

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

July 8, 2010

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

REQUEST FOR APPROVAL TO HOLD PUBLIC MEETINGS AND HEARINGS TO
ADOPT CHAPTER 13-60.85, HAWAII ADMINISTRATIVE RULES, MAUI AND
LANA'I ISLANDS FISHERIES RULES

Submitted for your consideration and approval is a request to hold public meetings and hearings to adopt Hawaii Administrative Rules (HAR) chapter 13-60.85, to allow the Department of Land and Natural Resources (DLNR) to more effectively regulate and protect the fisheries resources of Lana'i and Maui islands.

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, and community participation was allowed to somewhat influence the course and topics of discussion. As a result, distinct concerns and regulatory preferences have become evident for each island.

Since January, staff at the Maui DAR office have proactively facilitated further community discussion regarding regulations specific to Maui and Lana'i islands. This process has resulted in a set of rules which appears to have 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. Consultation with enforcement officers from DLNR's Division of Conservation and Resource Enforcement (DOCARE) stationed in Maui has also informed the drafting of these rules.

PURPOSE

In order to facilitate the proactive adaptive management efforts of the Maui DAR office, DLNR's DAR is proposing the adoption of a new regulatory chapter for the marine fisheries of Maui and Lana'i Islands. See **Exhibit A**.

The provisions of this chapter offer additional protections for species of concern on this island. Based on scientific research and community dialogue, current statewide

regulations concerning these species have been found inadequate. In addition, current rule conventions regarding daily bag limits have appeared to leave large loopholes by which poachers often escape liability for resource violations. For example, under other aquatic resource regulations, 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. As a result, 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. To ensure responsible user conduct, and to further facilitate compliance, this chapter proposes to also require all individuals engaged in marine fishing activities on Maui and Lana‘i Islands and their surrounding waters to possess a copy of these rules.

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.

An asset forfeiture provision is included to implement the DLNR’s asset forfeiture authority under Chapter 712A and Section 199-7, HRS.¹ The loss of asset forfeiture as an enforcement tool has been cited by DOCARE officers as a severe impairment of their ability to effectively foster compliance with aquatic resource regulations.

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 also provide an exception for activities conducted pursuant to special activity permits that expressly refer to the chapter.

Finally, DAR notes that state agencies are bound by the Hawai‘i state constitution to affirmatively protect and enforce traditional and customary gathering rights, subject to reasonable regulation by the state.² These rules thus provide for a cultural gathering permit, which will allow permittees to gather regulated specimens holding special cultural significance for traditional and customary or cultural perpetuation purposes. The permitting process is not intended to restrict constitutional rights or entitlements established by the courts, but provides an additional avenue for cultural practitioners to verify their customs without the burden of defending their rights in the judicial system.

RECOMMENDATION:

¹ See Carlisle v. One (1) Boat, 119 Hawai‘i 245 (2009).

² See Haw. Const’n Art. XII sec. 7; Ka Pa‘akai o ka ‘Āina v. Land Use Comm’n, 94 Hawai‘i 31, 45 (2000); Public Access Shoreline Hawai‘i v. Hawai‘i County Planning Comm’n, 79 Hawai‘i 425, 437 (1995).

“That the Board authorize and approve the holding of public meetings and hearings to adopt Chapter 13-60.85, Maui and Lana’i Islands Fisheries, Hawaii Administrative 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,



Francis Oishi, Program Manager
Division of Aquatic Resources

APPROVED FOR SUBMITTAL



LAURA H. THIELEN, Chairperson
Department of Land and Natural Resources

Attachment

EXHIBIT A

Ramseyer Draft
(07/08/2010)

RAMSEYER FORMAT

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-60.85, Maui and Lana'i Islands
Fisheries Rules,
Hawai'i Administrative Rules

(07/08/2010)

1. Chapter 60.85 of Title 13, Hawai'i Administrative
Rules, is adopted to read as follows:

"HAWAI'I ADMINISTRATIVE RULES

TITLE 13

SUBTITLE 4

FISHERIES

CHAPTER 60.85

MAUI AND LANAI ISLANDS FISHERIES RULES

§ 13-60.85-1	Definitions
§ 13-60.85-2	Penalty
§ 13-60.85-3	Asset Forfeiture
§ 13-60.85-4	Exceptions
§ 13-60.85-5	Scope
§ 13-60.85-6	Severability
§ 13-60.85-7	Required Possession of Regulations
§ 13-60.85-8	Alteration of Fish
§ 13-60.85-9	Āholehole
§ 13-60.85-10	'Āweoweo
§ 13-60.85-11	Goatfish
§ 13-60.85-12	Kole
§ 13-60.85-13	Manini
§ 13-60.85-14	Menpachi
§ 13-60.85-15	Moi
§ 13-60.85-16	Mū
§ 13-60.85-17	Pāku'iku'i
§ 13-60.85-18	Uhu
§ 13-60.85-19	Ulua

§ 13-60.85-1 Definitions. As used in this chapter, unless otherwise provided:

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

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

"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 a person who has been issued a special marine product license pursuant to section 13-74-42, HAR, and section 189-6, HRS.

