HRS Chapter 190 - Marine Life Conservation Program

Haw. Rev. Stat. § 190-1 : Hawaii Statutes - Section 190-1
Conservation area; administration.

All marine waters of the State are hereby constituted a marine life conservation area to be administered by the department of land and natural resources subject to this chapter and any other applicable laws not inconsistent herewith or with any rules adopted pursuant hereto. No person shall fish for or take any fish, crustacean, mollusk, live coral, algae or other marine life, or take or alter any rock, coral, sand or other geological feature within any conservation district established pursuant to this chapter except in accordance with section 190-4 and rules adopted by the department pursuant hereto. [L 1955, c 192, §2; RL 1955, §21-131; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §190-1; am L 1981, c 16, §1]

Haw. Rev. Stat. § 190-1.5 : Hawaii Statutes - Section 190-1.5: State marine waters.

As used in this chapter, state marine waters shall be defined as extending from the upper reaches of the wash of the waves on shore seaward to the limit of the State's police power and management authority, including the United States territorial sea, notwithstanding any law to the contrary. [L 1990, c 126, §4]


The department of land and natural resources may establish and from time to time modify the limits of one or more conservation districts in each county and may, if it deems necessary, declare all waters within any county a conservation district. [L 1955, c 192, §5; RL 1955, §21-134; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §190-2]


The department of land and natural resources pursuant to chapter 91, shall adopt rules governing the taking or conservation of fish, crustacean, mollusk, live coral, algae, or other marine life as it determines will further the state policy of conserving, supplementing and increasing the State's marine resources. The rules may prohibit activities that may disturb, degrade, or alter the marine environment, establish open and closed seasons, designate areas in which all or any one or more of certain species of fish or marine life may not be taken, prescribe and limit the methods of fishing, including the type and mesh and other description of nets, traps, and appliances, and otherwise regulate the fishing and taking of marine life either generally throughout the State or in specified districts or areas. The rules shall upon taking effect supersede any state laws inconsistent therewith. [L 1955, c 192, §6; RL 1955, §21-135; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §190-3; am L 1981, c 16, §2]


The department of land and natural resources may, in any conservation district, prohibit the taking of marine life or the engaging in activities prohibited by this chapter and rules adopted thereunder, except by permit issued by it for scientific, education, or other public purposes on
such terms and conditions deemed necessary to minimize any adverse effect within the conservation district. The department may revoke any permit for any infraction of the terms and conditions of the permit. Any person whose permit has been revoked shall not be eligible to apply for another permit until the expiration of one year from the date of revocation. [L 1955, c 192, §7; RL 1955, §21-136; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §190-4; am L 1981, c 16, §3]


(a) The department shall, pursuant to chapter 91, adopt rules for the regulation of anchoring and mooring in each marine life conservation district established under this chapter.
(b) Within its jurisdiction over ocean recreational boating and coastal activities, the department shall adopt rules pursuant to chapter 91 for the regulation of boating in each marine life conservation district established under this chapter. [L 1988, c 381, §1; am L 1991, c 183, §1]


(a) Any person violating this chapter, any rule adopted pursuant thereto, or the terms and conditions of any permit issued under section 190-4, shall be guilty of a petty misdemeanor and punished as provided in subsections (b) and (c).
(b) The punishment, in addition to any other penalties, shall be a fine of not less than:

(1) $250 for a first offense;
(2) $500 for a second offense; and
(3) $1,000 for a third or subsequent offense.

(c) The fines specified in this section shall not be suspended or waived. [L 1955, c 192, §8; RL 1955, §21-137; HRS §190-5; am L 1981, c 16, §4; am L 1999, c 195, §9]

General administrative penalties, see §187A-12.5.
APPENDIX B

POLICY FOR COMMERCIAL ACTIVITIES ON STATE OWNED AND MANAGED LANDS AND WATERS DEPARTMENT OF LAND AND NATURAL RESOURCES
Policy for Commercial Activities  
on State Owned and Managed Lands and Waters  
Department of Land and Natural Resources

RECOMMENDATIONS APPROVED ON 1/30/98:

1) The Board accepted the final report of Findings and Recommendations from the Department's Commercial Use Task Force, and acknowledged the fine work of the Task Force in establishing the basis for the Department's commercial use policies.

