

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawaii 96813

July 12, 2013

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

This submittal was deferred from the meeting dated June 28, 2013. All contents remain the same with the exception of the date of the meeting and the item number.

**REQUEST FOR APPROVAL TO HOLD PUBLIC MEETINGS AND HEARINGS TO
ADOPT A NEW CHAPTER UNDER HAWAII ADMINISTRATIVE RULES ("HAR")
AS TITLE 13 CHAPTER 95.1, ISLAND-BASED FISHERIES RULES, TO
ESTABLISH NEW BAG AND SIZE LIMITS FOR MAUI AND LANA'I ISLAND
FISHERIES**

Submitted for your consideration and approval is a request to hold public meetings and hearings to adopt Hawaii Administrative Rules ("HAR") chapter 13-95.1 to: 1) establish new bag and size limits for Maui and Lana'i islands and 2) allow the Department of Land and Natural Resources ("DLNR"), on an island-by-island basis, to more effectively regulate and protect the State's marine fisheries resources.

Currently, statewide bag and size limits are not restrictive enough to sustain healthy fisheries. The rules themselves are poorly written and often difficult to enforce. Moreover, broad statewide regulations fail to address many localized resource concerns. The proposed rules seek to remedy these problems.

HISTORY

In January 2009, DLNR's Division of Aquatic Resources ("DAR") began holding public meetings statewide regarding the regulation of various species of fish. Meetings began with a discussion on size limits for three main groups of fish – goatfishes, parrotfishes, and jacks. However, meetings from island to island did not follow a standard format. Community participation directed the course and topics of discussion. As a result, each island expressed distinct concerns and regulatory preferences.

Maui DAR staff proactively facilitated community discussion regarding Maui and Lana'i islands regulations. This process generated a set of proposed rules that has gained broad public support. These rules are based both on public concerns as well as best available scientific information regarding the reproductive life cycles of the regulated species. Division of Conservation and Resource Enforcement ("DOCARE") officers in Maui also provided input in drafting these rules.

PURPOSE

DAR proposes to adopt a new chapter to provide a regulatory framework for the transition from the statewide regulation of marine fisheries to island-based regulation. The proposed rules establish new, more protective fisheries regulations for Maui and Lana'i islands.

Subchapter One contains general provisions applicable to the entire chapter, including definitions, penalties, scope of application, exceptions, severability, and provisions regarding the alteration of fish regulated under the following subchapters.

Subchapter Two establishes rules providing additional protection for those species of special concern on Maui and Lana'i islands. See **Exhibit A**. Based on scientific research and community dialogue, current statewide regulations for these species are inadequate. In addition, current rule conventions regarding daily bag limits leave large loopholes which poachers use to escape liability. For example, under the current rules, enforcement officers must observe an individual actually taking numbers of fish greater than the daily bag limit, within a verifiable period of less than twenty-four hours. To remedy this, provisions in the proposed chapter supplement daily take provisions with corresponding possession-based limits, with definitions intended to enhance enforceability and to set clear lines for compliance.

In many cases, commercial fishing pressure has been cited as an area of concern, particularly with regard to high-value species that command good prices at market. At the same time, the value of these species also reflects their potential cultural and culinary importance to the non-fishing community. Provisions have thus been carefully crafted to leave room for sustainable commercial harvest of certain ulua species, but subject to additional size and species restrictions that DAR's scientists and community members feel will minimize the impact on current fisheries resources.

As DAR develops island-based rules for other islands, additional subchapters will be added through the rulemaking process. In the meantime, those islands' fisheries will still be regulated under the statewide provisions of HAR chapter 13-95.

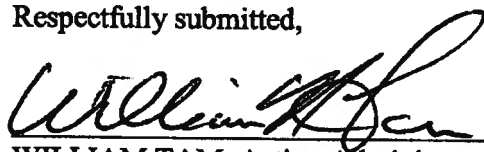
As with other area-based regulatory chapters, the proposed rule chapter is expressly intended to work cumulatively with state laws and regulations that do not directly conflict with its provisions. To avoid conflicts with existing permit provisions, these rules provide an exception for activities conducted pursuant to special activity permits that expressly refer to this chapter. The rules also provide an exception to allow for the exercise of traditional and customary native Hawaiian gathering rights and practices.

