

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

September 12, 2014

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

INFORMATIONAL BRIEFING ON PROPOSAL TO ADOPT A NEW CHAPTER UNDER
HAWAII ADMINISTRATIVE RULES AS TITLE 13 CHAPTER 95.1, ISLAND-BASED
FISHERIES RULES, TO ESTABLISH NEW BAG AND SIZE LIMITS FOR MAUI ISLAND
FISHERIES (*NON-DECISION MAKING ITEM*)

This submittal provides an update on the Department of Land and Natural Resources' ("DLNR") proposal to adopt Hawaii Administrative Rules ("HAR") chapter 13-95.1 to: 1) establish new bag and size limits for species of concern on the island of Maui 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.

The new rules would establish greater protection for two important groups of fish—goatfish and parrotfish—on the island of Maui and provide a regulatory framework for the transition from the statewide regulation of marine fisheries to island-based regulation.

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 regulations for Maui and Lana'i islands. This process, which was widely advertised to the public, generated a set of proposed rules that gained broad support among those who participated. The resulting proposed regulations were 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 the proposed rules.

Based on the results from this public scoping process, DAR originally proposed regulations for eleven fish groups on Maui and Lana'i. On July 12, 2013, the Board approved the proposed rules for public hearing. On September 18, 2013, the Governor also approved. A copy of the proposed rules that went out for public hearing is attached as **Exhibit A**.

ORIGINAL PROPOSED RULES

The purpose of the proposed adoption of the new rule chapter was twofold. First, it would provide a regulatory framework for the transition from statewide regulation of marine fisheries to island-based regulation. Second, it would establish new, more protective fisheries regulations for the islands of Maui and Lanai.

Subchapter One contained general provisions applicable to the entire chapter, including definitions, penalties, scope of application, exceptions, and severability.

Subchapter Two proposed rules providing additional protection for those species of special concern on Maui and Lana'i islands. Scientific research and community dialogue suggested that current statewide regulations for these species were inadequate. In addition, current rule conventions regarding daily bag limits had left large loopholes which poachers used to escape liability. To remedy this, provisions in the proposed chapter supplemented daily take provisions with corresponding possession-based limits, with definitions intended to enhance enforceability and to set clear lines for compliance.

Commercial fishing interests were also considered in the development of the proposed rules. DAR used input from commercial fishers, as well as its own commercial fisheries catch data, to minimize adverse impacts to commercial landings where possible. For example, provisions were carefully crafted to leave room for sustainable commercial harvest of certain ulua species through additional size and species restrictions.

Additional subchapters were reserved for the establishment of other island-based rules as DAR works with fishers on each island to develop them. In the meantime, those islands' fisheries would still be regulated under the statewide provisions of HAR chapter 13-95.

PUBLIC HEARINGS

DAR accepted public testimony on the proposed rules from October 20, 2013 to December 6, 2013 and held public hearings in Lana'i City, Lana'i on November 19, 2013; in Hana, Maui on November 20, 2013; and in Kahului, Maui on November 21, 2013. DAR received a total of 153 verbal and written testimonies. 53 were in support (35%); 83 were against (54%); and 17 were unclear in their support or opposition. The minutes from the public hearings and written testimonies are attached as **Exhibit 1**.

AMENDED RULEMAKING PROPOSAL

Based on the written and oral public testimony received by DAR through the chapter 91 public hearings process, DAR has decided to move forward with the adoption of regulations for only two fish groups, uhu (parrotfish) and goatfish. Regulations for āholehole, 'āweoweo, kole, manini, moi, mū, pāku'iku'i, ulua/papio (jacks), and 'ū'ū have been removed from the proposed rules. DAR has also reduced the geographical scope of the proposed rules to apply only to the island of Maui. The proposed regulations no longer apply to Lana'i. A few other non-substantive changes are also included in the amended proposed rules for simplification and

clarification purposes. Specifically, unnecessary definitions have been deleted to reflect the removal of the above-mentioned species regulations; the penalty provision has been amended to remove expressly-stated minimum and maximum administrative fines in favor of more general language that references statutory minimums and maximums; and subsection 4(b) has been reworded to clarify the Department's protection of native Hawaiian traditional and customary rights as recognized under article XII, section 7, of the State Constitution. A Ramseyer draft of the proposed rules, as amended based on results from the public hearing process, is attached as **Exhibit 2**. A more in-depth explanation of DAR's decision to move forward with regulations for goatfish and uhu is provided in the attached Analysis of Public Hearings and Testimony. See **Exhibit 3**.

