

Amendment and Compilation of Chapter 13-74
Hawaii Administrative Rules

(Date of Adoption)

1. Chapter 13-74, Hawaii Administrative Rules, entitled "License and Permit Provisions and Fees for Fishing, Fish, and Fish Products", 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 74

LICENSE AND PERMIT PROVISIONS AND FEES
FOR FISHING, FISH, AND FISH PRODUCTS

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SUBCHAPTER 1

GENERAL PROVISIONS

§13-74-1 Definitions. As used in this chapter,
unless otherwise provided:

"Aquatic life" means any type of species of
mammal, fish, amphibian, reptile, mollusk, crustacean,
arthropod, invertebrate, coral, or other animal that
inhabits the freshwater or marine environment and
includes any part, product, egg, or offspring thereof;
or freshwater or marine plants, including seeds,
roots, products, and other parts thereof.

"Baitfish" means any of the species listed in section 13-74-22.

"Baitfishing report" means a monthly report that is furnished to the department with respect to any baitfish taken.

~~["Board" means the board of land and natural resources.]~~

"Bottomfish fishing activity" means those fishing activities associated with the taking of bottomfish while on a vessel.

"Catch report" means a monthly report that every commercial marine licensee shall furnish to the department with respect to the marine life taken.

"Commercial marine dealer" means any person who sells or exchanges, or who is an agent in the transfer of marine life obtained directly from a commercial marine licensee, or any commercial marine licensee who sells or exchanges marine life at retail.

"Commercial marine license" means [a] any license issued to take marine life within or outside the State for commercial purpose.

"Commercial marine licensee" means a person who has been issued a commercial marine license pursuant to section 189-2, HRS.

"Commercial marine vessel license" means a license issued to an individual for a specific vessel that allows all crew on board the vessel to take marine life within or outside the State for commercial purpose without requiring each crew member to possess an individual commercial marine license.

"Commercial purpose" means the taking of marine life for profit or gain or as a means of livelihood where the marine life is taken in or outside of the State, or where the marine life is sold, offered for sale, landed, or transported for sale anywhere in the State.

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

"Fishing", "fishing activities", or "to fish" means catching, taking, or harvesting, or attempting to catch, take, or harvest, aquatic life. The use of a pole, line, hook, net, trap, spear, or other gear which

is designed to catch, take, 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 caught, taken, or harvested, shall be deemed to be fishing.

"Freshwater game fishes" means those introduced freshwater fishes as listed in section 13-99-2.

"Freshwater game fishing license" means a license issued to take freshwater game fishes.

"License period" means the period of time during which the license is or was valid.

"Licensee" means any person who has been issued a license pursuant to this chapter.

"Main Hawaiian islands" means those islands, reefs, and shoals, as well as their respective appurtenant reefs and territorial waters of the Hawaiian Islands chain beginning and including Ni'ihau island to and including the Big Island of Hawai'i.

"Marine life" means any type or species of saltwater fish, shellfish, mollusks, crustaceans, coral, or other marine animals, including any part, product, egg, or offspring thereof; or seaweeds or other marine plants, including any part, product, seed, or root thereof.

"Nonresident" means any individual who is not a resident of the State of Hawai'i.

~~["Northwestern Hawaiian Islands" means those islands, reefs, and shoals, as well as their respective appurtenant reefs and territorial waters of the Hawaiian Islands chain beginning and including Nihoa island to and including Kure island.]~~

"Permittee" means any person who has been issued a permit pursuant to this chapter.

"Person" means an individual, partnership, firm, company, corporation, association, or other entity.

"Qualified aquaculturist" means a person, or association of persons, actively engaged in aquaculture farming, aquacultural produce processing, or aquacultural product development activities.

"Resident" means an individual that has established the individual's primary residence and worked in the State continuously for a period of

twelve months or longer immediately prior to applying for[7] or obtaining a license or permit, or has filed or paid the individual's State income taxes for the previous tax period[-], or has established domicile in the State. Domicile may be established by providing documentation including a valid Hawai'i driver's license or identification card, a valid school identification card, or any other official document issued to the individual within the previous thirty days from a government agency, financial institution, insurance company, or utility company.

"Trip" means any bout of fishing activity occurring in state marine waters in the course of a one way or round trip, and generally includes when a vessel has left port or shore until it puts into port or goes ashore, even if not to the point of origin. [Eff 8/12/93; am 10/18/10; comp 8/27/21; am and comp] (Auth: HRS §§187A-5, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-6) (Imp: HRS §§187A-5, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-6)

§13-74-2 General license and permit conditions.