RECOMMENDATION:

"That the Board authorize and approve the holding of public meetings and hearings to adopt Chapter 13-95.1, Hawaii Administrative Rules, Island-Based Fisheries Rules."


“That the Board delegate to the Chairperson the authority to appoint a hearings officer to conduct the aforementioned public meetings and hearings.”

Respectfully submitted,



WILLIAM TAM, Acting Administrator
Division of Aquatic Resources

APPROVED FOR SUBMITTAL



WILLIAM J. AILA, JR., Chairperson
Board of Land and Natural Resources

Attachment(s):

Proposed rules (Ramseyer format)

Map of Maui and Lana'i Islands Fisheries

EXHIBIT A
Ramseyer Draft
(Date)

RAMSEYER FORMAT

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-95.1, Island-Based Fisheries
Rules,
Hawaii Administrative Rules

(Date)

1. Chapter 95.1 of Title 13, Hawaii
Administrative Rules, is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

SUBTITLE 4

FISHERIES

PART V PROTECTED MARINE FISHERIES RESOURCES

CHAPTER 95.1

ISLAND-BASED FISHERIES RULES

Subchapter 1 General Provisions

\$13-95.1-1	Definitions
\$13-95.1-2	Penalty
\$13-95.1-3	Scope
\$13-95.1-4	Exceptions
\$13-95.1-5	Severability
\$13-95.1-6	Alteration of Fish

Subchapter 2 Maui and Lana'i Islands Fisheries

\$13-95.1-7	Āholehole
\$13-95.1-8	'Āweoweo
\$13-95.1-9	Goatfish
\$13-95.1-10	Kole
\$13-95.1-11	Manini
\$13-95.1-12	Moi
\$13-95.1-13	Mū
\$13-95.1-14	Pāku'iku'i
\$13-95.1-15	Uhu
\$13-95.1-16	Ulua; 'ōmilu; papa
\$13-95.1-17	'Ū'ū

SUBCHAPTER 1

GENERAL PROVISIONS

§13-95.1-1 Definitions. As used in this chapter, unless otherwise provided:

"Āholehole" means any fish known as *Kuhlia sandvicensis*, *Kuhlia xenura*, or any recognized synonym. Āholehole are also known as āhole or flagtail.

"Āweoweo" means any fish known as *Heteropriacanthus cruentatus*, *Priacanthus meeki*, or any recognized synonym. Āweoweo are also known as bigeye or glasseye.

"Commercial fishing expedition" means a joint venture between commercial marine licensees fishing solely for commercial purposes. All individuals in a fishing party must hold valid commercial marine licenses, and must all be engaged in fishing for commercial purposes, in order for any of the party members to be considered part of a commercial fishing expedition.

"Commercial marine dealer" means any person who sells or exchanges, or who is an agent in the transfer of marine life obtained directly from a commercial marine licensee, or any commercial marine licensee who sells or exchanges marine life at retail.

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

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

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

"Length" means the straight-line measurement from the tip of the snout to the middle of the trailing edge of the tail.

"Goatfish" means any fish in the family Mullidae, or any recognized synonym.

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

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

"Manini" means any fish known as *Acanthurus triostegus* or any recognized synonym. Manini are also known as convict tang.

"Moano kea" means any fish known as *Parupeneus cyclostomus* or any recognized synonym. Moano kea are also known as moano kali, moano ukali ulua, blue goatfish, or goldsaddle goatfish.

"Moi" means any fish known as *Polydactylus sexfilis* or any recognized synonym. Moi are also known as Pacific threadfin. The young of this fish are also known as moi li'i.

"Mū" means any fish known as *Monotaxis grandoculis* or any recognized synonym. Mū are also known as bigeye emperor.

"Munu" means any fish known as *Parupeneus insularis* or any recognized synonym. Munu are also known as doublebar goatfish.

"Oama" means any juvenile weke'ā or *Mulloidichthys flavolineatus*, which is less than five inches in length.

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

"Pāku'iku'i" means any fish known as *Acanthurus achilles* or any recognized synonym. Pāku'iku'i are also known as Achilles tang.

