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

January 27, 2006

BOARD OF LAND AND NATURAL RESOURCES
State of Hawaii
Honolulu, Hawaii

REQUEST APPROVAL TO HOLD PUBLIC HEARINGS TO AMEND HAWAII ADMINISTRATIVE RULES, CHAPTER 13-75, RULES REGULATING THE POSSESSION AND USE OF CERTAIN FISHING GEAR, TO FURTHER RESTRICT THE USE OF LAY GILL NETS AND FOR PROHIBITING THEIR USE IN CERTAIN WATERS OF THE STATE.

Submitted for your consideration and approval is a request to hold public hearings to amend Hawaii Administrative Rules (HAR), Chapter 13-75, Rules Regulating the Possession and Use of Certain Fishing Gear, to further restrict the use of lay gill nets and for prohibiting their use in certain waters of the State.

The proposed amendments would add requirements for the use of lay gill nets. Specifically, the proposed amendments would require the registration and identification of all lay gill nets, limit the maximum dimensions of lay gill nets, restrict their fishing or soak times and require attendance and inspection of nets when fished, not allow more than 4 hours of soak time in a 24 hour period of one net per person per day, and prohibit the use of lay gill nets in streams and stream mouths.

The proposed amendments would also ban the use of lay gill nets in certain waters around the State. Specifically, the proposed amendments would prohibit lay gill net use around the entire island of Maui, and on Oahu between Portlock Point to the Pearl Harbor channel, from Mokapu Peninsula to the northern boundary of Bellows Air Force Base, and in Kaneohe Bay between the two ship channels to include Ahu O Laka.

RECOMMENDATION:

"That the Board approve the holding of public hearings for the proposed amendments to the HAR, Chapter 13-75, Rules Regulating the Possession and Use of Certain Fishing Gear, to further restrict the use of lay gill nets and for prohibiting their use in certain waters of the State."

Respectfully Submitted,

for Dan A. Polhemus, Administrator
Division of Aquatic Resources

APPROVED FOR SUBMITTAL:

PETER T. YOUNG, Chairperson
Board of Land and Natural Resources

Attached: Chapter 13-75 (1/17/06)

RAMSEYER DRAFT
(1/17/06)

Rules Amending Title 13
Hawaii Administrative Rules

(Date)

1. Chapter 75 of Title 13, Hawaii Administrative Rules, entitled "Rules Regulating the Possession and Use of Certain Fishing Gear" is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4

FISHERIES

PART IV FISHERIES RESOURCE MANAGEMENT

CHAPTER 75

Rules Regulating the Possession and Use of
Certain Fishing Gear

§13-75-1 Definitions
§13-75-2 Penalty
§13-75-3 Severability
§13-75-4 Disposal of fishing gear
§13-75-5 Explosives
§13-75-6 Electrofishing devices
§13-75-7 Poisonous substances
§13-75-8 Firearms
§13-75-9 Spears
§13-75-10 Throw nets
§13-75-11 Drift gill nets
§13-75-12 Gill nets
§13-75-12.2 Akule nets
§13-75-12.4 Lay nets
§13-75-13 Bullpen traps

§13-75-14 Nets, generally
§13-75-15 Traps

§13-75-1 Definitions As used in this chapter, unless otherwise provided:

"Akule" means any fish identified as *Selar crumenopthalmus* or other recognized synonyms. This fish is also known as pa'a'a, halalu, hahalalu, and big-eye scad.

"Bag net" means a type of fishing net made into the shape of a pocket or pouch with an open end held open in the water with the aid of a net float line that supports the top edge of the net up towards the ocean surface and parallel to a net lead line that keeps the lower edge of the net down on the ocean bottom. The bag net is usually made of heavy gauge line to make the net very visible and made of small mesh to prevent the fish from passing through the mesh.

"Bag net fishing method" means a technique of fishing where a person or persons engage in the act of or attempt to engage in the act of deploying a fence net in the water in such a manner as to completely encircle the aquatic life. The fence net primarily acts like a barrier to hold or concentrate the aquatic life within the net. The mesh is smaller than the target species so as to prevent the smaller aquatic life from swimming through or entangling in the mesh. The aquatic life is then moved into the bag net for removal from the water. The main characteristics of the bag net fishing method are the closed net configuration, the moving net, person or persons do not chase the aquatic life into the net, and most, if not all, of the aquatic life within the net are captured.