2) The Board adopted the following commercial activity policies and directed the Department to develop appropriate standards and processing mechanisms to implement these policies as needed with the following caveats:

- This should be done in a timely but transparent manner to assure that all affected constituencies are aware and participate where appropriate;
- It should not unreasonably affect outstanding permits, licenses, and existing memoranda of understanding;
- The diversity of resources managed by the Department will require different implementation approaches;
- The current funding constraints will delay some actions needed for full implementation of these policies; and
- All relevant commercial activity proposals brought forward for Board approval will have considered these commercial activity policies.

POLICY # 1:

The Department, when considering commercial activity proposals or management actions on state owned lands and waters, will use the following hierarchy of priorities:

a. The Natural or Cultural Resource - The highest priority should go to the conservation of the resource. Only if an activity can be done in a way that does not unduly damage the resource, should it be allowed.

b. The General Public - If use or activity by the public can be done without undue damage to the resource, it should be the next priority.

c. Commercial Activities - Commercial activities should be considered only if their impacts do not impinge on the resource, #a above, or use by the general public, #b, above.
If public and commercial activities are occurring, and resource impacts indicate that restrictions or controls need to be imposed, these should first be levied on commercial operators. The general public is the last group to have restrictions and controls imposed on them.

POLICY #2:

The principles of *Limits of Acceptable Change* should be used to monitor and manage intensities of use.

POLICY #3:

Any new permits for commercial activity should have explicit conditions to allow DLNR ability to change levels or terminate certain activities based upon stated limits of acceptable change. This will insure that managing agencies have timely opportunities to remedy any problems that occur as a result of that permit.

POLICY #4:

The *Managing Agency* has the lead responsibility to coordinate an applicant's activity application. The Managing Agency is responsible to inform other appropriate agencies and solicit comments much in the way present CDUA applications are handled by the Lands Division. Any environmental documentation (e.g. environmental impact statements and/or assessments) needed to process any commercial activity will be the responsibility of the applicant.

POLICY #5:

The *Managing Agency* can issue activity permits for routine activities and not for profit organizations without Board approval. Memoranda of understanding can be established for not for profit organizations to cover a range of activities. Very significant activities and/or those requesting multiple years should go to the Board for approval.

POLICY #6:

Reasonable fees for commercial users should be assessed based either on a percentage of gross revenues, per user, or expected impacts of their activity. While any group conducting an activity should be encouraged to also perform work that improves the resource, or mitigates their presence, there should be no guaranteed waiver of all fees for service of this kind. Not for profit groups that charge fees only to cover administrative costs can be exempted from fees.
POLICY #7:

The Department will compile a list of eligible sites for commercial activity. The list will also note the intensity of commercial activity that will be permitted. The list will be periodically reviewed and updated.

Definitions:

Activity - A pursuit that does not involve the changing or alteration of land or water areas, or existing structures on those land or water areas. In general, activities are those things that take place on the resources in a passive way, do not involve any resource extraction, or do not require the imposition of change on the resource.

Commercial Activity - The collection by a party or their agent of any fee, charge, or other compensation shall make the activity commercial except when such fee, charge, or other compensation is for the sale of literature allowed under Chapter 13-7-7, HAR. Nonprofit status of any group or organization under Internal Revenue or Postal Laws or regulations does not in itself determine whether an event or activity arranged or managed by such a group or organization is noncommercial. Not for profit groups that charge only a nominal fee for administrative costs that utilize a public facility or resource at a frequency and/or magnitude that does not significantly contribute to the degradation of the facility and/or resource will be considered non-commercial.