"Papa" means any fish known as *Carangoides orthogrammus* or any recognized synonym. Papa are also known as island jack or yellowspot.

"Possess" means to procure, receive, hold, or control for a sufficient period to have had the opportunity to release or relinquish control.

"Take" means to fish for, capture, confine, or harvest aquatic life. This term shall not apply to the temporary capture or confinement of any specimen which is returned to the water as soon as possible after landing.

"Uhu" means any fish belonging to the family Scaridae or any recognized synonyms. Uhu is a general term for parrotfish.

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

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

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

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

"Ulua" means any fish known as *Alectis ciliaris* (threadfin pompano or kagami); *Carangoides equula* (whitefin trevally); *Carangoides ferdau* (barred jack); *Carangoides orthogrammus* (island jack, yellowspot, or papa); *Caranx ignobilis* (giant trevally, white ulua or ulua aukea); *Caranx lugubris* (black trevally or ulua

lā'uli); *Caranx melampygus* (bluefin trevally or 'ōmilu); *Caranx sexfasciatus* (bigeye trevally or menpachi ulua); or any recognized synonyms. The young of these fish are also known as pāpio.

"Ū'ū" means any fish in the genus *Myripristis*. 'Ū'ū are also known as menpachi or soldierfish.

"Weke'ā" means any fish known as *Mulloidichthys flavolineatus* or any recognized synonym. Weke'ā are also known as white goatfish. The young of these fish are also known as 'oama.

"Weke nono" means any fish known as *Mulloidichthys pfluegeri* or any recognized synonym. Weke nono are also known as Pflueger's goatfish or moelua. [Eff:] (Auth: HRS §§187A-5, 189-2, 189-6) (Imp: HRS §§187A-1, 187A-5, 188-53, 189-2, 189-6)

§13-95.1-2 Penalty. Any person who violates any provision of this chapter, or the terms and conditions of any permit issued pursuant to this chapter, shall be subject to administrative fines of:

- (1) Not less than \$100 and not more than \$1,000 for a first offense;
- (2) Not less than \$200 and not more than \$2,000 for a second offense; and
- (3) Not less than \$500 and not more than \$3,000 for a third or subsequent offense.

Any criminal penalty imposed pursuant to section 188-70, HRS, for any violation of a provision of this chapter shall not be deemed to preclude the recovery of administrative fines under this section, or as may be otherwise provided by law. [Eff:] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 187A-12.5, 188-53, 188-70)

§13-95.1-3 Scope. (a) Unless expressly provided otherwise, the scope of jurisdiction for each of the following subchapters of chapter 13-95.1 shall be as follows:

(1) Subchapter 2 (sections 13-95.1-7 through 13-95.1-17) shall apply to the take or possession of aquatic life from, in, or on the lands or waters of Maui or Lana'i islands subject to state jurisdiction or control. For purposes of subchapter 2, "waters of Maui and Lana'i islands" shall mean all ocean waters within three nautical miles seaward from the highest wash of the waves on the shores of Maui and Lana'i, respectively, excluding all waters within two nautical miles from the shores of Kaho'olawe island, as shown on the "Map of Maui and Lana'i Islands Fisheries (5/7/2013)" attached below.

(b) Nothing in this chapter shall be construed to restrict the State's claims to jurisdiction and authority over its marine waters.

(c) The take and possession provisions of this chapter supersede any conflicting take or possession provisions in chapter 13-95, Hawaii Administrative Rules. [Eff:] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-1.5, 188-22.5, 187A-5, 188-53)

§13-95.1-4 Exceptions. (a) The prohibitions of this chapter shall not apply to authorized employees of the department when acting in the course of their official duties, departmental agents and contractors engaged in authorized departmental activities, or to any persons conducting activities permitted under a valid license or permit listed under section 13-95-1.1 that expressly refers to this chapter.

(b) Nothing in this chapter shall prohibit the exercise of traditional and customary native Hawaiian rights or practices for subsistence, cultural, and religious purposes.

