

**PRE-PUBLIC HEARING SMALL BUSINESS IMPACT STATEMENT  
TO THE  
SMALL BUSINESS REGULATORY REVIEW BOARD**  
(Hawaii Revised Statutes §201M-2)

Date: \_\_\_\_\_

Department or Agency: \_\_\_\_\_

Administrative Rule Title and Chapter: \_\_\_\_\_

Chapter Name: \_\_\_\_\_

Contact Person/Title: \_\_\_\_\_

E-mail: \_\_\_\_\_ Phone: \_\_\_\_\_

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7?

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Yes

☐

No

If "Yes," provide details: \_\_\_\_\_

**I. Rule Description:**

☐

New

☐

Repeal

☐

Amendment

☐

Compilation

**II. Will the proposed rule(s) affect small business?**

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Yes

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No

(If "No," no need to submit this form.)

\* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

\* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part-time employees in Hawaii." HRS §201M-1

**III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?**

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Yes

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No

(If "Yes" no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

**IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))**

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Yes

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No

(If "Yes" no need to submit this form.)

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**If the proposed rule affects small business and are not exempt as noted above, please provide a reasonable determination of the following:**

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.
  
  
  
  
  
  
  
  
  
  
2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

If the proposed rule imposes a new or increased fee or fine:

- a. Amount of the current fee or fine and the last time it was increased.
  
  
  
  - b. Amount of the proposed fee or fine and the percentage increase.
  
  
  
  - c. Reason for the new or increased fee or fine.
  
  
  
  - d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).
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3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.
5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.
6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.
7. How the agency involved small business in the development of the proposed rules.
  - a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

8. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

If yes, please provide information comparing the costs and benefits of the proposed rules to the costs and benefits of the comparable federal, state, or county law, including the following:

- a. Description of the public purposes to be served by the proposed rule.
- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.
- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.
- d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.
- e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.

\* \* \*

Small Business Regulatory Review Board / DBEDT  
Phone: (808) 586-2594 / Email: [DBEDT.sbrrb.info@hawaii.gov](mailto:DBEDT.sbrrb.info@hawaii.gov)

This Statement may be found on the SBRRB Website at: <http://dbedt.hawaii.gov/sbrrb/resources/small-business-impact-statements>

## **ATTACHMENT A: Supplement to the Pre-Public Hearing Small Business Impact Statement to the Small Business Regulatory Review Board**

### **HAR Chapter 13-74 – License and Permit Provisions and Fees for Fishing, Fish, and Fish Products**

#### **A. Statement of the topic of the proposed rules or a general description of the subjects involved:**

Request to Hold Public Hearings on Proposed Amendments to and Compilation of Chapter 13-74, Hawaii Administrative Rules, "License and Permit Provisions and Fees for Fishing, Fish, and Fish Products," to Establish and Add Provisions for a New Nonresident Recreational Marine Fishing License Pursuant to Section 188-72, Hawaii Revised Statutes (HRS), Establish and Add Provisions for a New Commercial Marine Vessel License Pursuant to HRS §189-2, Establish and Add Provisions for a New Commercial Marine Dealer License Pursuant to HRS §189-10, Increase the Fee for the Bait License, the Mullet Pond Operator and Closed Season Sales License, the Kona Crab and Lobster Closed Season Sales License, the Special Marine Animal or Product Possession and Sale License, and the Aquaculture License from \$50.00 to \$100.00, Establish a Fee of \$200 for a License to Sell Reared Species, Clarify the Penalties for Violations of the Chapter, Add Asset Forfeiture as an Administrative Enforcement Tool Within the Chapter, and make Other Non-Substantive Housekeeping Amendments for Clarity and Consistency With Other Chapters.

#### **B. III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?**

The Nonresident Recreational Marine Fishing License is being adopted to implement HRS §188-72, which does not require the agency to interpret the requirements of the statute. The remaining proposed rule amendments are not strictly constrained by statutory requirements and allow DLNR-DAR to establish requirements through rulemaking.