Respectfully submitted,



FRAZER MCCILVRAY, Administrator
Division of Aquatic Resources

APPROVED FOR SUBMITTAL



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

Attachments:

- Exhibit A – Original Proposed rules
- Exhibit 1 – Public Hearing Minutes
- Exhibit 2 – Ramseyer Draft
- Exhibit 3 – Analysis of Public Hearings and Testimony

Exhibit A

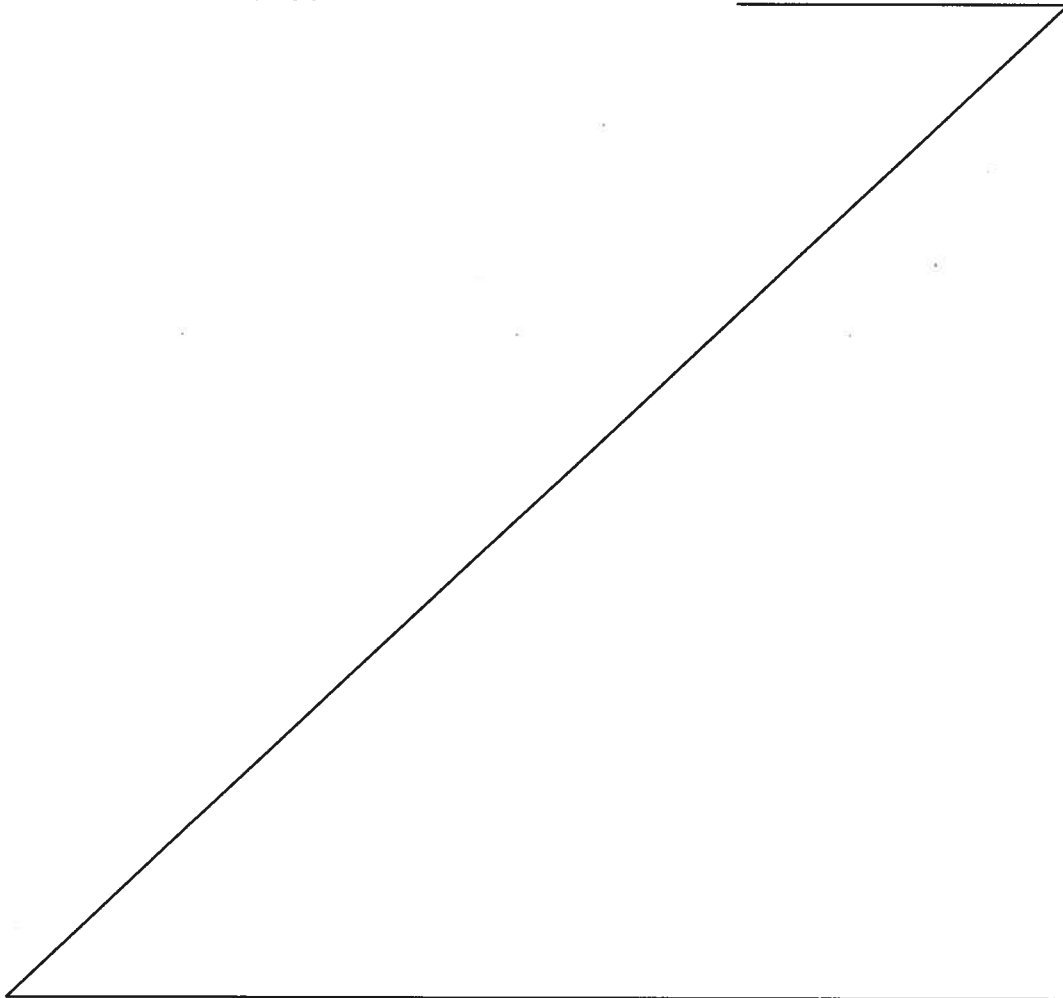
Ramseyer Format 8/5/13

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-95.1
Hawaii Administrative Rules

(Date of adoption)

1. Chapter 13-95.1, Hawaii Administrative Rules,
entitled "Island-Based Fisheries Rules" is adopted to
read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

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 to 13-95.1-19	(Reserved)

Subchapter 2 Maui and Lana'i Islands Fisheries

\$13-95.1-20	Āholehole
\$13-95.1-21	'Āweoweo
\$13-95.1-22	Goatfish
\$13-95.1-23	Kole
\$13-95.1-24	Manini
\$13-95.1-25	Moi
\$13-95.1-26	Mū
\$13-95.1-27	Pāku'iku'i
\$13-95.1-28	Uhu
\$13-95.1-29	Ulua; 'ōmilu; papa
\$13-95.1-30	'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 shall hold valid commercial marine licenses, and shall 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.