Except as otherwise provided:

- (1) All licenses and permits issued pursuant to this chapter are non-refundable and non-transferable and shall be valid for not longer than one year from the date of issuance. A duplicate license or permit may be issued upon affidavit that the original has been lost or destroyed, and upon payment of a duplicate license fee; provided that the duplicate license or permit shall expire on the same date as when the original license or permit would have expired;
- (2) A licensee or permittee shall show the license or permit and confirming identification upon the demand of any officer authorized to enforce the fishing laws of the State. No person shall refuse

any such officer the examination of the license or permit and confirming identification, or inspection of any bag or container of any kind that could reasonably be used to carry any aquatic life or any vehicle or conveyance used to transport any aquatic life if such officer [has probable cause, as provided by law, to believe that such bag, container, vehicle, or conveyance contains evidence of a violation of the fishing laws of the State.] reasonably believes that the person is, or recently has been, engaged in fishing activities.

Failure or refusal to show the license or permit and confirming identification or examination and search of any bag, container, vehicle, or conveyance shall be prima facie evidence of a violation of this chapter and sufficient cause for the immediate revocation of the license or permit by the [board,] department;

- (3) No licensee or permittee shall allow any other person to carry, display, or use the license or permit, except if the license or permit is issued ~~[to]~~ for a vessel;
- (4) The department or its agents may issue licenses and permits as authorized by law, and with such conditions necessary to manage, protect, and conserve aquatic life;
- (5) Should a monthly report be required by any license or permit, such report shall be rendered to the department as a true and correct statement of such information the department may require, on or before the tenth day of the following month in which the aquatic resources were taken or purchased, except for the Kona crab and lobster closed season sales license issued pursuant to section 13-74-41 whose report shall be rendered five days after the end of each of the closed season months on forms either furnished by, or approved by the

- department;
- (6) Should a trip report be required as a condition of any license or permit, the report shall be timely submitted to the department as a true and correct statement of such information the department may require, on or before the fifth day following the last day of each trip in which aquatic life was landed. A trip report includes such information but is not limited to: start and end dates of the trip, locations fished, hours spent fishing at each location; numbers, kinds and weights of aquatic life caught, released, or lost to predators; and
- (7) Any information submitted to the department as required under this section or chapters 187A, 188, and 189, HRS, shall be confidential and shall not be disclosed, except when required under court order or by the state attorney general's office subpoena, or with the prior written consent of the person submitting the information, or under cooperative agreements with United States government agencies for the exchange and use of the information specifically to manage aquatic resources. The department may establish procedures to preserve the confidentiality of submitted information, except that the department may release or make public information in the aggregate or summary form that does not directly or indirectly disclose the identity of any person who submits information. [Eff 8/12/93; am 1/15/99; am 10/18/10; comp 8/27/21; am and comp]
- (Auth: HRS §§187A-5, 187A-5.5, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-3, 189-3.5, 189-6, 189-10) (Imp: HRS §§187A-2, 187A-5, 187A-12.4, 187A-15, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-3, 189-3.5, 189-6, 189-10)

§13-74-3 Suspension, revocation and non-issuance of licenses and permits, generally. Except as may be otherwise provided, the [~~board~~] department may:

- (1) Suspend any and all licenses and permits issued pursuant to this chapter when such action is necessary for the protection and conservation of the aquatic life;
- (2) Revoke any license or permit issued pursuant to this chapter for any infraction of the terms and conditions of the license or permit and any person whose license or permit was revoked shall not be eligible to be issued another license or permit until the expiration of one year from the date of revocation, unless another time period is specified;
- (3) In any proceeding for the revocation of [~~a commercial marine~~] any license or permit issued pursuant to [~~section 13-74-20,~~] this chapter, the licensee or permittee shall be given notice and opportunity for hearing in conformity with chapter 91, HRS. Upon revoking the license[~~r~~] or permit, the [~~board~~] department may specify a period of time during which the [~~commercial~~] licensee or permittee shall not be eligible to be issued another license; provided that the period shall not exceed one year from the date of revocation; and
- (4) Refuse to issue any license or permit to a person who is not legally admitted to the United States, who does not provide proper identification, who has unresolved violations of any license or permit issued pursuant to this chapter, or for other just cause. Should the department refuse to issue any license or permit, the department shall give the person notice and an opportunity for hearing in accordance with chapter 91,