Ecotourism - Travel to Hawaii’s natural, cultural and historic attractions to experience and study Hawaii’s unique environment, heritage and culture in a manner which is ecologically responsible and sustainable, and sustains the wellbeing of local communities.

Limits of Acceptable Change - A concept of assessing impacts to the resource. Under this concept, descriptors are established indicating what level of change or impact is tolerable, or what level it takes to trigger some kind of remedial action. If a resource is unduly impacted, restrictions are imposed, regardless of the number of users.

Managing Agency - The Managing Agency is that lead Division or office that has jurisdictional responsibility for the area being considered for an activity. If a proposed activity takes place on more than one jurisdiction, the division or office having the greatest area of resource will be considered as the Managing Agency.

Undue Damage or Impact - Includes excessive damage, or those impacts which cannot be economically remedied, given a managing agency's resources.

Use - If a proposed action will involve a change or construction, this is considered a use.
APPENDIX C

HAWAI‘I ADMINISTRATIVE RULES TITLE 13, CHAPTER 31
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 May 26, 1981]

§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 [Eff and comp SEP 16 1995 ]

(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 Pahee 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 3 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 Pahee O Lono Point, then west along a straight line from Pahee 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 A and B are illustrated in "Map of Molokini Shoal Marine Life Conservation District, Maui 1/18/1981" attached at the end of this chapter. [Eff: 5/26/1981; am, ren, and comp SEP 16 1995] (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 the Molokini shoal marine life conservation district:

(1) Fish for, catch, take, injure, kill, possess, or remove any finfish, crustacean, mollusk including sea shell and ophiu, live coral, algae or limu, or other marine life, or eggs thereof except as provided for in section 13-31-4(1);

(2) Have or possess in the water, any spear, trap net, crowbar, or any other device that may be used for the taking or altering of marine life, geological feature, or specimen;

(3) Take, alter, deface, destroy, possess, or remove any sand coral, rock, or other geological feature, or specimen;
§13-31-5

(4) Feed or deliberately introduce any food material, substance, or attractant, directly to or in the vicinity of any aquatic organism, by any means for any purpose except as provided in section 13-31-4(1);

(5) Moor boats for commercial activities 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: 5/26/1961; am, ren, and comp SEP 16 1995] (Auth: §§190-3, 190-4.5) (Imp: HRS §§190-1, 190-3, 190-4.5)

§13-31-4 Allowed activities. A person may
(1) Fish for, catch, take, possess, or remove any finfish by trolling in subzone B 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. [Eff 5/26/1981; am, ren, and comp SEP 16 1995] (Auth: HRS §§190-3, 190-4.5) (Imp: HRS §§190-1, 190-3, 190-4.5)

§13-31-5 Exceptions; permits. The department may issue permits 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, 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) Except as provided in chapter 13-257, subchapter 4, to engage in commercial activity, excluding the taking of marine life, with a marine life conservation district use permit. 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. Prior to its expiration, 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

31-3
loss, liability, claim or demand for property
damage, personal injury and death arising from
any act or omission related to this permit;
(3) An application for 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 within the twelve-
month period immediately prior to the
effective date of these rules, and possesses a
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. No application for a permit
shall be accepted after ninety days of the
effective date of these rules;
(4) 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) The permit shall be non-transferable, except
as provided by section 13-231-62; and
(6) 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: 5/26/1981; am 3/2/1987; am,
ren, and comp SEP 16 1995] (Auth: §§187A-6,
190-3, 190-4.5) (Imp: HRS §§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: 5/26/1981; am,
ren, and comp SEP 16 1995] (Auth: HRS §§190-3, 190-
4.5) (Imp: HRS §190-5)
APPENDIX D

DAY USE MOORING RULES

(HAR SECTION 13, CHAPTER 257)
Subchapter 4, Day Use Mooring Area, Molokini Shoal Marine Life Conservation District