"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.

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

"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, 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 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 13-95.1-20 through 13-95.1-30) 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" means 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 exhibit entitled "Map of Maui and Lana'i Islands Fisheries", dated 5/7/13, located at the end of this chapter.

(b) Nothing in this chapter shall 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. [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 the

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 shall 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 to 13-95.1-19 (Reserved)

SUBCHAPTER 2

MAUI AND LANA'I ISLANDS FISHERIES

§13-95.1-20 Āholehole. (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)

§13-95.1-21 '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)

§13-95.1-22 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)

§13-95.1-23 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)

§13-95.1-24 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)

§13-95.1-25 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)

§13-95.1-26 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)

§13-95.1-27 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)

§13-95.1-28 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)

§13-95.1-29 Ulua; 'ōmilu; papa.

(a) Recreational bag and size limits. Except as provided in subsection (b), 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; or
- (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; and
- (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)

§13-95.1-30 '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 13-95.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

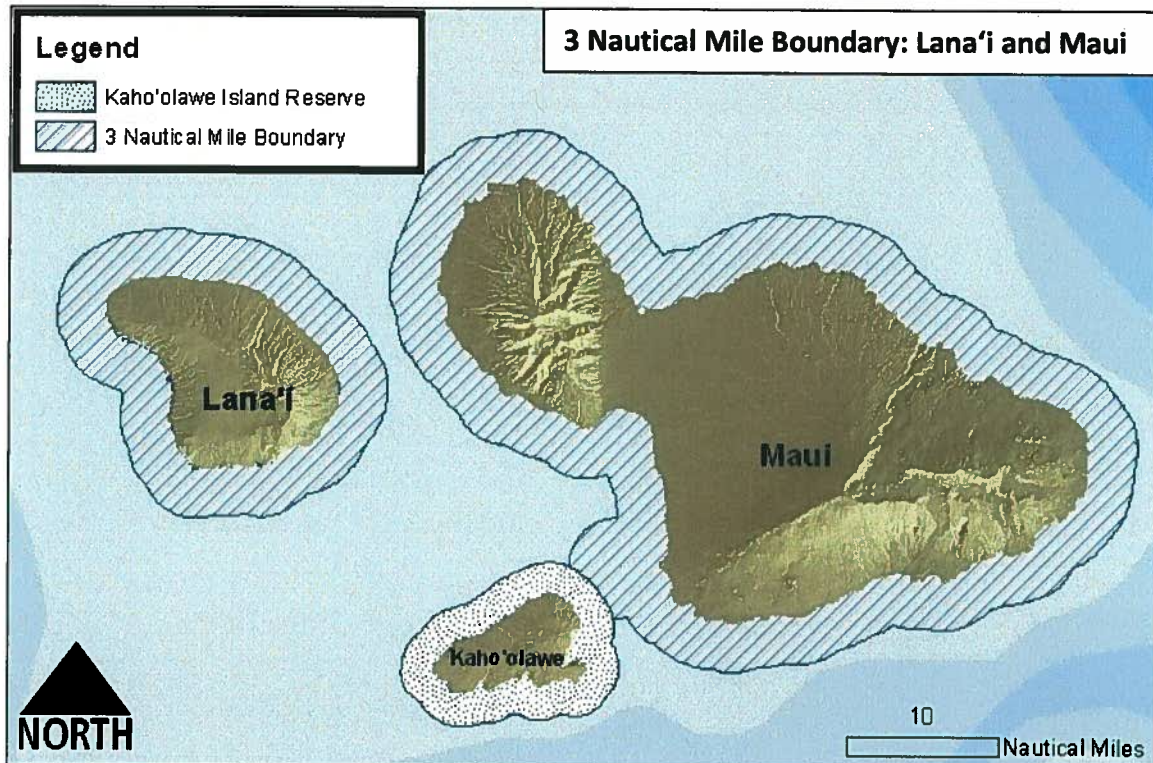
I certify that the foregoing are copies of the rules, drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

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

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General

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



Shapefiles: State of Hawaii Office of Planning Map: Division of Aquatic Resources

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 13-261).

