall be construed, superseded, or governed thereby. Nothing contained in these rules shall be construed to limit the powers of any state department or agency. Each provision of these rules is also intended to be construed most liberally in light of the purpose stated in section 13-230-1. [Eff 2/24/94; comp 12/7/13; comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-230-3 Severability. The provisions of these rules are declared to be severable and if any portion or the application thereof to any person or property is held invalid for any reason, the validity of the remainder of these rules or the application of such remainder to other persons or property shall not be affected. [Eff 2/24/94; comp 12/7/13; comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-230-4 Penalties and prosecution. (a) Violation of rules, penalty. Any vessel, its agent, owner, or crew that violates the rules of the

department, including vehicular parking or traffic movement and unauthorized discharge, dumping, or abandoning of any petroleum product, hazardous material, or sewage in violation of the state water quality standards established by the department of health, may be fined or deprived of the privilege of operating or mooring any vessel in state waters for a period of not more than thirty days, in accordance with section 200-14, Hawaii Revised Statutes.

(b) General administrative penalties. Except as otherwise provided by law, the board is authorized to set, charge, and collect administrative fines and to recover administrative fees and costs, including attorney's fees and costs, or bring legal action to recover administrative fines and fees and costs, including attorney's fees and costs, or payment for damages or for the cost to correct damages resulting from a violation of subtitle 8 of title 12 or any rule adopted thereunder in accordance with section 200-14.5, Hawaii Revised Statutes. Each day or instance of violation shall constitute a separate offense. [Eff 2/24/94; comp 12/7/13; am 12/31/18; comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-14, 200-14.5) (Imp: HRS §§200-2, 200-3, 200-4, 200-14, 200-14.5)

§13-230-5 Judicial review. Nothing contained in these rules shall be construed to preclude appropriate resort to judicial remedy or review. [Eff 2/24/94; comp 12/7/13; comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-230-6 Notice. Where notice to a permittee, co-owner, lien holder, owner, or any other party is required by this chapter, the department shall effect service by one of the following:

- (1) Posting the notice in a conspicuous place aboard the permittee's vessel or at the assigned berth;

(2) Mailing the notice to the person by certified mail, return receipt requested, at the person's last known address, provided that service by mail is deemed received and completed five days after the date of mailing; or

(3) Personal service;

provided that in an emergency, where life or property is endangered or if a vessel may interfere with other vessels, construction, or maintenance of berthing facilities, or with the free and proper navigation of a waterway unless immediate action is taken, remedial action may be taken by the department without prior notice. [Eff 2/24/94; comp 12/7/13; comp

] (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-230-7 Tampering with, defacing, or removing notices. No person shall tamper with, deface, or remove any notice posted by the department pursuant to section 13-230-6 except the owner of the vessel or the permittee assigned to the berth. [Eff 2/24/94; comp 12/7/13; comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-230-8 Definitions. When used in these rules promulgated pursuant to chapter 200, Hawaii Revised Statutes, unless otherwise specifically provided or the context clearly indicates otherwise:

"Abandon" when applied to animals, means to leave an animal at any location, whether intentionally, recklessly, or negligently, without the owner intending to return for the animal and without the permission of the public or private property owner.

"Adult" means a person who has reached majority.

"Agreement" means the agreement between the boat owner and the State as required by section 13-231-2.

"Anchoring" means to secure a vessel temporarily to submerged land by dropping an anchoring device from a vessel.

"Anchoring device" means a device made of metal or similar material, attached by rope or chain to a vessel, which can be deployed to submerged land to secure the vessel in a particular place.

"Approved" means that a fitting, appliance, apparatus, or item of equipment to be fitted or carried in a vessel, or by any particular arrangement, is sanctioned by the commandant of the Coast Guard, unless otherwise stated by the department.

"Approved backflow prevention device" means a backflow prevention device that meets the requirements contained in standard 1001, American Society of Sanitary Engineers or the Uniform Plumbing Code adopted by the Uniform Plumbing Code adopted by the International Association of Plumbing and Mechanical Officials (IAPMO).

"Approved marine surveyor" means a person who has been approved by the chairperson to inspect a vessel for an owner seeking a permit to moor a vessel in a small boat harbor in accordance with section 13-231-45(h) and (i).

"Approved vessel inspector" means an employee of the department who has been designated by the chairperson to inspect a vessel for compliance with criteria necessary to obtain a mooring permit.

"Assigned berth" means a berth that is assigned to a permittee by a valid regular mooring permit.

"Background" means that portion of the hull or superstructure, or a specially provided backing plate, upon which the numbers are placed, but shall not include any border, trim, outlining, or shading of the numerals or letters.

"Barge" means a non-self-propelled vessel.

"Berth" means any place where a vessel is anchored, moored, or made fast or laid alongside a dock, quay, catwalk, or pier.

"Bicycle" means every device propelled by human power upon which any person may ride, having two tandem wheels which are sixteen inches in diameter or greater, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels.

"Boat" means a small vessel propelled by oars or paddles or by sail or power.

"Boat dealer" means a person engaged wholly or partly, for gain or compensation, in the business of selling vessels or offering vessels for sale, buying or taking in vessels for the purpose of resale, or exchanging vessels.

"Boat livery" means a person or entity who is engaged in the business of renting, leasing, or chartering vessels.

"Boat manufacturer" means a person engaged in:

- (1) The manufacture, construction, or assembly of boats or associated equipment;
- (2) The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly; or
- (3) The importation into the United States for sale of boats, associated equipment, or components thereof.

"Boat owner" means the legal owner of a vessel where there is no security interest held by anyone on the vessel, a buyer under a purchase money security interest, a debtor under any security interest, a demise charterer of a vessel, or a lessee or charterer of a vessel under lease or charter which provides the lessee or charterer with exclusive right to possession of the vessel to the exclusion of the lessor or the person from whom the vessel is chartered. The documentation of ownership must meet the requirements of section 13-241-5(c).

"Recreational boating accident":

- (1) Means a collision, accident, or other casualty involving:
 - (A) A person's death;
 - (B) Complete loss of a vessel;
 - (C) Damage to a vessel amounting to \$2,000 or more;
 - (D) The disappearance of a person from a vessel under circumstances indicating death or injury to that person; or

- (E) The injury to a person requiring medical treatment beyond first aid.
- (2) Includes damage to a vessel or its equipment, loss of life, or injury to any person or object:
 - (A) Caused by a moving vessel's wake, wash, or waves, or by a vessel's capsizing, or collision with another vessel or object;
 - (B) Caused by flooding, fire, or explosion;
 - (C) Caused when a person falls overboard; or
 - (D) On board a vessel.

"Bona fide fishing tournament" means a fishing tournament sponsored by a boat club, fishing club or yacht club, or a business or non-profit organization formed for the primary purpose of sponsoring a fishing tournament where participation is invited from the general public.

"Buoy" means any floating aids to navigation moored to the seabed and used to convey a message.

"Business" means any and all activities engaged in or caused to be engaged in by any person or legal entity, including, but not limited to, solicitations and advertisements, with the object of making a profit or obtaining an economic benefit either directly or indirectly.

"C.F.R." means the Code of Federal Regulations.

"Camping" means the use and occupation of any portion of a state small boat harbor, boat launching facility, or any other property managed by the department as a temporary or permanent dwelling place or sleeping place (including the laying down of bedding for the purpose of sleeping). Camping includes being in possession of a backpack, tents, blankets, tarpaulins, or other obvious camping paraphernalia, or storing personal belongings, or making any fire, or using any tents, shelter, or other structure or vehicle for sleeping or doing any digging or earth breaking or carrying on cooking activities. The above-listed activities constitute camping when it reasonably appears, in light of the circumstances,

that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging.

"Canoe" means outrigger canoe.

"Carrying passengers for hire" means the carriage of any person or persons by a vessel for compensation flowing, whether directly or indirectly, to the owner, charterer, operator, agent, or any other person interested in the vessel.

"Catamaran" means a multi-hulled vessel with a broad, flat deck that is affixed on top of closed cylinders which are used for buoyancy, the basic design of which is usually implemented with two rows of floats as a catamaran or with three rows of floats as a trimaran.

"Certificate" means a certificate of number issued by the department for an undocumented vessel.

"Chairperson" means the chairperson of the board of land and natural resources of the State of Hawaii or the chairperson's duly authorized representative or subordinate.

"Civil union" means a union between two individuals established pursuant to chapter 572B, Hawaii Revised Statutes.

"Civil union partner" means an individual who is a party to a civil union established pursuant to chapter 572B, Hawaii Revised Statutes.

"Coast Guard" means the United States Coast Guard, or its successor agency.

"Colony" means a collective of free-roaming, abandoned, stray, or feral cats.

"Commercial activity" means to engage in any action or attempt to engage in any action designed for profit, which includes, but is not limited to, the exchange or buying and selling of commodities; the providing of services relating to or connected with trade, traffic, or commerce in general; any activity performed by the commercial operator or its employees or agents in connection with the delivery of such commodities or services; and the soliciting of

business, including the display or distribution of notices, business cards, or advertisements for commercial promotional purposes.

"Commercial fishing motorboat" means a motorboat used for taking fish for profit or gain or as a means of livelihood.

"Commercial high speed boating" means the use of an open ocean racing boat to provide high speed rides to passengers who pay compensation for the rides.

"Commercial high speed boating" does not include:

- (1) The use of an open ocean racing boat during an official racing competition; or
- (2) The use of an open ocean racing boat while practicing for a racing competition; provided that no passenger pays compensation for riding the boat during the practice.