"Bullpen trap" means a type of fishing gear that has a pen and guide or guides of a length or lengths of net or material designed to guide aquatic life into the pen situated to prevent the escape of some or all of the aquatic life entering into the pen, whether or not the guide or guides are connected to the pen.

"Closed net configuration" means a net that is deployed in a manner in which the net acts as a physical barrier that prevents or impedes the escape of aquatic life that are too large to pass through the mesh. A net deployed in a series of baffles or in a complete circle will not allow large fish to escape capture, even if the fish are not entangled in the mesh.

"Commercial marine licensee" means any person that has been issued a commercial marine license pursuant to section 13-74-20.

"Gill net" means a [rectangular] panel or curtain of net made of various materials that is suspended vertically in the water with the aid of a net float line that supports the top edge of the net up towards the ocean surface and parallel to a net lead line that keeps the lower edge of the net down towards the ocean bottom. The gill net is usually made of transparent or semi-transparent materials to make the net seem invisible underwater[.], with mesh openings large enough to permit only the heads of the fish to pass through, ensnaring them around the gills when they attempt to escape.

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

"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 becoming unhooked or lost.

"Lay net" means a gill net that is used in lay net fishing.

"Lay netting or lay net fishing method" means a technique of fishing where a person or persons engage in the act of or attempt to engage in the act of deploying a gill net in the water in a specific location, then retrieving the gill net from the same

location, after a certain time period has passed to allow for the capture of aquatic life. The lay net primarily entangles aquatic life within the mesh of the net as aquatic life swim or move into the stationary lay net. The lay net is mostly deployed in a straight line or semi-circle configuration. The main characteristics of the lay net fishing [method] are the open net configuration, the stationary net, person or persons do [not] chase the aquatic life into the net] and only aquatic life that entangles in the net mesh are captured. This fishing method is also known as set netting, cross netting, pa'ipa'i, and moemoe netting.

"Surround gill netting or surround gill net fishing method" means a technique of fishing where a person or persons engage in the act of or attempt to engage in the act of deploying a gill net in the water in such a manner as to completely encircle the aquatic life. The gill net primarily entangles aquatic life within the mesh of the net as the aquatic life swim or move into the surround gill net. The main characteristic of surround gill net fishing are the closed net configuration, the moving net, person or persons chase the aquatic life into the net, and the only aquatic life that entangles in the net mesh are captured.

"Stretched mesh" means the straight line distance between two opposite inner edges of each eye of the mesh as measured when the eye is stretched to its maximum size.

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

"Using" means placing in the water or attempting to place in the water. [Eff and comp]

(Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-75-2 Penalty. A person violating this chapter shall be punished as provided by law. [Eff: 12/3/98] (Auth: HRS §§ 187A-5, 187A-12.5, 187A-13, 188-70, 189-4) (Imp: HRS §§187A-5, 187A-12.5, 187A-13, 188-70, 189-4)

§13-75-3 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: 12/3/98] (Auth: HRS §§187A-5, 1-23) (Imp: HRS §§187A-5, 1-23)

§13-75-4 Disposal of fishing gear. It is unlawful to discard or otherwise dispose of any fishing net, trap, or gear with netting, or parts thereof, in the waters of the State. [Eff: 12/3/98] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-75-5 Explosives. (a) It is unlawful to possess or use on or near state waters, any explosives or blasting fuse caps, for the purpose of taking aquatic life, except under the terms and conditions of a permit first obtained by the user from the department.

(b) The department may issue permits for the use of explosives consistent with other legal requirements. [Eff: 12/3/98] (Auth: HRS §§187A-5, 188-23) (Imp: §§187A-5, 188-23)

§13-75-6 Electrofishing devices. (a) It is unlawful to possess or use on or near state waters, any electrofishing devices or any source of electrical energy with appurtenant devices for the introduction of electricity into the water for the purpose of taking aquatic life, except under the terms and

conditions of a permit first obtained by the user from the department.