Exhibit 1

Public Hearing Minutes
Adoption of Hawaii Administrative Rules
CHAPTER 13-95.1
Island-Based Fisheries Rules

Hearing Dates/

Locations:

Tuesday, November 19, 2013

Lanai Senior Center, Lanai City, Lanai

Wednesday, November 20, 2013

Helene Hall, Hana, Maui

Thursday, November 21, 2013

Maui Waena Intermediate School Cafeteria, Kahului, Maui

I. Opening

Public hearings were held in Lanai City on Lanai and in Hana and Kahului on Maui.

The Lanai City public hearing was called to order at 5:30 P.M. Russell Sparks, DAR Maui Aquatic Biologist, conducted the Lanai City hearing. Also present was Adam Wong, the DAR Maui Education Specialist.

The Hana public hearing was called to order at 5:31 P.M. Russell Sparks, DAR Maui Aquatic Biologist, conducted the Hana hearing. Also present was Adam Wong, the DAR Maui Education Specialist

The Kahului public hearing was called to order at 5:30 P.M. Russell Sparks, DAR Maui Aquatic Biologist, conducted the Kahului hearing. Also present were Adam Wong, Education Specialist, Skippy Hau, Aquatic Biologist, and Kristy Stone, Monitoring Coordinator from the Maui DAR office.

II. Background

A. In January 2009, DLNR's Division of Aquatic Resources 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 facilitated community discussion regarding Maui and Lana'i islands regulations. This process guided the development of these draft rules. These rules are based both on public concerns as well as best available scientific information.

- B. Approvals to conduct this public hearing were obtained from the Board of Land and Natural Resources on July 12, 2013, the Small Business Regulatory Review Board on August 19, 2013, and Governor Abercrombie on September 18, 2013.
- C. Copies of the administrative rules were made available for inspection at the public hearings.

III. Notice of public hearing

The Legal Notice of this public hearing was published in the October 20, 2013, Sunday issue of the Honolulu Star Advertiser. On November 8, 2013, the department issued a press release regarding the public hearings.

IV. Hearing procedures

The hearings officer explained the proposed new administrative rules. Each person who wanted to testify was given 3 minutes to provide their testimony.

V. Testimonies

A. Lanai

- 37 people in attendance
- 12 public testimonies accepted
- 7 opposed to the proposed rules
- 2 supported the proposed rules
- 3 were unclear

One testimony against the proposal expressed specific concerns about small fish with proposed bag limits (no specific species were mentioned). Another testimony was specifically opposed to the moi bag limit because they captured moi with throw nets and felt they could not prevent catching more than the proposed bag limit of 5.

Overall those in attendance seemed to support the idea of managing Lanai as a CBSFA. They did not feel it was appropriate to group Lanai with Maui and wanted more time and control to determine how to best manage their specific Island's marine resources. There was also a lot of concern voiced about outsiders affecting their resources. They wanted a buffer zone created around Lanai to prevent outside boats from coming in and fishing their waters. One testifier suggested Lanai be regulated like Kaho'olawe with a no vessel buffer zone around the entire island.

B. Hana

- 28 People in Attendance
- 18 public testimonies accepted

15 against the proposed rules
1 supported the proposed rules
2 were unclear

Most were not specific in their opposition except that they felt it took away their ability to sustain themselves and their families from the marine resources. They felt it took away their cultural rights to gather for subsistence.

Two people said the bag limits were needed, but should not apply to Hana residents, just to outsiders. Numerous written comments from Hana High School students had the same sentiment. They acknowledged a problem with over fishing and were concerned about the resources, but felt regulations should only apply to those coming from outside, not to Hana residents who were fishing for their subsistence purposes.

The overwhelming sentiment seemed to be that East Maui (Kaupo – Keanai) should be exempted from the regulations and allowed to plan their own regulations through the Community-Based Subsistence Fishing Area (“CBSFA”) designation process.