"Commercial motorboat" means any motorboat used for hire, profit, or gain.

"Commercial ocean recreation activities" means any ocean recreation activity offered for a fee.

"Commercial purposes" includes the staging, loading, and discharge of passengers or supplies at a state boating facility for further transport to a vessel's offshore location by means of a water taxi or any other vessel, or provisioning a vessel before or after a voyage involving the carriage of passengers for hire.

"Commercial vessel" means a vessel engaged in any trade, business, or commercial activity, including, but not limited to, carrying passengers for hire, charter fishing, bare boat (demise) or any type of charter maintenance, harvesting coral or similar resources, construction, towing, tow-boating, or other trade or business wherein the vessel is used in any manner to promote the venture, or is registered with the State or documented by the United States Coast Guard for commercial use.

"Compensation" means any valuable consideration.

"Contrivance" means any man-made object or artificial arrangement not used or intended to be used for transportation which may be floated upon or suspended within or on the water.

"Day-use mooring buoy" means a mooring buoy that can be used for a maximum of two and one-half hours at a time and overnight mooring is prohibited.

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

"Dinghy" means a small open boat under thirteen feet in length, which may be propelled by oars, sails, or an outboard motor and carried on or towed by a larger boat or yacht.

"Display area" means the area on a sign or buoy used for display of a waterway marker symbol.

"Diver's flag" means a red flag with a white diagonal running from the masthead to lower outside corner.

"Division" means the department of land and natural resources division of boating and ocean recreation.

"Documented vessel" means any vessel which has a valid marine document issued by the Coast Guard, in accordance with the Code of Federal Regulations, Subchapter G, Part 67, Documentation of Vessels.

"Dormant vessel" means a vessel or contrivance, other than a houseboat, that has not been navigated from or has not vacated an assigned mooring or facility within or offshore of a state small boat harbor at least once within a ninety-day period, or cannot be made seaworthy upon thirty days' notice to the owner.

"Enforcement officer" means a police officer and any other state or county officer charged with the enforcement of state laws.

"Federal laws and requirements" means all statutes, regulations, and other laws of the United States, which may be applicable to these rules.

"Feral" means having escaped or been released from domestication and reverted to a wild state and any offspring resulting therefrom.

"Firm" includes a business organization such as a sole proprietorship, partnership, or corporation which is licensed to engage in or conduct business in the State.

"Foreign built vessel" means any vessel whose hull was constructed in a country other than the United States.

"Forward half of the vessel" means any portion of the vessel in front of a point equidistant from the stem and stern of the vessel.

"Free diver" means a person who is using a mask and snorkel, other than for SCUBA diving, who submerges under water or breaks the surface of the water.

"Global Positioning System" (GPS) means the method of terrestrial navigation using a GPS electronic instrument, receiving data from a network of orbiting satellites to locate one's position by latitude and longitude.

"Gross receipts" means all moneys paid or payable to the account of the commercial use permittee or catamaran registration certificate holder, for services rendered, or resulting from trade, business, commerce, or sales by the vessel or water sports equipment owner when the services, trade, business, commerce, or sales have a direct relationship to the vessel or permitted activity.

"Guardian" means a person invested by a court of law with the power, and charged with the duty, of taking care of a person and of managing the property of that person.

[~~"Hanai"~~] "Hānai" means a child who is taken permanently to be reared, educated, and loved by someone other than natural parents--traditionally a grandparent or other relative. The child is given outright; natural parents renounce all claims to the child. Usually the child is given at infancy.

"Handboard" means any type of surf riding board that is:

- (1) With or without skegs;
- (2) Worn on one or both of the operator's hands;
- (3) Is less than sixteen inches in overall length; and
- (4) Is used for the sport of wave riding.

"Harbor resident" means the owner, co-owner, or their spouse and their legal dependents authorized by

the department to reside on board a vessel used as the principal habitation of the owner.

"Hearing officer" means a person appointed by the chairperson to hear appeals.

"High seas" means all parts of the sea that are not included in the exclusive economic zone, in the territorial sea, or in the internal waters of the United States.

"Highway" means "street" as defined in this section.

"Houseboat" means any vessel which is fitted for use as a permanent or temporary place of habitation, and is either stationary or capable of being moved by oars, sweeps, or towing.

"Hull" means the shell, frame, or body of a vessel, exclusive of masts, yards, sails, riggings, machinery, and equipment.

"Immediate family" means any person [~~and his or her~~], the person's spouse, and the person's dependent children under twenty-one years of age.

"Inland waters" mean the waters shoreward of the territorial sea baseline.

"Interest" includes any claim of right, title, ownership of stock, shares, profit, benefit, or gain in a corporation, partnership, joint venture, or any other business entity that has a use permit.

"Kayak" means a watercraft that has an open or covered top and is designed to hold one or more participants and propelled by use of a single- or double-bladed paddle.

"Launch" means a small motorboat that is open or that has the forepart of the hull covered.

"Legal dependent" or "dependent" means those persons who are defined as dependents by law, e.g., a spouse or minor child, or who are defined as dependents under Internal Revenue Service regulations or by the Armed Forces of the United States, or any of the following persons who are dependent upon a permittee for all or a substantial portion of the person's living expenses:

- (1) Spouse;
- (2) A son or daughter who is:

- (A) Unmarried and under eighteen years;
 - (B) Unmarried and under twenty years if a full-time student at a high school, business school, or technical school;
 - (C) Unmarried and under twenty-two years if a full-time undergraduate student at a college; or
 - (D) Unmarried and physically handicapped so as to be incapable of self-support;
- (3) A parent or grandparent if physically handicapped so as to be incapable of self-support; or
- (4) A grandchild, brother, or sister under eighteen years of age.

"Legal owner" includes a person who holds unencumbered title to a vessel or is a secured party under a security interest for the vessel.

"Length" when applied to vessels covered by these rules, means the measurement of a vessel from end to end over the deck. It is a straight-line measurement of the overall length from the foremost part of the vessel measured parallel to the centerline. Bowsprits, boomkins, rudders, motor brackets, and similar fittings or attachments or sheer are not to be included in the measurement. In case of a vessel of an open type or with a cockpit, the measurement is taken between the foremost and aftermost extremities of the hull exclusive of sheer. In vessels having more than one deck, it is the length measured from the foremost part of the bow to the aftermost part at the stern exclusive of sheer.

"Lienholder" means a person holding a recorded security interest in a vessel.

"Lifeboat" means a boat carried aboard a vessel and used solely for lifesaving purposes, but not including dinghies, tenders, speedboats, or other types of craft carried aboard a vessel and used for other than lifesaving purposes.

"Liquor" or "intoxicating liquor" shall mean the same as defined in section 281-1, Hawaii Revised Statutes.

"Litter" means any and all types of debris and substances, whether liquid or solid, and materials such as garbage, refuse, rubbish, glass, cans, bottles, paper, wrappings, fish or animal carcasses, or any other nauseating or offensive matter or any machinery, appliance, or automobile, or parts thereof, or any other substances which render small boat harbor lands or facilities unsightly, noxious, or otherwise unwholesome to the detriment of the public health and welfare or the enjoyment of the small boat harbor for recreational purposes.

"Livery boat" means a vessel which is rented, leased, or chartered by a person who is engaged in the business of renting, leasing, or chartering vessels.

"Living aboard" means the substantial use of a vessel as a place of abode, dwelling, living quarters, or residence, including, but not limited to, the regular use for such purposes during weekends.

"Machinery" means all internal combustion engines located within the vessel and all motor or mechanical devices capable of propelling vessels.

"Majority" means the age specified under section 577-1, Hawaii Revised Statutes.

"Minor" means a person who has not reached the age of majority.

"Moor" means to secure a boat by making it fast with cables, lines, or anchors.

"Mooring" means a buoy attached by rope or chain to a permanently placed weight or structure situated within a submerged land area and to which a vessel can be made permanently or temporarily secured. "Mooring" is also referred to as a "mooring buoy".

"Motorboat" means any vessel [~~which~~] that is equipped with propulsion machinery, including steam. This term includes, but is not limited to, wet bikes, motorized surfboards, and any other vessel temporarily or permanently equipped with a motor.

"Navigable streams" means the waters of estuaries and tributaries of the streams of each island of the State, where boating and water related activities, recreational or commercial, may be carried on, whether the mouths of the streams are physically opened or not

to ocean waters for [~~intra~~] intrastate or interstate commerce or navigation.

"Nonresident" means a person who is not a resident of the State of Hawaii.

"Ocean recreation management area" (ORMA) means ocean waters of the State that have been designated for specific activities as described in chapter 13-256, Ocean Recreation Management Rules and Areas.

"Ocean waters" means all waters seaward of the shoreline within the jurisdiction of the State.

"Open ocean racing boat" means a motorized vessel which:

- (1) Is designed, modified, or restored for the primary purpose of high speed board racing; and
- (2) Has the capacity to carry not more than the operator and five passengers.

"Operate" means to navigate or otherwise use a vessel on or in the waters of the State.

"Operator" means a person who operates, or who has charge of the navigation or use of, a vessel.

"Operator permit" means the permit issued by the department [~~which~~] that authorizes either the direct operation or the offering for a fee of surfboards and sailboards or any vessel, watercraft or water sports equipment on the ocean waters and navigable streams of the State.

"Outrigger canoe" means a canoe having the inclusion of a rig known as an outrigger which acts as a counterpoise or balance, rigged out from the side of the canoe. A number of spars (iako), usually two but up to as many as ten depending on the canoe's origin and purpose, are lashed across and to the canoe gunwales, extending outwards for a given distance and truncating with the attachment of a flotation device (ama).