§13-257-51 Molokini island day use mooring area. The boundary of the Molokini island day use mooring area is contiguous with the boundary of Subzone A of the Molokini shoal marine life conservation district, as described in section 13-31-2, and as shown on Exhibit "DM-10", dated March 3, 1994, located at the end of this subchapter and described as follows:

Beginning at a point at the high water mark at Pahi'e 0
Lono Point; then in a straight line to the end of the shoal
at the northwest point of Molokini island; then in a
counter-clockwise direction along the shoreline of Molokini
island to the point of beginning. (Eff SEP 16 1995) (Auth:
HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

§13-257-52 Commercial use restrictions. (a) No vessel shall use a day use mooring for commercial purposes unless the owner has been issued a marine life conservation district use permit by the department pursuant to section 13-31-5, as evidenced by its inclusion as an addendum to a 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 for that vessel.

(b) Mooring zone "A" is designated for use by commercial vessels carrying twelve or more passengers. Mooring zone "B" is designated for use by commercial vessels carrying less than twelve passengers. The use of any one particular mooring shall be on a first-come, first-served basis. Mooring zones "A" and "B" as shown on exhibit "DM-10" located at the end of this subchapter are generalized locations intended to reflect current mooring practices and are subject to revision, pending development of a final mooring plan prior to installation of permanent moorings.

(c) The department may authorize the owner of a commercial vessel not having a marine life conservation district use permit occasional or infrequent use of the day use moorings, not to exceed eight times a year, when application is made and approved not less than seven days in advance of the date of intended use. (Eff SEP 16 1995) (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)
§13-257-53 Commercial day use mooring permit fee. The commercial day use mooring permit fee for a commercial Molokini day use mooring shall be the greater of $100 per month or two percent of gross receipts, provided that this fee shall be waived for commercial operators who are presently paying commercial vessel user fees for the use of state boating facilities in accordance with section 13-234-5. This fee shall be in addition to the commercial use permit fee required under section 13-31-5. [Eff SEP 16 1995] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

§13-257-54 Recreational vessel use of Molokini day use moorings. Mooring zone “C” is designated for primary use by recreational vessels, and is shown on exhibit “DM-10” located at the end of this subchapter. Recreational vessels may also use vacant moorings located in zones “A” and “B” except during the period from 8:30 a.m. to 11:30 a.m. [Eff SEP 16 1995] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

§13-257-55 Speed Restrictions. No vessel shall operate at a speed in excess of “slow-no wake” within the Subzone A, as defined in section 13-257-51 and shown on exhibit “DM-10”. [Eff SEP 16 1995] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §200-10)

§13-257-56 Anchoring restrictions. (a) Anchoring is prohibited within the Molokini island day use mooring area, provided that anchoring is permitted within the designated area at locations of sand, rock, or rubble bottom types where no live corals exist until such time as new day use moorings are installed.


§13-257-57 to §13-257-60 (Reserved)
STATE OF HAWAII
MOLOKINI ISLAND DAY USE MOORING AREA
Being a portion of the
MOLOKINI SHOAL MARINE LIFE CONSERVATION DISTRICT
EXHIBIT "DM-10"
DECEMBER 16, 1994

ALL DAY USE MOORINGS ON A "FIRST-COME, FIRST-SERVED BASIS".

1. Zone "A" is designated for use by commercial vessels carrying twelve or more passengers.

2. Zone "B" is designated for use by commercial vessels carrying less than twelve passengers.

3. Zone "C" is designated for primary use by recreational vessels. Recreational vessels may also use vacant moorings located in Zone "A" and "B", except from 6:30am to 11:30am.

Note: Exact locations of moorings will be determined at time of permanent installation.
APPENDIX E

MOLOKINI SHOAL MLCD COMMERCIAL USE PERMITS
MARINE LIFE CONSERVATION DISTRICT USE PERMIT FOR:
COMMERCIAL ACTIVITIES IN THE MOLOKINI SHOAL
MARINE LIFE CONSERVATION DISTRICT

Under the authority of Title 13, Chapter 31, Section 5, Hawaii Administrative Rules (HAR), and all other applicable laws, the Board of Land and Natural Resources hereby grants a Marine Life Conservation District Use Permit to:

APPLICANT NAME ________________________________

BUSINESS NAME ________________________________

MAILING ADDRESS ________________________________

PHONE NO. ________________________________

PROPOSED ACTIVITIES:

______________________________________________

VESSEL NAME, AND HA. NO. OR VESSEL DOCUMENT NO.

