

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-77.1
Hawaii Administrative Rules

[INSERT DATE OF FINAL BLNR APPROVAL]

1. Chapter 13-77.1, Hawaii Administrative Rules, entitled "Aquarium Fishery 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 77.1

AQUARIUM FISHERY MANAGEMENT

Subchapter 1 General Provisions

§13-77.1-1	Applicability and scope
§13-77.1-2	Penalty
§13-77.1-3	Asset forfeiture
§13-77.1-4	Severability
§13-77.1-5	Definitions
§13-77.1-6	Prohibited activities; exemptions

- §13-77.1-7 State of Hawai'i aquarium fish permit
- §13-77.1-8 Commercial aquarium collecting vessels;
registration and marking requirements
- §13-77.1-9 Commercial aquarium dealer registration
and requirements
- §13-77.1-10 Reserved

Subchapter 2 West Hawai'i Aquarium Fishery

- §13-77.1-11 Applicability
- §13-77.1-12 West Hawai'i prohibited activities
- §13-77.1-13 West Hawai'i geographical endorsement
- §13-77.1-14 West Hawai'i commercial aquarium
species whitelist and annual catch
limits (ACLs)

SUBCHAPTER 1

GENERAL PROVISIONS

§13-77.1-1 Applicability and scope. This chapter applies to the taking of marine life for aquarium purposes. [Eff _____] (Auth: HRS §§187A-5, 190-3) (Imp: HRS §§187A-5, 190-3)

§13-77.1-2 Penalty. (a) Any person who violates any provision of this chapter or the terms and conditions of any permit issued as provided by this chapter shall be subject to:

- (1) Administrative penalties as provided by section 187A-12.5, HRS;
- (2) Criminal penalties as provided by section 188-70, HRS;
- (3) Revocation of their state of Hawai'i aquarium fish permit, commercial marine license, commercial marine vessel license, commercial marine dealer license, or any other license or permit involved in the

violation or infraction pursuant to section 13-74-3; and

(4) Any other penalty as provided by law.

(b) In addition to any other penalties provided by law, any person whose permit has been revoked shall not be eligible to apply for another state of Hawai'i aquarium fish permit until the expiration of one year from the date of revocation. [Eff]
(Auth: HRS §§187A-5, 190-3) (Imp: HRS §§187A-12.5, 187A-13, 190-5)

§13-77.1-3 Asset forfeiture. Any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of this chapter, may be seized and subject to forfeiture as provided by section 199-7 and chapter 712A, HRS. [Eff] (Auth: HRS §§187A-5, 190-3) (Imp: HRS §199-7, ch. 712A)

§13-77.1-4 Severability. If any provision of this chapter, or the application thereof, to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff] (Auth: HRS §§187A-5, 190-3, 1-23) (Imp: HRS §§187A-5, 190-3, 1-23)

§13-77.1-5 Definitions. As used in this chapter, unless otherwise provided:

"Annual catch limit" or "ACL" is the maximum commercial harvest in a given fishing year established for any marine fishery subject to closure. The catch is measured in number of specimens collected through cumulative reported landings by state of Hawai'i aquarium fish permittees.

"Aquarium collecting gear" means any equipment or gear adapted, designed, or commonly used to collect,

capture or maintain marine life alive in a state of captivity, including but not limited to hand nets, fence or barrier nets, fiberglass, plastic, wood or metal 'tickle sticks' (including spears or similar implements used to manipulate the movement of aquarium fish or animals), catch buckets, keeps, baskets or venting needles.

"Aquarium collecting vessel" means any motorized or non-motorized vessel used by any person to collect, ferry, or scout for aquarium fish or animals.

"Aquarium purposes" means to hold marine 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. Marine life collected under a valid aquarium permit may not be used for human consumption, for bait, or for other consumptive purposes.

"Broodstock" means reproductively mature marine life that breed and produce offspring, usually collected for aquaculture or educational purposes.

"Commercial aquarium collection season" means the time period during which the taking of specimens of species of marine life, listed in a whitelist pursuant to subchapter 2, is allowed.

"Commercial aquarium collecting trip" means a one way or round trip in state marine waters aboard any aquarium collecting vessel where any taking of marine life for commercial aquarium purposes occurs, and generally includes when an aquarium collecting vessel has left port or shore until it puts into port or goes ashore, even if not to the point of origin.

"Commercial aquarium dealer" means any commercial marine dealer who purchases, obtains, exchanges, transfers, possesses, sells, or offers for sale any live specimen of marine life taken within the jurisdiction of the state for commercial aquarium purposes.

"Commercial aquarium purposes" means the taking or possession of marine life to hold alive in a state of captivity for profit, gain, or sale, or to barter, exchange, offer for sale, or purchase upon an offer for sale. For the purpose of this chapter,

"commercial aquarium purposes" does not include the taking of broodstock under a valid special activity permit issued by the department pursuant to section 187A-6, HRS, or any rule adopted thereunder; additionally, "commercial aquarium purposes" does not include the taking of marine life for educational or scientific purposes by non-profit organizations, educational institutions, or any other group or entity that charges only a nominal fee enough to cover administrative costs.

"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 license issued by the department, pursuant to section 189-2, HRS, for the taking of marine life for commercial purposes as defined in section 189-2, HRS.

"Criminal aquatic resource violation" means a violation of any provision of Title 12, Subtitle 5, Hawaii Revised Statutes, "Aquatic Resources and Wildlife" or any rules adopted thereunder for which a person is found guilty of a petty misdemeanor or higher.

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

"Designee" means an individual on behalf of whom an organization applies for a state of Hawai'i aquarium fish permit to allow that individual to take marine life for commercial aquarium fish purposes under the organization's approved final environmental assessment or final environmental impact statement relating to the taking of marine life for aquarium purposes.

"Division" means the division of aquatic resources.

"Environmental impact statement" or "EIS" means an informational document prepared in compliance with chapter 343, HRS, and chapter 11-200.1. The initial EIS filed for public review is referred to as the DEIS and is distinguished from the FEIS, which is the

document that has incorporated the public's comments and the responses to those comments. The FEIS is the document that shall be evaluated for acceptability by the accepting authority.

"Final environmental assessment" means the environmental assessment submitted by an approving agency following the public review and comment period for the draft EA and in support of a FONSI.

"Finding of no significant impact" or "FONSI" means a determination by an agency based on an EA that an action not otherwise exempt will not have a significant effect on the environment and therefore does not require the preparation of an EIS.

"Fine mesh aquarium net" or "fine mesh aquarium trap" means any trap or net with a mesh size smaller than what is allowed by law and is used to take marine life for aquarium purposes.

"Fine mesh hand net" or "fine mesh scoop net" means a net consisting of a bag of mesh material attached to a frame to hold the bag open, and a handle with a stretched mesh of less than two inches. The net is small enough to use with one hand by one person.

"Fishing gear" means a pole, line, hook, net, trap, spear, or other device that is designed to catch, take, or harvest marine life.

"Geographical endorsement" means an addition to the state of Hawai'i aquarium fish permit that authorizes the holder to use their permit in a specific geographic region.

"HEPA exemption" means a finding by the department, in its capacity as an approving authority pursuant to chapter 343, HRS, and chapter 11-200.1, that a proposed applicant action is covered under one or more of the exempted specific actions listed in part 1 and general types of actions listed under part 2 of the department's exemption list, established pursuant to chapter 11-200.1, subchapter 8.