C. Kahului

148 People in Attendance
40 public testimonies accepted
31 opposed to the proposed rules
5 supported the proposed rules (or at least portions of the proposals)
4 were unclear

The Kahului Hearing was very heated with a lot of frustration being expressed from the majority of those in attendance. A common theme centered around the State needing to consult more with the Aha Moku Councils and to hold meetings and discussions in all the Moku around Maui. Those pushing for consultation with the Aha Moku Councils provided no specific comments on specifics within the rule, except to say communities could manage their own resources with a code of conduct and under the concept of Kuleana, and that they did not need the state to create rules to work under these concepts. Many people felt that the questionnaire that we used to help scope the rules was not distributed widely enough and since we only had 128 completed questionnaires, it was not appropriate to use these to justify the proposed rules. They didn't seem to acknowledge the numerous facilitated scoping meetings that were also used to help fine-tune the draft rules. A petition circulated by the Aha Moku Council that was in opposition to the proposed rules was turned in with what appeared to be several hundred signatures.

There were many folks who provide specific comments in relation to the proposed rules. These specifics and the number of testifiers who provided comments against specific portions of the rules are listed below:

Menpachi Bag Limit of 20 Fish/Day:	4
Aweoweo Bag Limit of 5 Fish/Day:	1
Ulua/Papio Bag Limit of 5 Fish/Day:	4
Moi Bag Limit of 5 Fish/Day:	5
Manini Bag Limit of 20 Fish/Day:	1
Blue Uhu Harvest Prohibition:	2
Kole Bag Limit of 20 Fish/Day:	2
Omilu Maximum Size Limit of 24”:	1
Aholehole Bag Limit of 20 Fish/Day:	1

Testimony in support of specific rules included:

Uhu Total Bag Limit of 2 Fish/Day:	1
Kumu Bag Limits of 1 Fish/Day:	1
Moano Kali and Munu Bag Limits of 2 Fish/Day:	1

D. Written/Email Testimony

Overall there were 83 written/email testimonies received.
45 were in support of the rules as proposed
30 were against the rules as proposed
8 were not clearly for or against the proposed rules

VI. Adjournment

The Lanai City hearing was adjourned at 6:35 P.M. The Hana hearing was adjourned at 7:11 P.M. The Kahului hearing was adjourned at 8:25 P.M.

