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Amendment and Compilation of Chapter 13-51 Hawaii Administrative Rules

(date adopted)

1. Chapter 13-51, Hawaii Administrative Rules, entitled "Kahului Harbor, Maui", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART II MARINE FISHERIES MANAGEMENT AREAS

CHAPTER 51

KAHULUI HARBOR, MAUI

§13-51-1	Definitions
§13-51-1.1	Boundaries
§13-51-2	Regulated activities
§13-51-3	Repealed
§13-51-4	Penalty
§13-51-5	Severability

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§13-51-1 Definitions. As used in this chapter, unless the context clearly indicates ~~[otherwise:]~~ or is otherwise provided:

~~["Akule" means any fish identified as *Selar erumenophthalmus* or other recognized synonym. This fish is also known as pa'a'a, halalu, hahalalu, and big-eyed scad.]~~

"Area" means the Kahului Harbor fisheries management area as described in section 13-51-1.1.

"Board" means the board of land and natural resources.

~~["Crab net" means a type of fishing gear consisting of netting material over a flat, circular hoop frame, specifically designed to entangle or catch crabs as they crawl or swim onto a net set flat on the bottom.]~~

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

~~["Fishing-related activities" means actions that take marine life.]~~

~~"Group" means two or more people, including but not limited to members of the same family, who purposefully fish together for at least a portion of their fishing activity.]~~

"Hand net" means a net consisting of a mesh bag attached to a frame to hold the bag open, and a handle. The net is small enough for use with one hand by one person.

"Kahului Harbor" means the harbor situate at Kahului, Wailuku, Maui, Hawaii.

"Landing net" means a hand net that is used to further secure capture of marine life, after the marine life has been first hooked or otherwise detained, to prevent the marine life from ~~[being released.]~~ becoming unhooked or lost.

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

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~~["Mullet" means any fish known as *Mugil cephalus* or any recognized synonym.~~

~~"Nohu" means any fish known as *Engrasicholina purpurea*, *Stolephorus purpureus*, or any recognized synonym.~~

~~"Push net" means a type of fishing gear consisting of netting material in the shape of a flat, rectangular, single panel, with straight handles attached on two opposite sides of the net and designed to be held with both hands.]~~

~~"Snag" means to hook or attempt to hook a fish [on any portion of its body elsewhere than its mouth.], without first waiting for a bite. Any fish hooked on any portion of its body other than its mouth shall be considered snagged.~~

~~"Stretched mesh" means the straight-line distance between two opposite inner edges of each opening (or 'eye') of the net mesh, as measured when the eye is stretched to its maximum length.~~

~~"Take" means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, or harvest, [aquatic] marine life. The use of any gear, equipment, tool, or any means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, or harvest, [aquatic] marine life by any person who is in the water, or in a vessel on the water, or on or about the shore where [aquatic] marine life can be fished for, caught, captured, confined, or harvested, shall be construed as taking. 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. [Eff 3/8/84; am and comp 4/30/09; am and comp] (Auth: HRS §188-53) (Imp: HRS §188-53)~~

§13-51-1.1 Boundaries. The Kahului Harbor fisheries management area shall include that portion of the submerged lands and overlying waters of Kahului Harbor beginning at the upper reaches of the wash of the waves at the shoreline and bounded by an imaginary

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straight line drawn between the seaward edges of the two breakwaters forming the harbor entrance channel and further described in the map entitled "Kahului Harbor Fisheries Management Area 10/20/2006" attached at the end of this chapter and made a part of this section. [Eff and comp 4/30/09; comp]
(Auth: HRS §188-53) (Imp: HRS §188-53)

§13-51-2 Regulated activities. (a) It is unlawful for any person, while within the ~~[area]~~ Kahului Harbor Fisheries Management Area, to:

- (1) Use any net, except that a person may use:
 - ~~[(A)]~~ ~~A bait net to take nehu and other baitfish with a valid nehu bait license issued pursuant to section 13-74-22;~~
 - ~~[(B)]~~ ~~A net, except lay net, to take only akule with a valid commercial marine license issued pursuant to section 13-74-20 and subject to the provisions of section 13-75-12.2;~~
 - ~~[(C)]~~ (A) A landing net with a stretched mesh of two inches or greater to secure hooked or otherwise detained marine life; and
 - ~~[(D)]~~ (B) A ~~[push net or]~~ hand net while on the shore to take shrimp and other marine life, provided that the ~~[push net or hand net, including the handle or handles, is not more than three feet in any dimension];~~ diameter of the net is equal to or less than eight inches and the handle is equal to or less than fourteen inches in length.
 - ~~[(E)]~~ ~~A crab net is not more than two feet in diameter to take crabs, provided that no person may use more than ten such crab nets at any time; and~~
 - ~~[(F)]~~ ~~A net to take mullet less than three inches fork length and other marine life for the purpose of stocking a licensed aquaculture facility, subject~~