"Hīnālea 'i'iwi" means any fish known as *Gomphosus varius* or any recognized synonym. Hīnālea 'i'iwi are also known as bird wrasse.

"Initial application" means the first application submitted for a permittee where the permittee has not been previously issued a state of Hawai'i aquarium fish permit pursuant to this chapter.

"Lau'ipala" means any fish known as *Zebrasoma flavescens* or any recognized synonym. Lau'ipala are also known as yellow tang.

"Live rock" means any natural hard substrate to which marine life is visibly attached or affixed.

"Mā'i'i'i" means any fish known as *Acanthurus nigrofuscus* or any recognized synonym. Mā'i'i'i are also known as brown surgeonfish.

"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 seaweed or other marine plants, including any part, product, seed, or holdfast thereof.

"Non-commercial aquarium purposes" means the taking or possession of marine life to hold alive in a state of captivity for personal, cultural, or recreational use, and not for compensation of any kind.

"Party" means a named applicant on a final environmental assessment or final environmental impact statement that has been accepted pursuant to chapter 343, HRS, and chapter 11-200.1.

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

"Sell" means to solicit and receive an order for; to have, or keep, or offer, or expose for sale; to deliver for value or in any other way than purely gratuitously; to peddle; to keep with intent to sell; and to traffic in.

"State of Hawai'i aquarium fish permit" means a permit issued by the department to take marine life for commercial aquarium purposes.

"State of Hawai'i aquarium fish permittee" means any person with a valid State of Hawai'i aquarium fish permit issued by the department to take marine life for commercial aquarium purposes.

"Thompson's Surgeonfish" means any fish known as *Acanthurus thompsoni* or any recognized synonym.

"Whitelist" means a list of species of marine life that may be taken for commercial aquarium purposes. [Eff _____] (Auth: HRS §§187A-5, 190-3) (Imp: HRS §§187A-5, 190-3)

§13-77.1-6 Prohibited activities; exemptions.

(a) Except as provided in subsections (b) and (c), it is unlawful to take marine life for aquarium purposes without a valid state of Hawai'i aquarium fish permit issued by the department pursuant to section 7.

(b) Any person may, without a valid state of Hawai'i aquarium fish permit, take up to five specimens of marine life per person per day for non-commercial aquarium purposes, provided that the marine life is taken in compliance with all laws of the state including bag limits, size limits, open and closed seasons, gear restrictions, and licensing and permit requirements.

(c) The department may issue special activity permits pursuant to section 187A-6, HRS, or any rules adopted thereunder, to allow any action that would otherwise be prohibited by this chapter.

(d) No person aboard any vessel shall engage in commercial aquarium collecting activities unless the vessel complies with the restrictions and requirements of section 8. [Eff _____] (Auth: HRS §§187A-5, 188-53, 190-3) (Imp: HRS §§187A-5, 188-53, 190-3)

§13-77.1-7 State of Hawai'i aquarium fish permit. (a) Applications for the issuance or renewal of state of Hawai'i aquarium fish permits and geographical endorsements will be accepted by the division for a period of thirty days from the effective date of this chapter and from October 1 until November 30 of each year thereafter, provided that:

- (1) Any application received outside of the aforementioned application periods will be denied and a new application will need to be submitted for the following application period;
- (2) Upon receipt of an application, DAR will review each application within a reasonable time period and inform the applicant if more information is needed to satisfy all the application requirements;
- (3) When all application requirements are fulfilled, DAR will provide a statement of preliminary approval indicating that the applicant has satisfied the department that they have met all the necessary application requirements and criteria to receive a state of Hawai'i aquarium fish permit with any applicable geographical endorsement as requested in the application;
- (4) After the close of each application period, DAR will conduct a final review of all applications received and will inform each applicant whether or not the application has been approved or denied within ten business days, clearly specifying the basis for which any denial was made;
- (5) The state of Hawai'i aquarium fish permit fee is \$100, which shall be paid, as specified by the division, prior to issuance of a State of Hawai'i aquarium fish permit to an approved applicant;
- (6) Upon receipt of the appropriate fee payment, the division shall send each state of Hawai'i aquarium fish permit and applicable geographical endorsement(s), including any applicable terms and conditions, to each approved applicant within five business days.

(b) In addition to the general license provisions in ch. 13-74, subchapter 1, the following terms and conditions apply for all state of Hawai'i aquarium fish permits:

- (1) A state of Hawai'i aquarium fish permit:
 - (A) Shall be valid for a period of not more than one year and shall expire on December 31 of each year;
 - (B) Is non-transferable; and
 - (C) May not be used by anyone other than the permittee named on the permit.
- (2) Each valid state of Hawai'i aquarium fish permit shall include at least one geographical endorsement issued pursuant to this chapter, and each state of Hawai'i aquarium fish permit shall only be valid for use in the geographical region(s) covered under the geographical endorsement(s) attached to the state of Hawai'i aquarium fish permit.
- (3) Each geographical endorsement issued pursuant to this chapter shall include a clear description of the region covered under the geographical endorsement as well as any region-specific terms and conditions such as:
 - (A) Gear restrictions;
 - (B) Species whitelist;
 - (C) Bag limits;
 - (D) Size limits;
 - (E) Open and closed seasons;
 - (F) Annual catch limits;
 - (G) Individual catch quotas; and
 - (H) Any other region-specific term and condition as the department finds necessary to carry out the purpose of this chapter.
- (4) Any state of Hawai'i aquarium fish permit applicant wishing to take marine life for commercial aquarium purposes must satisfactorily demonstrate to the division that they:
 - (A) Have a valid commercial marine license issued by the department pursuant to section 13-74-20, and section 189-2, HRS;

- (B) Are a party of an approved environmental assessment with a finding of no significant impact (EA/FONSI) or an accepted environmental impact statement (EIS) relating to the taking of marine life for aquarium purposes covering the area of the geographical endorsement requested, provided that:
 - (i) If the applicant is a group or organization, the organization may, on an initial application for a state of Hawai'i aquarium fish permit, name a designee to receive the permit under the organization's EA/FONSI or approved EIS;
 - (ii) It is the sole responsibility of the designee to ensure they satisfy all other application requirements; and
 - (iii) Upon approval of the application and issuance of a state of Hawai'i aquarium fish permit, it is the sole responsibility of the designee to comply with all terms and conditions of the state of Hawai'i aquarium fish permit and any attached geographical endorsement;
 - (C) Have not been convicted of a criminal aquatic resource violation within the past five years; and
 - (D) Possess facilities to and can maintain fish and other marine life alive and in reasonable health.
- (5) Any person with a valid state of Hawai'i aquarium fish permit and geographical endorsement issued pursuant to this chapter may use fine mesh aquarium nets and traps to take marine life for commercial aquarium purposes pursuant to the terms and conditions of their state of Hawai'i

aquarium fish permit and geographical endorsement.