"Owner" shall be synonymous with the word "boat owner" as defined in this section.

"Paddleboard" means any type of board that [~~is~~]:

- (1) [~~Without~~] Is without skegs;
- (2) Does not exceed four feet in length; and
- (3) Is used for the sport of surfriding.

"Paipo board" shall be synonymous with the word "paddleboard" as defined in this section.

"Parasailing" means the activity in which an individual is transported or carried aloft by a parachute, sail, or other material attached to a towline, which is towed by a vessel.

"Parent" includes legal guardian and legal adoptive parent, except where the guardianship or adoption was acquired primarily to obtain resident status for the ward or adopted child. ~~[It]~~ "Parent" shall also include a person who can legally claim an unmarried minor as a dependent for federal income tax purposes, but only when the person has been in loco parentis to the minor for the twelve-month period immediately preceding the residence determination date.

"Park" or "parking" means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers.

"Passenger" means every person carried on board a vessel other than:

- (1) The owner or the owner's representative;
- (2) The operator;
- (3) Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and are paid for their services; or
- (4) Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for the guest's carriage.

"Person" means any individual, firm, partnership, corporation, trust, association, joint venture, organization, institution, or any other legal entity.

"Personal flotation device" is a technical term for a life preserver that has been approved and certified by the United States Coast Guard and capable of providing at least ninety per cent of factory-rated flotation capacity.

"Pet owner" means any person owning, harboring, or keeping a dog, cat, or other domestic pet, or having custody thereof.

"Power driven catamaran" means a catamaran propelled by machinery whether under sail or not.

"Power-driven vessel" means any vessel propelled by machinery.

"Pram" means a small lightweight nearly flat-bottomed boat with a broad transom and usually square-bow often used as a dinghy.

"Principal owner" means a person whose name appears on a certificate of number as the primary owner or who is named as managing owner of a Coast Guard documented vessel.

"Principally used" means a measurement of the time when a vessel is on the waters of the United States, a state, territory, province, or country and includes the time when the vessel is not in motion, as, for instance, when the vessel is moored or at anchor, as well as the time when the vessel is being navigated.

"Rafting" means tying up or otherwise attaching one vessel to another vessel that is already attached to a mooring or similar device, or to another vessel that is already anchored.

"Reciprocal beneficiary" means an adult who is a party to a valid reciprocal beneficiary relationship and meets the requisites for a valid reciprocal beneficiary relationship as set forth in chapter 572C, Hawaii Revised Statutes.

"Recreation" means activities in which there is direct and intimate contact with water including, but not limited to, fishing, swimming, surfing, boating, water skiing, and viewing or enjoying historical, archeological, scenic, or scientific sites.

"Recreational vessel" means any vessel that is being used for pleasure and not for conducting commercial activity.

"Regatta" or "marine parade" means an organized water event of limited duration which is conducted according to a prearranged schedule.

"Registration sticker" means a pair of stickers, plates, tabs, or other devices issued by the department with certificates of number and renewals thereof to be affixed to the vessel to indicate that the vessel's certificate of number is current and valid.

"Regular permittee" means a person holding a valid regular mooring permit.

"Regulatory marker" means a waterway marker [which] that indicates the existence of regulatory areas, speed zones, or restricted areas and which has no equivalent in the United States Coast Guard system of navigational aids.

"Residence" or "residence status" means a combination of physical presence in a place and the intent to make such place one's permanent home.

"Residency determination date" means:

- (1) The date a person applies for a use permit or for application renewal;
- (2) The date of issuance or renewal of a use permit;
- (3) The date the department makes a residency status determination following the receipt of a completed questionnaire submitted by a person classified as a nonresident pursuant to section 13-230-27; or
- (4) The date of a hearing officer's decision on a petition submitted to the department as prescribed in section 13-230-28.

"Roadway" means that portion of a street or highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term "roadway" shall refer to each roadway separately but not to all such roadways collectively.

"Rules" means the rules governing small boat harbors, facilities under the jurisdiction of the division, and State ocean waters as set forth in Title 13, Subtitle 11 - Ocean Recreation and Coastal Areas.

"Rules of the road" means the federal statutory and regulatory rules governing navigation of vessels.

These rules are published by the Coast Guard in pamphlet form and known as Navigation Rules - International - Inland COMDTINST [~~M16672.2B.~~] M16672.2D.

"Sailboard" means any type of board that exceeds four feet in length and is propelled by a detachable sail apparatus.

"Sailing vessel" means any vessel propelled by sail only. Every power-driven vessel which is under sail and not under power is to be considered a sailing vessel, and every vessel under power, whether under sail or not, is to be considered a power-driven vessel.

"SCUBA" means self-contained underwater breathing apparatus and includes all forms of self-contained underwater breathing apparatuses, e.g., re-breathers, open-circuit, semi-closed or closed circuit or surface-supplied breathing apparatuses.

"Security interest" means an interest in a vessel reserved or created by agreement and which secures payment or performance of an obligation. The term includes the interest of a lessor under a lease intended for security. A security interest is "perfected" when it is valid against third parties generally, subject only to specific statutory exceptions contained in article 9, chapter 490 and section 490:1-201, Hawaii Revised Statutes.

"Sheer" means the longitudinal upward curve of the deck, gunwales, and lines of a vessel, when viewed from the side.

"Shore waters" or "shores" means any shores or waters between the three nautical mile limit and the shoreline of the islands of the State of Hawaii.

"Shoreline" means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.

"Sign" means any device for carrying a message which is attached to another object such as a piling, buoy, structure, or land itself.

"Skeg" means any fin-like projection.

"Sleeping place" means a place used by a person for the purpose of sleeping, where the person is or may be asleep inside a tent, sleeping bag, or some form of temporary shelter or is or may be asleep atop of or covered by materials such as a cot, mat, bedroll, bedding, sheet, blanket, pillow, bag, cardboard, or newspapers.

"Slow-no-wake" means as slow as possible without losing steerage way and so as to make the least possible wake. This would almost always mean speeds of less than five miles an hour.

"Small boat harbor" means those harbors or portions of harbors, and any interest in property, whether real, personal, or mixed connected therewith under the care and control of the department, which are used as described in section 200-9, Hawaii Revised Statutes.

"Snorkeler" shall be synonymous with the word "free diver" as used in this section.

"Spouse" means a marriage partner, reciprocal beneficiary, or civil union partner of an individual.

"Stand" or "standing" means the halting of a vehicle whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

"State" means the State of Hawaii.

"State aid to navigation" means a waterway marker which is the equivalent of a United States Coast Guard aid to navigation.

"Stay aboard" or "staying aboard" means a person or persons aboard any vessel with prior notice to the department or a stay aboard permit between the hours of 12:00 midnight and 6:00 A.M., while the vessel is moored in a state small boat harbor or offshore mooring area.

"Stop" or "stopping", when prohibited, means any halting, even momentarily, of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control sign or signal.

"Stray" means any dog, cat, or other animal without a microchip or other registered owner-identifier or that is living or roaming off its owner's property without permission to be on other public or private property. Strays may also be feral or abandoned.

"Street" means the entire width between boundary lines of every way publicly maintained in any small boat harbor when any part thereof is open to the public for purposes of vehicular traffic.

"Surfboard" means any type of board that exceeds four feet in length and is used for the sport of surf riding.

"Symbols" means geometric figures such as a diamond, circle, or rectangle, used to convey a basic message.

"Tahiti moor" means the mooring of a vessel where one end of the vessel is moored by a rope or chain attached to a buoy that is attached to a pile or device that includes, but is not limited to, an anchor, concrete block or similar device placed or dropped on submerged land. The other end of the vessel is moored to the facility that includes, but is not limited to, breakwaters, catwalk, piers, and docks where direct access can be made from the facility to the vessel either by gangway, plank, or stepping onto the vessel.

"Temporarily assigned berth" means a berth that is allocated to a permittee by a valid temporary mooring permit for interim use of the facility.

"Temporary mooring" means mooring pursuant to a temporary use permit. Calculation of the allowable period for temporary mooring shall include cumulative days moored with and without a permit.

"Temporary permittee" means a person holding a valid temporary mooring permit for the interim use of a berth or offshore mooring.

"Tender" means a dinghy or a larger launch used to carry persons and supplies to and from large vessels.

"Territorial sea baseline" means the line from which the territorial sea is measured, which is

generally the low water line along the coasts including the coasts of islands and special closing lines drawn tangent to the headlands across the mouths of rivers, bays, inlets, and other similar indentations.

"Thrill craft" means any motorized vessel that falls into the category of personal watercraft, which:

- (1) Is generally less than thirteen feet in length as manufactured;
- (2) Is generally capable of exceeding a speed of twenty miles per hour;
- (3) Can be operated by a single operator, but may have the capacity to carry passengers while in operation; or
- (4) Is designed to provide similar operating performance as a personal watercraft through a combination of small size, power plant, and hull design.

The term includes, but is not limited to, a jet ski, waverunner, wet bike, surf jet, miniature speed boat, hovercraft, and every description of vessel which uses an internal combustion engine powering a water jet pump as its primary source of motive propulsion, and is designed to be operated by a person or persons sitting, standing, or kneeling on, or being towed behind the vessel.

"Tow-in surfing" means utilizing a surfboard, often equipped with foot straps, to surf waves with the assistance of a thrill craft that is equipped with a rescue sled, bow tow-line, and a tow-in-rope.