HRS. [Eff 8/12/93; am 1/15/99; comp 8/27/21; am and comp] (Auth: HRS §§187A-5, 188-44, 188-45, 188-50, 188-53, 189-2, 189-5, 189-6) (Imp: HRS §§187A-5, 188-44, 188-45, 188-50, 188-53, 189-2, 189-3, 189-5, 189-6)

§13-74-4 Penalties, generally. (a) [A] Unless otherwise provided, any person violating any provision of this chapter, or the terms and conditions of any license or permit issued [as provided by] pursuant to this chapter, shall be [punished as provided by law.] subject to:

- (1) Administrative penalties as provided by section 187A-12.5, HRS,;
- (2) Criminal penalties as provided by sections 187A-13, 188-70, and 189-4, HRS; and
- (3) Any other penalty as provided by law.

(b) Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of the State.

[Eff 8/12/93; am 1/15/99; comp 8/27/21; am and comp] (Auth: HRS §§187A-5, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-6) (Imp: HRS §§187A-5, 187A-12.5, 187A-13, 188-45, 188-50, 188-53, 189-2, 189-6)

§13-74-4.5 Asset forfeiture. Any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of this chapter or any of the terms and conditions of any license or permit issued pursuant to this chapter may be seized and subject to forfeiture as provided by section 199-7 and chapter 712A, HRS.

[Eff and comp] (Auth: HRS §§187A-5, 187A-12.5, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-6) (Imp: HRS §199-7, ch. 712A)

SUBCHAPTER 2

RECREATIONAL FISHING

§13-74-10 Freshwater game fishing license. (a)

No person [~~, except children below nine years of age,~~] shall fish, take, or catch any introduced [~~fresh-water~~] freshwater game fish without first obtaining a freshwater game fishing license, provided that children [~~exempt by this section~~] below nine years of age may fish without a license [~~only~~] when accompanied by a licensed adult.

(b) [~~Licenses~~] Freshwater game fishing licenses shall require the person's name, address, domicile, or residence, length of residence in the State, age, race, height, weight, and color of hair and eyes.

(c) The fee for the freshwater game fishing license shall be:

- (1) Minors [~~between nine and~~] under fifteen years of age, \$3;
- (2) Residents [~~over~~] between fifteen and [~~under~~] sixty-five years of age, \$5;
- (3) Persons sixty-five years of age and older, free;
- (4) Persons not qualifying under (1), (2), or (3) but over fifteen years of age, \$25, except that:
 - (A) Members of the armed forces of the United States on active duty in the State whether qualifying as a resident or not, and their [~~spouse~~] spouses and children fifteen years of age and over, \$5;
 - (B) 7-Day tourist license which is valid for only seven days from the date of issue, \$10;
 - (C) Tourist license which is valid for only thirty days from the date of

- issue, \$20;
- (5) Duplicate license, \$1. [Eff 8/12/93; am
1/15/99; am and comp 8/27/21; am and comp
] (Auth: HRS §§187A-5, 188-
50) (Imp: HRS §§187A-5, 188-50)

§13-74-11 Nonresident recreational marine fishing license. (a) It is unlawful for any nonresident of the State who has attained the age of fifteen, except members of the armed forces of the United States on active duty in the State and their spouses and minor children, to fish for, take, or catch any marine life for noncommercial or recreational purposes without first obtaining a nonresident recreational marine fishing license.

(b) Licenses shall require the person's name, address, date of birth, height, weight, color of hair and eyes, and such other information as the department may require.

(c) The fee for the nonresident recreational marine fishing license shall be:

(1) For a one-day fishing license, \$20;
(2) For a seven-day fishing license, \$40; and
(3) For an annual fishing license, \$70.

(d) Any person violating this section shall be subject to administrative penalties as provided by section 187A-12.5, HRS. [Eff and comp
] (Auth: HRS §188-72) (Imp: HRS
§§187A-12.5, 188-72)

SUBCHAPTER 3

COMMERCIAL FISHING

§13-74-20 Commercial marine license. (a) No person shall take marine life for commercial purposes whether the marine life is caught or taken within or

outside of the State, without first obtaining a commercial marine license~~[-]~~; provided that a valid commercial marine vessel license issued pursuant to section 13-74-23 shall satisfy the commercial marine license requirement for all persons taking marine life for commercial purposes aboard a validly-licensed vessel.