- (6) All marine life collected for aquarium purposes must be documented in a written "at sea report" prior to the aquarium collecting vessel's final departure to the landing port, provided that:

(A) "At sea reports" must be submitted to the division electronically, in a manner specified by the division in the terms and conditions of the permit or geographical endorsement, prior to final departure to the landing port, except that in areas where there is no mobile connectivity, reports must be submitted as soon as mobile connectivity returns and prior to landing;

(B) For commercial aquarium collecting trips in which more than one state of Hawai'i aquarium fish permittee participates, only one "at sea report" is required to fulfill the "at sea report" requirement for all permittees on the trip as long as the "at sea report" clearly states the name, permit number, and number of specimens of each species taken by each permittee that participated in the trip;

(C) Collectors may create their own reporting forms, provided that the reporting form includes the following information:

- (i) Date of the commercial aquarium collecting trip;
- (iii) Port of landing;
- (iv) Vessel identification number;
- (v) Commercial marine vessel license number, if applicable;
- (vi) Vessel operator name and commercial marine license number,

- if operator is not covered under a commercial marine vessel license;
- (vii) Name and permit number of all state of Hawai'i aquarium fish permittees participating in the commercial aquarium collecting trip;
 - (viii) Number of each whitelist species collected by each permittee; and
 - (ix) Any other additional information as requested by the division;
- (D) Once reported at sea, all marine life, must be retained and remain in the possession of the reporting permittee until their transfer to a registered commercial aquarium dealer, except that dead marine life collected under the permit may be disposed of prior to the transfer, provided that all dead marine life is reported in accordance with subsection (b) (8); and
- (E) The total number of fish reported at sea for each species shall not differ by more than five percent of the actual number landed.
- (7) Within one calendar day after the end of each commercial aquarium collecting trip and before submission of a final aquarium catch report, all live marine life caught must be transferred to a registered commercial aquarium dealer.
- (8) A final aquarium catch report with confirmed catch numbers shall be submitted within one calendar day after the end of each commercial aquarium collecting trip, provided that:
- (A) The department shall provide the permittee with blank report forms or, if submitted electronically, with the necessary digital reporting form to fulfill the requirements of this section;

- (B) Only reports submitted using the DAR-provided report form or digital reporting form will be accepted; and
- (C) Reports shall include:
 - (i) All marine life taken, including organisms that died while in possession of the permittee;
 - (ii) Total number of mortalities by species while in the possession of the permittee; and
 - (iii) The name, contact information, and commercial marine dealer license number of each dealer sold to.
- (9) Any net or container employed underwater to capture or hold marine life alive for aquarium purposes, must be labeled with the commercial marine license number or numbers of the person or persons owning, possessing or using the equipment.
 [Eff _____] (Auth: HRS §§187A-5, 188-31, 188-53, 190-3) (Imp: HRS §§187A-5, 188-31, 188-53, 190-3)

§13-77.1-8 Commercial aquarium collecting vessels; registration and marking requirements. (a)

All commercial aquarium collecting vessels shall:

- (1) Be registered every year with the division. Each registration shall be valid for one year from the date of registration. The current vessel identification number issued by either the department or the United States Coast Guard shall serve as the registration number for each vessel;
- (2) Clearly display the capital letters "AQ" permanently affixed to both sides of the vessel, either near the top of the gunwales or on the superstructure, provided that the "AQ" letters do not need to be displayed or visible when the vessel is not engaged in a commercial aquarium collecting trip. Unless otherwise specified, the "AQ" letters shall be no less than six inches high and three

- inches wide in either black or a color that contrasts with the background;
- (3) Fly a "stiffened" flag or pennant with the letter "A", as specified by the department, in a manner and location on the boat where the flag or pennant is clearly visible from all sides of the vessel at all times while aquarium collecting gear or collected aquarium marine life or both are onboard, provided that the department shall make available for purchase the specified flag or pennant "at cost" to aquarium permittees;
 - (4) Display a dive flag at all times when divers are in the water; and
 - (5) In the event an aquarium collecting vessel becomes inoperable, the operator of the vessel shall immediately notify the department's division of conservation and resources enforcement or United States Coast Guard or both by VHF radio or by cellular phone or both.

(b) Neither a valid state of Hawai'i aquarium fish permit nor a valid geographical endorsement authorizes assistance by non-permitted individuals during any aquarium collecting activities. However, non-permitted individuals may participate in a commercial aquarium collecting trip, provided that:

- (1) Non-permitted individuals shall not engage in any aquarium collecting activities;
- (2) For the purpose of accompanying a state of Hawai'i aquarium fish permittee as a safety dive partner, up to one non-permitted individual is allowed in the water; and
- (3) All non-permitted individuals must either have a valid individual commercial marine license or be covered by a valid commercial marine vessel license issued for the commercial aquarium vessel.

[Eff _____] (Auth: HRS §§187A-5, 188-53, 188F-6, 190-3) (Imp: HRS §§187A-5, 188-53, 188F-6, 190-3)

§13-77.1-9 Commercial aquarium dealer registration and requirements. (a) It is unlawful for any person to purchase, obtain, exchange, transfer, or sell any live specimen of marine life taken within the jurisdiction of the state for commercial aquarium purposes without first registering as a commercial aquarium dealer, provided that a state of Hawai'i commercial aquarium permittee may sell their catch to a registered commercial aquarium dealer without registering as a commercial aquarium dealer.

(b) It is unlawful for any person to purchase, obtain, exchange, transfer, or sell any non-whitelist species of marine life taken within the jurisdiction of the state for commercial aquarium purposes.

(c) Only a person with a valid commercial marine dealer license issued pursuant to section 13-74-45 is eligible to register as a commercial aquarium dealer.

(d) A registered commercial aquarium dealer must comply with the requirements of section 189-11, HRS.

(e) When the commercial aquarium fishing season for a given species is closed due to an ACL being reached, no specimens of that species may be purchased, obtained, exchanged, transferred, possessed, or sold, provided that specimens obtained prior to the date of closure may be possessed and sold after the date of closure.

(f) Every registered commercial aquarium dealer shall include with their weekly commercial marine dealer report, required pursuant to section 13-74-46, a report of the total number of specimens of each species exported out of the state for commercial aquarium purposes. [Eff _____] (Auth: HRS §§189-10, 189-11, 187A-5, 188-31.5, 188-53, 190-3) (Imp: HRS §§189-10, 189-11, 187A-5, 188-31.5, 188-53, 190-3)

§13-77.1-10 Reserved.

SUBCHAPTER 2

WEST HAWAI'I AQUARIUM FISHERY

§13-77.1-11 Applicability. This subchapter applies to the taking of marine life for aquarium purposes from the "West Hawai'i Regional Fishery Management Area, Hawai'i" (WHRFMA) as described in section 13-60.4-2. [Eff] (Auth: HRS §§187A-5, 188F-6, 190-3) (Imp: HRS §§187A-5, 188F-3, 190-3)

§13-77.1-12 West Hawai'i prohibited activities.

- (a) In addition to the restrictions and requirements in chapter 13-60.4 and any other restriction or requirement provided by law, it is unlawful to:
- (1) Take marine life for commercial aquarium purposes within the WHRFMA without a valid:
 - (A) State of Hawai'i aquarium fish permit issued pursuant to subchapter 1; and
 - (B) West Hawai'i geographical endorsement issued pursuant to this subchapter; and
 - (2) Possess aquarium collecting gear, or take or possess any specimen of marine life for aquarium purposes between sunset and sunrise, provided that collecting gear or collected marine life may be possessed after sunset or before sunrise if notification by phone is made to the division's West Hawai'i office prior to sunset. The notification shall include the names of individuals who plan to possess the gear or marine life and the location where the possession will take place. [Eff] (Auth: HRS §§187A-5, 188-53, 188F-6, 190-3) (Imp: HRS §§187A-5, 188-53, 188F-3, 190-3)

§13-77.1-13 West Hawai'i geographical endorsement. (a) The department may issue a West Hawai'i geographical endorsement authorizing state of

Hawai'i aquarium fish permittees to take marine life for commercial aquarium purposes within the WHRFMA, subject to the regulations in this subchapter.