"Transient vessel" means any vessel visiting the State for a period of less than ninety days.

"Ultralight or experimental float equipped aircraft" means an aircraft of light weight construction and limited range, generally carrying not more than two individuals, able to land on water surfaces using floats.

"Unassigned berth" means a berth that is not assigned to a permittee by a regular mooring permit.

"Underway" means the vessel is not at anchor, aground, or made fast to shore.

"Undocumented vessel" means any vessel [~~which~~ that] does not have a valid marine document issued by the Coast Guard, in accordance with the Code of Federal Regulations, Subchapter G, Part 67, Documentation of Vessels.

"Use permit" as used in these rules, means the authorization by the department to utilize state boating facilities, offshore mooring areas, offshore moorings, state ocean waters, and navigable streams, as evidenced by the fully executed "agreement" described in section 13-231-2.

"Vacation" means a period spent away from home or business in travel or recreation.

"Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, but excludes mopeds, devices moved by human power, or devices used exclusively upon stationary rails or tracks.

"Vessel" means all description of watercraft, used or capable of being used as a means of transportation on or in the water, except a seaplane.

"Vessel carrying passengers for hire" means any vessel which carries any person or persons for a valuable consideration that goes directly or indirectly to the owner, charterer, operator, agent, or any person who has an interest in the vessel.

"Vessel engaged in fishing" means any vessel fishing with nets, lines, trawls, or other fishing apparatus which restrict maneuverability, but does not include a vessel fishing with trolling lines or other fishing apparatus which do not restrict maneuverability.

"Vessel length" means the end-to-end measurement of a vessel, taken over the deck, parallel to the waterline from the foremost part of the bow to the aftermost part of the stern; provided[~~7~~] that hull platings, plankings, and extensions aside from the hull proper, such as a bowsprit, are not to be included in the measurement; provided further[~~7~~] that an open-type vessel or one with a cockpit shall be measured as if a complete deck existed at the upper level of the hull.

"Vessel length overall" means the distance between the fore-and-aft extremities of a vessel including hull platings, plankings, and any extensions beyond the hull proper, such as bowsprit, boomkin, steering device, or other extensions.

"Vessel used as a place of principal habitation" means a vessel on which any person remains overnight ninety times or more in a calendar year while the vessel is moored in a state small boat harbor.

"Visiting vessel" means a vessel temporarily moored in a state small boat harbor while having a use permit applicable to a different state small boat harbor or other boating facility under the jurisdiction of the division.

"Water sledding" means the activity in which an individual is transported or carried over the surface of the water on an apparatus attached to a towline and towed by a vessel.

"Water sports equipment" means any equipment, contrivance, frame, or other device that one or more persons may wear, lie, sit, or stand upon or in, and which is primarily for use in or on the water for pleasure, recreation, or sports, and not necessarily for transportation.

~~["Waters of the State" means any waters within the jurisdiction of the State, the marginal seas adjacent to the State, and the high seas when navigated as part of a journey or ride to or from the shores of the State.]~~

"Water taxi operations" means the shuttling of persons or cargo to or from the small boat harbor facility or a shoreside location authorized for such use under chapter 13-256 to a destination or vessel located outside the small boat harbor boundary.

"Waters of the State" means any waters within the jurisdiction of the State, the marginal seas adjacent to the State, and the high seas when navigated as part of a journey or ride to or from the shores of the State.

"Waterway marker" means any device designed to be placed in, or near, the water to convey an official message to a boat operator on matters ~~[which]~~ that may

affect health, safety, or well-being, except that such devices of the United States or an agency of the United States are excluded from the meaning of the definition.

"Wildlife" means any member of any non-domesticated species of the animal kingdom, and game mammals and game birds living in a wild and non-domesticated state, whether reared in captivity or not, including any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof. [Eff 2/24/94; am 4/27/02; am 6/16/03; am and comp 12/7/13; am 12/31/18; am and comp]
(Auth: HRS §§200-2, 200-4, 200-10, 200-22, 200-24)
(Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§§13-230-9 to 13-230-19 (Reserved)

SUBCHAPTER 2

DETERMINATION OF RESIDENCY

§13-230-20 Purpose. The purpose of this subchapter is to provide a procedure whereby a determination of residence status shall be made for all persons who own a vessel moored in a state small boat harbor or who apply for such moorage to assure that they are assessed the proper fees and charges as established by these rules; to provide an appeals mechanism for those persons who believe their residency classification is in error; and to provide sanctions for misrepresentation by a petitioner. [Eff 2/24/94; comp 12/7/13; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-230-21 REPEALED. [R 12/31/18]

§13-230-22 Twelve-month rule. (a) Status as a Hawaii resident must be acquired, and not subsequently lost at least twelve months prior to the residence determination date to avoid payment of the nonresidence fee differential prescribed in section 200-34, Hawaii Revised Statutes. This twelve-month rule also applies to the person whose residency is determined by the fact of residency of another.

(b) While residency shall be lost if it is interrupted during the twelve months immediately preceding the residence determination date, resident status derived from two or more successive periods of domicile in Hawaii may be joined together to compute the twelve-month period. [Eff 2/24/94; am and comp 12/7/13] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-230-23 Indications of residence. Because determination of residence in Hawaii requires a finding of subjective fact (intent to make a permanent home) as well as of objective fact (and physical presence), the following objective indications of a person's intent will be considered when determining the person's status. No single index is decisive.

- (1) Primary indications.
 - (A) Voter registration in Hawaii.
 - (B) Voting in Hawaii.
 - (C) Possession and use of Hawaii motor vehicle license plates.
 - (D) Payment of Hawaii personal income tax.
 - (E) Presence of spouse, children, and other close relatives in Hawaii.
- (2) Secondary indications.
 - (A) Membership in voluntary organizations in Hawaii.
 - (B) Licensing from the State for professional practice.

- (C) Carrying on of a business or the holding of a position in Hawaii.
- (D) Ownership of residential property or continuous letting of an apartment on a lease basis in Hawaii. [Eff 2/24/94; comp 12/7/13; comp]
(Auth: HRS §§200-2, 200-4, 200-10)
(Imp: HRS §§200-2, 200-4, 200-10)

§13-230-24 Rules of construction. The following rules of construction shall be applied in all cases:

- (1) Residence in Hawaii and residence in another place cannot be held simultaneously.
- (2) Presence in Hawaii primarily to attend an institution of higher learning does not create resident status.
- (3) Resident status, once acquired, will be lost by future voluntary actions of the resident inconsistent with such status~~[. However,]~~; provided that Hawaii residence will not be lost solely because of absence from the State while employed in the service of the United States, while engaged in navigation, or while a student at any institution of learning. [Eff 2/24/94; comp 12/7/13; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-230-25 Particular categories. (a) Adults. The resident status of every adult shall be established by the adult's own acts and intentions and shall not be derived from any other person, except as specifically provided otherwise in these rules.

- (b) Minors.
 - (1) Unemancipated minor. The residence of an unemancipated minor is the residence of the minor's father, if living, or the residence of the minor's mother, if the father is deceased.

- (2) Divorced parents. If the parents of an unemancipated minor are divorced, the minor's residence is that of the person to whom the minor's custody has been awarded by the court. If no award of custody has been made, the minor's residence is that of the father. However, if the minor maintains the minor's primary abode with the parent not having legal custody, residence of the minor is determined by that parent with whom the minor's primary abode is maintained.
- (3) Separated parents. If the parents of an unemancipated minor are separated, without a divorce having been granted or custody award having been made, the minor's residence is that of the father if the minor is not living with either parent. If the minor maintains primary abode with a parent, the minor's residence is the residence of that parent.
- (4) Death of a parent who had custody. The residence of an unemancipated minor becomes that of the surviving parent upon the death of the parent who had the minor's custody.
- (5) Both parents deceased. If both parents are deceased, the residence of the unemancipated minor remains that of the last parent to die until changed by court order. Upon court appointment of a guardian for the minor, the residence of the minor becomes that of the guardian.
- (6) A nonresident unemancipated minor attending an institution of higher learning outside of Hawaii or on active duty with the United States Armed Forces, whose parents become residents of Hawaii, and who would reach majority before deriving Hawaiian residence from the minor's parents' new status, may be classified as a resident for fee purposes when the minor's parents have completed twelve consecutive months of residence; provided that such classification will be

lost if actions inconsistent with resident status are taken after leaving such institution or discharge from the military (e.g., failure to promptly make a home in Hawaii).

- (7) If an unemancipated minor's parents lose their Hawaii residence, the minor will be classified as a nonresident at the next residence determination date. However, if the parents' change of residence is due to obedience to active-duty military orders, the minor shall continue to pay only resident fees and charges as long as one of the minor's parents remain on active duty and in a Hawaii resident status.
- (8) Emancipated minors. An emancipated minor shall be considered an adult for purposes of residence hereunder. The following shall constitute indications of emancipation, no one of which is controlling:
 - (A) Financially independent or self-supporting.
 - (B) Subsistence not provided by parent or legal guardian.
 - (C) Prior military service.
 - (D) Other primary and secondary indications of residence enumerated under section 13-230-24.
 - (E) Any other conduct inconsistent with parental control and custody.
- (9) [~~Hānai.~~] A person may base the person's residency on that of other than the parent or legal guardian~~[7]~~; provided that the relationship between the person and the person or persons other than the parent or legal guardian is [~~that of "hānai".~~] a hānai relationship.

(c) Aliens. In addition to all other requirements herein, an alien shall be classified as a resident only upon the alien's admission to the United States for permanent residence (immigration visa). Residence of a minor alien can only be derived from

another person (e.g., a parent) when both that person and the minor achieve resident status.

