

(Ramseyer Format)
(3/7/2018)

DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF AQUATIC RESOURCES

Amendments to Chapter 13-95
Hawaii Administrative Rules

(date of adoption)

1. Section 13-95-1, Hawaii Administrative Rules, is amended by adding new definitions to read as follows:

"Renewable energy projects" means projects developed by renewable energy producers, as the term is defined in section 171-95, Hawaii Revised Statutes, that reduce the consumption of non-renewable energy resources or produce renewable energy.

"Mitigation" means activities carried out in accordance with this chapter in order to avoid, minimize, restore, or compensate for losses of certain marine resources due to authorized activities.

[Eff 12/3/98; am 1/11/02; am 12/19/02; am 5/1/14; am
] (Auth: HRS §§187A-3.5, 187A-5, 190-
3) (Imp: HRS §§3.5, 187A-5, 190-3)

2. Section 13-95-70, Hawaii Administrative Rules, is amended to read as follows:

§13-95-70 Stony Corals. (a) Except as otherwise provided in this section or authorized by law:

- (1) Subject to [subsection] subsections (b) and (c), it is unlawful for any person to take, break, or damage any stony coral, except as

provided in sections 171-58.5 and 205A-44, HRS;

- (2) It is unlawful for any person to damage any stony coral by any intentional or negligent activity causing the introduction of sediment, biological contaminants, or pollution into state waters;
- (3) It is unlawful for any person to sell any stony coral; except that stony coral rubble pieces or fragments imported for the manufacture and sale of coral jewelry, or dead stony coral obtained through legal dredging operations in Hawaii for agricultural or other industrial uses, may be sold.

(b) No liability shall be imposed under subsection (a)(1) of this section for inadvertent breakage, damage, or displacement of an aggregate area of less than one half square meter of coral if caused by:

- (1) A vessel with a single anchor damage incident, in an area where anchoring is not otherwise prohibited, and not more frequently than once per year; or
- (2) Accidental physical contact by an individual person.

(c) The Department may authorize damage to stony corals for the development or operation of renewable energy projects and shall require mitigation to offset any stony coral losses.

~~(e)~~(d) Any person found in violation of any provision of this section pursuant to a criminal prosecution shall be subject to penalty as provided under section 187A-13, HRS. Any person found in violation of any provision of this section pursuant to civil or administrative action shall be subject to penalty as provided under section 187A-12.5, HRS."

[Eff 12/3/98; am 12/9/02; am 5/1/14; am

] (Auth: HRS §§187A-5, 189-6, 190-3)

(Imp: HRS §§187A-6, 187A-12.5, 187A-13, 189-6, 190-1, 190-3, 190-5)

3. Section 13-95-71, Hawaii Administrative Rules, is amended to read as follows:

§13-95-71 Live Rocks. (a) Except as otherwise provided in this section or authorized by law:

- (1) Subject to [subsection] subsections (b) and (c), it is unlawful for any person to take, break, or damage any live rock;
- (2) (2) Subject to subsection (b), it is unlawful for any person to damage any live rock by any intentional or negligent activity causing the introduction of sediment, biological contaminants, or pollution into state waters; and
- (3) It is unlawful for any person to sell any live rock.

(b) No liability shall be imposed under subsections (a)(1) or (a)(2) of this section for inadvertent breakage, damage, or displacement of an aggregate area of less than one square meter of live rock bottom cover.

(c) The Department may authorize damage to live rock for the development or operation of renewable energy projects and shall require mitigation to offset any live rock losses.

~~[(e)]~~(d) Any person found in violation of any provision of this section pursuant to a criminal prosecution shall be subject to penalty as provided under section 187A-13, HRS. Any person found in violation of any provision of this section pursuant to civil or administrative action shall be subject to penalty as provided under section 187A-12.5, HRS."

[Eff 12/3/98; am 12/9/02; am 5/1/14; am

] (Auth: HRS §§187A-5, 189-6, 190-3)

(Imp: HRS §§187A-6, 187A-12.5, 187A-13, 189-6, 190-1, 190-3, 190-5)

4. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material is underscored.

5. Additions to update source notes and other notes to reflect this amendment are not underscored.

6. The amendments to chapter 13-95, 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.

Suzanne D. Case
Chairperson
Board of Land and Natural
Resources

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General