[Eff _____] (Auth: HRS §§187A-5, 188-31, 188-35, 188F-6, 190-3) (Imp: HRS §§187A-5, 188-31, 188-35, 188F-3, 190-3)

§13-77.1-14 West Hawai'i commercial aquarium species whitelist and annual catch limits (ACLs). (a)

Except as prohibited in section 13-60.4-5, subsection (b), state of Hawai'i aquarium fish permittees may take or possess within the WHRFMA, for commercial aquarium purposes, only specimens of the following whitelist of species, provided that the yearly amount taken for each species does not exceed the ACL for each species indicated below:

- (1) 100,000 lau'ipala (*Zebrasoma flavescens*);
- (2) 1,086 Potter's angelfish (*Centropyge potteri*);
- (3) 800 mā'i'i'i (*Acanthurus nigrofuscus*);
- (4) 344 hīnālea 'i'iwi (*Gomphosus varius*); and
- (5) 182 Thompson's Surgeonfish (*Acanthurus thompsoni*).

(b) Take for commercial aquarium purposes of each whitelist species listed in subsection (a) shall be tallied beginning on January 1 of each year and end when the ACL is reached or on December 31 of each year, whichever occurs sooner, provided that:

- (1) When the tallied yearly catch is within five percent of the ACL for any given species, the department shall notify all State of Hawai'i aquarium fish permittees with a West Hawai'i geographical endorsement and all registered commercial aquarium dealers that the commercial aquarium fishing season within the WHRFMA will soon close for the species whose ACL is close to being reached;
- (2) Unless written notice is specifically requested, official notice of a season closure shall be made electronically by email to the email address on file with the

- department no less than three days prior to the closure of the season;
- (3) Upon timely receipt of a request for written notice of a season closure, notice shall be mailed to the address on file with the department, post-marked no less than three days prior to the closure of the season;
 - (4) Supplemental notice may be made by posting an announcement on the division's website;
 - (5) Following a species-specific closure for any of the species listed in subsection (a) due to commercial take of that species reaching or exceeding the established ACL, it is unlawful for any permittee to take or possess any live specimens of the closed species within the WHRFMA for the remainder of the calendar year; and
 - (6) If the yearly catch exceeds the ACL for any species, the number of specimens over the ACL shall be subtracted from that species' ACL for the following year."
[Eff _____] (Auth: HRS §§187A-5, 188-53, 188F-6, 189-2, 189-10, 190-3) (Imp: HRS §§187A-5, 188-53, 8188F-3, 189-2, 189-10, 190-3)

2. Chapter 13-60.4, Hawaii Administrative Rules, entitled "West Hawai'i Regional Fishery Management Area, Hawai'i", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART II MARINE FISHERIES MANAGEMENT AREAS

CHAPTER 60.4

WEST HAWAI'I REGIONAL FISHERY MANAGEMENT AREA, HAWAI'I

- §13-60.4-1 Intent and purpose
- §13-60.4-2 Geographical jurisdiction of chapter provisions
- §13-60.4-3 Definitions
- §13-60.4-4 Activities prohibited within the West Hawai'i regional fishery management area
- §13-60.4-5 Activities prohibited within selected areas
- §13-60.4-6 Lay net permit and use requirements
- §13-60.4-7 Aquarium collecting permit and vessel registration requirements
- §13-60.4-8 Penalty
- §13-60.4-8.5 Asset forfeiture
- §13-60.4-9 Severability

Historical note: Chapter 13-60.4 is based substantially upon chapter 13-60.3 and is simultaneously adopted upon repeal of that chapter. All rights, duties, penalties, and responsibilities incurred under chapter 13-60.3 are intended to be transferred to chapter 13-60.4 upon its adoption. [Eff 12/31/99; am, ren, and comp 8/1/05; R 12/26/13]

§13-60.4-1 Intent and purpose. (a) The intent and purpose of this chapter regarding the West Hawai'i regional fishery management area shall be to:

- (1) Establish the West Hawai'i regional fishery management area for improved management of consumptive and nonconsumptive uses of aquatic resources;
- (2) Ensure the sustainability of the State's nearshore ocean resources;
- (3) Identify areas with resource and use conflicts;
- (4) Minimize user conflicts and resource depletion in the West Hawai'i regional fishery management area, by designating fish replenishment areas and identifying other regulated areas where aquarium fish collecting is prohibited, areas where the use of gill nets as set nets is prohibited, and establishing a portion of the fish replenishment areas as fish reserves where no fishing of reef-dwelling fish is allowed;
- (5) Establish a system of day-use mooring buoys in high-use coral reef areas and prohibit anchoring in some of these areas to prevent anchor damage to corals;
- (6) Identify areas and resources of statewide significance for protection;
- (7) Facilitate scientific research and monitoring of the nearshore resources and environment; and
- (8) Facilitate the substantive involvement of

the community in resource management decisions for the West Hawai'i regional fishery management area through dialogue with community residents and resource users.

(b) Native Hawaiian traditional and customary rights with regard to marine resources for subsistence, cultural, and religious purposes are recognized. Claims for traditional and customary rights will be decided by appropriate agencies when a claims procedure is established. [Eff 12/26/13; comp 3/11/23; comp] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-2, 188F-3, 188F-4, 188F-6)

§13-60.4-2 Geographical jurisdiction of chapter provisions. (a) The provisions of this chapter shall apply to the West Hawai'i regional fishery management area, bounded by the west coast of Hawai'i Island, from Ka Lae, Ka'ū (South Point) to 'Upolu Point, North Kohala, and 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.

(b) The following marine reserves, fish replenishment areas, and netting restricted areas shall be established within the boundaries of the West Hawai'i regional fishery management area (as depicted in the exhibit entitled "Map of Marine Reserve, Fish Replenishment Area, and Netting Restricted Area Boundaries", dated 12/12/12, located at the end of this chapter):

- (1) Ka'ūpūlehu marine reserve, identified on shore to the north by the northern boundary of the Ka'ūpūlehu ahupua'a and to the south by the southern side of Kikaua Point (south of Kūki'o Bay);
- (2) North Kohala fish replenishment area, identified on shore to the north by Kamilo Gulch and to the south by the Kawaihae Lighthouse;
- (3) Puakō-'Anaeho'omalu fish replenishment area, identified on shore to the north by the

southern end of the Puakō Bay and Puakō Reef fisheries management area and to the south by the southern side of 'Anaeho'omalu Bay (Kapalaoa);