~~(b)~~ ~~[Additionally, any]~~ Any person providing [vessel] charter services in the State for the taking of marine life in or outside of the State shall obtain a commercial marine license~~[-]~~; provided that a valid commercial marine vessel license issued pursuant to section 13-74-23 shall satisfy the commercial marine license requirement for all persons providing charter services for the taking of marine life aboard a validly-licensed vessel.

~~[(b)]~~ ~~(c)~~ ~~[Licenses to persons with proof of identity to engage in the activities described in subsection (a)]~~ Commercial marine licenses shall require the person's name, address, age, place of birth, [length of residence in the State,] residency, height, weight, color of hair and eyes, citizenship, and such other information as the department may require. The department may require an applicant for a commercial marine license to show proof of identity prior to issuance or renewal of a license.

~~[(e)]~~ ~~(d)~~ The fee for the issuance or renewal of a commercial marine license shall be:

- (1) \$100 for residents; and
- (2) \$250 for all other persons.

The fee for a duplicate license shall be \$10.

~~[(d)]~~ ~~(e)~~ No person may:

- (1) Renew a commercial marine license more than two months prior to its expiration date; or
- (2) Be issued more than one commercial marine license at any one time~~[-]~~; provided that a person may hold a commercial marine license simultaneously with commercial marine vessel licenses or other licenses issued pursuant to this chapter.

~~[(e)]~~ ~~(f)~~ ~~[The department may require persons issued the commercial marine license to]~~ Commercial

marine licensees shall submit reports of their fishing activity. Such reports shall be submitted to the department monthly[+] pursuant to section 13-74-2(5); provided that persons taking bottomfish as defined in chapter 13-94, in the main Hawaiian islands, shall, in addition to their monthly report for species other than bottomfish, submit trip reports of their bottomfish fishing activity [if requested.] pursuant to section 13-74-2(6). The monthly and trip reports shall be subject to section 13-74-2, sections 189-3 and 189-3.5, HRS, and as may be otherwise provided by law. [Eff 8/12/93; am 1/15/99; am 10/18/10; am 1/7/18; am and comp 8/27/21; am and comp] (Auth: HRS §§189-2, 189-3, 189-3.5) (Imp: HRS §§189-2, 189-3, 189-3.5)

~~§13-74-21 Northwest Hawaiian Islands fishing permit.~~ (a) ~~The department may issue permits to commercial marine licensees who own or operate a vessel deemed capable by the department for effectively taking marine life within the Northwestern Hawaiian Islands, to fish for such marine life, or utilize methods or appliances which may be regulated or prohibited elsewhere within the State. The department may limit the number of permits issued to take marine life in any particular area and such limitation shall be on the basis of the order of application for permits.~~

~~(b) A separate permit shall be required for each fishing vessel or independent fishing operation, regardless of whether several vessels or operations are owned or conducted by the same person, and shall be carried aboard each vessel or otherwise be readily available for inspection at all times.~~

~~(c) The fee for the Northwest Hawaiian Islands fishing permit shall be \$50 and the duplicate license fee shall be \$10.]~~ [Eff 8/12/93; am 1/15/99; am and comp 8/27/21; R] (Auth: HRS §188-37) (Imp: HRS §188-37)

Historical note: §13-74-21 is based substantially upon chapter 13-46. [Eff 5/28/81; am 1/25/82; R 8/12/93]

§13-74-22 Bait license. (a) The department may issue to commercial marine licensees a license to take the following baitfishes for which an open season is declared:

- (1) 'Iao (*Atherinomorus insularum*);
- (2) Marquesan sardine (*Sardinella marquensis*);
- (3) Nehu (*Encrasicholina purpurea*);
- (4) Piha (*Spratelloides delicatulus*);
- (5) "Tabai" (*Mollienesia* spp.);
- (6) Threadfin shad (*Dorosoma petenense*);
- (7) Gold-spot herring (*Herklotsichthys quadrimaculatus*).

(b) Licenses for taking baitfishes other than nehu shall be issued for fishing operations where the fish caught are landed in the State, and where no baitfish caught are sold or transferred except for bait purposes.

(c) Licenses for taking nehu shall be issued only to persons employed on live-bait tuna boats, and only if their principal means of livelihood is derived from tuna fishing and the sale of tuna, where the fish caught are landed in the State, and the nehu is not sold to others.

(d) A separate license shall be required for each fishing vessel or independent fishing operation, regardless of whether several vessels or operations are owned or conducted by the same person, and shall be carried aboard each vessel or otherwise be readily available for inspection at all times.