______________________________________________

VESSEL LENGTH _______ VESSEL TYPE _______ PASSENGER CAPACITY _______

(U.S. Coast Guard Passenger Certification attached? ☐)

This permit allows only snorkel, SCUBA and surface-supplied air diving, swim, and sight-see commercial activities, within the Molokini Shoal Marine Life Conservation District (MLCD) in furtherance of the purpose of Chapter 190, Hawaii Revised Statutes (HRS), under the terms and conditions listed below:

1. The permittee shall comply with all applicable provisions of the Department of Land and Natural Resources (Department) HAR, Chapter 13-31, and other applicable laws not exempted by this permit.

2. This permit does not authorize the primary permittee or any designated assistant to engage in any other activity that violates any other State, Federal or County law, regulation or ordinance.

3. Under the authority of HRS Chapter 190 and all other applicable laws, the permittee may be liable for damages to natural resources caused by the permittee in the Molokini Shoal MLCD.

4. Under the authority of HRS Chapter 190 and all other applicable laws, the permittee may be held liable for the actions of all persons entering Molokini Shoal MLCD under the authority of this permit.

Page 1 of 5
5. Discretion shall be used to avoid conflict with divers, swimmers, recreational and commercial vessel operators, and others while conducting commercial activities.

6. The vessel covered by this permit shall be equipped with both a continuously recording Global Positioning System (GPS) plotting unit and a depth recorder. The GPS unit must be installed no later than May 15, 2010. The depth recorder unit must be installed no later than July 15, 2014. Once installed, both the GPS plotting unit and depth recorder must be turned on and GPS track data must be recorded at all times while the vessel is within the Molokini Shoal MLCD.

7. Should the vessel covered under this permit impact any submerged land or natural resource within the Molokini MLCD, the vessel operator shall immediately record the location of impact. The permittee shall notify the Division of Aquatic Resources Maui office (243-5294, or 294-4280 after hours) and the Division of Conservation and Resource Enforcement (873-3960) immediately after any such impact, and provide the number of this permit and the GPS coordinates of the impact site (phone or voice mail messages are acceptable notification). Any recorded GPS track data must be preserved for Department inspection, and shall not be cleared without Department authorization. Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against the informant in any criminal case, except in a prosecution for perjury, for giving a false statement, or for failing to comply with the requirements of this condition.

8. The permittee shall notify the Division of Aquatic Resources Maui office (243-5294, or 294-4280 after hours) and the Division of Conservation and Resource Enforcement (873-3960) prior to conducting any salvage activity within the Molokini Shoal MLCD, except that salvage and vessel rescue operations may be commenced immediately prior to notification if necessary to protect the safety of human lives or natural resources. The permittee may be held liable for damages to natural resources resulting from salvage activities.

9. It is prohibited to conduct any vessel repairs within the Molokini Shoal MLCD, except to the extent necessary to protect the immediate safety of human lives or natural resources within the MLCD. A permittee or agent of the permittee found conducting vessel repairs or maintenance (including, but not limited to, vessel or hull cleaning, engine maintenance, fixture repair, etc.) must demonstrate that such conduct was necessary to protect the safety of human lives or natural resources within the MLCD. The permittee may be held liable for damages to natural resources from repair or maintenance activities.