- (4) Kaloko-Honokōhau fish replenishment area, identified on shore to the north by the southern boundary of Wāwālolli Zone (a Kona Coast fisheries management area defined in section 13-58-2) at Wawahiwa'a Point and to the south by Noio Point;
- (5) Kailua-Keauhou fish replenishment area, identified on shore to the north by the southern boundary of Kailua Bay Zone, Kona Coast fisheries management area defined in section 13-58-2, and to the south by the northern boundary of the Keauhou Bay fisheries management area defined in section 13-57-1;
- (6) Red Hill fish replenishment area, identified on shore to the north at Nenu Point and to the south by Keawakāheka Point;
- (7) Nāpo'opo'o-Hōnaunau fish replenishment area, identified on shore to the north by the southern boundary of Kealakekua Bay marine life conservation district (Manini Beach Point) and to the south by the southern boundary of Pu'uho'oua o Hōnaunau (Ki'ilae);
- (8) Ho'okena fish replenishment area, identified on shore to the north by Loa Point and to the south by Ka'ū Loa Point;
- (9) Ka'ohē Beach fish replenishment area (Pebble Beach), identified on shore to the north by signage south of Ka'ū Loa Point, and to the south by signage north of 'Au'au Point;
- (10) Miloli'i fish replenishment area, identified on shore to the north by Makahiki Point and to the south by Kāki'o Point;
- (11) Kikaua Point-Mākole'ā Point netting restricted area, identified on shore to the north by Kikaua Point (Kalae o Kikaua) and to the south by Mākole'ā Point (near Kekaha Kai State Park);

- (12) Nenuē Point-Kealakekua Bay netting restricted area, identified on shore to the north by the northern boundary of the Red Hill fish replenishment area and to the south by the northern boundary of the Kealakekua Bay marine life conservation district;
- (13) Hanamalo Point-Kanewa`a Point netting restricted area, identified on shore to the north by Hanamalo Point, inclusive of Okoe Bay and Kapu`a Bay, and to the south by Kanewa`a Point, South Kona; and
- (14) Kanonone-Kalīpoa netting restricted area, identified on shore to the north by Kanonone, inclusive of Pōhue Bay, Kahakahakea, and identified to the south by Kalīpoa, Ka`ū.

Unless otherwise described, any area described in this chapter shall be described by four reference points identified by their latitude and longitude coordinates, as provided in the tables located at the end of this chapter entitled "Table of Reference Coordinates to Marine Reserve and Fish Replenishment Area Boundaries", dated 12/12/12, and "Table of Reference Coordinates to Netting Restricted Area Boundaries", dated 12/12/12, and as may be further indicated by signage on or about the shoreline. The four points shall be identified as the landward northern point, the landward southern point, the seaward northern point, and the seaward southern point. The landward boundary for each of these areas shall be an imaginary line drawn along the highest wash of the waves between the landward northern point and the landward southern point. Should there be a stream or river flowing into the ocean, the landward boundary shall be an imaginary straight line drawn between the shoreline on either side of the stream or river, as if the stream or river was not there. Imaginary straight lines drawn through the landward and seaward northern points, and through the landward and seaward southern points, shall constitute the northern and southern boundary lines of each area.

The seaward boundary of each area shall be determined by an imaginary line drawn along the one hundred fathom (six hundred feet) depth contour, between the intersection of the one hundred fathom depth contour and the northern and southern boundary lines. Seaward GPS reference points are for guidelines and the one hundred fathom depth contour otherwise controls the seaward boundary. Any area designated in this chapter shall include the submerged lands and overlying waters within these four boundaries.

(c) The following areas, designated and subject to additional regulations in other chapters, shall also be considered and regulated as part of the West Hawai'i regional fishery management area:

- (1) Lapakahi marine life conservation district, as described in chapter 13-33;
- (2) Kawaihae Harbor fisheries management area, as described in chapter 13-55;
- (3) Wailea Bay marine life conservation district, as described in chapter 13-35;
- (4) Old Kona Airport marine life conservation district, as described in chapter 13-37;
- (5) Kealakekua Bay marine life conservation district, as described in chapter 13-29;
- (6) Puakō Bay and Puakō Reef fisheries management area, as described in chapter 13-54;
- (7) Kīholo Bay fisheries management area, as described in chapter 13-60;
- (8) Kailua Bay fisheries management area, as described in chapter 13-52;
- (9) Keauhou Bay fisheries management area, as described in chapter 13-57;
- (10) Kona Coast fisheries management area, as described in chapter 13-58;

Except for the area encompassed by the Kawaihae Harbor fisheries management area, Kawaihae commercial harbor shall not be regulated as part of the West Hawai'i regional fishery management area.

(d) Nothing in this chapter shall be construed as allowing within the West Hawai'i regional fishery management area any activity otherwise prohibited by

law or rules adopted by the department of land and natural resource or any other department of the State. [Eff 12/26/13; am 7/29/16; comp 3/11/23; comp] (Auth: HRS §§187A-5, 188-53, 188F-6, 190-3) (Imp: HRS §§187A-5, 188-53, 188F-2, 188F-3, 188F-4, 188F-6, 190-3)

§13-60.4-3 Definitions. As used in this chapter unless otherwise provided:

"Aquarium collecting gear" means any equipment or gear adapted, designed, or commonly used to collect, capture or maintain aquatic life alive in a state of captivity, including but not limited to hand nets, fence or barrier nets, fiberglass, plastic, wood or metal 'tickle sticks' (including spears or similar implements used to manipulate the movement of aquarium fish or animals), catch buckets, keeps, baskets or venting needles.

"Aquarium collecting vessel" means any motorized or non-motorized vessel used by any person to collect, ferry, or scout for aquarium fish or animals.

"Aquarium purposes" means to hold 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. Aquatic life collected under a valid aquarium permit may not be used for human consumption, for bait, or for other consumptive purposes.

"Aquatic life" means any type or 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.

"Commercial purpose" means the taking of aquatic life for profit, gain, sale, purchase, barter, exchange, to offer for sale, or upon any offer to purchase.

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

"Deploy" means to place the specified gear in the water, in whole or in part.

"Fish feeding" means deliberately introducing into the water any food material, substance, or device used as an attractant, for any purpose except catching and removing marine life.

"Fishing gear" means any net, spear, rod, reel, hook-and-line, slurp gun, or any other equipment or gear adapted, designed, or commonly used to take or capture aquatic life.

"Hook-and-line" means a fishing line to which one or more hooks or other tackle are attached. A hook-and-line may include a fishing rod or reel or both to deploy and retrieve the line, and the use of a landing net to land hooked fish.

"Kona crab net" means a mesh net encircled by a rigid frame no more than three feet in length in any direction.

"Lay net" means a panel of net mesh that is suspended vertically in the water with the aid of a float line that supports the top edge of the net upward towards the water surface and a lead line that keeps the bottom edge of the net downward towards the ocean bottom.

"Lay net fishing" or to "lay net fish" means deploying or attempting to deploy a lay net in a set location and in an open configuration, and retrieving the lay net from the same location after a certain time period has passed. This fishing method is also known as set netting, cross netting, pa'ipa'i, and moemoe netting. This term does not apply to the use of a lay net to completely encircle a pre-identified school of fish, where the net is constantly attended at all times while in the water, such as in the practice of surround netting.

"Marine reserve" means an area where any and all extraction of reef-related marine life, either alive or dead, or any portion of the reef structure, including coral, rocks, plants, algae, sand, shells, or any feature of the natural reef, shall be prohibited, except as allowed in this chapter.

"Multi-panel lay net" means a lay net consisting of two or more layers of netting, usually of different mesh size. This gear is also known as a trammel net.

"Natural fibers" means fibers derived wholly from plant materials including, olonā, linen, cotton, hemp, and sisal.

"SCUBA gear" means any equipment adapted, designed, or commonly used to enable a diver to breathe while underwater, including but not limited to SCUBA regulators, high pressure cylinders, rebreathers, SNUBA, and hookah rigs.

"SCUBA spearfishing" means to take or to attempt to take aquatic life through the combined use of a spear and SCUBA gear.

