

Amendment and Compilation of Chapter 13-31
Hawaii Administrative Rules

(Date adopted)

1. Chapter 13-31, Hawaii Administrative Rules, entitled "Molokini Shoal Marine Life Conservation District, Maui", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART 1 MARINE LIFE CONSERVATION DISTRICTS

CHAPTER 31

MOLOKINI SHOAL MARINE LIFE CONSERVATION DISTRICT, MAUI

- §13-31-1 Definitions
- §13-31-2 Boundaries
- §13-31-3 Prohibited activities
- §13-31-4 Allowed activities
- §13-31-5 Exceptions; permits
- §13-31-6 Penalty

Historical note: Chapter 31 of title 13 is based substantially upon regulation 42 of the division of fish and game, department of land and natural resources, State of Hawaii. [Eff 7/8/77; R 5/26/81]

§13-31-1 Definitions. As used in this chapter unless otherwise provided:

~~["Trolling" means trailing a line attached to either a baited hook or artificial lure from a boat moving faster than slow-no-wake speed;~~

~~"Slow-no-wake" means as slow as possible without losing steerage way and so as to make the least possible wake. This would almost always mean speeds of less than five miles per hour;~~

~~"Demonstrate" as is used in section 13-31-5(3) means proof such as in any combination of documents including but not limited to copies of commercial licenses, excise tax reports, brochures, affidavits, etc. The burden of proof lies with the applicant.~~

~~"Active commercial vessel operation" as used in section 13-31-5(3) means use no less than two times every quarter over four quarters (12 months) and greater than eight times per year]~~

"Anchor" means to drop or deploy an anchor into the water. For the purposes of this section, "anchor" does not include attaching to a legal mooring.

"Finfish" means any of various species of marine life that uses fins to swim, not including marine mammals or sea turtles.

"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.

"Slow-no-wake" means as slow as possible without losing steerage way and so as to make the least possible wake. This would almost always mean speeds of less than five miles per hour.

"Take" means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, or harvest, 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, marine life by any person who is in the water, or in a vessel on the water, or on or about the shore where marine life can be fished for, caught, captured, confined, or harvested, shall be construed as taking. Any gear, equipment, or tool possessed in the water shall be construed as being in use for the purposes of taking marine life.

"Trolling" means trailing a line attached to either a baited hook or artificial lure from a boat moving faster than slow-no-wake speed. [Eff and comp 9/16/95; am and comp] (Auth: HRS §190-3) (Imp: §§190-3, 190-4.5)

§13-31-2 Boundaries. The Molokini shoal marine life conservation district shall include subzones A and B of that portion of the submerged lands and overlying waters surrounding Molokini islet, county of Maui, as follows:

- (1) Subzone A is defined as that portion of submerged lands and overlying waters within the crater, beginning at a point at the highwater mark of Lalilali Point, then along the highwater mark of the northern shoreline eastward until Pahe'e o Lono Point, then west along a straight line to the end of the submerged ridge (shoal) extending from Lalilali Point, then along the top of the shoal back to the point of beginning; and
- (2) Subzone B is defined as that portion of submerged lands and overlying waters outside the crater, encircling the islet out to 100 yards, seaward of the point of beginning at the highwater mark of Lalilali Point then eastward along the highwater mark of the

southern shoreline of the islet to Pahe'e o Lono Point, then west along a straight line from Pahe'e o Lono Point to the end of the shoal extending from Lalilali Point, then along the top of the shoal back to the point of beginning.

~~[Subzone areas]~~ Subzones A and B are illustrated in Exhibit A entitled "Map of Molokini Shoal Marine Life Conservation District, Maui [1/18/94" attached] ~~Exhibit A entitled "Map of Molokini Shoal Marine Life Conservation District, Maui"~~, dated June 24, 2019, located at the end of this chapter. [Eff 5/26/81; am, ren, and comp 9/16/95; am and comp] (Auth: HRS §190-3) (Imp: HRS §§190-1, 190-2, 190-3)

§13-31-3 Prohibited activities. ~~[No person shall engage in the following activities in]~~ Within the Molokini [shoal marine life conservation district] Shoal Marine Life Conservation District, county of Maui, no person shall:

- (1) ~~[Fish for, catch, take, injure, kill, possess, or remove any finfish, crustacean, mollusk including sea shell and opihi, live coral, algae or limu, or other marine life, or eggs thereof]~~ Take marine life except as provided for in section 13-31-4(1);
- (2) Have or possess in the water, any ~~[spear, trap, net, crowbar,]~~ gear, equipment, tool, or ~~[any]~~ other device that may be used for the taking or altering of ~~[marine life,]~~ any geological feature~~[,]~~ or specimen;
- (3) Take, alter, deface, destroy, possess, or remove any sand, coral, rock, or other geological feature~~[,]~~ or specimen;
- (4) Feed or deliberately introduce any food material, substance, or attractant, directly to or in the vicinity of any marine life, by any means for any purpose except as provided in section 13-31-4(1);

