

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

July 12, 2024

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

Request for Approval to Hold Public Hearings to Adopt a New Chapter as Hawaii Administrative Rules, Title 13, Chapter 48.5, "Maunalua Bay Fisheries Management Area, O'ahu" (Maunalua Bay FMA) to: Outline the Purpose of the Maunalua Bay FMA; Provide Definitions for Key Terms Throughout the Chapter; Establish the Duration of the Maunalua Bay FMA Rules; Establish and Delineate the Boundaries for the Maunalua Bay FMA; Prescribe the Permitted and Prohibited Activities Within the Maunalua Bay FMA, Including Restrictions on Take and/or Possession of Alakuma (7-11 Crab), Horned Helmet, Triton's Trumpet, Ula (Spiny Lobsters) and Ula Pāpapa (Slipper Lobsters), and a Prohibition on the Take of Marine Life With a Spear Between 6:00PM and 6:00AM; Carve Out an Exception for Vessels With Restricted Species or Gear in Active Transit Through the Maunalua Bay FMA; Establish the Administrative and Criminal Penalties for Violations of This Chapter; and Recognize the State's Asset Forfeiture Authority

At the May 10, 2024 Board of Land and Natural Resources (Board) meeting, the Division of Aquatic Resources (DAR) briefed the Board on the Maunalua Bay Fisheries Management Area, O'ahu (Maunalua Bay FMA) proposal. Since the briefing, the Department of the Attorney General has reviewed the Maunalua Bay FMA Draft Rules (Hawaii Administrative Rules Chapter 13-48.5) and did not make any changes. **Exhibit 1**, attached. DAR now requests approval from the Board to hold public hearings on the adoption of Hawaii Administrative Rules (HAR) chapter 13-48.5 to designate the Maunalua Bay FMA, to create long-term sustainable fishing within Maunalua Bay, to implement fisheries management actions that protect ecologically critical and socially important marine life while minimizing impacts to sustainable fishing practices in Maunalua Bay, to develop and implement monitoring and data collection processes that integrate western, indigenous, and citizen science that contributes to fisheries management decision-making, and to develop and implement an inclusive, transparent, adaptive stakeholder-endorsed and science-based decision-making process that leads to long-term sustainable fishing within Maunalua Bay.

OVERVIEW OF PROPOSED AMENDMENTS:

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

Section 1 describes the purpose of the chapter.

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

Section 3 prescribes the duration of the Maunalua Bay FMA (until June 30, 2036)

Section 4 delineates the boundaries of the Maunalua Bay FMA.

Section 5 prescribes the permitted and prohibited activities within the Maunalua Bay FMA. The regulations in Section 5 set restrictions on take of certain species, and prohibit the taking marine life with a spear between 6:00PM and 6:00AM.

Within the Maunalua Bay FMA it will be prohibited to:

- 1) Take or possess any specimen of: 'alakuma (7-11 crab), horned helmet, Triton's trumpet, ula (spiny lobster) and ula pāpapa (slipper lobster);
- 2) Between 6:00PM and 6:00AM, use or possess any spear while diving; possess both diving equipment and a spear at the same time; or possess both diving equipment and any specimen of speared aquatic life at the same time.

Section 6 carves out an exception allowing vessels in possession of restricted gear or species to traverse through the Maunalua Bay FMA as long as they remain in active transit.

Section 7 establishes the administrative and criminal penalties that may be imposed for violations of this chapter.

Section 8 recognizes the State's asset forfeiture authority as an enforcement tool for violations of this chapter. This section will facilitate enforcement of this chapter by providing the Department with the appropriate range of tools to deter violations.

Section 9 is a severability clause, which is a standard inclusion when new administrative rules are proposed.

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

RECOMMENDATIONS:

“That the Board:

1. Authorize and approve the holding of public hearing(s) on the island of O‘ahu on the adoption of Hawaii Administrative Rules chapter 13-48.5, “Maunalua Bay Fisheries Management Area, O‘ahu”; and
2. Delegate to the Chairperson the authority to appoint hearing officer(s) to conduct the aforementioned public hearing(s).”