(d) Military personnel. Service in the armed forces of the United States shall not of itself negate establishment of residence in Hawaii. For instance, a nonresident member of the United States Armed Forces whose last duty station is in Hawaii and who does all other things necessary to establish a bona fide Hawaiian domicile, including discharge from the military in Hawaii, may be classified as a resident. In addition, a person who establishes a Hawaiian domicile but who enters the military service prior to the expiration of twelve months from the date of such establishment may add the period of the person's military service on to the former period to satisfy the twelve-month rule.

(e) Married persons and persons in other legal relationships. A married person or reciprocal beneficiary or civil union partner may establish resident status, either on the basis of indications of residence, or on the basis of the indications of residence of the person's spouse. However, the person must clearly state intent to make Hawaii the person's permanent residence. For purposes of the liveaboard fee, the person holding a principal habitation permit may rely on the residency indications of a reciprocal beneficiary who lives on board the vessel. [Eff 2/24/94; am and comp 12/7/13; am 12/31/18; comp] (Auth: HRS §§200-2, 200-4, 200-10)
(Imp: HRS §§200-2, 200-4, 200-10)

§13-230-26 Determination of residence procedure.

(a) These rules establish a fee structure in which nonstate residents in specified instances shall pay an application and permit fee differential. Therefore, any person seeking to be classified as a Hawaii resident for fee purposes shall, at the time of application for or prior to being issued a permit, complete and submit to the department a questionnaire provided by the department designed to elicit facts which will aid the department in determining the

applicant's resident, nonresident, or Armed Forces status. The applicant shall answer all pertinent questions and shall attest to the truth of the answers with the applicant's signature. The department may also require the applicant to produce certified copies of documents or other relevant proof as may be necessary for the determination of residency status.

(b) A nonresident who believes that the nonresident's residency status has changed so that the nonresident has achieved Hawaii residency status may seek reclassification as a resident by submitting a completed questionnaire as prescribed in subsection (a) on or following the date the nonresident believes that the change in residency status occurred. [Eff 2/24/94; comp 12/7/13; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-230-27 Permittee required to report change of residence. A resident permittee who subsequently takes up residence outside of the State and continues to moor the permittee's vessel in a state small boat harbor shall advise the department in writing within seven days of the permittee's change of residence. In such a case, nonresident fees and charges shall be payable following the change of residence. A permittee who intends to assume residence outside of the [~~state~~] State or relocate to another island yet retain a permitted vessel and assigned mooring shall cause all applicable harbor use permits to be revised to identify the individual that agrees to assume the vessel owner's obligations under the use permit and these rules during the period of the permittee's absence. This individual shall reside on the same island that the vessel is moored. [Eff 2/24/94; am and comp 12/7/13; comp] (Auth: HRS §§200-2, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-10, 200-22, 200-24)

§13-230-28 Appeals. (a) Classification as a nonresident by the department may be appealed by the aggrieved person by filing a petition for a declaratory ruling in accordance with section 13-1-27.

(b) No petition for appeal shall be accepted by the department unless:

- (1) The petitioner has paid the nonresident fees and fees and charges and filing fee for residency status appeal.
- (2) The petitioner has submitted with the petition documentary evidence tending to establish that the petitioner has, for a period of twelve months prior to the residency determination date, been physically present in the State of Hawaii with the intent to make Hawaii the petitioner's home. The documentary evidence to be furnished shall support the claim of residency by establishing acceptable indicia of residency as provided under section 13-230-23.
- (3) The petition is filed with the department within thirty days following receipt by certified mail, return receipt requested, or personal delivery, as the case may be, of the department's determination of the petitioner's nonresident status.

(c) The petition shall be signed by the petitioner. The petition shall be filed at any division of boating and ocean recreation district office on or before the thirtieth day following receipt by certified mail, return receipt requested or personal delivery, of the department's determination of the petitioner's nonresident status. The district manager receiving the appeal shall promptly forward ~~it~~ the appeal to the administrator of the division of boating and ocean recreation.

(d) The administrator of the division of boating and ocean recreation shall promptly review any petition filed with the department and take appropriate action as follows within fifteen days after the filing of the petition:

- (1) Return the petition to the concerned district manager if the administrator of the division of boating and ocean recreation determines the petition should not have been accepted under subsection (b) with an explanation of the basis for rejection, a copy of which shall be forwarded to the petitioner;
- (2) Reverse the department's prior determination that the petitioner is a nonresident if the administrator of the division of boating and ocean recreation determines that the petitioner has submitted adequate proof that the petitioner is a resident of the State of Hawaii; or
- (3) Forward the petition to the chairperson for a declaratory ruling in accordance with section 13-1-27.

(e) The nonstate resident fee differential and filing fee for residency status appeal shall be promptly refunded if the department reverses the determination of nonresident status, as provided in section 13-234-24. [Eff 2/24/94; am and comp 12/7/13; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-230-29 Misrepresentation. It is a violation of these rules for any person to misrepresent any fact upon any form or document intended for or used in determination of resident status for fees and charges purposes or for any person to misrepresent any fact at an appellant hearing hereunder." [Eff 2/24/94; am and comp 12/7/13; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

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. These amendments to and compilation of chapter 13-31, 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 (date), and filed with the Office of the Lieutenant Governor.

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

APPROVED AS TO FORM:

Deputy Attorney General

Item F-2, Exhibit 9

Amendment and Compilation of Chapter 13-257
Hawaii Administrative Rules

INSERT DATE OF ADOPTION

1. Chapter 13-257, Hawaii Administrative Rules, entitled "Day-Use Mooring Rules", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 11

OCEAN RECREATION AND COASTAL AREAS

PART 3

OCEAN WATERS, NAVIGABLE STREAMS AND BEACHES

CHAPTER 257

DAY-USE MOORING RULES

Subchapter 1 General Provisions

§13-257-1	Purpose and scope
§13-257-2	Day-use mooring permit
§13-257-3	Day-use mooring buoy limitations
§13-257-4	Anchoring restrictions
§13-257-5	Day-use mooring installation
§13-257-6	Day-use mooring locations
§13-257-7	Rafting prohibited
§13-257-8	Liability
§13-257-9	Safety and enforcement

§§13-257-10 to 13-257-15 (Reserved)

Subchapter 2 Day-Use Moorings, Island of Hawai'i

§§13-257-16 to 13-257-24 Repealed

§§13-257-25 to 13-257-35 (Reserved)

Subchapter 3 Day-Use Moorings, Island of Maui

§§13-257-36 to 13-257-50 (Reserved)

Subchapter 4 Day-Use Mooring Area, Molokini Shoal
Marine Life Conservation District

§13-257-51 Molokini day-use mooring area

§13-257-52 Commercial-use restrictions

§13-257-53 Commercial day-use mooring permit fee

§13-257-54 Recreational vessel use of Molokini day-
use moorings

§13-257-55 Speed Restrictions

§13-257-56 Anchoring restrictions

§§13-257-57 to 13-257-60 (Reserved)

Subchapter 5 Day-Use Moorings, Island of Lāna'i

§§13-257-61 to 13-257-70 (Reserved)

Subchapter 6 Day-Use Moorings, Island of Moloka'i

§§13-257-71 to 13-257-80 (Reserved)

Subchapter 7 Day-Use Moorings, Island of O'ahu

§§13-257-81 to 13-257-90 (Reserved)

Subchapter 8 Day-Use Moorings, Island of Kaua'i
§§13-257-91 to 13-257-120 (Reserved)

SUBCHAPTER 1

GENERAL PROVISIONS

§13-257-1 Purpose and scope. (a) The purpose of ~~[the day-use]~~ day-use mooring rules and zones is to reduce damage to coral and other marine life as a result of continuous use of anchors by commercial and recreational vessels in zones of high dive and mooring activity statewide.

(b) ~~[The rules describe the]~~ This chapter contains provisions for mooring at state ~~[day-use]~~ day-use mooring ~~[buoys and the zones where the buoys are located.]~~ buoys. [Eff 9/16/95; am and comp
] (Auth: HRS §§200-2, 200-3, 200-4, 200-10)
(Imp: HRS §200-10)

§13-257-2 ~~[Day-use]~~ Day-use mooring permit. An owner or operator of a vessel using a ~~[day-use]~~ state day-use mooring ~~[established under]~~ buoy installed pursuant to this chapter shall not be required to apply for a ~~[day-use]~~ day-use mooring permit from the department, except as otherwise provided in this chapter. ~~[Any use of a state day use mooring shall be at the sole risk of the owner or operator of the vessel using the mooring.]~~ [Eff 9/16/95; am and comp
] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

§13-257-3 ~~[Time limit.]~~ State day-use mooring buoy limitations. (a) ~~[The time limit for use of a~~

~~day use]~~ A vessel using a state day-use mooring buoy
~~[by any one vessel]~~ shall not exceed two and one half
hours ~~[when another vessel is waiting for the use of~~
~~that mooring buoy,]~~ of use, except as provided by
section 13-37-3 for the ~~[old Kona airport marine life~~
~~conservation district.]~~ Old Kona Airport Marine Life
Conservation District, Hawai'i.