10. The following conditions apply to the commercial activities authorized by this permit for the Molokini Shoal MLCD: a. Non-certified SCUBA diving which is not part of a SCUBA certification course is not allowed within the Molokini Shoal MLCD. b. SCUBA diving conducted as part of a Basic Open Water SCUBA certification course requires at least one certified SCUBA instructor for every three student divers. Certified divers, not including the SCUBA instructor and any certified dive master assistant, will be considered student divers when joining a Basic Open Water certification dive group. c. Certified SCUBA diving where all divers are Basic Open Water certified shall be conducted with at least one certified dive master for every seven certified divers. d. Surface-supplied air diving shall be conducted using air lines no longer than ten feet and in waters no less than twenty feet deep, and shall be conducted only outside of the boundaries indicated on Attachment A ("Prohibited Areas for Surface-Supplied Air Diving"). Surface-supplied air diving is not considered SCUBA diving and is not subject to the instructor-to-diver ratio provisions of this condition.

11. In addition to the activities prohibited in HAR Chapter 13-31, the following activities shall be prohibited within the Molokini Shoal MLCD: active barbecuing; and any activity that may result in
the discharge of water pollutants or waste, including, but not limited to, the cleaning of snorkel and dive gear. “Water pollutants” include dredged spoil, solid refuse, incinerator residue, sewage, garbage, sludge, munitions, chemical waste, biological materials, radioactive materials, excessive heat, wrecked or discarded equipment, rock, sand, soil, sediment, cellar dirt and industrial, municipal, and agricultural waste. “Waste” includes sewage, industrial and agricultural matter, and all other liquid, gaseous, or solid substance, including radioactive substances, whether treated or not, which may pollute or tend to pollute the waters of this state.

12. It is prohibited to possess any fishing gear in subzone A, except for trolling gear either stowed out of sight, or stowed without any terminal tackle attached to any fishing line. Every crewmember on vessels engaged in fishing activities must have a valid Commercial Marine License, as required by HAR Section 13-74-20 and HRS Section 189-2. It is prohibited to possess any fish food or material used for the purpose of fish feeding while conducting commercial activities within the Molokini Shoal MLCD.

13. The permittee must ensure that all crewmembers entering the Molokini Shoal MLCD under the authority of this permit have been fully informed of the permit terms and conditions prior to entry into the Molokini Shoal MLCD. Prior to each commercial trip to the MLCD, the permittee must ensure that all passengers have been fully informed of the rules, prohibited activities and other instructions contained in Attachment B (“Pre-Trip Passenger Briefing and Acknowledgement”). The permittee shall obtain the signature of each passenger acknowledging their receipt of the information on Attachment B, and shall allow inspections of the signed copies of Attachment B at the Department’s request.

14. The permittee shall provide to the Division of Aquatic Resources a monthly report of the number of commercial trips taken each day to the Molokini Shoal MLCD, and the number of passengers taken each day. This report shall be made using copies of Attachment C (“Mandatory Molokini Use Log”) available at www.hawaii.gov/dlnr, and must be a true and correct statement of such information. The report shall be due to the Division of Aquatic Resources on or before the twentieth day of the following month in which the trips were taken. Passenger count information, if it is confidential business information whose release would cause substantive competitive harm, is exempt from disclosure under the State Uniform Information Practices Act.

15. This permit shall be in effect for a two year period, from 12/15/09 to 12/14/11 for the activities as specified.

16. This permit shall be valid for use with a vessel with a certified passenger capacity of no more than passengers. The permittee must provide to the Division of Aquatic Resources a copy of the Coast Guard certification on passenger capacity for any vessel covered under this permit.

17. Only Designated Vessel Captains may operate any vessel covered under this permit, including emergency and permanent transfers. Designated Vessel Captains must certify below that they have at least five trips’ worth of prior experience at the Molokini Shoal MLCD. Every such trip must have been taken aboard the vessel covered under this permit, or aboard a vessel of similar size, propulsion, and passenger capacity.