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~~to the provisions of a valid
aquaculture license issued pursuant to
section 13-74-43.]~~

- (2) Take or possess a total bag limit of more than fifty specimens of marine life per person per day~~[, except that a person may possess more than the total bag limit:~~
 - ~~(A) Of baitfish with a valid nehu bait license issued pursuant to section 13-74-22; and~~
 - ~~(B) Of akule with a valid commercial marine license issued pursuant to section 13-74-20.];~~
- (3) Snag any marine life; and
- (4) Use more than two poles, provided that each pole may have only one line, and each line may have no more than two hooks, with each hook having only one point, while at or near the shoreline~~[-]~~, except that double or treble hooks are allowed when using lures.

(b) It is unlawful for any person to take, attempt to take, or possess any marine life from the area or use any fishing gear while in the area that may otherwise be prohibited by law.

(c) The department may issue permits to engage in activities prohibited by this section for scientific, propagation, or other purposes, in accordance with section 187A-6, Hawaii Revised Statutes, and as may be otherwise authorized by law, provided that:

- (1) The department may impose terms and conditions it deems necessary to conserve and manage the marine life in the area;
 - (2) The board may revoke any permit and assess a fine or other penalty for any infraction of the terms and conditions of the permit; and
 - (3) A person whose permit was revoked shall not be eligible to apply for another permit for up to one year after the date of revocation.
- (d) Unless prohibited in this section, all other legal fishing gears may be used within the area.

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(e) Nothing in this chapter shall be construed as allowing activities within any portion of Kahului Harbor, which may be otherwise prohibited by law or rules adopted by the department of transportation. [Eff 3/8/84; am and comp 4/30/09; am and comp] (Auth: HRS §§187A-6, 188-53) (Imp: HRS §188-44, 188-45, 188-53)

~~[§13-51-3 Fisher check station requirements. The department is collecting catch per unit effort information through reporting by all those who voluntarily enter the Kahului Harbor Fisheries Management Area for fishing or fishing-related activities.~~

~~(a) To achieve this purpose, all individuals and groups entering the area to take marine life shall sign their names on a departmental form located at a designated fisher check station in the Kahului Harbor Fisheries Management Area. Designated fisher check stations are located near the boat launch ramp at the northwestern end of the harbor and near Pier 2 at the southeastern end of the harbor.~~

~~(b) When departing the area or at the end of the bout of fishing activity, all individuals and groups should sign out at the same designated fisher check station at which they signed in. All individuals and groups signing out shall also fill out a departmental report form regarding their fishing activity during the fishing trip, including all marine life taken from the area. The fishing reports shall be confidential and used to monitor and manage fishing activity in the area. Groups may submit one fishing report that details the fishing activity of all members of the group, but each individual member may be responsible for the accuracy of the report as to that individual.~~

~~(c) Failure to perform the reporting requirements in the above subsections may result in the assessment of administrative penalties pursuant to chapter 199D, Hawaii Revised Statutes, section 187A-12.5, Hawaii Revised Statutes, or any regulations promulgated in accord with these statutes. Criminal~~

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~~penalties will not be assessed for a violation under this section, but shall remain otherwise severable.]~~

[Eff 3/8/84; am and comp 4/30/09; R]
(Auth: HRS §§187A-12.5, 188-53, 199D-1) (Imp: HRS §§187A-12.5, 199D-2)

§13-51-4 Penalty. Unless specifically provided, any person violating the provisions of this chapter may be punished as provided by sections 187A-12.5, 188-70, or chapter 199D, Hawaii Revised Statutes, and as may be otherwise provided by law. [Eff 3/8/84; am and comp 4/30/09; comp] (Auth: HRS §§187A-5, 188-53, 199D-1) (Imp: HRS §§187A-12.5, 188-70, 199D-1 to 199D-2)

§13-51-5 Severability. The provisions of this chapter are declared to be severable, and if any portion, or the application thereof, to any person or property is held invalid for any reason, the validity or application of the remainder of these rules to other persons or property shall not be affected." [Eff and comp 4/30/09; comp] (Auth: HRS §188-53) (Imp: HRS §§1-23, 188-53)

2. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes and other notes to reflect these amendments and compilation are not underscored.

4. The amendments to and compilation of chapter 13-51, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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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.

SUZANNE D. CASE
Chairperson, Board of Land
and Natural Resources

APPROVED AS TO FORM:

Deputy Attorney General