(b) The department may issue permits for the use of electrofishing devices consistent with other legal requirements. [Eff: 12/3/98] (Auth: HRS §§187A-5, 188-23) (Imp: HRS §§187A-5, 188-23)

§13-75-7 Poisonous substances. (a) It is unlawful to deposit in, permit to pass into, orplace where it can pass into the state waters for the purpose of taking aquatic life any of the following:

(1) Any petroleum, coal or oil tar, lampblack, aniline, asphalt, bitumen, or residuary product of petroleum or carbonaceous material or substance;

(2) Hypochlorous acid or any of its salts, including bleaches commonly sold under various trade names, such as Chlorox and Purex, and bleaching powders;

(3) Preparations containing rotenone, tephrosin, or plant materials from *Barringtonia asiatica, Cocculus ferrandianus, Hura crepitans, Piscidia erythrina, Tephrosia purpurea, Wikstroemia; and*

(4) Any other substance or material deleterious to aquatic life; except under the terms and conditions of a permit first obtained by the user from the department.

(b) The department may issue permits to allow the possession of stated amounts of these substances poisonous to aquatic life if the department deems the amount in possession is for legitimate purposes or in quantities too small to harm aquatic life.

(c) The possession of these substances without a permit issued by the department by any person on or near the water where fish can be taken, or aboard any fishing vessel or boat is prima facie evidence of a violation of this section. [Eff: 12/3/98] (Auth: HRS §§187A-5, 188-23) (Imp: HRS §§187A-5, 188-23)

§13-75-8 Firearms. (a) No person shall pursue, take, or kill any turtle, crustacean, mollusk, aquatic mammal, or fish, except tuna and billfish that have been caught and gaffed and sharks, in the State with firearms as defined in section 134-1, HRS.

(b) Any crustacean, mollusk, aquatic mammal, or fish taken or killed or offered for sale in violation of this section shall be confiscated and offered as evidence. [Eff: 12/3/98] (Auth: §187A-5) (Imp: HRS §187A-5)

§13-75-9 Spears. (a) No person shall pursue, take or kill any crustacean (except introduced freshwater prawns), turtle, or aquatic mammal in the State with a spear.

(b) Any crustacean, mollusk, aquatic mammal, or fish taken or killed or offered for sale in violation of this section shall be confiscated and offered as evidence.

(c) No person shall take any fish by the use of spears, or possess any speared fish which is smaller than the minimum size for the fish as specified in section 188-40, HRS or any rule adopted thereunder and any person violating this provision for the first time shall receive a citation. Any subsequent violation shall be punished as provided for in section 188-70, HRS; provided that the first subsequent violation shall be considered a first violation for the purpose of section 188-70, HRS. [Eff: 12/3/98] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-75-10 Throw nets. (a) It is unlawful for any person who is in the water or on or about the shore where fish can be taken to have in the person's possession a throw net with a mesh of less than two inches stretched [measure]mesh.

(b) It shall be unlawful for any person to sell or to offer for sale any throw net with a mesh of less than two inches stretched [measure]mesh. [Eff: 12/3/98] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-75-11 Drift gill nets. It is unlawful for any person to possess or use any drift gill net in the waters of the State. [Eff: 12/3/98] (Auth: HRS § 187A-5) (Imp: HRS § 187A-5)

§13-75-12 Gill nets. (a) It is unlawful for any person engaged in gill net fishing to:

(1) Leave the person's net unattended without visually inspecting the net every two hours and releasing or removing any undersized, illegal, or unwanted catch; or

(2) Leave the net in the water for a period of more than four hours in any twenty-four hour period.

[(b) For purposes of this section, "gill net" means a curtainlike net suspended in the water with mesh openings large enough to permit only the heads of the fish to pass through, ensnaring them around the gills when they attempt to escape.] [Eff: 12/3/98] Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-75-12.2 Akule nets. (a) It is unlawful for any person without a valid commercial marine license to take akule with any net that has less than two and three-fourths inches stretched mesh, except as provided by law.