Respectfully submitted,



BRIAN J. NEILSON, Administrator
Division of Aquatic Resources

APPROVED FOR SUBMITTAL



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

Attachment:

Exhibit 1 – Draft Proposed HAR chapter 13-48.5 (Ramseyer format)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-48.5
Hawaii Administrative Rules

(Date of adoption)

1. Chapter 13-48.5, Hawaii Administrative Rules, entitled "Maunalua Bay Fisheries Management Area, O'ahu" is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART II MARINE FISHERIES MANAGEMENT AREAS

CHAPTER 48.5

MAUNALUA BAY FISHERIES MANAGEMENT AREA, O'AHU

§13-48.5-1	Purpose
§13-48.5-2	Definitions
§13-48.5-3	Duration
§13-48.5-4	Boundaries
§13-48.5-5	Prohibited activities
§13-48.5-6	Penalty
§13-48.5-7	Severability

§13-48.5-1 Purpose. The purpose of this chapter regarding the Maunalua Bay Fisheries Management Area is to:

- (1) Create long-term sustainable fishing within Maunalua Bay;
- (2) Implement fisheries management actions that protect ecologically critical and socially important marine life while minimizing impacts to sustainable fishing practices;
- (3) Develop and implement monitoring and data collection processes that integrate western, indigenous, and citizen science (including empirical knowledge from Maunalua Bay users) to provide decision-makers with a diversity of accurate, abundant, and timely information that contributes to fisheries management decision-making; and
- (4) Develop and implement an inclusive, transparent, adaptive stakeholder-endorsed and science-based decision-making process that lends to long-term sustainable fishing within Maunalua Bay. [Eff]
(Auth: HRS §188-53) (Imp: HRS §188-53)

§13-48.5-2 Definitions. As used in this chapter, unless the context clearly indicates or is otherwise provided:

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

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

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

"Diving equipment" means any gear commonly associated with the practice of diving, including but not limited to a mask, underwater breathing apparatus, or fins.

"Horned helmet" means any gastropod mollusk known as *Cassis cornuta* or any recognized synonym. Horned helmet are also known as yellow helmet shell and pū.

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

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

"Triton's trumpet" means any gastropod mollusk known as *Charonia tritonis* or any recognized synonym. Triton's trumpet are also known as giant triton and pū.

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

"Ula pāpapa" means any crustacean of the species *Scyllarides squammosus* or *Scyllarides haanii*, or any recognized synonym. Ula pāpapa are also known as ula 'āpapapa, slipper lobster, ridgeback slipper lobster, or shovel-nosed lobster.

"Underwater breathing apparatus" means any apparatus that allows a person to breathe while his or her face is below the surface of the water, including but not limited to snorkels, SCUBA regulators, high

pressure cylinders, rebreathers, SNUBA, and hookah rigs. [Eff _____] (Auth: HRS §188-53) (Imp: HRS §188-53)

§13-48.5-3 Duration. These rules shall be effective until June 30, 2036, or until the effective date of new or amended rules implementing science-based, adaptive management measures as developed by the department in consultation with the Maunalua community and other interested parties, whichever occurs earlier. [Eff _____] (Auth: HRS §188-53) (Imp: HRS §188-53)

§13-48.5-4 Boundaries. (a) The Maunalua Bay Fisheries Management Area includes that portion of the southeastern coast of the island of O'ahu consisting of all state waters and submerged lands bounded by:

- (1) A straight line extending from the southern tip of Kawaihoa Point (Spitting Caves) at 21.25918°N, -157.70718°W westward to the Diamond Head buoy at approximately 21.24679°N, -157.81571°W;
- (2) A straight line extending from the Diamond Head buoy shoreward to the Diamond Head Lighthouse at 21.25523°N, -157.80967°W; and
- (3) A line drawn along the shoreline between the Diamond Head lighthouse and Kawaihoa Point.

The foregoing boundaries and reference points are shown on Exhibit A entitled "Map of the Maunalua Bay Fisheries Management Area, Oahu", dated June 24, 2020, located at the end of this chapter.

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

53)] (Auth: HRS §188-53) (Imp: HRS §188-

§13-48.5-5 Prohibited Activities. While within the Maunalua Bay Fishery Management Area, it is unlawful to:

- (1) Take or possess any specimen of the following species: 'alakuma, horned helmet, Triton's trumpet, ula, or ula pāpapa;
 - (2) Between 6:00 p.m. and 6:00 a.m.:
 - (A) Use or possess any spear while diving;
 - (B) Possess both diving equipment and a spear at the same time; or
 - (C) Possess both diving equipment and any specimen of speared aquatic life at the same time. [Eff]
- (Auth: HRS §188-53) (Imp: HRS §§187A-5, 188-53)

§13-48.5-6 Transit through Maunalua Bay FMA with restricted gear and species. Prohibited gear and restricted species as described in sections 13-48.5-5 may be possessed while onboard a vessel in active transit through the area, provided that no prohibited gear is in the water during the transit. Vessels that are adrift, anchored, or moored are not considered to be in active transit with the exception of vessels in line for the boat ramp and vessels actively loading and unloading at the wharf or on shore.