(e) The fee for the bait license shall be [~~\$50~~] \$100, and the duplicate license fee shall be \$10.

(f) Each person issued a bait license shall, in addition to monthly catch reports pursuant to 13-74-20, submit baitfishing reports to the department. The baitfishing reports shall be submitted monthly in a form and manner provided by the department. The catch reports and baitfishing reports shall be subject to

13-74-2 and sections 189-3 and 189-3.5, HRS, and as
may be otherwise provided by rule or law. [Eff
8/12/93; am 1/15/99; am and comp 8/27/21; am and comp
] (Auth: HRS §§187A-5, 188-45) (Imp:
§§187A-5, 188-45)

Historical note: §13-74-22 is based substantially upon
chapter 13-72. [Eff 5/26/81; am 1/25/82; R 8/12/93]

13-74-23 Commercial marine vessel license. (a)

The department shall, upon receipt of a valid
application and appropriate fee payment, issue a
commercial marine vessel license to any qualified
individual.

(b) A qualified individual is anyone who:

- (1) Possesses a valid commercial marine license;
- (2) Is at least eighteen years old;
- (3) Provides proof of identify; and
- (4) Does not have any unmet child support
obligations pursuant to §189-2, HRS.

(c) Any qualified individual applying for a
commercial marine vessel license shall file an
application on an approved application form that is
available from the department. The application shall
be completed in its entirety. Failure to provide a
completed application or providing false or misleading
information on the application may result in delay or
denial of the application.

(d) A commercial marine vessel license shall be
valid from the date of issuance and shall expire on
the expiration date of the licensee's commercial
marine license. A commercial marine vessel license
shall only be valid for a specific vessel and is
nontransferable. A qualified individual may obtain
and possess more than one commercial marine vessel
license at a time.

(e) The fee for the issuance or renewal of a
commercial marine vessel license shall be:

- (1) \$100 for any vessel less than twenty-two
feet in length that is not used for longline

- fishing;
- (2) \$200 for any vessel twenty-two feet in length or greater that is not used for longline fishing; and
 - (3) \$1,500 for any vessel used for longline fishing, as defined in section 189-2.5, HRS.

The fee for a duplicate license shall be \$10.

(f) If a commercial marine vessel license is issued for a longline vessel, the commercial marine vessel licensee shall file an annual report with the department that contains the following information about all crew members who worked aboard the longline vessel during the license period:

- (1) Identity;
- (2) Nationality;
- (3) Arrival date in Hawai'i
- (4) Departure date; and
- (5) Any other information the department may require.

The longline annual report shall be submitted to the department within thirty days of the end of the license period.

(g) If a commercial marine vessel license is issued for a vessel providing charter services for the taking of marine life, the license shall satisfy the commercial marine license requirement for all crew members. The commercial marine vessel license does not exempt charter fishing vessel passengers or customers from the requirement to have a nonresident recreational marine fishing license or any other license required by law. For purposes of this section, a "passenger" is any individual on board a vessel who is not a member of the vessel's crew.

(h) If a vessel for which a commercial marine vessel license is obtained is lost, destroyed, stolen, sold, transferred, or otherwise no longer in the possession or control of the licensee, the licensee shall immediately notify the department, and the license shall be terminated.

(i) The commercial marine vessel license shall be kept aboard the vessel at all times while participating in commercial fishing activities and

shall be made available for inspection upon demand.

(j) Persons issued a commercial marine vessel license shall submit reports of the vessel's fishing activity. Such reports shall be submitted to the department monthly pursuant to section 13-74-2(5); provided that persons taking bottomfish, as defined in chapter 13-94, in the main Hawaiian islands shall, in addition to their monthly reports for species other than bottomfish, submit trip reports of their bottomfishing activity pursuant to section 13-74-2(6). The monthly and trip reports shall be subject to section 13-74-2, sections 189-3 and 189-3.5, HRS, and as may be otherwise provided by law. [Eff and comp] (Auth: HRS §§189-2, 189-3, 189-3.5) (Imp: HRS §§189-2, 189-3, 189-3.5)

SUBCHAPTER 4

OTHER LICENSES AND PERMITS

§13-74-40 Mullet pond operator and closed season sales license. (a) The department may issue to any owner or operator of a fish pond a license to lawfully catch young mullet, known as pua, during the closed season, for the purpose of stocking the owner's or operator's pond, and provided that any owner or operator of a fish pond and any dealer may lawfully sell such pond raised mullet during the closed season with such a license granting this privilege.