18. This permit shall be non-transferable, except as provided by HAR Section 13-231-62.

19. The permittee shall notify the Division of Aquatic Resources Maui office (243-5494, or 294-4280 after hours) of any emergency, temporary transfer of this permit to another vessel within twenty-four hours of the transfer (voice messages are acceptable notification). Within seventy-two hours of the transfer, the permittee shall also submit via fax (243-5833) a completed copy of Attachment
D ("Vessel Transfer or Change Form"). If approved, a temporary transfer shall be valid for no more than one month. Vessels covered under a temporary transfer may carry no more passengers per trip to Molokini than the Coast Guard passenger capacity certification of the original vessel. The permittee shall submit via fax an additional Vessel Transfer or Change Form within seventy-two hours after the resumed use of the original vessel under this permit.

20. The permittee shall obtain approval from the Division of Aquatic Resources prior to any permanent transfer of vessel operated under this permit. Any approved new vessel shall have a certified passenger capacity of no more than the capacity stated on this permit. The permittee shall submit a completed copy of Attachment D ("Vessel Transfer or Change Form") thirty days prior to the expected permanent transfer, to allow sufficient time for review and processing.

21. As of March 15, 2010, any vessel covered under this permit, including emergency or permanent transfers, must display a double-sided white marine boat flag with the permit number prominently labeled in black lettering on both sides. The marine flag shall be no smaller than twelve inches by eighteen inches and lettering must be at least five inches tall. The marine flag must be prominently displayed at all times while within the Molokini Shoal MLCD.

22. The permittee shall notify the Division of Aquatic Resources Maui office (243-5294) of any change to the Molokini Shoal Marine Life Conservation District Use Permit, contact information, or Designated Vessel Captain. Notice shall be given within seven days of any such change by submitting a completed copy of Attachment D ("Vessel Transfer or Change Form").

23. Unless the permit is reissued, it shall automatically expire on the expiration date. In order to be considered for reissuance, this permit must be received by the Division of Aquatic Resources Maui Office, 130 Mahalani St., Wailuku, HI 96793, prior to its expiration.

24. The permittee must comply with all other Department requirements for commercial vessels, including a commercial vessel use permit for the use of state boating facilities issued in accordance with HAR section 13-231-57, or a commercial vessel registration issued in accordance with HAR section 13-256-4.

25. The permittee shall fully cooperate with any Department official, employee, authorized agent, or contractor's request relating to the conservation, protection, management, or study of the MLCD and its resources.

26. Permit terms and conditions shall be treated as severable from all other terms and conditions contained in this or any other ancillary permit. In the event that any provision of this permit or other ancillary permit is found or declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms or conditions of this permit.

27. The Board of Land and Natural Resources may revoke or suspend any permit for any infraction of the terms and conditions of this permit. 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.

28. This permit shall not be reissued if the permittee is not in compliance with the terms and conditions of this permit or any other permit issued to the permittee by the Department of Land and Natural Resources.

29. This permit does not in any way make the Board of Land and Natural Resources of the State of Hawaii or its employees liable for any claims of personal injury or property damage which may
occur while the permittees are engaged in activities authorized under this permit; further, the permittees agree to hold the State harmless against any claims of personal injury, death, property damage, or business loss resulting from their activities.

I certify that I understand the conditions of this Permit and the Penalty of Chapter 13-31, Hawaii Administrative Rules, which is attached hereto for reference. If I am signing as a Designated Vessel Captain, I additionally certify that I have at least five trips of prior experience to Molokini Shoal MLCD aboard the vessel covered under this permit, or aboard a vessel of similar size, propulsion, and passenger capacity.

