

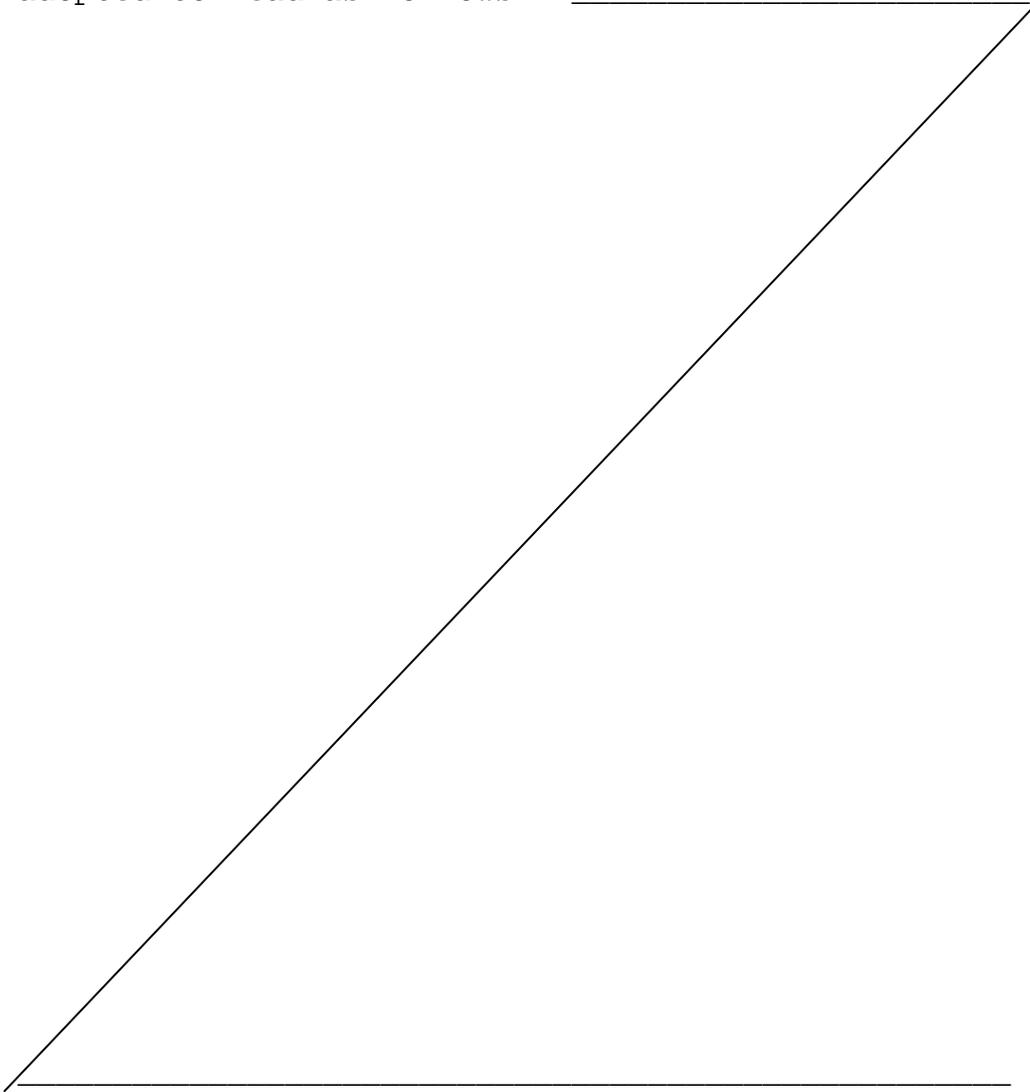
Ramseyer Draft
(10/24/2014)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-77
Hawaii Administrative Rules

(date)

1. Chapter 77 of Title 13, Hawaii Administrative Rules, entitled "Oahu Aquarium Life Management" is adopted to read as follows: _____



"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART IV FISHERIES RESOURCE MANAGEMENT