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

"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, or transported for sale anywhere in the State.

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

"Fork 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 goldring surgeonfish, *Ctenochaetus strigosus*, or any recognized synonym.

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

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

"Menpachi" means any fish in the genus *Myripristis*. Menpachi are also known as ūū or soldierfish.

"Moano kea" means any fish known as blue goatfish, *Parupeneus cyclostomus*, or any recognized synonym. This fish may also be known as moano kali or moano ukali-ulua.

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

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

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

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

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

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

"Pālukaluka" means any fish known as redlip parrotfish, *Scarus rubroviolaceus*, or any recognized

synonym. The terminal phase of these fish are also known as "uhu 'ele'ele."

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

"Possess" means to have control over or the ability and intention to exercise control over, whether directly or indirectly through another person or persons, whether individually or shared jointly with other individuals, and whether on one's person, on a fish stringer or kui, or in any container, vehicle, or vessel controlled or occupied by the person or group of people. The presence of aquatic life on a fish stringer or kui shared by any number of individuals, or in any container, vehicle, or vessel to which access or occupancy is concurrently shared by any number of individuals, is prima facie evidence that said aquatic life was knowingly and jointly possessed by all such individuals. When determining compliance with the per-person possession limits of this chapter, the number of jointly possessed aquatic specimens shall be divided by the number of people in joint possession. For administrative enforcement purposes, persons in joint possession of an unlawful quantity of aquatic specimens shall be jointly and severally liable for all fines and fees that may be imposed for such unlawful possession.

"Sell" means to solicit and receive an order for; to have, or keep, or offer, or expose for sale; to deliver for value or in any way than purely gratuitously; to peddle; to keep with intent to sell; or to traffic in.

"Take" means to fish for, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, or harvest, aquatic 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, aquatic life where aquatic life can be fished for, caught, captured, confined, or harvested, shall be construed as taking. This term shall not apply to the temporary capture of aquatic specimens for department-sanctioned tag-and-release purposes.

"Uhu" means any fish belonging to the family *Scaridae* or any recognized synonyms.

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

"Uhu 'ele'ele" is any redlip parrotfish, *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.

"Uhu uliuli" is any spectacled parrotfish, *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.

"Ulua" means any fish known as threadfin or kagami, *Alectis ciliaris*; whitefin trevally, *Carangoides equula*; barred jack, *Carangoides ferdau*; island jack or papa, *Carangoides orthogrammus*; white ulua, *Caranx ignobilis*; black trevally or ulua iā'uli, *Caranx lugubris*; bluefin trevally or 'ōmilu, *Caranx melampygus*; bigeye trevally or menpachi ulua, *Caranx sexfasciatus*; or any recognized synonym. The young of these fish are also known as pāpio.

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

"Weke nono" means any fish known as *Mulloidichthys pflugeri*, or any recognized synonym. [Eff:]
(Auth: HRS §§ 187A-5, 189-2, 189-6) (Imp: HRS §§ 187A-1, 187A-5, 188-53, 189-2, 189-6)

§13-60.85-2 Penalty. Any person who violates any provision of this chapter, or the terms and conditions of any permit as provided for in this chapter, shall be punished as provided by law. For the maximum take and possession limits imposed by this chapter, where greater than one specimen has been taken or possessed in excess of the limit, every specimen of aquatic life taken or possessed in excess of the maximum number of specimens shall constitute a separate offense. [Eff:]
(Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53, 187A-12.5, 188-70)

§13-60.85-3 Asset Forfeiture. Any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of the provisions of this chapter may be seized and subject to forfeiture as provided by HRS section 199-7 and chapter

712A. [Eff: _____] (Auth: HRS §§199-7, 712-A)
(Imp: HRS §§199-7, 712A)

§13-60.85-4 Exceptions. (a) This chapter shall not apply to department officials, agents, and contractors engaged in their duly authorized departmental duties, or to conduct permitted under a department-issued special activity permit that expressly refers to this chapter.

(b) For the purposes of this chapter, any commercial marine dealer may possess greater than the allowed number of aquatic specimens, only if such specimens were purchased from other duly-licensed individuals, with receipts issued for each purchase pursuant to section 189-11, Hawai'i Revised Statutes. Receipts must include the first and last name of the person to whom the receipt is issued.