(b) Overnight mooring is ~~[prohibited except in~~
~~ease of emergency or by enforcement or rescue craft.]~~
prohibited. [Eff 9/16/95; am and comp
] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp:
HRS §200-10)

§13-257-4 Anchoring restrictions. ~~[Anchoring]~~
Unless otherwise provided in this chapter, anchoring
is allowed only in areas of sand, rock, or rubble
bottom types where no live corals exist; provided that
anchoring is prohibited within one hundred yards of
any [day use mooring buoy, except as otherwise
provided in these rules. Anchoring elsewhere in a day
use mooring zone is permitted in areas of sand, rock,
or rubble bottom types where no live corals exist.]
state day-use mooring buoy. [Eff 9/16/95; am and comp
] (Auth: HRS §§200-2, 200-3, 200-4,
200-10) (Imp: HRS §200-10)

§13-257-5 ~~[Day use]~~ Day-use mooring buoy
installation. (a) Design guidelines for [a typical
day use] state day-use mooring buoy installation is as
shown on Exhibits "DM-00", "DM-00-A", and "DM-00-B",
dated December 16, 1994, located at the end of this
subchapter. The department shall adhere to the design
guidelines specified in this subsection, and the board
shall have the discretion to approve mooring buoy
designs that differ from the guidelines in this
section if the board finds that:

- (1) A specific design offers environmental or structural advantages over those specified in the day-use mooring buoy guidelines; and
- (2) Such environmental or structural advantages outweigh any negative impacts to aquatic resources.

(b) For each state day-use mooring buoy site, the department shall develop a day-use mooring buoy site proposal, subject to approval and modification by the board, which shall consider:

- (1) Public input;
- (2) Impact upon aquatic resources;
- (3) Use patterns with respect to the proposed site; and
- (4) Any other information relevant to site selection and mooring buoy installation.

[Eff 9/16/95; am and comp]
(Auth: HRS §§200-2, 200-3, 200-4, 200-10)
(Imp: HRS §200-10)

§13-257-6 Day-use mooring buoy locations. The department shall maintain a listing of sanctioned day-use mooring buoys installed in waters of the State. The listing shall be available on the division's website, may be maintained in print form, and shall provide GPS coordinates for the location of each mooring buoy. The department shall make a reasonable effort to ensure that the GPS coordinates on the listing provide an accurate location for each state-owned day-use mooring buoy. [Eff]
(Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

§13-257-7 Rafting prohibited. Rafting of vessels from any day-use mooring buoy is prohibited. [Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

§13-257-8 Liability. By using a state day-use mooring buoy, a vessel owner or operator assumes the sole risk of using the mooring. The State assumes no liability or responsibility associated with the use of any day-use mooring buoys, except as otherwise provided in this chapter. [Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

§13-257-9 Safety and enforcement. The restrictions cited in this chapter do not apply to the following:

- (1) Emergency situations;
- (2) Law enforcement, patrol, or rescue craft;
- (3) Department vessels and personnel performing official duties;
- (4) Vessels and personnel performing authorized homeland security training operations; and
- (5) The United States Coast Guard. [Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-10)

§§13-257-10 to 13-257-15 (Reserved)

SUBCHAPTER 2

[~~DAY-USE MOORING,~~] DAY-USE MOORINGS, ISLAND OF
[~~HAWAII~~] HAWAI'I

~~§13-257-16 Kaiholena to Malae Point day use mooring zone.~~ (a) ~~Kaiholena to Malae Point day use mooring zone is encompassed by the boundaries as shown~~

~~on Exhibit "DM-01" dated November 15, 1990, located at the end of this subchapter and described as follows:~~

~~Beginning at a point at the high water mark at the tip of Malae Point and measured by azimuth clockwise from True South; 050 degrees for a distance of four hundred seventy-five feet; 161 degrees for a distance of four thousand eight hundred fifty feet; 150 degrees for a distance of two thousand feet; 167.5 degrees for a distance of seven thousand three hundred thirty feet; 246.5 degrees to the high water mark at the shoreline; then along the shoreline to the point of beginning.~~

~~(b) The following buoys are within the mooring zone described in this section.~~

~~(1) Buoy "DM-01" located at a point on the water measured by azimuth clockwise from True South, 152.5 degrees for a distance of four thousand four hundred fifty feet from the southwest tip of Keaweula Bay.~~

~~(2) Buoy "DM-02" located at a point on the water measured by azimuth clockwise from True South, 143 degrees for a distance of two thousand eight hundred ten feet from the southwest tip of Keaweula Bay.~~

~~(3) Buoy "DM-03" located at a point on the water measured by azimuth clockwise from True South, 154 degrees for a distance of five hundred ninety feet from the southwest tip of Keaweula Bay.] [Eff 9/16/95; R~~

~~] (Auth: HRS §§200- 2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)~~

~~[§13-257-17 Malae Point to Kaiopae Point day use mooring zone. (a) Malae Point to Kaiopae Point day use mooring zone is encompassed by the boundaries as shown on Exhibit "DM-02" dated November 15, 1990, located at the end of this subchapter and described as follows:~~

~~Beginning at a point at the high water mark at the tip of Kaiopae Point and measured by azimuth clockwise from True South; 056 degrees for a distance of six hundred ten feet; 137 degrees for a distance of six thousand five hundred eighty feet; 151 degrees for a distance of forty thousand six hundred feet; 148 degrees for a distance of six thousand nine hundred ninety-five feet; then in a straight line to the high water mark at the Malae Point shoreline; then along the shoreline to the point of beginning.~~

~~(b) The following buoys are within the mooring zone described in this section.~~

- ~~(1) Buoy "DM-04" located at a point on the water measured by azimuth clockwise from True South, 354 degrees for a distance of one thousand feet from the northwest tip of Kalala Gulch Cove.~~
- ~~(2) Buoy "DM-05" located at a point on the water measured by azimuth clockwise from True South, 333 degrees for a distance of two thousand six hundred feet from the northwest tip of Kalala Gulch Cove.~~
- ~~(3) Buoy "DM-06" located at a point on the water measured by azimuth clockwise from True South, 113.5 degrees for a distance of one thousand one hundred feet from the southeast tip of Kamilo Gulch Cove.~~
- ~~(4) Buoy "DM-07" located at a point on the water measured by azimuth clockwise from True South, 001 degrees for a distance of one thousand one hundred feet from the southeast tip of Kamilo Gulch Cove.~~
- ~~(5) Buoy "DM-08" located at a point on the water measured by azimuth clockwise from True South, 314 degrees for a distance of two thousand six hundred fifty feet from the southeast tip of Kamilo Gulch Cove.~~
- ~~(6) Buoy "DM-09" located at a point on the water measured by azimuth clockwise from True South, 095 degrees for a distance of one~~

~~thousand one hundred ten feet from the northwest tip of Keawewai Gulch Cove.] [Eff 9/16/95; R] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)~~

~~[§13-257-18 Paoua Bay to Honokaope Bay day use mooring zone. (a) Paoua Bay to Honokaope Bay day use mooring zone is encompassed by the boundaries as shown on Exhibit "DM-03" dated November 15, 1990, located at the end of this subchapter and described as follows:~~

~~Beginning at a point at the high water mark at the tip of Lae o Panipou Point and measured by azimuth clockwise from True South; 124 degrees for a distance of one thousand two hundred feet; 060 degrees for a distance of two thousand nine hundred twenty feet; 044 degrees for a distance of seven thousand two hundred fifty feet; then in a straight line to the high water mark at the Anaohoomalu "trig" shoreline; then along the shoreline to the point of the beginning.~~

~~(b) The following buoys are within the mooring zone described in this section.~~

~~(1) Buoy "DM-10" located at a point on the water measured by azimuth clockwise from True South, 081.5 degrees for a distance of one thousand one hundred fifty feet from Keanapukalua Point.~~

~~(2) Buoy "DM-11" located at a point on the water measured by azimuth clockwise from True South, 057 degrees for a distance of two thousand feet from Keanapukalua Point.] [Eff 9/16/95; R] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)~~

~~[§13-257-19 Kaauau Point to Kapalaoa Point day use mooring zone. (a) Kaauau Point to Kapalaoa Point~~

~~day use mooring zone is encompassed by the boundaries as shown on Exhibit "DM-04" dated November 15, 1990, located at the end of this subchapter and described as follows:~~

~~Beginning at a point at the high water mark at the tip of Kaauau Point and measured by azimuth clockwise from True South; 053 degrees for a distance of four thousand one hundred eighty feet; then in a straight line to the high water mark at Kapalaoa Point shoreline; then along the shoreline to the point of beginning.~~

~~(b) The following buoy is within the mooring zone described in this section.~~

~~(1) Buoy "DM-12" located at a point on the water measured by azimuth clockwise from True South, 219 degrees for a distance of three thousand fifty feet from Kapalaoa Point.]~~

~~[Eff 9/16/95; R] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)~~

~~**[§13-257-20 Makako Bay to Kalihi Point day use mooring zone.** (a) Makako Bay to Kalihi Point day use mooring zone is encompassed by the boundaries as shown on Exhibit "DM-05" dated November 15, 1990, located at the end of this subchapter and described as follows:~~

~~Beginning at a point at the high water mark at the tip of Kalihi Point and measured by azimuth clockwise from True South; 062 degrees for a distance of five hundred fifty feet; 150 degrees for a distance of two thousand nine hundred seventy five feet; 012.5 degrees for a distance of one thousand three hundred twenty five feet; 040 degrees for a distance of three thousand four hundred feet; 270 degrees to the high water mark of the shoreline; then along the shoreline to the point of beginning.~~

~~(b) The following buoys are within the mooring zone described in this section.~~