"Set" when used as a noun with respect to the use of lay nets, means a sequential act beginning from when the lay net is fully deployed in the water and ending on the next complete removal of the lay net from the water.

"Spear" means any device or implement which is designed or used for impaling marine life. Spears may include but are not limited to spear gun shafts, arbaletes, arrows, bolts, Hawaiian slings, tridents, or three-prong spears. A dive knife is not considered to be a spear.

"Speared" means pierced, impaled, penetrated, stuck, or run through by a sharp, pointed implement.

"Take" means to fish for, catch, or harvest, or to attempt to fish for, catch, or harvest, aquatic life. The use of any gear, equipment, tool, or any means to fish for, catch, capture, or harvest, or to attempt to fish for, catch, capture, or harvest, aquatic life by any person who is in the water, or in a vessel on the water, or in the shoreline area where aquatic life can be fished for, caught, or harvested, shall be construed as taking.

"Total length" means the length of a fish measured from the tip of the snout to the tip of the longer lobe of the caudal (tail) fin. The length measurement shall be a straight-line measure, not measured over the curvature of the body of the fish.

"Whitelist" means a list of species of marine

life that may be taken for aquarium purposes. [Eff 12/26/13; am 7/29/16; am and comp 3/11/23; comp] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6)

§13-60.4-4 Activities prohibited within the West Hawai'i regional fishery management area. While within the West Hawai'i regional fishery management area, no person shall:

- (1) Take, kill, possess, sell, or offer for sale, any specimen of the following species: *Aetobatus narinari* (spotted eagle ray), *Carcharhinus amblyrhynchos* (gray reef shark), *Carcharhinus melanopterus* (blacktip reef shark), *Cassis cornuta* (horned helmet), *Charonia tritonis* (Triton's trumpet), *Dasyatis hawaiiensis* (Hawaiian stingray), *Dasyatis lata* (broad stingray), *Pteroplatytrygon violacea* (pelagic stingray), *Galeocerdo cuvier* (tiger shark), *Rhincodon typus* (whale shark), or *Triaenodon obesus* (whitetip reef shark);
- (2) Possess more than five *Zebrasoma flavescens* (yellow tang) larger than 4.5 inches in total length, or possess more than five *Zebrasoma flavescens* smaller than two inches in total length;
- ~~[(3) Possess aquarium collecting gear, or take or possess any specimen of aquatic life for aquarium purposes;~~
- ~~(A) Between sunset and sunrise, provided that collecting gear or collected aquatic life may be possessed after sunset or before sunrise if notification by phone is made to the Division of Aquatic Resources West Hawai'i (DAR-Kona) office prior to sunset. The notification shall include the names of individuals who plan to possess the gear or aquatic life and the location where the possession will take place;~~
- ~~(B) Without holding a valid West Hawai'i~~

~~aquarium permit issued pursuant to section 13-60.4-7(a);~~

- ~~(C) In violation of the terms and conditions of a West Hawai'i aquarium permit issued to that person; or~~
- ~~(D) While occupying any vessel that does not conform to the registration and marking requirements of section 13-60.4-7(d);~~
- ~~(4) Possess or use any net or container employed underwater to capture or hold aquatic life alive for aquarium purposes, that is not labeled with the commercial marine license number or numbers of the person or persons owning, possessing or using the equipment;~~
- ~~(5)] (3) Possess a lay net or engage in lay net fishing in violation of the requirements of section 13-60.4-6; or~~
- ~~(6)] (4) Engage in or attempt to engage in SCUBA spearfishing, possess both SCUBA gear and a spear at the same time, or possess SCUBA gear and any specimen of speared aquatic life at the same time. [Eff 12/26/13; comp 3/11/23; am and comp] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-3)~~

§13-60.4-5 Activities prohibited within selected areas.

(a) No person may engage in fish feeding while within any of the marine reserves, fish replenishment areas, or netting restricted areas described in section 13-60.4-2(b) or any of the other areas listed in section 13-60.4-2(c).

(b) While within the fish replenishment areas described in section 13-60.4-2(b)(2) to (10), or while within any of the areas listed in section 13-60.4-2(c) other than the Kiholo Bay fisheries management area, no person may:

- (1) Collect aquatic life for aquarium purposes; or
- (2) Possess any aquarium collecting gear, or

take or possess any specimen of aquatic life for aquarium purposes, except that aquarium collecting gear or aquatic life collected for aquarium purposes may be possessed while onboard a vessel in active transit through the areas, provided that no collecting gear is in the water during the transit. Boats that are adrift, anchored, or moored are not considered to be in active transit.

(c) No person may lay net fish while within the following areas, as described in section 13-60.4-2(b) and in the tables located at the end of this chapter entitled "Table of Reference Coordinates to Marine Reserve and Fish Replenishment Area Boundaries", dated 12/12/12, and "Table of Reference Coordinates to Netting Restricted Area Boundaries", dated 12/12/12:

- (1) Puakō-'Anaeho'omalu fish replenishment area;
- (2) Kikaua Point-Mākole'ā netting restricted area (Kekaha Kai State Park);
- (3) Nenua Point (Red Hill fish replenishment area)-Kealakekua Bay netting restricted area;
- (4) Hanamalo Point-Kanewa'a Point netting restricted area;
- (5) Kanonohe-Kalīpoa netting restricted area; and
- (6) Kaloko-Honokōhau fish replenishment area, except that a person may lay net fish in the Kaloko-Honokōhau fish replenishment area using only a locally-constructed, handmade lay net of natural fibers, that is used in compliance with section 13-60.4-6.

(d) Except as provided in subsection (e), and subject to all other applicable laws, while within the Ka'ūpūlehu marine reserve no person may:

- (1) Take or attempt to take any specimen of aquatic life, provided that the following species may be taken by hook-and-line seaward of the twenty fathom (120 feet) depth contour: *Pristipomoides filamentosus* ('ōpakapaka), *Pristipomoides sieboldii* (kalekale), *Aphareus rutilans* (lehi),

Pristipomoides zonatus (gindai), *Etelis coruscans* (onaga), *Etelis carbunculus* (ehu), *Epinephelus quernus* (hāpu`upu`u), *Aprion virescens* (uku), *Lutjanus kasmira* (ta`ape), *Cephalopholis argus* (roi), *Lutjanus fulvus* (toau), *Iniistius pavo* (nabeta), *Katsuwonus pelamis* (aku), *Thunnus spp.* (`ahi and tombo), Family Istiophoridae (a`u), *Acanthocybium solandri* (`ono), *Coryphaena spp.* (mahimahi); and provided further that *Ranina ranina* (kona crab) may be taken by kona crab nets only, while seaward of the twenty fathom (120 feet) depth contour;

- (2) Possess any specimen of marine life other than the species listed in subsection (d)(1) above;
- (3) Possess or use any fishing gear other than hook-and-line or kona crab nets or both; or
- (4) Deploy any fishing gear (including hook-and-line or kona crab nets) shoreward of the twenty fathom (120 feet) depth contour.

(e) The department may issue permits in accordance with sections 187A-6 and 188-53, Hawaii Revised Statutes, for the take of non-native or invasive species of fish and invasive algae from the Ka`ūpūlehu Marine Reserve.

