

December 11, 2013

To: KIRC Commissioners
From: Michael K. Nāho‘opi‘i, Executive Director
Subject: Administrative Rules Changes HAR 13-261

RECOMMENDED MOTION:

To authorize the Executive Director to begin drafting amendments to Hawaii Administrative Rules Chapter 13-261.

BACKGROUND & SUMMARY:

HAR 13-261 were developed to manage, preserve, restore and protect the natural and cultural resources of the reserve; to regulate activities within the reserve; and to protect the public health and safety (§13-261-1). The current administrative rules were adopted on March 15, 2002, following a public hearing held on December 17, 2001. The rules took effect on June 12, 2002.

This year, Maui County Prosecutors brought to my attention that there has been an issue prosecuting cases involving unauthorized fishing within the Reserve’s waters due to a typographical error in the published administrative rules. HAR 13-261-13 lists two, subsection (2):

- (2) Such activity is conducted through the provisions of the Consent Decree set forth in *Aluli vs. Brown* (1980), so long as said Consent Decree remains in effect, and is consistent with subsection (1) above; or
- (2) Such activity consists of trolling in Zone B of the reserve on two weekends per month as scheduled by the executive director and noticed by publication in the Local Notice to Mariners issued by the Commander Fourteenth Coast Guard District (OAN), provided that any vessels trolling shall first register with the commission and shall submit catch reports to the commission. The frequency, time, manner, and place of such trolling may be further regulated by the commission pursuant to section 13-261-13(c);

A review of the administrative rule’s submission for authorization reveals that the error was made before it was signed by the Governor and recorded by the Lieutenant Governor’s office, therefore any correction to the administrative rule will require an amendment that will follow the procedures set forth in HRS 91-3.

DISCUSSION:

KIRC staff will be drafting the applicable amendment to correct the above error and will be reviewing the entire administrative rules to make recommendations for any additional amendments that will clarify or strengthen the existing rules. Some of the areas we are proposing to amend will be to clarify rules pertaining to permitted trolling and subsistence fishing.

Once the recommended amendments have been drafted, staff will present the amendments to the Commission to authorize the staff to conduct the necessary public hearings as specified in §91-3 HRS.

LEGAL AUTHORITY:

Hawaii Revised Statutes 6K-6(9): Shall adopt rules in accordance with chapter 91 that are necessary for the purposes of this chapter and shall maintain a record of its proceedings and action.