CHAPTER 77

OAHU AQUARIUM LIFE MANAGEMENT

General Provisions

- §13-77-1 Intents and purposes
- §13-77-2 Definitions
- §13-77-3 Penalties
- §13-77-4 Exemptions
- §13-77-5 Severability
- §13-77-6 Oahu prohibited activities

General Provisions

§13-77-1 Applicability and scope. This chapter shall apply to the collection of aquatic life for an aquarium purpose from the waters of Oahu while using fine or small mesh traps or fine or small mesh nets, but not throw nets. While governing the taking of aquatic life intended for live aquarium displays, this chapter shall not apply to the use of nets to take aquatic life for food, bait, or other consumptive purposes. This chapter is also intended to supplement regulations restricting the use of net fishing gears in chapter 13-75. [Eff] (Auth: HRS §§187A-5, 188-31) (Imp: HRS §§187A-5, 188-31)

§13-77-2 Definitions. As used in this chapter unless otherwise provided:

"Achilles tang" means any marine fish species known as *Acanthurus achilles* or any recognized synonym.

"Aquarium purposes" means to hold marine fish, fresh water nongame fish, or other aquatic life alive in a state of captivity, whether as pets, for scientific study, for public exhibition, for public display, or for sale for these purposes.

"Aquarium fish permit" means a permit issued by the department pursuant to section 188-31, HRS, for the use of fine mesh nets and traps to take marine fish, fresh water nongame fish, or other aquatic life for aquarium purposes.

"Bandit angelfish" means any marine fish species known as *Apolemichthys arcuatus* or any recognized synonym. This species is also known as banded angel, *Holacanthus arcuatus*, and *Desmoholacanthus arcuatus*.

"Cleaner wrasse" means any marine fish species known as *Labroides phthirophagus* or any recognized synonym.

"Commercial aquarium fish permit" means a valid aquarium fish permit issued to a person who also has been issued a valid commercial marine license.

"Commercial marine license" means a license issued by the department for the taking of marine life for commercial purposes, issued pursuant to section 189-2, HRS.

"Day" means the twenty-four hours following midnight of one day until midnight of the following day. It is a measure of time for the purposes of setting a bag limit only.

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

"Kole" means any marine fish species known as *Ctenochaetus strigosus* or any recognized synonym.

"Length" means the straight-line external measurement from the leading edge of the snout or jaw to the middle of the trailing edge of the tail.

"Moorish idol" means any marine fish species

known as *Zanclus cornutus* or any recognized synonym.

"Naso tang" means any marine fish species known as *Naso lituratus* or any recognized synonym. This species is also known as the orangespine unicornfish.

"Ornate butterflyfish" means any marine fish species known as *Chaetodon ornatissimus* or any recognized synonym.

"Oval butterflyfish" means any marine fish species known as *Chaetodon lunulatus* or any recognized synonym.

"Permittee" means a person who has a valid commercial or recreational aquarium fish permit.

"Person" means any individual, corporation, partnership, association or other business entity.

"Potter's angel" means any marine fish species known as *Centropyge potteri* or any recognized synonym.

"Recreational aquarium fish permit" means a valid aquarium fish permit issued to a person for non-commercial use.

"Reticulated butterflyfish" means any marine fish species known as *Chaetodon reticulatus* or any recognized synonym.

"Small mesh" or "fine mesh" means a net, trap, or other fishing gear with mesh, which stretched mesh size is smaller than the legal limit as provided in section 13-75-14.

"State" means the state of Hawaii.

"State marine waters" means those waters 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.

"Waters of Oahu" means, for enforcement purposes, marine waters from the shoreline around the island of Oahu seaward for three nautical miles.

"Yellow tang" means any marine fish species known as *Zebbrasoma flavescens* or any recognized synonym.