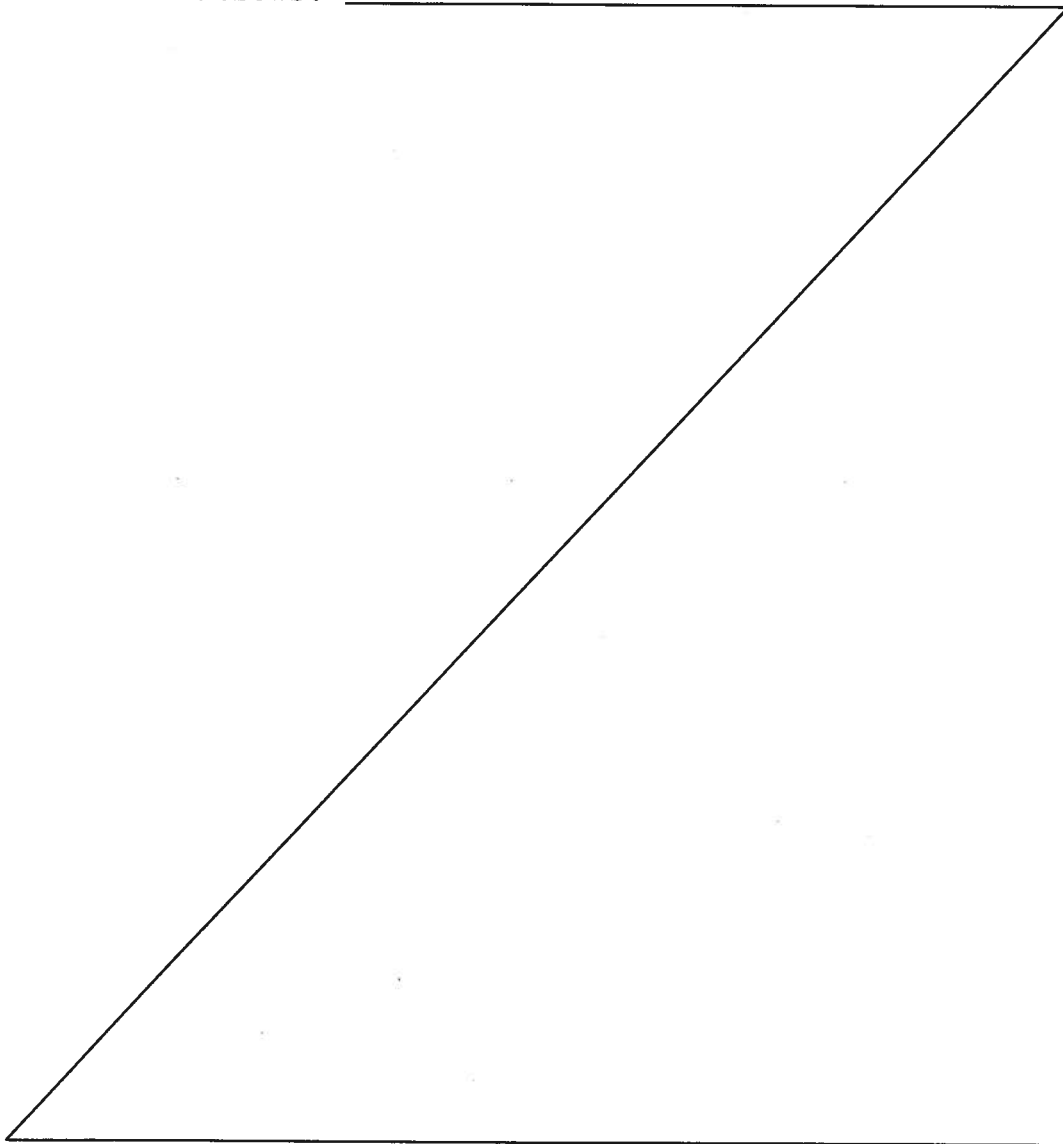
Exhibit 2

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-95.1
Hawaii Administrative Rules

(Date of adoption)

1. Chapter 13-95.1, Hawaii Administrative Rules, entitled "Island-Based Fisheries Rules", is adopted to read as follows: _____



"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

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

Subchapter 2 Maui Island Fisheries

§13-95.1-20	Goatfish
§13-95.1-21	Uhu

SUBCHAPTER 1

GENERAL PROVISIONS

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

"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.

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

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

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

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

"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.

"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.

"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-gray, 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.

"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, 189-2, 189-6)

§13-95.1-2 Penalty. (a) Any person who violates any provision of this chapter shall be subject to administrative fines as provided by chapter 187A, HRS.

(b) Any administrative fine imposed under this section for any violation of a provision of this chapter shall not preclude the imposition of criminal penalties pursuant to section 188-70, HRS, 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 subchapter 2 shall be as follows:

Subchapter 2 shall apply to the take or possession of aquatic life from, in, or on the lands or waters of Maui island subject to state jurisdiction or control. For purposes of this section, "waters of Maui island" means all ocean waters within three nautical miles seaward from the highest wash of the waves on the shores of Maui, excluding all waters within two nautical miles from the shores of Kaho'olawe island, as shown on Exhibit 1 entitled "Map of Maui Island Fisheries", dated May 19, 2014, and located at the end of this chapter.

(b) Nothing in this chapter shall 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. [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) Native Hawaiian traditional and customary rights recognized under article XII, section 7, of the Hawaii State Constitution shall not be abridged.

(c) For the purposes of this chapter, any commercial marine dealer may possess more than the allowed number of aquatic specimens, only if the 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 shall 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 provisions, or application of the provisions which can be given effect without the invalid provision or application, shall not be affected. [Eff] (Auth: HRS §§187A-5, 188-53)
(Imp: HRS §§187A-5, 188-53)

SUBCHAPTER 2

MAUI ISLAND FISHERIES

§13-95.1-20 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 moano kea and two munu per day, or possess more than two moano kea and two munu at any one time.

(e) Notwithstanding subsection (b), 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.