(b) A separate license shall be required for each fish pond or market operation, regardless of whether several fish pond or market operations from which the mullet are sold are owned or operated by the same person, and shall be readily available for inspection at all times.

(c) The fee for the mullet pond operator and closed season sales license shall be [~~\$50~~] \$100, and the duplicate license fee shall be \$10. [Eff 8/12/93; am 1/15/99; am and comp 8/27/21; am and comp

] (Auth: HRS §188-44) (Imp: HRS §188-44)

§13-74-41 Kona crab and lobster closed season sales license. (a) The department may issue a license to a commercial marine dealer, or any restaurant, to sell or serve during the closed season, Kona crabs or lobsters lawfully caught during the open season.

(b) Each licensee shall submit a report to the department within five days after the end of each of the closed season months. The report shall list the amount of remaining Kona crab and lobster in the licensee's inventory as of the end of the month.

(c) The fee for the Kona crab and lobster closed season sales license shall be [~~\$50~~] \$100, and the duplicate license fee shall be \$10. [Eff 8/12/93; am 1/15/99; am and comp 8/27/21; am and comp

] (Auth: HRS §188-57) (Imp: HRS §188-57)

§13-74-42 Special marine animal or product possession and sale license. (a) The department may issue a license to an importer, wholesaler, retailer, or restaurant to possess, sell, or offer for sale, any fish, shellfish, crustacean, or other marine animal, or any product made from such marine animals taken outside of the waters of the State, when such taking, possession, or sale of the same species is restricted if taken within the waters of the State.

(b) Licenses shall require the business' name, address, telephone number, name of applicant, and any other information the department may require.

(c) Each licensee shall furnish to the department monthly reports that include the following information:

- (1) If licensee is an importer:
 - (A) Species imported, source, quantity, and arrival date;
 - (B) Name and address of buyers, species

- sold, quantity, and date of such sale;
- (2) If licensee is a wholesaler:
 - (A) Source, quantity, and date purchased;
 - (B) Name and address of buyers, species sold, quantity, and date of such sale;
 - (3) If licensee is a retailer or restaurant:
 - (A) Source and date of purchase;
 - (B) Species and quantity sold.
 - (4) And any other such information the department may require.
- (d) The fee for the special marine animal or product possession and sale license shall be [~~\$50~~] \$100, and the duplicate license fee shall be \$10. [Eff 8/12/93; am 1/15/99; am and comp 8/27/21; am and comp] (Auth: HRS §189-6) (Imp: HRS §189-6)

Historical note: §13-74-42 is based substantially upon chapter 13-71. [Eff 5/26/81; R 8/12/93]

§13-74-43 Aquaculture license. (a) After review of a written application, the department may issue to any qualified aquaculturist~~[7]~~ a license to fish for, rear, possess, or sell any ~~[regulated]~~ aquatic life~~[7]~~ whose fishing, possession, or sale is prohibited by closed season, minimum size, or bag limit; provided that the qualified aquaculturist rears or reared the ~~[regulated]~~ aquatic life in an aquaculture facility for commercial purpose. To qualify for a license a qualified ~~[aquaculturists]~~ aquaculturist must satisfy the department that the qualified aquaculturist is able to maintain aquatic life or live rock alive and in good health in an aquaculture facility at all times in accordance with industry-wide standards.

(b) The licensee shall make and issue a receipt whenever a transaction concerning regulated aquatic life occurs. The receipt shall be a written record of the transaction and shall include:

- (1) The transaction date;
- (2) The name and address of the licensee, the

name of the person issuing the receipt, and the name and address of the person to whom the receipt is issued, except that the name and address of the person to whom the receipt is issued are not required if the transaction is with a person who will not resell the regulated aquatic life;

- (3) The name, weight, number or other appropriate measure of quantity, and value of all regulated aquatic life involved in the transaction; and
- (4) Any other information the department may require.

(c) The licensee shall keep all receipts on file and be able to present such receipts for inspection upon demand of any officer authorized to enforce the laws of the State. The receipts shall be kept for not less than twenty-four months after the transaction date or until the regulated aquatic life is no longer in the licensee's possession, whichever is longer. The department may approve the use of documents other than the receipts as written records of the transaction.