(b) It is unlawful for any person without a valid commercial marine license to take akule while using the bag net fishing method.

(c) Except as provided in subsection (e) or as may be otherwise allowed by law, it is unlawful for any commercial marine licensee to take akule while using the:

(1) Lay net fishing method with a net that has less than two and three-fourths inches stretched mesh;

(2) Surround net fishing method with a net that has less than two and one-half inches stretched mesh; and

(3) Bag net fishing method with a net that has

less than one and one-half inches stretched mesh.

(d) It is unlawful for any commercial marine licensee to keep akule with in a bag net in the ocean for more than three days without notifying the department. The person must explain the reasons for keeping the akule and when the bag net will be removed. The chairperson of the department may require the immediate removal of the akule from the bag net if such action is necessary to prevent the unacceptable waste of said akule or to alleviate an unacceptably high public safety risk. [Eff and comp: 1//11/02] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-75-12.4 Lay nets. (a) It is unlawful for any person on or about the water to:

(1) Possess or use a lay net that has not been registered with the department;

(2) Possess or use a lay net or lay nets when combined;

A. are longer than 125 feet in length and more than seven feet in stretched height; except as provided in section 13-60.3-5 and

B. with less than two and three-fourths inches stretched mesh; except as provided for in section 13-52-2.

(3) Possess or use a multi-panel net;

(4) Possess or use a lay net that does not have at least four identification tags as specified or provided by the department. One identification tag must be attached at each end of both the net float line and the net lead line for a total of four attachment points on each lay net.

(b) It is unlawful for any person using the lay net fishing method to:

(1) Use a lay net that is not marked by surface buoys as specified or provided by the department. The buoys shall display the lay net registration number, be marked with reflective tape, and visible above the

surface of the water. The buoys shall be attached to each end of the float line for a total of two buoys for each lay net;

(2) Use a lay net within 250 feet of another lay net; except as provided for in section 13-60.3-5;

(3) Use a lay net in water greater than 25 feet in depth; provided that a person with a commercial marine license may use a lay net in water depths up to 80 feet; except as provided in section 13-60.3-5;

(4) Use a lay net for more than four hours during any one set; provided that after one set, the same lay net may not be used again within twenty-four hours after the ending of the set; and provided further that no person shall set any other lay net within that twenty-four hour period after the ending of the set;

(5) Leave a lay net unattended for more than one-half hour;

(6) Retrieve a lay net in such a manner as to cause any stony coral to break either from its attachment to the bottom or in smaller pieces. Any stony coral as defined in section 13-95-1 brought to the surface in the net shall be considered a violation of this section;

(7) Fail to complete inspection of an entire lay net within two hours after the beginning of the set. The person lay net fishing shall inspect the lay net and release any threatened, endangered, prohibited or unwanted species;

(8) Discard, abandon, or leave any lay net, or portion thereof, in the water for longer than four hours;

(9) Use a lay net in freshwater streams or stream mouths.

(c) It is unlawful for any person to falsely identify, with identification tags, any lay net that

is not registered with the department as required in subsections (a)(4) and (a)(1) respectively.

(d) Should any registered lay net be lost, destroyed, sold, traded, stolen, given away, or otherwise no longer the property of, or no longer in the possession of the registered owner, then the registered owner shall be responsible for the lay net until a report is filed and confirmed by the department.

(e) Any lay net on or about the water that is not registered or that does not have proper identification tags or surface buoys as required in subsections (a)(1), (a)(4), and (b)(1) shall be considered contraband and subject to immediate seizure by the department.

(f) It is unlawful for any person to lay net fish in the following areas as provided in the table describing the boundary coordinates for the restricted fishing areas at the end of the chapter, entitled, "Table of descriptions of lay net fishing restricted areas" dated January 17, 2006, and in the maps at the end of this chapter, entitled, "Map of lay net fishing restricted areas" dated January 17, 2006:

(1) Island of Maui;

(2) Portlock Point to Keahi Point, Oahu;

(3) Mokapu Peninsula to Wailea Point, Oahu; and

(4) Kaneohe Bay, Oahu. [Eff:]

(Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

§13-75-13 Bullpen trap. (a) It is unlawful for any person to use bullpen traps with a stretched mesh of less than two inches.