- (5) ~~[Moored boats for commercial activities]~~
Engage in commercial activity involving ocean users getting in or on the water, including but not limited to swimming, snorkeling, diving, kayaking, or paddling, except as provided for in section 13-31-5; or
- (6) Anchor a boat ~~[when a day use mooring system and management plan is established by this department]~~. [Eff 5/26/61; am, ren, and comp 9/16/95; am and comp]
(Auth: §§190-3, 190-4.5) (Imp HRS §§190-1, 190-3, 190-4.5)

§13-31-4 Allowed activities. A person ~~may~~ may ~~[may~~

- (1) ~~Fish for, catch, take, possess, or remove]~~
may take or possess any finfish by trolling in subzone B only ~~[only~~
- (2) ~~Possess in the water, any knife and any shark billy, bang stick, powerhead, or carbon dioxide (CO2) injector for the sole purpose of personal safety].~~ only. [Eff 5/26/81; am, ren, and comp 9/16/95; am and comp] (Auth: HRS §§190-3, 190-4.5) (Imp: HRS §§190-1, 190-3, 190-4.5)

§13-31-5 Exceptions; permits. (a) The

department may issue special activity permits ~~[permits]~~ special activity permits, not longer than one year in duration, to engage in activities otherwise prohibited by law ~~[and section 13-31-3, under such terms and conditions it deems necessary to carry out the purpose of chapter 190, Hawaii Revised Statutes:~~

- (1) ~~To take]~~ for scientific, educational, management, or propagation ~~[, or other]~~ purposes in conformance with chapter 190 and section 187A-6, Hawaii Revised Statutes ~~[,~~

~~any form of marine life or eggs thereof otherwise prohibited by law;].~~

[+2] (b) Except as provided in chapter 13-257, subchapter 4, the department may issue marine life conservation district commercial use permits to engage in commercial activity, excluding the taking of marine life, with [a marine life conservation district use permit.] the following conditions:

- (1) Each boat shall be required to obtain a separate permit[. An applicant for this permit shall pay a non-refundable permit fee of \$50 valid for a two-year duration.];
- (2) Upon adoption of this chapter, active permits with an expiration date of December 14, 2023, shall have a new expiration date of December 31, 2023. Thereafter, permits shall be valid for not longer than two years and shall expire on December 31 of each odd-numbered year;
- (3) Each permittee shall pay a permit fee at the time of renewal. The fee shall be set based on three categories of passenger capacity: Category 1 for vessels with passenger capacities lower than ~~twenty-five~~²⁵; Category 2 for vessels with passenger capacities ~~from between twenty-five~~²⁵ ~~to and seventy-four~~⁷⁴; and Category 3 for vessels with passenger capacities equal to 75 or more;
- (4) Permit renewal fees shall be set ~~as follows at the following~~: Category 1 = \$1,500; Category 2= \$3,000; and Category 3= \$6,000;
- (5) The department may establish permit terms and conditions that provide for the reduction or waiver of permit fees as the department deems appropriate;
- (6) Prior to [its] the expiration ~~[r]~~ of the permit, the permittee may apply for reissuance. Unless the permit is reissued,

it shall automatically expire on the expiration ~~date~~. ~~The permittee shall indemnify, defend, and hold harmless the State of Hawaii, its successors, assigns, officers, employees, contractors, and agents from and against any loss, liability, claim or demand for property damage, personal injury and death arising from any act or omission related to this permit~~; ~~date~~;

~~[(3)]~~ (7) An application for reissuance of this permit shall be accepted only from a commercial operator who ~~[can demonstrate active commercial vessel operation within the Molokini shoal marine life conservation district]~~ possesses a current permit within the twelve-month period immediately prior to the ~~[effective date of these rules]~~ expiration date of their current permit and who possesses a commercial vessel use permit for the use of state boating facilities issued in accordance with section ~~13-231-57~~ 13-231-57 or a commercial vessel registration issued in accordance with section 13-256-4 ~~[. — [No application for a permit shall be accepted after ninety days of the effective date of these rules]~~; ~~+~~

(8) The permittee shall indemnify, defend, and hold harmless the State of Hawaii, its successors, assigns, officers, employees, contractors, and agents from and against any loss, liability, claim or demand for property damage, personal injury and death arising from any act or omission related to this permit;

~~[(4)]~~ (9) The permit shall be incorporated as an addendum to the commercial vessel use permit for the use of state boating facilities issued in accordance with section 13-231-57, or a commercial vessel registration issued in accordance with section 13-256-4;