(c) No provision of this chapter shall prohibit the exercise of traditional and customary native Hawaiian rights or practices as permitted by the department, pursuant to the Hawai'i state constitution. [Eff: _____] (Auth: HRS §§187A-5, 187A-6, 189-2, 189-6, 189-11) (Imp: HRS §§187A-5, 187A-6, 188-53, 189-2, 189-6, 189-11)

§ 13-60.85-5 Scope. Unless expressly provided otherwise, the provisions of this chapter apply only to the lands and waters of Maui and Lana'i, and are cumulative with all other laws or regulations that do not directly conflict with these rules. "Waters of Maui and Lana'i" include all state marine waters extending seaward three miles from the highest wash of the waves on the shores of Maui and Lana'i, respectively, excluding all waters within three nautical miles from the shores of Kaho'olawe island, as indicated in the "Map of Maui and Lana'i Islands Fisheries (6/1/2010)" located at the end of this chapter. [Eff: _____] (Auth: HRS §§ 187A-1.5, 187A-5, 188-53) (Imp: HRS §§187A-1.5, 187A-5, 188-53)

§ 13-60.85-6 Severability. If any provision of this chapter, or the application thereof, to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff: _____] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

§ 13-60.85.-7 Required possession of regulations. Any person, while engaged in the taking or attempted taking of

marine life, must possess the most current copy of "Maui and Lana'i Fisheries Rules" available at the Maui DAR office, or online at www.hawaii.gov/dlnr/dar. [Eff:] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

§ 13-60.85-8 Alteration of fish. While on, in, or upon state lands adjacent to, the waters of Maui or Lana'i islands, no person may possess any fish or fish part of any species regulated by this chapter, which has been altered such that the fork length of the whole fish cannot be determined. [Eff:] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§ 187A-5, 188-53)

§ 13-60.85-9 Āholehole. (a) Any other department size restriction notwithstanding, subject to subsections (b) and (c), any person may take āholehole of any size. (b) No person may take more than twenty āholehole per day. (c) No person may possess more than twenty āholehole at any time. [Eff:] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§ 187A-5, 188-53)

§ 13-60.85-10 'Āweoweo. (a) No person may take more than five 'āweoweo per day. (b) No person may possess more than five 'āweoweo at any time. [Eff:] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§ 187A-5, 188-53)

§ 13-60.85-11 Goatfish. (a) No person may take or possess any kūmū, moano kea, or weke nono less than twelve inches in fork length. Except as provided in subsection (e), no person may take or possess any other goatfish less than eight inches in fork length. (b) No person may take or possess any kūmū of any size until midnight of December 31, 2015, provided that the department may, pursuant to formal board action at a publicly noticed meeting, lift or lengthen this restriction at any time. (c) No person may take greater than two each of kūmū, moano kea, or munu per day. (d) No person may possess greater than two each of kūmū, moano kea, or munu at any time. (e) Subsection (a) notwithstanding, any person may

take up to fifty 'oama per day, or possess up to fifty 'oama at any time. 'Oama may only be taken by pole-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)

§ 13-60.85-12 Kole. (a) No person may take greater than twenty kole per day.

(b) No person may possess greater than twenty kole at any time. [Eff:] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§ 187A-5, 188-53)

§ 13-60.85-13 Manini. (a) No person may take or possess any manini less than six inches in fork length.

(b) No person may take greater than twenty manini per day.

(c) No person may possess greater than twenty manini at any time. [Eff:] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§ 187A-5, 188-53)

§ 13-60.85-14 Menpachi. (a) No person may take more than twenty menpachi per day.

(b) No person may possess greater than twenty menpachi at any time. [Eff:] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§ 187A-5, 188-53)

§ 13-60.85-15 Moi. (a) No person may take or possess any moi less than twelve inches in fork length.

(b) No person may take more than five moi per day.

(c) No person may possess more than five moi at any time. [Eff:] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§ 187A-5, 188-53)

§ 13-60.85-16 Mū. (a) No person may take or possess any mū less than fourteen inches in fork length.

(b) No person may take more than two mū per day.

(c) No person may possess more than two mū at any time. [Eff:] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§ 187A-5, 188-53)

§ 13-60.85-17 Pāku'iku'i. (a) No person may take more than ten pāku'iku'i per day.

(b) No person may possess more than ten pāku'iku'i at any time. [Eff:] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§ 187A-5, 188-53)

§ 13-60.85-18 Uhu. (a) No person may take or possess any pālupaluka or any uhu 'ahu'ula less than fourteen inches in fork length. Any other department size restriction notwithstanding, subject to subsections (b) through (d), any person may take any other uhu greater than ten inches in fork length.