(f) Subsections (d) and (e) of this section shall be effective until June 30, 2026, or until the effective date of rules implementing a comprehensive fisheries management plan as developed by the department in consultation with the Ka`ūpūlehu community and other interested parties, whichever occurs later. [Eff 12/26/13; am 7/29/16; am and comp 3/11/23; comp] (Auth: HRS §§187A-5, 188-53, 188F-6, 190-3) (Imp: HRS §§187A-5, 188-53, 188F-6, 190-3)

§13-60.4-6 Lay net permit and use requirements.

(a) It is unlawful for any person within the West Hawai`i regional fishery management area to:

- (1) Possess or use a lay net without first

obtaining a lay net permit pursuant to section 13-75-12.4;

- (2) Possess or use more than one lay net;
- (3) Possess or use a lay net:
 - (A) Longer than one hundred twenty-five feet in length or more than seven feet in stretched height;
 - (B) With less than two and three-fourths inches stretched mesh; and in Kailua Bay fisheries management area, with less than three inches stretched mesh; or
 - (C) With two or more joined lay nets with a combined total length of more than two hundred fifty feet;
- (4) Possess or use a multi-panel lay net; or
- (5) Possess or use a lay net that does not have at least four identification tags as specified by the department. Each identification tag must legibly display the lay net permit number of the person possessing or using the net. One identification tag must be attached at each end of both the net float line and the net lead line for a total of four attachment points on each lay net.

(b) It is unlawful for any person lay net fishing to:

- (1) Use a lay net that is not marked by buoys as specified by the department. The buoys shall legibly display the lay net permit number of the person using the lay net, be marked with reflective tape, and be visible above the surface of the water. The buoys shall be attached to each end of the float line for a total of two buoys for each lay net;
- (2) Use a lay net within one thousand two hundred feet of any other lay net; provided that two or more individuals working together and using the lay net fishing method may use a joined net;

- (3) Use a lay net in water that is more than eighty feet in depth;
 - (4) Use a lay net for more than four hours during any one set; provided that the same person shall not set any other lay net within twenty-four hours after the ending of the set;
 - (5) Leave a lay net unattended for any amount of time, provided that a lay net shall be considered unattended if the lay net or surface buoys are not within eyesight of the person using the lay net;
 - (6) Retrieve a lay net in such a manner as to cause coral to break from its attachment to the bottom or to break into smaller pieces. Any coral brought to the surface in the net shall be considered prima facie evidence of a violation of this section;
 - (7) Fail to complete inspection of an entire lay net within two hours after the beginning of the set. The person lay net fishing shall inspect the lay net and release any threatened, endangered, prohibited, or unwanted species; or
 - (8) Discard, abandon, or leave any lay net, or portion thereof, in the water for longer than four hours.
- (c) It is unlawful for any person to falsely identify any lay net.
- (d) Persons using a vessel or float may use a total maximum of two hundred fifty feet of lay net, provided that at least two persons are present and associated with the same vessel or float.
- (e) Any lay net within the West Hawai'i regional fishery management area that does not have proper identification tags, as required in subsection (a)(1) and (a)(5), shall be subject to immediate seizure according to section 199-7, HRS, and subject to forfeiture by the department under procedures similar to chapter 712A, Hawaii Revised Statutes.
- (f) This section shall not apply to panel mesh nets with a stretched mesh size of less than two and

three-fourths inches that are marked with commercial marine license numbers as required under section 13-60.4-4(4), and permitted for use and possession for commercial aquarium purposes under ~~[an]~~ a valid State of Hawai'i aquarium fish permit ~~[and]~~ with a valid West Hawai'i [aquarium permit] geographical endorsement issued ~~[under section 13-60.4-7(a).]~~ pursuant to chapter 13-77.1. [Eff 12/26/13; am and comp 3/11/23; am and comp] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6, 199-7, 712A-6)

~~[§13-60.4-7 Aquarium collecting permit and vessel registration requirements. (a) West Hawai'i aquarium permit. The department may issue West Hawai'i aquarium permits authorizing persons to engage in aquarium collecting activities for species listed in subsection (b) and to use fine meshed traps and nets (other than throw nets) to collect those species in the West Hawai'i regional fishery management area, notwithstanding section 13-75-14, subject to terms and conditions the department deems necessary for the management of the area and its resources. No person, unless exempted from provisions of this chapter by the issuance and possession of a valid special activity permit under section 187A-6, Hawaii Revised Statutes, shall engage in aquarium collecting activities within the West Hawai'i regional fishery management area without first having been issued and possessing a West Hawai'i aquarium permit in addition to a valid State of Hawai'i aquarium fish permit. Permits shall be valid for one year from the date of issuance unless revoked sooner, and are non-transferable. In addition to applying any other penalties provided by law, the department may revoke any West Hawai'i aquarium permit for any infraction of these rules or the terms and conditions of the permit, and any person whose permit has been revoked shall not be eligible to apply for another West Hawai'i aquarium permit until the expiration of one year from the date of revocation. (b) Aquarium species whitelist. In addition to~~

~~other regulations deemed necessary for the management of the West Hawai'i regional fishery management area, an aquarium permit holder may only take or possess specimens of the following species of fish for aquarium purposes while within the West Hawai'i regional fishery management area: *Acanthurus achilles* (Achilles tang), *Acanthurus dussumieri* (eyestripe surgeonfish), *Acanthurus nigricans* (goldrim surgeonfish), *Acanthurus nigrofuscus* (brown surgeonfish), *Acanthurus olivaceus* (orangeband surgeonfish), *Acanthurus thompsoni* (Thompson's surgeonfish), *Anampses chrysocephalus* (psychedelic wrasse), *Canthigaster jaetator* (whitespotted Toby), *Centropyge fisheri* (Fisher's angelfish), *Centropyge potteri* (Potter's angelfish), *Cephalopholis argus* (peacock grouper), *Chaetodon kleinii* (blacklip butterflyfish), *Chaetodon miliaris* (milletseed butterflyfish), *Chaetodon multicinctus* (multiband butterflyfish), *Chaetodon quadrimaculatus* (fourspot butterflyfish), *Chaetodon tinkeri* (Tinker's butterflyfish), *Cirrhilabrus jordani* (flame wrasse), *Cirrhitops fasciatus* (redbarred hawkfish), *Coris gaimard* (yellowtail Coris), *Ctenochaetus hawaiiensis* (chevron tang), *Ctenochaetus strigosus* (goldring surgeonfish, kole), *Dascyllus albisella* (Hawaiian Dascyllus), *Forcipiger flavissimus* (forcepsfish), *Gomphosus varius* (bird wrasse), *Halichoeres ornatus* (ornate wrasse), *Hemitaurichthys polylepis* (pyramid butterflyfish), *Lutjanus kasmira* (bluestripe snapper), *Macropharyngodon geoffroy* (shortnose wrasse), *Melichthys niger* (black Durgon), *Naso lituratus* (orangespine unicornfish), *Ostracion meleagris* (spotted boxfish), *Paracirrhites forsteri* (blackside hawkfish), *Pseudanthias hawaiiensis* (Hawaiian longfin Anthias), *Pseudocheilinus octotaenia* (eightline wrasse), *Pseudocheilinus tetrataenia* (fourline wrasse), *Pseudojuloides cerasinus* (smalltail wrasse), *Sufflamen bursa* (lei triggerfish), *Thalassoma duperrey* (saddle wrasse), *Xanthichthys auromarginatus* (gilded triggerfish), and *Zebrasoma flavescens* (yellow tang); provided further that:~~