(b) It is unlawful for any person to capture or attempt to capture aquatic life with a bullpen trap which exceeds two thousand feet in total length. The total length of a bullpen trap shall include the length of the guide or guides and pen.

(c) It is unlawful for any person engaged in bullpen trap fishing to leave the trap in the same place for a period of more than sixteen hours.

(d) It is unlawful for any person to capture or attempt to capture aquatic life with a bullpen trap within one thousand yards from the shoreline, except as provided in subsection (e).

(e) Nothwithstanding subsection (d), it is lawful to capture or attempt to capture aquatic life with a bullpen trap in the area seaward from five hundred yards from the shoreline of the island of Molokai west of Kaunakakai wharf and in the area seaward from two hundred yards from the shoreline of the island of Molokai east of Kaunakakai wharf; provided that the department may designate other areas of similar characteristics in which the use of bullpen traps within one thousand yards from the shoreline may be allowed under this subsection. [Eff: 12/3/98] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-75-14 Nets, generally. It is unlawful for any person to use nets made of or using netting with a stretched mesh of less than two inches, except that:

(1) Pond owners or operators who hold a valid license issued under section 13-74-40, may use nets of smaller mesh to take young mullet or pua for stocking fish ponds;
(2) Commercial marine licensees who hold a valid license issued under section 13-74-22, may use nets of smaller mesh to take nehu, iao, marquesan sardine, or any other species for which an open season may be declared by the department for use as bait;
(3) All persons may use nets of smaller mesh to take shrimp or opae, opelu, makiawa, or mikiawa;
(4) Aquarium fish collectors with a valid aquarium fish permit issued pursuant to section 188-31, HRS, may use traps and nets for aquarium fish in conformance with the conditions of the permit, provided that non-commercial aquarium fish collectors shall be

limited to a combined total of five fish or aquatic life specimens per person per day;

(5) All persons may use a net with mesh of not less than one and one-half inches to take akule; provided that no akule measuring less than eight and one-half inches in total length from the tip of the snout to the tip of the tail shall be taken with a net during the months of July, August, September, and October;

(6) All persons engaged in surround net fishing with scuba, may use nets with mesh of not less than one and one-half inches only to bag and transport the fish captured with legal gear to the shore or to the boat; and

[(7) All persons engaged in stationary monofilament gill net fishing may use monofilament gill netting with a stretched mesh of not less than two and three-fourths inches; and]

[(8)](7) All persons may use hand nets or scoop nets of smaller mesh to take fish or other marine life for noncommercial purposes only; provided that the net, including the handle and other attachment thereto, shall not exceed three feet in any dimension. [am:] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-75-15 Traps. (a) It is unlawful for any person to use any type of trap which is not portable or which is more than ten feet in length or six feet in height or width.

(b) Except for traps of smaller mesh to take shrimp or opae, and for the entrance cone, it shall also be unlawful to use traps:

(1) With netting having a stretched mesh of less than two inches; or

(2) Made with plastic, wire, coated wire, or any other still material with a rigid mesh of less than two inches long by one inch wide."

[Eff: 12/3/98] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

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

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

4. These amendments to and compilation of chapter 13-75, 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 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.