(d) The licensee shall submit to the department a summary report on or before July 31st of each year, covering the previous twelve-month period between July 1st to June 30th. The report shall provide an accounting of the regulated aquatic life received, bought, sold, transferred, or exchanged. The accounting shall include the items involved in a transaction, the sum of the weight, number or other appropriate unit of quantity, and value, along with any other information the department may require.

(e) Licensees that rear live rocks shall only use rocks for producing live rocks obtained from legal sources such as quarries or dredging operations [~~and may not fish for~~]. Harvesting, collecting, or otherwise obtaining live rocks from the wild[~~-~~] is strictly prohibited.

(f) Unless authorized in writing by the department, licensees shall not:

- (1) Release cultured aquatic life or live rock into state waters;

- (2) Fish for, in state waters, any regulated aquatic life or live rock;
- (3) Fish in areas where fishing is restricted by law; or
- (4) Use gear that the department has declared illegal except for small meshed nets, provided the net is not a small meshed thrownet.

(g) The department may restrict or prohibit the rearing of any aquatic life as authorized by this section, such as those species whose entry into or possession in the State is restricted or prohibited pursuant to the rules of the department of agriculture, those species that the state or federal governments may list as threatened or endangered, or any aquatic life the department may determine to be unsuitable for commercial rearing in the State or otherwise potentially detrimental to living aquatic resources in the State.

(h) The department may require licensees:

- (1) Who fish in the wild for regulated aquatic life to report such catches and to include in the report the species, numbers, size, fishing location, amount of fishing effort, and any other information for the purpose of this license. The regulated aquatic life taken from the wild may only be used for stocking into the aquaculture facility as juveniles or used as adults to provide broodstock material. The licensee may not sell or offer for sale any regulated aquatic life taken from the wild that is less than the minimum size as specified by law;
- (2) To obtain a Conservation District Use Permit pursuant to chapter 13-53, [~~Hawaii~~ ~~Administrative Rules~~ (]HAR[)] and a Right of Entry Permit pursuant to chapter 171, HRS, in addition to any other requirement of law; [~~and~~]
- (3) To provide a list of names of [~~commercial~~ ~~marine dealers~~] any person that will buy or obtain any regulated aquatic life that were

reared in the licensee's aquaculture facility. Any changes to the list shall be in writing~~[-]~~; and

(4) To submit additional monthly reports, trip reports, or other reports as required by the department.

(i) ~~[Each aquaculture facility shall have a separate license,]~~ A separate license shall be obtained for each aquaculture facility that rears, possesses, or sells regulated aquatic life, even if one person owns or operates several aquaculture facilities. A copy of the license shall be available for inspection upon the demand of any officer authorized to enforce the laws of the State, including whenever the regulated aquatic life are fished for, delivered, transported, or sold. The license shall be kept at the facility for immediate inspection.

(j) For purposes of this section:

"Aquaculture facility" means any farm, ranch, hatchery, pond, workplace, or place of business that is designed or intended for the rearing, breeding, or culturing of aquatic life or live rock in a controlled or managed salt, brackish, or freshwater environment.

"Regulated aquatic life" means any aquatic life or live rock whose fishing for, possession, or sale is ~~[regulated during]~~ prohibited by a closed season, [or when regulated by a] minimum size, or bag limit as specified in subtitle 5 or title 12 or administrative rules.

(k) The license fee shall be ~~[\$50.]~~ \$100, and the duplicate license fee shall be \$10. [Eff 8/8/96; comp 8/27/21; am and comp] (Auth: HRS §§187A-3.5, 187A-5, 188-44, 188-68) (Imp: HRS §§187A-3.5, 187A-5, 188-44, 188- 68)

§13-74-44 License to sell reared species. (a)

The department may issue to any person a license to possess, sell, or offer for sale ~~[regulated]~~ any aquatic life~~[-]~~ whose possession or sale is prohibited by a closed season, minimum size, or bag limit;

provided that [~~a qualified aquaculturist has reared~~] the [~~regulated~~] aquatic life was reared in a licensed aquaculture facility.

(b) The licensee shall keep a receipt issued by the licensed aquaculture facility when receiving or buying the regulated aquatic life.

(c) The licensee shall issue a receipt to the person to whom the regulated aquatic life is sold or transferred. The receipt shall be a written record of the transaction and shall include:

- (1) The transaction date;
- (2) The names and addresses of the licensee, the person issuing the receipt, and the person to whom the receipt is issued, except that the name and address of the person to whom the receipt is issued are not required if the transaction is with a person that will not resell the regulated aquatic life;
- (3) The name, weight, number or other appropriate measure of quantity, and value of all regulated aquatic life involved in the transaction; and
- (4) Any other information the department may require.