APPLICANT:

Signature:

Print:

DESIGNATED VESSEL CAPTAIN(S):

Signature:

Print:

Signature:

Print:

Signature:

Print:

Signature:

Print:

Signature:

Print:

APPROVED:

Laura H. Thielen, Chairperson
Board of Land and Natural Resources

cc: DOCAPE

DOBOR

DAR-Maui

USFWS

USCG-Maui
APPENDIX F

MOLOKINI SHOAL MLCD COMMERCIAL USE PERMIT HOLDERS
### MOLOKINI SHOAL MLCD COMMERCIAL PERMIT HOLDERS

<table>
<thead>
<tr>
<th>Permit #</th>
<th>Business Name</th>
<th>Vessel Name</th>
<th>Vessel Type</th>
<th>Vessel Length</th>
<th>PAX</th>
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<tr>
<td>1</td>
<td>3090, Inc.</td>
<td>Alii Nui</td>
<td>Catamaran</td>
<td>54</td>
<td>?</td>
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<tr>
<td>2</td>
<td>Aquatic Charters of Maui, Inc.</td>
<td>Xian</td>
<td>Mono</td>
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<td>3</td>
<td>Catamaran Express, Inc.</td>
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<td>Cloud IX</td>
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<td>Clark Enterprises, Inc.</td>
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<td>Catamaran</td>
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<td>Kahikolu, Ltd.</td>
<td>Quicksilver</td>
<td>Catamaran</td>
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<td>Kihei Boat Co., Inc.</td>
<td>Sea Spirit</td>
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<td>Kihei Ramp #6 Corp.</td>
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<td>Kihei SCUBA Services, Inc.</td>
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<td>Maka Kai Charters, Inc.</td>
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<td>Pride of Maui</td>
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<td>Four Winds II</td>
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<td>Prince Kuhio</td>
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<td>32</td>
<td>Mike Severns Diving</td>
<td>Pilikai</td>
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<td>33</td>
<td>Molokini Divers, Inc.</td>
<td>Whats the Scoop</td>
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<td>No Ka Oi IV Charters, Inc.</td>
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<td>Southshore Charters, Inc.</td>
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<td>Pro Diver</td>
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<td>Yuki Gutsu Seafoods, Inc.</td>
<td>Trilogy V</td>
<td>Catamaran</td>
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</tbody>
</table>
APPENDIX G

STANDARDIZED OBSERVATION CHECKLIST
FIELD RESEARCH DATA INFORMATION

Researcher Name
Day of Week & Date
Harbor
Company Name & Boat Name
Departure Time (From Harbor)
Arrival Time (At Harbor)
Number of People on Boat
  Number of Snorkelers
  Number of Divers
  Number of Snuba
  Number Not Doing These Activities
  Total Number on Boat
Molokini
  Number of Boats at Molokini
  Number of People Visible in Water at Molokini
  Total Number of People at Molokini
Secondary Site Name
  Number of Boats at Secondary Site
  Number of People Visible in Water at Secondary Site
  Total Number of People at Secondary Site

Facilities / Behavior
On Board Toilets
  Yes p
  No p
Waste Dumping Overboard
  Yes p
  No p
Fish Feeding
  Yes p
  No p
Meal Offered
  Yes p
  No p
Intro Diving / Training
  Yes p
  No p
Snuba
  Yes p
  No p
Handle Marine Life (Showing)
  Yes p
  No p
Barbequing on Boat
  Yes p
  No p
Playing Music on Boat
  Yes p
  No p
Fishing
  Yes p
  No p

Information / Education
About Nature
  Yes p
  No p
About Underwater Species
  Yes p
  No p
About Coral Reefs
  Yes p
  No p
About History of the Area
  Yes p
  No p
About Native Hawaiian Culture
  Yes p
  No p
About Proper Etiquette / Behavior
  Yes p
  No p
About Safety
  Yes p
  No p
About Equipment
  Yes p
  No p
How Human Impact Environment
  Yes p
  No p
Touching Marine Life is Bad
  Yes p
  No p
Fish Feeding is Bad
  Yes p
  No p
Suggestions for How to Help
  Yes p
  No p

Response Rate (i.e., Completed, Denials)
Pre-Trip Survey
Post-Trip Survey
Total

Denial (i.e., Refused)
Pre-Trip Survey
Post-Trip Survey
Total
APPENDIX H

SURVEY INSTRUMENTS
APPENDIX I

UNCOLLAPSED PERCENTAGES