#### **1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.**

Small businesses required to comply with the proposed rules will include:

- a) Commercial Marine Dealers including seafood dealers, wholesalers, and restaurants that buy marine life landed in the State of Hawaii directly from commercial fishers.
- b) Commercial fishers that possess a bait license.
- c) Mullet pond operators that catch juvenile striped mullet lawfully in the closed season and sell such pond raised mullet during the closed season.
- d) Businesses or individuals that possess, sell, or offer for sale during the closed season Kona crab or lobster lawfully caught in Hawaii waters during the open season.
- e) Businesses or individuals that possess, sell, or offer for sale any marine animal taken outside of waters of the State when such taking, possession, or sale is prohibited within waters of the of the State.
- f) Aquaculture facility operators that fish for, rear, possess, or sell aquatic life whose fishing, possession, or sale is prohibited by closed season, minimum size, or bag limit.

- g) Businesses or individuals that possess, sell, or offer for sale any aquatic life whose fishing, possession, or sale is prohibited by closed season, minimum size, or bag limit provided that the aquatic life was reared in a licensed aquaculture facility.

**2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.**

Commercial Marine Dealers, noted above as a), will be required to obtain an annual \$100 Commercial Marine Dealer License. Commercial Marine Dealers are currently required to register and report their transactions weekly and there will be no change to the existing reporting requirement.

Licenses to sell or possess certain regulated species, noted above as b) through g), will cost \$100 annually. Reporting requirements for particular licenses will increase, i.e., Bait License, but not beyond what is currently required for other commercial take.

**If the proposed rule imposes a new or increased fee or fine:**

**a) Amount of the current fee or fine and the last time it was increased.**

- Bait license - \$50, 1999
- Mullet pond operator and closed season sales license - \$50, 1999
- Kona crab and lobster closed season sales license – \$50, 1999
- Special marine animal or product possession and sale license - \$50, 1999
- Aquaculture license - \$50, 1996
- License to sell reared species – free (fee waived)
- Commercial marine dealer license – no existing license

**b) Amount of the proposed fee or fine and the percentage increase.**

- Bait license - \$100 (100% increase)
- Mullet pond operator and closed season sales license - \$100 (100% increase)
- Kona crab and lobster closed season sales license – \$100 (100% increase)
- Special marine animal or product possession and sale license - \$100 (100% increase)
- Aquaculture license - \$100 (100% increase)
- License to sell reared species – \$200 for two-year license (no previous fee)
- Commercial marine dealer license – \$100 (no previous fee)

**c) Reason for the new or increased fee or fine.**

The new Commercial Marine Dealer License fee will offset some of the administrative costs to issue the license and develop and maintain the Dealer Licensing and Reporting System.

Fee increases for existing licenses reflect increased costs of issuing these licenses and maintain online licensing systems.

**3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.**

The new Commercial Marine Dealer License fees and the increased fees for the other specialized fishing and dealer licenses are expected to generate approximately \$37,650, which will be deposited into DAR's commercial fish special fund. This fund is used to support DAR's commercial fisheries program (licensing and data processing staff salary and supplies).

The new optional Commercial Marine Vessel License fees are not expected to generate additional revenue. Any revenue generated from CMVLs would be offset by losses from less purchases of individual Commercial Marine Licenses.

The new Nonresident Recreational Marine Fishing License fees are expected to generate approximately \$1 million annually, which will be deposited into DAR's Sportfish Special Fund and used to support recreational fishing projects, such as DAR's Fish Aggregation Device (FAD) program, artificial reefs, stock enhancement, habitat improvement, and outreach and education.

**7. How the agency involved small business in the development of the proposed rules.**

**a) If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.**

Scoping Commercial Marine Dealers provided the recommendation that the Commercial Marine Dealer License either be forgone or offered at a much lower fee than the proposed \$100. Eliminating the licensing requirement altogether was not adopted as it would not achieve any of DARs stated goals including increasing compliance and enforcement capability. The recommendation to lower the proposed fee was not adopted as DAR feels it is reasonable and commensurate with other DAR-issued licenses.

Charter operators proposed several recommendations including no additional licensing requirement for non-resident recreational fishers and an alternative in which the charter operator would incur part, or all of the licensing costs directly to avoid the licensing requirement falling on their clients. Complete elimination of the proposed Non-Resident Recreational Marine Fishing Licenses was not adopted as it would not be consistent with statutory requirements. The option to pass on client's licensing costs directly to the charter operator was an innovative solution, but was ultimately not adopted as it would require modification to the statute.

Commercial fishers offered some recommendations regarding the Commercial Marine Vessel License including varied pricing for non-longline vessels based on size. This recommendation was found to be valid and was adopted. Longline representatives also provided input regarding average crew size and appropriate cost. Their input was considered in creating the proposed longline-specific vessel fee.