(f) No person may sell any 'oama at any time.
[Eff] (Auth: HRS §§187A-5, 188-53)
(Imp: HRS §§187A-5, 188-53)

§13-95.1-21 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)

2. The adoption of chapter 13-95.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

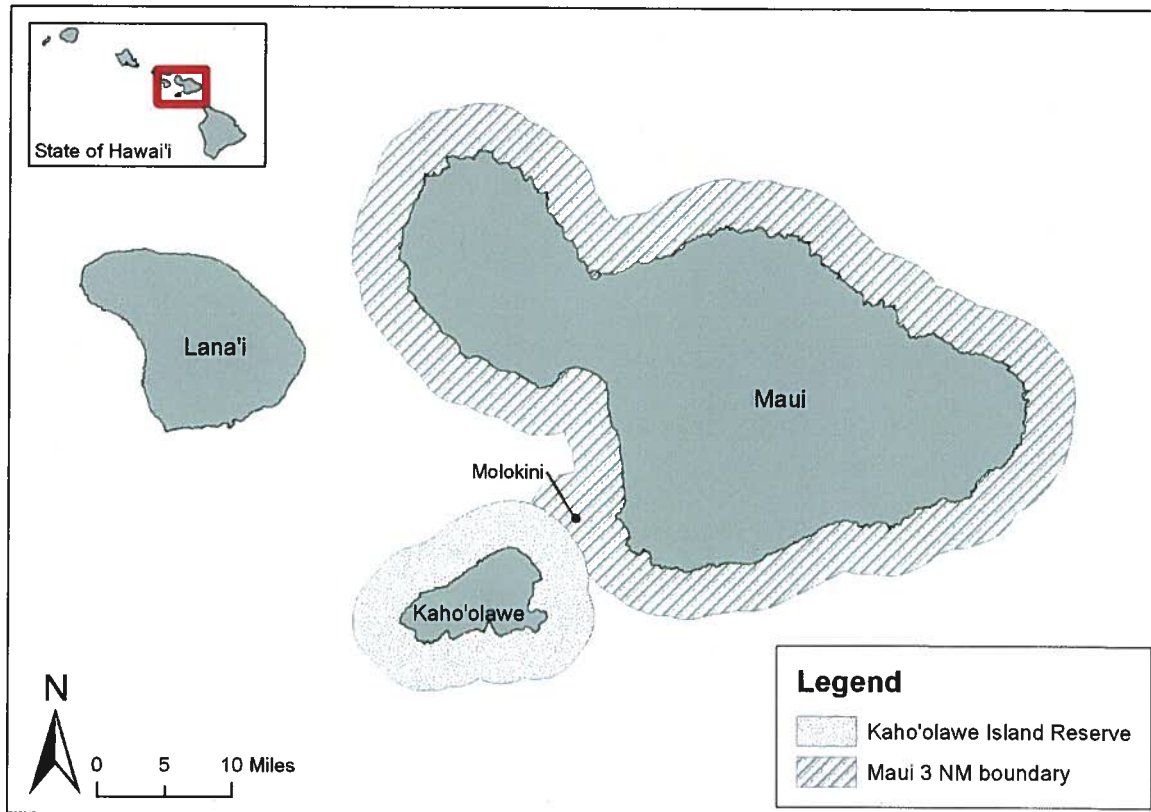
I certify that the foregoing are copies of the rules, drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

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

APPROVED AS TO FORM:

Deputy Attorney General

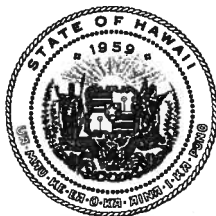
Exhibit 1. Map of Maui Island Fisheries (May 19, 2014)



NOTE: The Maui Island 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 13-261).

Exhibit 3

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF AQUATIC RESOURCES
1151 PUNCHBOWL STREET, ROOM 330
HONOLULU, HAWAII 96813

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

JESSE K. SOUKI
FIRST DEPUTY

WILLIAM M. TAM
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

Analysis of Public Hearings and Testimony on Proposed New Maui and Lana'i Bag and Size Limit Rules

The Division of Aquatic Resources (DAR) held public hearings on the proposed Maui/Lanai bag and size limit rules in Hana and Kahului on Maui and in Lanai City on Lanai in November 2013. The majority of the public oral and written testimonies were in opposition to the proposed rules (54%). There were, however, 35% of the testimonies in support and 11% that were unclear.