§13-48.5-7 Penalty. (a) Any person who violates any provision of this chapter or the terms and conditions of any permit issued as provided by this chapter, shall be subject to:

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

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

(3) Any other penalty as provided by law.

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

§13-48.5-8 Asset forfeiture. Any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of this chapter, may be seized and subject to forfeiture as provided by section 199-7 and chapter 712A, HRS. [Eff] (Auth: HRS §190-3) (Imp: HRS §199-7, ch. 712A)

§13-48.5-9 Severability. If any provision of this chapter, or the application thereof, to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable." [Eff] (Auth: HRS §188-53) (Imp: HRS §§1-23, 188-53)

2. The adoption of chapter 13-48.5, 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.

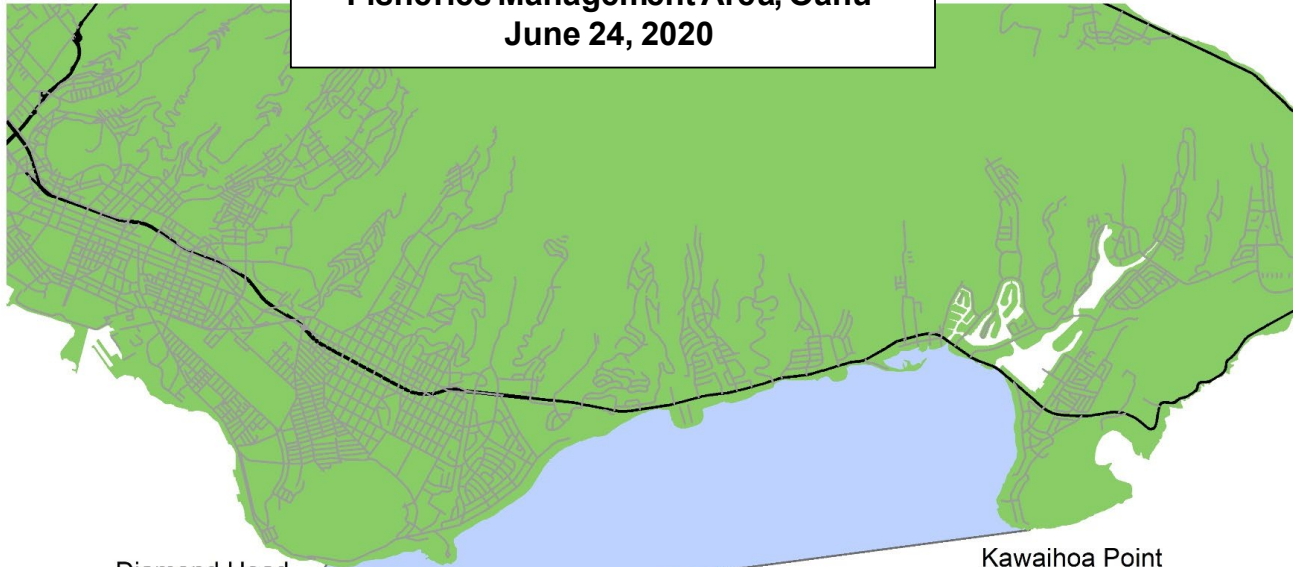
DAWN N.S. CHANG
Chairperson
Board of Land and Natural
Resources

APPROVED FOR PUBLIC HEARING:

Joseph McGinley

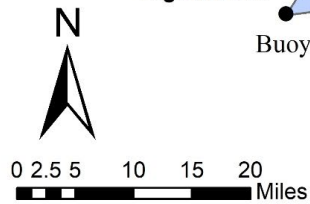
Deputy Attorney General

**Exhibit A. Map of the Maunalua Bay Fisheries Management Area, Oahu
June 24, 2020**



Diamond Head
Lighthouse
●
Buoy

Kawaihoa Point



Proposed Boundary Coordinates:

Diamond Head Lighthouse: N21.25523, W157.80967
Diamond Head Buoy: N21.24679, W157.81571
Kawaihoa Point: N21.25918, W157.70718