(c) For the purposes of this chapter, any commercial marine dealer may possess more than the allowed number of aquatic specimens, only if such

specimens were purchased from other individual(s) with:

- (1) A valid commercial marine license; or
 - (2) A valid special marine product license;
- and has receipts issued for each purchase pursuant to section 189-11, HRS. Receipts must include the first and last name and license number of the person to whom the receipt is issued. [Eff:]
(Auth: HRS §§187A-3.5, 187A-5, 187A-6, 189-2, 189-6)
(Imp: HRS §§187A-3.5, 187A-5, 187A-6, 188-53, 189-2, 189-6, 189-11)

§13-95.1-5 Severability. If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remaining chapter provisions, or application of the chapter provisions which can be given effect without the invalid provision or application, shall not be affected thereby. [Eff:] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

§13-95.1-6 Alteration of fish. While on, in, or upon lands adjacent to, the waters of an island whose fisheries are regulated under any subchapter of this chapter, no person may possess any fish or fish part of any species regulated under that island's subchapter, which has been altered such that the length of the whole fish cannot be determined. [Eff:] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

SUBCHAPTER 2

MAUI AND LANA'I ISLANDS FISHERIES

§13-95.1-7 Aholehole. (a) Any other department size restriction notwithstanding, subject to

subsection (b), any person may take āholehole of any size.

(b) No person may take more than twenty āholehole per day, or possess more than twenty āholehole at any one time. [Eff:]
(Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

§13-95.1-8 'Āweoweo. No person may take more than five 'āweoweo per day, or possess more than five 'āweoweo at any one time. [Eff:] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

§13-95.1-9 Goatfish. (a) No person may take or possess any kūmū, moano kea, or weke nono less than twelve inches in length.

(b) Except as provided in subsection (e), no person may take or possess any other goatfish less than eight inches in length.

(c) No person may take more than one kūmū per day, or possess more than one kūmū at any one time.

(d) No person may take more than two each of moano kea or munu per day, or possess more than two each of moano kea or munu at any one time.

(e) Subsection (b) notwithstanding, any person may take up to fifty 'oama per day, or possess up to fifty 'oama at any one time, provided that no 'oama may be taken by any means other than hook-and-line fishing. No person may sell any 'oama at any time.

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

§13-95.1-10 Kole. No person may take more than twenty kole per day, or possess more than twenty kole at any one time. [Eff:] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

§13-95.1-11 Manini. (a) No person may take or possess any manini less than five inches in length.

(b) No person may take more than twenty manini per day, or possess more than twenty manini at any one time. [Eff:] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

§13-95.1-12 Moi. (a) No person may take or possess any moi less than twelve inches in length.

(b) No person may take more than five moi per day, or possess more than five moi at any one time.

(c) Except as otherwise provided by law, no person may take, possess, or sell any moi during June, July, or August. [Eff:] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

§13-95.1-13 Mū. (a) No person may take or possess any mū less than fourteen inches in length.

(b) No person may take more than two mū per day, or possess more than two mū at any one time.

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

§13-95.1-14 Pāku'iku'i. No person may take more than five pāku'iku'i per day, or possess more than five pāku'iku'i at any one time. [Eff:]

(Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

§13-95.1-15 Uhu. (a) No person may take or possess any uhu 'ele'ele or uhu uliuli at any time.

(b) No person may take or possess any uhu pālupaluka or any uhu 'ahu'ula less than fourteen inches in length.

(c) Any other department size restriction notwithstanding, subject to subsections (a) and (b),

any person may take any other uhu greater than ten inches in length.

(d) No person may take more than two uhu of any variety per day, or possess more than two uhu of any variety at any one time. [Eff:]
(Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

§13-95.1-16 Ulua; 'ōmilu; papa.

(a) Recreational bag and size limits. Except as provided in subsection (b) of this section, no person may:

- (1) Take or possess any ulua less than ten inches in length.
- (2) Take more than five ulua of any variety per day, or possess more than five ulua of any variety at any one time.
- (3) Take more than two ulua of any variety greater than twenty-four inches in length per day, or possess more than two ulua of any variety greater than twenty-four inches in length at any one time.
- (4) Take or possess any 'ōmilu greater than twenty-four inches in length.