_____
PETER T. YOUNG, Chairperson
Board of Land and Natural Resources

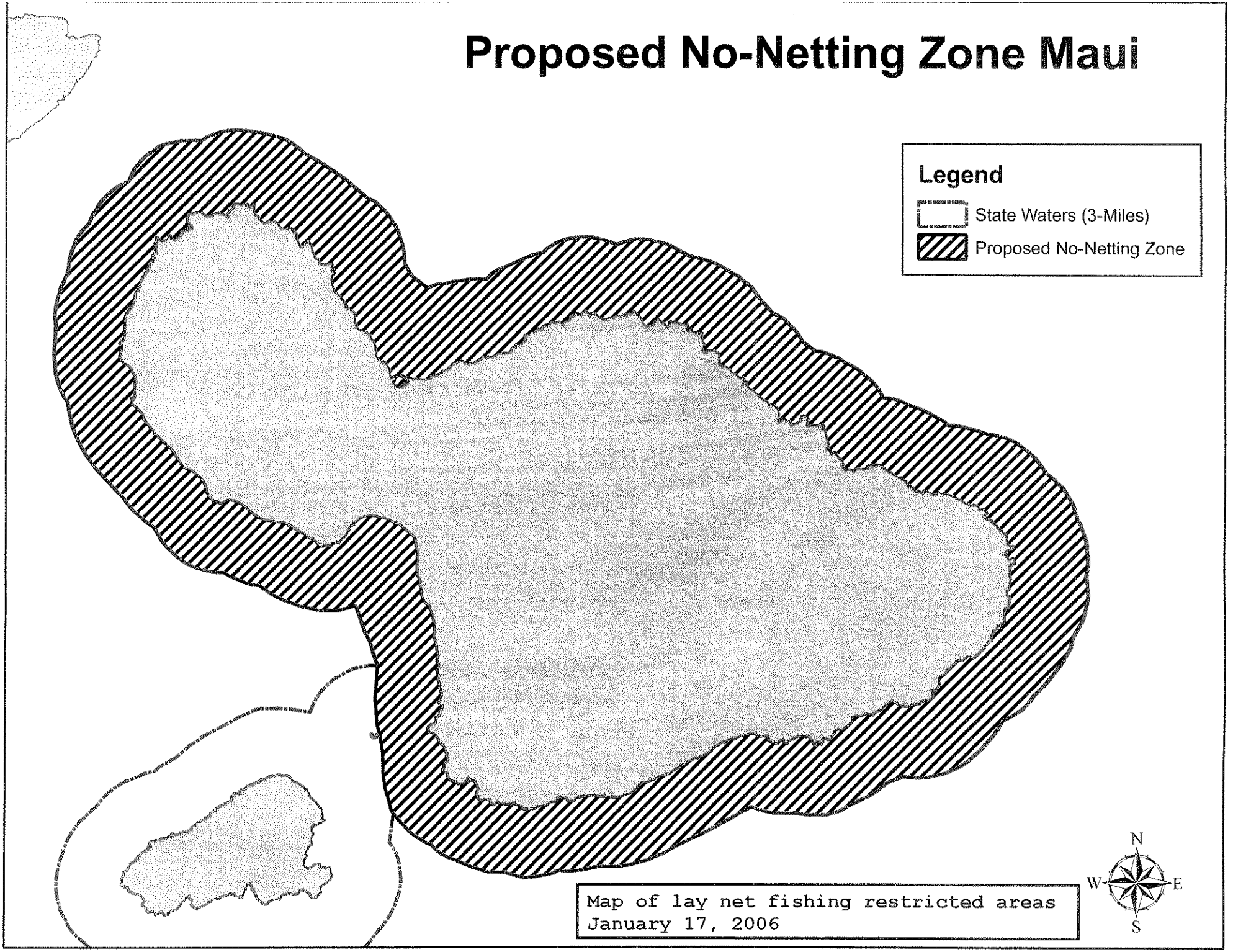
APPROVED FOR PUBLIC HEARING:

_____
Deputy Attorney General

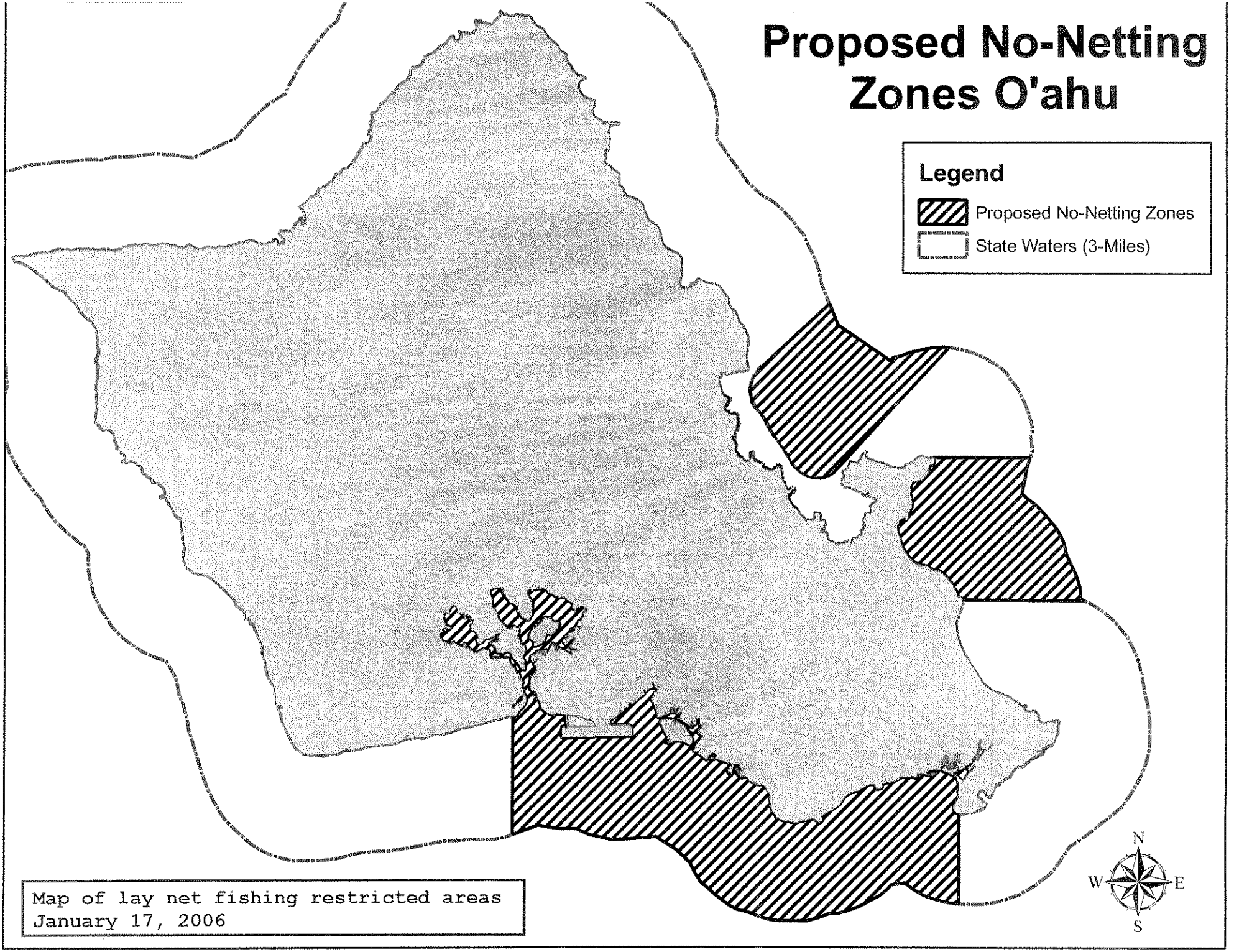
Table of descriptions of lay net fishing restricted areas.
January 17, 2006

Location	Area Description/Boundary Definition
Maui (island)	State waters out to 3 nautical miles around the entire island.
Kaneohe Bay, Oahu	State waters out to 3 nautical miles and bounded by the sampan and ship channels and further bounded landward by the main boat channel that connects North and South portions of the Bay.
Kailua Bay, Oahu	State waters out to 3 nautical miles and bounded by the latitude coordinates 21°27.5'1"N (Mokapu Point) and 21°22.8'1"N (Wailea Point).
South Oahu	State waters out to 3 nautical miles and bounded by the longitude coordinates 157°42.6'W (Kawaihoa Point) and 157°58.8'W (Keahi Point).

Proposed No-Netting Zone Maui



Map of lay net fishing restricted areas
January 17, 2006


Proposed No-Netting Zones O'ahu
Legend
Proposed No-Netting Zones
State Waters (3-Miles)
N
W
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Map of lay net fishing restricted areas
January 17, 2006