(b) No person may take or possess any uhu 'ele'ele or uhu 'uli'uli at any time.

(c) No person may take more than two uhu per day.

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

§ 13-60.85-19 Ulua. Except as provided in subsection (d) of this section:

(a) No person may take or possess any ulua less than ten inches in fork length. Other provisions of this section notwithstanding, no person may possess any 'ōmilu greater than twenty-four inches in fork length.

(b) No person may take more than five ulua per day, or more than two ulua greater than twenty-four inches in fork length per day.

(c) No person may possess more than five ulua total, and no more than two ulua greater than twenty-four inches in fork length, at any time.

(d) A commercial marine licensee fishing solely for commercial purposes either alone, or as part of a commercial fishing expedition, may take, possess, and sell any number of papa between sixteen inches and twenty-four inches in fork length. Such a commercial marine licensee may also possess up to five ulua of any variety other than papa and 'ōmilu, between sixteen inches and thirty-two inches in fork length. No ulua greater than thirty-two inches in fork length, no papa greater than twenty-four inches in fork length, and no 'ōmilu of any size may be taken or possessed while fishing for commercial purposes.

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

2. The adoption of chapter 60.85, Hawai'i Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

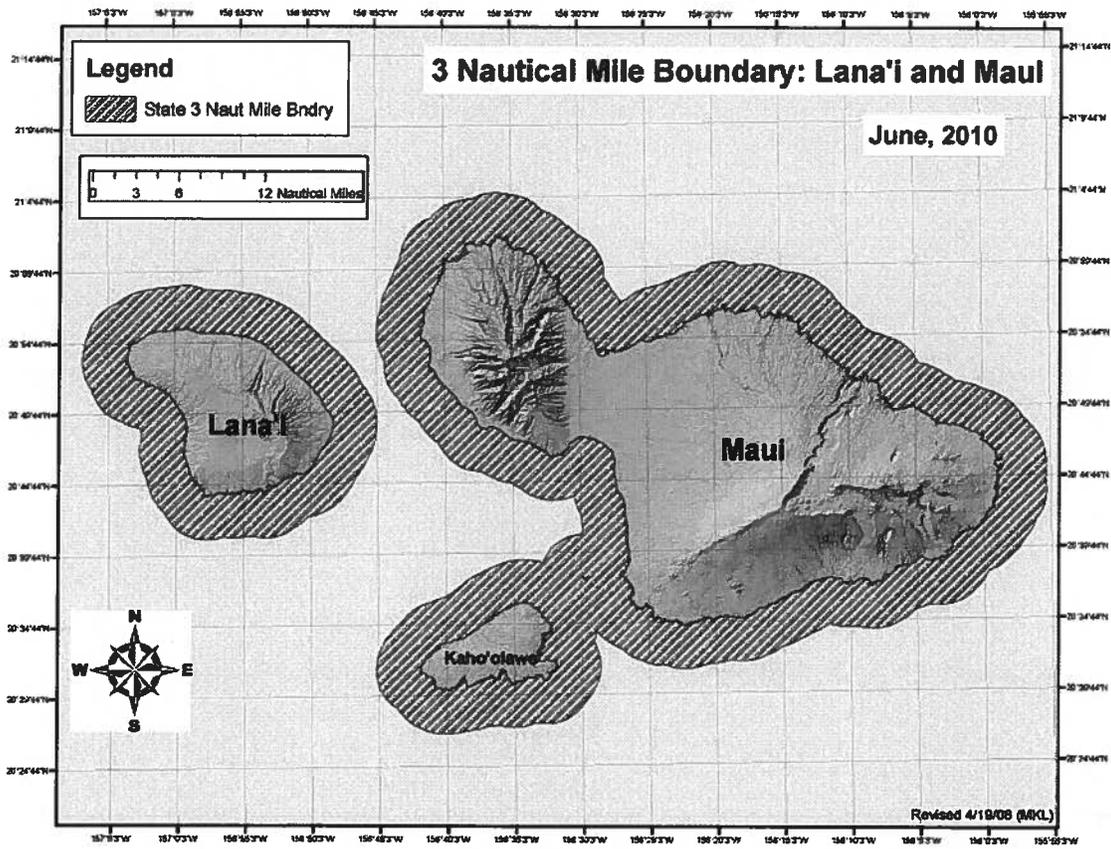
I certify that the foregoing are copies of the rules, drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawai'i Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

Laura Thielen, Chairperson
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General

Map of Maui and Lana'i Islands Fisheries (6/1/2010)



NOTE: The Maui and Lana'i Islands Fisheries rules do NOT apply to the state marine waters within three nautical miles of Kaho'olawe island.