Although some degree of opposition to any new fishing regulations is expected, DAR was concerned with the degree of opposition in this case and reviewed all the testimony in great detail looking for specific concerns and/or other management options. This careful review showed that in small communities like Hana and on the island of Lanai, the community wanted more input into the management decisions and wanted to use the Community Based Subsistence Fishing Area (CBSFA) designation process to manage their local resources in a way consistent with their subsistence lifestyle. At the Kahului meeting a lot of specific concern was expressed over the proposed bag limits for 'ū'ū (menpachi), ulua/papio (jacks), and moi. There were also some specific testimonies in support of the uhu and large goatfish bag limits. A few comments specifically addressed concerns that these regulations would ban commercial take of the resources.

In response to these concerns, DAR has decided to only move forward with the uhu (parrotfish) and goatfish regulations on the island of Maui. The proposed rules for ulua/papio (jacks) and all other species would be removed from this rules package. In addition, all proposed rules for the island of Lanai would be removed. DAR plans to work directly with the communities in east Maui and on Lanai to look at creating CBSFAs that will address the majority of their nearshore fishery concerns in a process that will be specific to their individual resource issues and that takes into account their subsistence harvesting needs. The need to move the uhu (parrotfish) and goatfish rules forward in spite of some opposition is outlined below.

Uhu (parrotfish) Proposed Rules

Multiple sources of data from both fisheries dependent and independent surveys indicate that the uhu resources are being overfished and that they are critically important species supporting healthy coral reef ecosystems. Our current regulations (12" minimum size on all species) inadvertently push all legal harvest onto the two large species of uhu (*Chlorurus perspicillatus* and *Scarus rubroviolaceus*). Surveys indicate that these two species are becoming rare on shallow water coral reefs where they play a very important role as grazers helping to control

algae growth, stimulating crustose coralline algae growth, and opening up space for new coral recruitment. The proposed two tier system of size limits (14”) for these two large species and (10”) for all the smaller species should allow more legal harvest pressure to be spread out amongst all the uhu species. Furthermore, the proposed 2 uhu total bag limit would prevent excessive harvest by a few fishers. In addition to these proposed rules, the proposal to prohibit all harvest of the male uhu for the two large species (uhu ‘ele‘ele and uhu pālupaluka) should help maintain a more normal social/reproductive structure on the reef and allow the large male uhu to continue to graze and serve their ecosystem functions on shallow coral reef areas. The practice of protecting and/or avoiding the harvest of the large male uhu also seems to fit within the subsistence harvesting practices of many small communities who have proposed similar regulations within their specific areas and who have explained to DAR staff that the large male uhu are not as desirable for food. Surveys in reserves where uhu harvest is prohibited have shown that each reef can support a limited amount of male uhu and their associated harems of female fish. DAR, therefore, expects each reef area will have a few large male uhu and that most of the other fish will remain female and be available to be sustainably harvested through the establishment of minimum sizes and bag limits. The results of this proposed rule change will be carefully monitored by the DAR monitoring program, and if necessary future changes may be proposed in an effort to adaptively manage uhu stocks. It is also important to note that a recent fisheries stock assessment conducted by NOAA fisheries staff suggests that the redlip uhu (*Scarus rubroviolaceus*) is in an overfished state and the endemic spectacled uhu (*Chlorurus perspicillatus*) is so rarely sighted that its stocks could not be effectively assessed. Written testimony from the Maui Mayor also strongly suggests we move forward with the proposed uhu rules to help maintain healthy coral reefs.

Goatfish Proposed Rules

Several species of goatfish—most notably the kūmū (*Parupeneus porphyreus*), the moano kea (*Parupeneus cyclostomus*) and the munu (*Parupeneus insularis*)—are becoming increasingly rare. This fact is supported by survey data, and most fishers agree that these species need additional protection to prevent overharvest. A recent stock assessment of the kūmū further supports that this species is being overharvested and needs additional management. DAR, therefore, feels it is appropriate to move forward with the proposed bag limits on these three species of goatfish. The additional proposed rules for the other species of goatfish are also important to move forward as they set minimum sizes more in line with the size at which these fish become reproductively mature. There were no specific testimonies in opposition to the proposed goatfish regulations with some folks strongly supporting these proposals.

Overall, DAR feels that it is of critical importance to move forward with the proposed uhu and goatfish rules. Although there is still concern for the other species listed within the original rule proposal, DAR staff feel they can work with communities to come up with new management approaches and to encourage the development of more CBSFAs.