- ~~(1) Buoy "DM-13" located at a point on the water measured by azimuth clockwise from True South, 214 degrees for a distance of three thousand two hundred fifty feet from Keahole Lighthouse.~~
- ~~(2) Buoy "DM-14" located at a point on the water measured by azimuth clockwise from True South, 178 degrees for a distance of one thousand three hundred forty feet from Keahole Lighthouse.] [Eff 9/16/95; R] (Auth HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)~~

~~[§13-257-21 Wawaloli Beach to Maliu Point day use mooring zone. (a) Wawaloli Beach to Maliu Point day use mooring zone is encompassed by the boundaries as shown on Exhibit "DM-06" dated November 15, 1990, located at the end of this subchapter and described as follows:~~

~~Beginning at a point at the high water mark at the tip of Maliu Point and measured by azimuth clockwise from True South; 140 degrees for a distance of ten thousand five hundred feet; 158.5 degrees for a distance of four thousand five hundred forty feet; 180 degrees for a distance of two thousand two hundred fifty feet; 151 degrees for a distance of three thousand ninety feet; 242 degrees to the high water mark of the shoreline; then along the shoreline to the point of beginning.~~

~~(b) The following buoys are within the mooring zone described in this section.~~

- ~~(1) Buoy "DM-15" located at a point on the water measured by azimuth clockwise from True South, 172 degrees for a distance of four thousand three hundred seventy five feet from Puhili Point.~~
- ~~(2) Buoy "DM-16" located at a point on the water measured by azimuth clockwise from True South, 170 degrees for a distance of two~~

~~thousand six hundred twenty-five feet from Puhili Point.~~

- ~~(3) Buoy "DM-17" located at a point on the water measured by azimuth clockwise from True South, 152 degrees for a distance of one thousand one hundred fifty feet from Puhili Point.~~
- ~~(4) Buoy "DM-18" located at a point on the water measured by azimuth clockwise from True South, 002 degrees for a distance of nine hundred eighty feet from Puhili Point.~~
- ~~(5) Buoy "DM-19" located at a point on the water measured by azimuth clockwise from True South, 121 degrees for a distance of one thousand six hundred feet from Wawahiwaa Point (Heiau).~~
- ~~(6) Buoy "DM-20" located at a point on the water measured by azimuth clockwise from True South, 073 degrees for a distance of seven hundred fifty feet from Wawahiwaa Point (Heiau).~~
- ~~(7) Buoy "DM-21" located at a point on the water measured by azimuth clockwise from True South, 005 degrees for a distance of seven hundred fifty feet from Wawahiwaa Point (Heiau).~~
- ~~(8) Buoy "DM-22" located at a point on the water measured by azimuth clockwise from True South, 312 degrees for a distance of one thousand four hundred fifty feet from Wawahiwaa Point (Heiau).~~
- ~~(9) Buoy "DM-23" located at a point on the water measured by azimuth clockwise from True South, 143 degrees for a distance of one thousand seven hundred feet from Kaloko Point.~~
- ~~(10) Buoy "DM-24" located at a point on the water measured by azimuth clockwise from True South, 069 degrees for a distance of one thousand one hundred twenty-five feet from Kaloko Point.] [Eff 9/16/95; R~~

] (Auth: HRS §§200-2, 200-3, 200-4,
200-10) (Imp: HRS §200-10)

~~§13-257-22 Kaiwi Point to Kukailimoku Point day use mooring zone.~~ (a) ~~Kaiwi Point to Kukailimoku Point day use mooring zone is encompassed by the boundaries as shown on Exhibit "DM-07" dated November 15, 1990, located at the end of this subchapter and described as follows:~~

~~Beginning at a point at the high water mark at the tip of Kukailimoku Point and measured by azimuth clockwise from True South; 000 degrees for a distance of nine hundred fifty feet; 117.5 degrees for a distance of seven thousand three hundred eighty feet; 099 degrees for a distance of two thousand five hundred feet; 140 degrees for a distance of three thousand eighty feet; 159 degrees for a distance of one thousand nine hundred feet; 270 degrees to the high water mark of the shoreline; then along the shoreline to the point of beginning.~~

~~(b) The following buoys are within the mooring zone described in this section.~~

- ~~(1) Buoy "DM-25" located at a point on the water measured by azimuth clockwise from True South, 001 degrees for a distance of seven hundred feet from Kaiwi Point.~~
- ~~(2) Buoy "DM-26" located at a point on the water measured by azimuth clockwise from True South, 351 degrees for a distance of one thousand six hundred ninety feet from Kaiwi Point.~~
- ~~(3) Buoy "DM-27" located at a point on the water measured by azimuth clockwise from True South, 115 degrees for a distance of one thousand five hundred fifty feet from Keahuolu Point.~~
- ~~(4) Buoy "DM-28" located at a point on the water measured by azimuth clockwise from True~~

- ~~South, 010 degrees for a distance of five hundred feet from Keahuolu Point.~~
- ~~(5) Buoy "DM-29" located at a point on the water measured by azimuth clockwise from True south, 288 degrees for a distance of one thousand three hundred feet from Keahuolu Point.~~
 - ~~(6) Buoy "DM-30" located at a point on the water measured by azimuth clockwise from True South, 293 degrees for a distance of three thousand three hundred eighty feet from Keahuolu Point.~~
 - ~~(7) Buoy "DM-31" located at a point on the water measured by azimuth clockwise from True south, 113 degrees for a distance of four thousand three hundred ninety feet from Kukailimoku Point.~~
 - ~~(8) Buoy "DM-32" located at a point on the water measured by azimuth clockwise from True South, 107 degrees for a distance of two thousand three hundred fifty feet from Kukailimoku Point.~~
 - ~~(9) Buoy "DM-33" located at a point on the water measured by azimuth clockwise from True South, 039 degrees for a distance of six hundred feet from Kukailimoku Point.] [Eff 9/16/95; R] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)~~

~~[§13-257-23 **Kuamoo Bay to Paaao Bay day use mooring zone.** (a) Kuamoo Bay to Paaao Bay day use mooring zone is encompassed by the boundaries as shown on Exhibit "DM-08" dated November 15, 1990, located at the end of this subchapter and described as follows:~~

~~Beginning at a point at the high water mark at the Keauhou Coast "trig station" and measured by azimuth clockwise from True South; 090 degrees for a distance of eight hundred thirty feet; 335 degrees for a distance of eight thousand four~~

~~hundred feet; 270 degrees to the shoreline of the northwest tip of Paaaoa Bay; then along the shoreline to the point of beginning.~~

~~(b) The following buoys are within the mooring zone described in this section.~~

- ~~(1) Buoy "DM-34" located at a point on the water measured by azimuth clockwise from True South, 025 degrees for a distance of eight hundred fifteen feet from the Keauhou Coast "trig station"~~
- ~~(2) Buoy "DM-35" located at a point on the water measured by azimuth clockwise from True South, 087 degrees for a distance of one thousand one hundred feet from Kalanui Point.~~
- ~~(3) Buoy "DM-36" located at a point on the water measured by azimuth clockwise from True South, 073 degrees for a distance of seven hundred feet from Kuamoo Point.~~
- ~~(4) Buoy "DM-37" located at a point on the water measured by azimuth clockwise from True South, 115 degrees for a distance of one thousand seventy-five feet from Leinokano Point.] [Eff 9/16/95; R]~~
~~(Auth: HRS §§200-2, 200-3, 200-4, 200-10)~~
~~(Imp: HRS §200-10)~~

~~**[§13-257-24 Paaaoa Bay to Cook Point day use mooring zone.** (a) Paaaoa Bay to Cook Point day use mooring zone is encompassed by the boundaries as shown on Exhibit "DM-09" dated November 15, 1990, located at the end of this subchapter and described as follows:~~

~~Beginning at a point at the high water mark at the northwest tip of Paaaoa bay and measured by azimuth clockwise from True South; 090 degrees for a distance of one thousand seventy-five feet; 015.5 degrees for a distance of five thousand nine hundred fifty-five feet; 329 degrees for a distance of eight thousand five hundred fifty feet; 009 degrees for a distance of three~~

~~thousand three hundred feet; 335 degrees for a distance of one thousand nine hundred feet; 295 degrees for a distance of four thousand six hundred ninety feet; 213 degrees to the high water mark at Cook Point; then along the shoreline to the point of beginning.~~

~~(b) The following buoys are within the mooring zone described in this section.~~

- ~~(1) Buoy "DM-38" located at a point on the water measured by azimuth clockwise from True South, 156 degrees for a distance of nine hundred eighty feet from Paaaoa Point.~~
- ~~(2) Buoy "DM-39" located at a point on the water measured by azimuth clockwise from True South, 090 degrees for a distance of eight hundred feet from Paaaoa Point.~~
- ~~(3) Buoy "DM-40" located at a point on the water measured by azimuth clockwise from True South, 155 degrees for a distance of eight hundred feet from Kekeiwaha Point.~~
- ~~(4) Buoy "DM-41" located at a point on the water measured by azimuth clockwise from True South, 069 degrees for a distance of seven hundred fifty feet from Keikiwaha Point.~~
- ~~(5) Buoy "DM-42" located at a point on the water measured by azimuth clockwise from True South, 130 degrees for a distance of two thousand seven hundred ten feet from the Puu Ohau "trig station".~~
- ~~(6) Buoy "DM-43" located at a point on the water measured by azimuth clockwise from True South, 075 degrees for a distance of one thousand six hundred seventy five feet from the Puu Ohau "trig station".~~
- ~~(7) Buoy "DM-44" located at a point on the water measured by azimuth clockwise from True South, 000 degrees for a distance of two thousand one hundred feet from the Keauhou Coast "trig station".~~
- ~~(8) Buoy "DM-45" located at a point on the water measured by azimuth clockwise from True South, 181 degrees for a distance of two~~