(d) The licensee shall keep on file and be able to present for inspection upon demand of any officer authorized to enforce the laws of the State, a copy of all receipts for not less than twenty-four months after the transaction date or until the regulated aquatic life is no longer in the licensee's possession, whichever is longer. The department may approve the use of documents other than the receipts as written records of the transaction.

(e) [~~Each market outlet that sells or offers for sale the regulated aquatic life shall have a separate license,~~] A separate license shall be obtained for each market outlet that sells or offers for sale the regulated aquatic life, even if the same person owns or operates several outlets. The license shall be kept at the market outlet for immediate inspection upon demand of any officer authorized to enforce the laws of the State.

(f) The department may require submittal of monthly reports, pursuant to the purposes of this section.

(g) For the purposes of this section:

"Licensed aquaculture facility" means any aquaculture facility licensed pursuant to section 13-74-43.

"Regulated aquatic life" means any aquatic life or live rock whose fishing for, possession, or sale is ~~[regulated during]~~ prohibited by a closed season, ~~[or when regulated by a]~~ minimum size, or bag limit as specified in subtitle 5 of title 12 or administrative rules.

(h) The fee for the license shall be ~~[waived with the]~~ \$200. The license shall be valid for not longer than two years ~~[from the date of issuance.]~~, and the duplicate license fee shall be \$10. [Eff 8/8/96; am 5/22/00; comp 8/27/21; am and comp

] (Auth: HRS §§187A-3.5, 187A-5)

(Imp: HRS §§187A- 3.5, 187A-5)

§13-74-45 Commercial marine dealer license. (a)

No person shall sell, offer for sale, exchange, or act as an agent in the sale, exchange, or transfer of marine life obtained directly from a commercial marine licensee, unless they possess a valid commercial marine dealer license; provided that a commercial marine licensee who sells or exchanges self-caught marine life at retail and complies with the reporting requirements of section 13-74-2 shall not be required to hold a commercial marine dealer license.

(b) A commercial marine dealer licensee shall not sell or offer for sale, purchase or attempt to purchase, exchange, or act as an agent in the sale, exchange, or transfer of any marine life taken within the jurisdiction of the State for commercial purpose that is obtained from any person who does not have a valid commercial marine license, commercial marine dealer license, or other license or permit authorizing such sale, purchase, exchange, or transfer for

commercial purpose.

(c) Each market outlet where marine life that is obtained directly from a commercial marine licensee is sold for commercial purposes shall have a separate commercial marine dealer license, even if one person owns or operates several market outlets. A copy of the license shall be kept at the market outlet and shall be made available for immediate inspection upon the demand of any officer or agent authorized to enforce the laws of the State.

(d) The fee for a commercial marine dealer license shall be \$100 and the duplicate license fee shall be \$10.

(e) Every holder of a commercial marine dealer license shall comply with the reporting requirements of 13-74-46.

(f) For purposes of this section, "market outlet" means a location where marine life is sold or offered for sale. A market outlet can be a physical location such as a retail market or restaurant or an online location such as a website specifically designed to facilitate the sale of marine life. [Eff and comp] (Auth: HRS §189-10) (Imp: HRS §189-10)

§13-74-46 Commercial marine dealer report. (a)

Every commercial marine dealer shall submit to the department a report of all marine life obtained, purchased, transferred, exchanged, or sold during a weekly reporting period, which begin on Sundays and end on the following Saturdays. A report shall be submitted to the department by the Tuesday following the end of each weekly reporting period. Reports shall contain the following information:

- (1) The name, address, and telephone number of the commercial marine dealer;
- (2) The time period for which the report is being submitted;
- (3) The species, numbers, weights, and values of each of the varieties of marine life landed

in the State that the dealer obtained, purchased, transferred, exchanged, or sold during the reporting period;

- (4) The name and current license number of the commercial marine licensee from whom the marine life was obtained or purchased; and
- (5) Other information as required on forms provided by, or as directed in writing by, the department.

(b) Reports shall be submitted to the department weekly." [Eff 1/7/18; comp 8/27/21; comp
] (Auth: HRS §189-10) (Imp: HRS §189-10)

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

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

4. These amendments to and compilation of chapter 13-74, 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.

DAWN N.S. CHANG
Chairperson
Board of Land and Natural
Resources

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General