- [~~(5)~~] (10) The permit shall be non-transferrable, except as [~~provided~~] provided by section 13-231-62; [~~and~~]
- (11) The ~~d~~Department may establish additional permit terms and conditions deemed necessary to minimize any adverse effect within the conservation district; provided that the department shall provide written notice of any change in permit conditions at least ninety calendar days prior to the effective date of the change, except, as determined by the department, when an immediate change in permit conditions is necessary to protect or preserve the conservation district or to protect the health and safety of the public; and
- [~~(6)~~] (12) The board may revoke any permit for any infraction of the terms and conditions of the permit, and a person whose permit is revoked shall not be eligible to renew a permit until the expiration of one year from the date of revocation. [Eff 5/26/81; am 3/2/87; am, ren, and comp 9/16/95; am and comp] (Auth: §§187A-6, 190-3, 190-4.5) (Imp: HRS §§90-3(b), 187A-6, 190-4)

§13-31-6 Penalty. A person violating the provisions of this chapter or the terms and conditions of any permit issued as provided by this chapter, shall be punished as provided by law." [Eff 5/26/81; am, ren, and comp 9/16/95; comp] (Auth: HRS §§190-3, 190-4.5) (Imp: HRS §190-5)

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. These amendments to and compilation of chapter 13-31, 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 (date), and filed with the Office of the Lieutenant Governor.

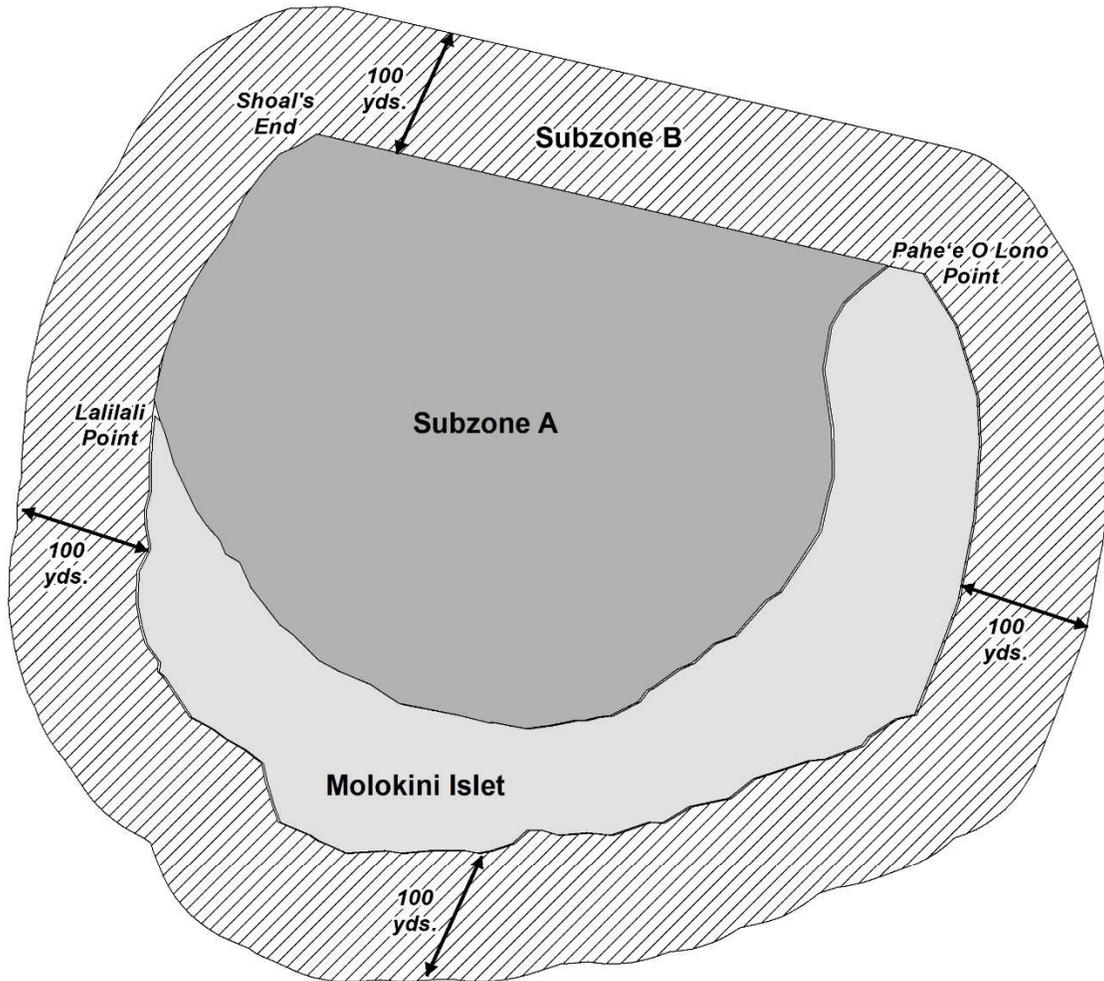
DAWN N. S. CHANG
Chairperson, Board of Land
and Natural Resources

APPROVED AS TO FORM:

Deputy Attorney General

**Exhibit A. Map of Molokini Shoal
Marine Life Conservation District, Maui
June 24, 2019**

0 0.05 0.1 Miles



Legend

- Molokini Shoal MLCD: Zone A
- Molokini Shoal MLCD: Zone B