~~thousand nine hundred ninety feet from
Keawekaheha Point.~~

- (9) ~~Buoy "DM-46" located at a point on the water
measured by azimuth clockwise from True
South, 168 degrees for a distance of one
thousand three hundred fifty feet from
Keawekaheha Point.] [Eff 9/16/95; R
] (Auth: HRS §§200-2, 200-3, 200-
4, 200-10) (Imp: HRS §200-10)~~

§§13-257-25 to 13-257-35 (Reserved)

SUBCHAPTER 3

~~[DAY-USE]~~ DAY-USE MOORINGS, ISLAND OF MAUI

§§13-257-36 to 13-257-50 (Reserved)

SUBCHAPTER 4

~~[DAY-USE]~~ DAY-USE MOORING AREA, MOLOKINI SHOAL MARINE
LIFE CONSERVATION DISTRICT

§13-257-51 Molokini [~~island day use mooring area.~~]
Island Day-Use Mooring Area. The boundary of the
Molokini [~~island day use mooring area~~] Island Day-Use
Mooring Area is contiguous with the boundary of
Subzone A of the Molokini [~~shoal marine life
conservation district,~~] Shoal Marine Life Conservation
District, as described in section 13-31-2, and as
shown on [~~Exhibit "DM-10",~~] Exhibit A, entitled "Map
of Molokini Shoal Marine Life Conservation District,

Maui", dated ~~[March 3, 1994,]~~ June 24, 2019, located at the end of this subchapter and described as follows:

Beginning at a point at the high water mark ~~[at Pahe'e o Lono Point; then in a straight line to the end of the shoal at the northwest point of Molokini island; then in a counter-clockwise direction along the shoreline of Molokini island]~~ of Lalilali Point, then along the high water mark of the northern shoreline eastward until Pahe'e o Lono Point, then west along a straight line to the end of the submerged ridge (shoal) extending from Lalilali Point, then along the top of the shoal back to the point of beginning. [Eff 9/16/95; am and comp]
(Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

§13-257-52 Commercial use restrictions. (a) No vessel shall use a ~~[day use]~~ state day-use mooring for commercial purposes unless the owner has been issued a marine life conservation district use permit by the department pursuant to section 13-31-5, as evidenced by its inclusion as an addendum to a commercial vessel use permit for the use of state boating facilities issued in accordance with section 13-231-57, or a commercial vessel registration issued in accordance with section 13-256-4 for that vessel.

(b) ~~[Mooring zone "A" is designated for use by commercial vessels carrying twelve or more passengers. Mooring zone "B" is designated for use by commercial vessels carrying less than twelve passengers.]~~ The use of any one particular mooring shall be on a first-come, first-served basis. ~~[Mooring zones "A" and "B" as shown on exhibit "DM-10" located at the end of this subchapter are generalized locations intended to reflect current mooring practices and are subject to revision, pending development of a final mooring plan prior to installation of permanent moorings.]~~

(c) ~~The department may authorize the owner of a commercial vessel not having a marine life~~

~~conservation district use permit occasional or infrequent use of the day use moorings, not to exceed eight times a year, when application is made and approved not less than seven days in advance of the date of intended use.] [Eff 9/16/95; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)~~

§13-257-53 Commercial ~~[day use]~~ day-use mooring [permit] fee. ~~[The commercial day use mooring permit] Beginning January 1, 2024, the fee for [a] commercial use of a Molokini ~~[day use]~~ day-use mooring [shall be the greater of \$100] is \$200 per month [or two per cent of gross receipts,]; provided that this fee ~~[shall be]~~ is waived for commercial operators who are presently paying ~~[commercial vessel user fees for the use of state boating facilities in accordance with section 13-234-5.]~~ the ocean stewardship user fee required by section 187A-52, HRS. This fee ~~[shall be]~~ is in addition to the commercial use permit fee required under section 13-31-5~~[.]~~ and any commercial fees charged pursuant to chapter 13-234. [Eff 9/16/95; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)~~

§13-257-54 Recreational vessel use of Molokini ~~[day use]~~ day-use moorings. ~~[Mooring zone "C" is designated for primary use by recreational vessels, and is shown on exhibit "DM-10" located at the end of this subchapter.]~~ Recreational vessels shall have exclusive use of designated recreational state day-use moorings. All designated recreational state day-use moorings shall be indicated with a surface float. Recreational vessels may also use vacant commercial state day-use moorings [located in zones "A" and "B"] except [during the period] from [8:30 a.m. to 11:30 a.m.] 7:30 a.m. to 9:30 a.m. [Eff 9/16/95; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

§13-257-55 Speed [~~Restrictions.~~] restrictions.

No vessel shall operate at a speed in excess of "slow-no wake" within the [~~Subzone A, as defined in section 13-257-51 and shown on exhibit "DM-10".~~] Molokini Island Day-Use Mooring Area. [Eff 9/16/95; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

§13-257-56 Anchoring restrictions. [~~(a)~~]

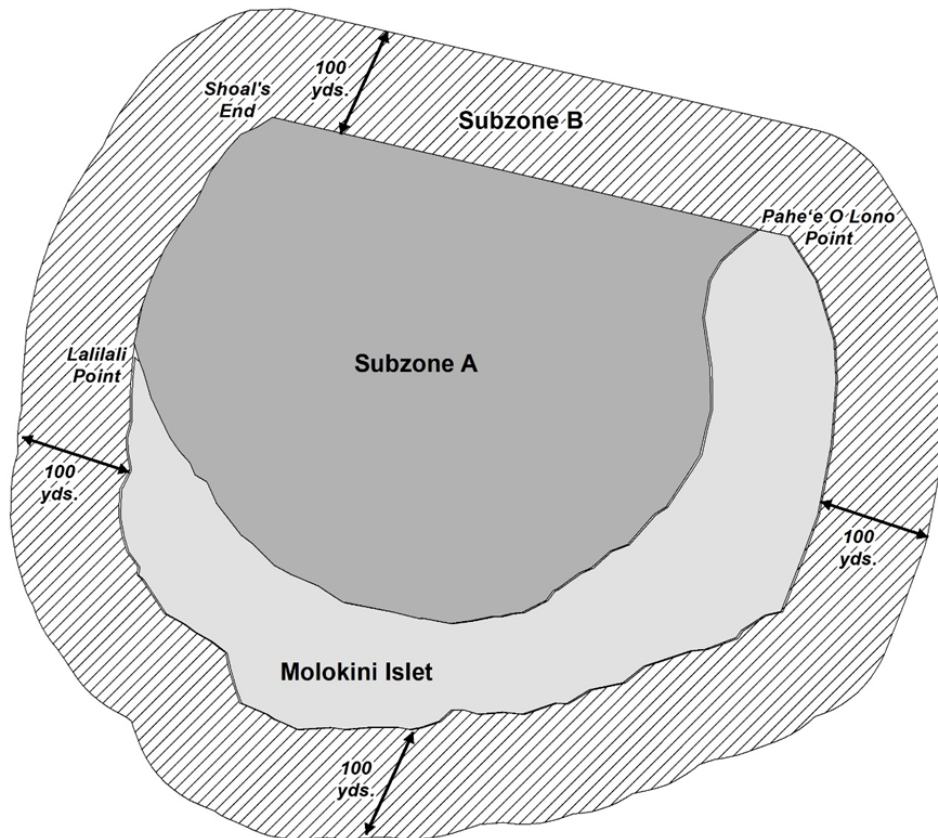
Anchoring is prohibited within the Molokini [~~island day use mooring area, provided that anchoring is permitted within the designated area at locations of sand, rock, or rubble bottom types where no live corals exist until such time as new day use moorings are installed.~~

(b) [~~Anchoring is prohibited within Subzone B of the Molokini shoal marine life conservation district.~~] Island Day-Use Mooring Area. [Eff 9/16/95; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)



§§13-257-57 to 13-257-60 (Reserved)

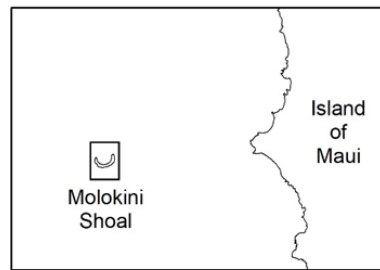
**Exhibit A. Map of Molokini Shoal
Marine Life Conservation District, Maui
June 24, 2019**

0 0.05 0.1 Miles



Legend

-  Molokini Shoal
MLCD: Zone A
-  Molokini Shoal
MLCD: Zone B



SUBCHAPTER 5

~~[DAY-USE]~~ DAY-USE MOORINGS, ISLAND OF ~~[LANAI]~~ LĀNA`I

§§13-257-61 to 13-257-70 (Reserved)

SUBCHAPTER 6

~~[DAY-USE]~~ DAY-USE MOORINGS, ISLAND OF ~~[MOLOKAI]~~
MOLOKA`I

§§13-257-71 to 13-257-80 (Reserved)

SUBCHAPTER 7

~~[DAY-USE]~~ DAY-USE MOORINGS, ISLAND OF ~~[OAHU]~~ O`AHU

§§13-257-81 to 13-257-90 (Reserved)

SUBCHAPTER 8

~~[DAY-USE]~~ DAY-USE MOORINGS, ISLAND OF ~~[KAUAI]~~ KAUA`I

§§13-257-91 to 13-257-120 (Reserved)"

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 13-257, 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