(b) Commercial bag and size limits. A commercial marine licensee fishing solely for commercial purposes either alone, or as part of a commercial fishing expedition, may:

- (1) Take, possess, and sell any number of papa between sixteen inches and twenty-four inches in length.
- (2) Take up to five ulua of any variety, other than 'ōmilu and papa, between sixteen inches and thirty-two inches in length, per day, or possess up to five ulua of any variety, other than 'ōmilu and papa, between sixteen inches and thirty-two inches in length, at any one time.

No ulua greater than thirty-two inches in length, no papa greater than twenty-four inches in length, and no

'ōmilu of any size may be taken or possessed while fishing for commercial purposes.

(c) No person shall sell or attempt to sell any ulua less than sixteen inches or greater than thirty-two inches in length, or any papa less than sixteen inches or greater than twenty-four inches in length, or any 'ōmilu of any size. [Eff:]
(Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

§13-95.1-17 'Ū'ū. No person may take more than twenty 'ū'ū per day, or possess more than twenty 'ū'ū at any one time." [Eff:] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

2. The adoption of chapter 95.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

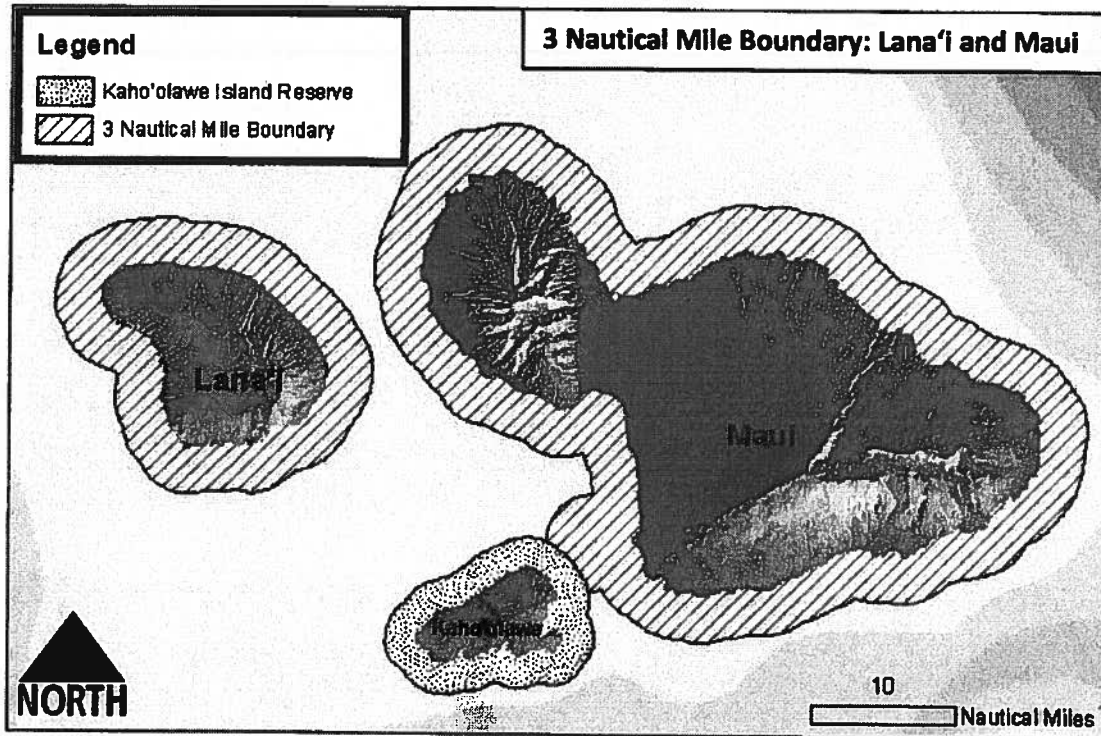
I certify that the foregoing are copies of the rules, drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

William J. Aila, Jr., Chairperson
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:

/s/ Colin J. Lau
Deputy Attorney General

Map of Maui and Lana'i Islands Fisheries (5/7/2013)



NOTE: The Maui and Lana'i Islands Fisheries rules do NOT apply to waters within two nautical miles of Kaho'olawe island (which are governed by the Kaho'olawe Island Reserve Commission's separate authority, Hawaii Administrative Rules chapter 261).