[Eff] (Auth: HRS §§187A-5, 188-31)
 (Imp: HRS §§187A-5, 188-31)

§13-77-3 Exemptions. Notwithstanding the provisions of this chapter, the department may issue the licenses or permits which exempt persons from the provisions of this chapter. Section 13-75-14(7) exempts the use of small mesh hand nets or scoop nets to take fish or other marine life for non-commercial purposes. [Eff _____] (Auth: HRS §§187A-3.5, 187A-6, 189-6) (Imp: HRS §§187A-3.5, 187A-6, 189-6)

§13-77-4 Penalties. A person violating any provision of this chapter shall be guilty of a petty misdemeanor and penalized as provided by section 187A-13, HRS. In addition to any criminal penalty, any violation of these rules shall also be subject to civil and administrative penalties, as provided by section 187A-12.5, HRS. [Eff _____] (Auth: HRS §§187A-12.5, 187A-13, 187A-32) (Imp: HRS §§187A-12.5, 187A-13)

§13-77-5 Severability. The provisions of these rules 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 of the remainder of these rules or the application of the remainder to other persons or property shall not be affected. [Eff _____] (Auth: HRS §§187A-5, 188-31) (Imp: HRS §§1-23, 187A-5)

§13-77-6 Oahu prohibited activities. (a) Notwithstanding the provisions of chapter 13-75, it is unlawful for any person in or on the waters of Oahu, possessing a small mesh net authorized under a commercial aquarium fish permit or recreational aquarium fish permit, to possess a small mesh net that is:

- (1) More than thirty (30) feet long; provided that two or more permittees may join two

nets, each no more than thirty (30) feet long, for a total net length of no more than sixty (60) feet long; or

- (2) More than six (6) feet in height.
- (3) These restrictions regarding net length and height in subsection (a) shall take effect after July 1, 2015.

(b) It is unlawful for any person, while possessing, using, or having used a small mesh net authorized under a commercial aquarium fish permit and in or on the waters of Oahu, to possess a small mesh net and take or possess a daily bag limit of more than:

- (1) One hundred (100) yellow tang;
- (2) Seventy-five (75) kole;
- (3) Fifty (50) Potter's angel;
- (4) Fifty (50) naso tang;
- (5) Twenty-five (25) moorish idol; or
- (6) Ten (10) achilles tang.

A daily bag limit includes the cumulative number of regulated aquatic life taken or possessed by a person on any day.

(c) It is unlawful for any person while possessing, using, or having used a small mesh net authorized under a commercial aquarium fish permit and in or on the waters of Oahu, to possess a small mesh net and to take or possess more than six (6) of any of the following per day:

- (1) Yellow tang less than one and one-half (1.5) inches in length;
- (2) Yellow tang more than five (5) inches in length;
- (3) Kole more than five (5) inches in length; or
- (4) Cleaner wrasse of any size.

(d) It is unlawful for any person while possessing, using, or having used a small mesh net authorized under a commercial aquarium fish permit and in or on the waters of Oahu, to take or possess more than two (2) bandit angelfish that are longer than five and a half (5.5) inches in length, per day.

- (e) It is unlawful for any person while

possessing, using, or having used a small mesh net authorized under a commercial aquarium fish permit, to operate a vessel on the waters of Oahu with:

- (1) More than the daily bag limits as provided in subsections (b), (c), and (d) for the number of permittees on board the vessel; or
- (2) More than three times the number of any daily bag limit, regardless of the number of permittees on board.

(f) It is unlawful for any person, while possessing a small mesh net authorized under a commercial aquarium fish permit or recreational aquarium fish permit while in or on the waters of Oahu, to take or possess any of the following species:

- (1) Ornate butterflyfish;
- (2) Oval butterflyfish; and
- (3) Reticulated butterflyfish." (Auth: HRS §§187A-5, 188-31) (Imp: HRS §§187A-5, 188-31)

2. The adoption of chapter 13-77, 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 _____, and filed with the Office of the Lieutenant Governor.

William J. Aila, Jr.,
Chairperson, Board of Land
and Natural Resources

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General