~~(1) No *Zebrasoma flavescens* (yellow tang) may be~~

~~taken or possessed in violation of section 13-60.4-4(2);~~

~~(2) No more than five *Ctenochaetus strigosus* (goldring surgeonfish or kole) larger than four inches in total length may be taken per day or possessed at any time; and~~

~~(3) No more than ten *Acanthurus achilles* (Achilles tang) may be taken per day, or possessed at any time.~~

~~(c) Aquarium collecting vessel registration and marking requirements. All aquarium collecting vessels shall:~~

~~(1) Be registered every year with the Division of Aquatic Resources West Hawai'i (DAR Kona) office to take aquatic life for aquarium purposes within the West Hawai'i regional fishery management area. Each registration shall be valid for one year from the date of registration. The current vessel identification number issued by either the department or the United States Coast Guard shall serve as the registration number for each vessel;~~

~~(2) Clearly display the capital letters "AQ" permanently affixed to both sides of the vessel, either near the top of the gunwales or on the superstructure. Unless otherwise specified, the "AQ" letters shall be no less than six inches high and three inches wide in either black or a color that contrasts with the background;~~

~~(3) Fly a "stiffened" flag or pennant from the vessel with the letter "A" as specified by the department. The flag or pennant shall be provided at cost to aquarium permittees as specified by the department. The flag or pennant shall be displayed and clearly visible from both sides of the vessel at all times while aquarium collecting gear or collected aquarium marine life or both are onboard;~~

~~(4) Display a dive flag at all times when divers~~

~~are in the water; and~~

- ~~(5) In the event an aquarium collecting vessel becomes inoperable, the operator of the vessel shall immediately notify the department's division of conservation and resources enforcement or United States Coast Guard or both by VHF radio or by cellular phone or both.~~

~~(d) Control date. A control date was established in August 1, 2005 to possibly limit participation in the West Hawai'i regional fishery management area commercial aquarium fishery. Persons who begin fishing in the West Hawai'i regional fishery management area commercial aquarium fishery on or after the control date will not be assured continued participation if the department establishes an aquarium limited entry program in the future.~~

~~(e) Nothing in this chapter shall prevent the department from establishing another control date.]~~
[Eff 12/26/13; comp 3/11/23; r] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-3)

§13-60.4-8 Penalty. (a) Any person violating any provision of this chapter or the terms and conditions of any permit issued as provided by this chapter, shall be subject to:

- (1) Administrative penalties as provided by section 187A-12.5, HRS;
- (2) Criminal penalties as provided by sections 187A-13 and 188-70, 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 this State. [Eff 12/26/13; am and comp 3/11/23; comp] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-12.5, 188-53, 188-70)

§13-60.4-8.5 Asset forfeiture. Any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of this chapter or the terms and conditions of any permit issued as provided by this chapter, may be seized and subject to forfeiture as provided by section 199-7 and chapter 712A, HRS. [Eff and comp 3/11/23; comp] (Auth: HRS §188-53) (Imp: HRS §199-7, ch. 712A)

§13-60.4-9 Severability. If any provision of this chapter, or the application thereof, to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable." [Eff 12/26/13; comp 3/11/23; comp] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§1-23, 187A-5, 188-53, 188F-6)

3. Chapter 13-75, Hawaii Administrative Rules, entitled "Rules Regulating the Possession and Use of Certain Fishing Gear", 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 RESOURCES MANAGEMENT

CHAPTER 75

RULES REGULATING THE POSSESSION AND USE
OF CERTAIN FISHING GEAR

§13-75-1	Definitions
§13-75-2	Penalty
§13-75-2.5	Asset forfeiture
§13-75-3	Severability
§13-75-4	Disposal of fishing gear
§13-75-5	Explosives
§13-75-6	Electrofishing devices
§13-75-7	Poisonous substances
§13-75-8	Firearms
§13-75-9	Spears
§13-75-10	Throw nets
§13-75-11	Drift gill nets
§13-75-12	Gill nets
§13-75-12.2	Akule nets
§13-75-12.4	Lay nets
§13-75-12.5	State waters around Moloka'i, special rules
§13-75-13	Bullpen traps
§13-75-14	Nets, generally
§13-75-15	Traps

§13-75-1 Definitions. As used in this chapter, unless otherwise provided:

"Akule" means any fish identified as *Selar crumenophthalmus* or any recognized synonym. Akule are also known as pā`ā`ā, halalū, hahalalū, goggle-eyed scad, or big-eyed scad.

"Bag net" means a type of fishing net made into the shape of a pocket or pouch with an open end held open in the water with the aid of a net float line that supports the top edge of the net up towards the ocean surface and parallel to a net lead line that

keeps the lower edge of the net down on the ocean bottom. The bag net is usually made of heavy gauge line to make the net very visible and made of small mesh to prevent the fish from passing through the mesh.

"Bag net fishing method" means a technique of fishing where a person or persons engage in the act of or attempt to engage in the act of deploying a fence net in the water in such a manner as to completely encircle the aquatic life. The fence net primarily acts like a barrier to hold or concentrate the aquatic life within the net. The mesh is smaller than the target species so as to prevent the smaller aquatic life from swimming through or entangling in the mesh. The aquatic life is then moved into the bag net for removal from the water. The main characteristics of the bag net fishing method are the closed net configuration, the moving net, person or persons do not chase the aquatic life into the net, and most, if not all, of the aquatic life within the net are captured.

"Bullpen trap" means a type of fishing gear that has a pen and guide or guides of a length or lengths of net or material designed to guide aquatic life into the pen situated to prevent the escape of some or all of the aquatic life entering the pen, whether or not the guide or guides are connected to the pen.

"Closed net configuration" means a net that is deployed in a manner in which the net acts as a physical barrier that prevents or impedes the escape of aquatic life that are too large to pass through the mesh. A net so deployed in a series of baffles or in a complete circle will not allow large fish to escape capture, even if the fish are not entangled in the mesh.

"Commercial aquarium fish collector" means any person who takes marine life for commercial aquarium purposes.

"Commercial marine licensee" means any person that has been issued a commercial marine license pursuant to section 189-2, HRS, and section 13-74-20.

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

"Freshwater stream" means any river, creek, canal, ditch, or other natural or artificial watercourse with a defined bed or channel in which freshwater flows, either continuously or periodically. This includes portions of freshwater streams that may contain brackish water or saltwater periodically, such as at high tide or during times of low or no freshwater flow.

"Gill net" means a panel or curtain of net made of various materials, that is suspended vertically in the water with the aid of a net float line that supports the top edge of the net up towards the ocean surface and parallel to a net lead line that keeps the lower edge of the net down towards the ocean bottom. The gill net is usually made of transparent or semi-transparent materials to make the net seem invisible underwater, with mesh openings large enough to permit the heads of fish to pass through, ensnaring them around the gills when they attempt to escape.

"Gold-spot herring" means any fish identified as *Herklotsichthys quadrimaculatus* or other recognized synonyms.

"Hand net" means a net consisting of a bag of mesh material attached to a frame to hold the bag open, and a handle. The net is small enough to use with one hand by one person.

"`Iao" means any fish known as *Atherinomorus insularum* or any recognized synonym. `Iao are also known as Hawaiian silverside or Hawaiian Islands silverside.

"Landing net" means a hand net that is used to further secure capture of marine life, after the marine life has been first hooked or otherwise detained, to prevent the marine life from becoming unhooked or lost.

"Lay net" means a gill net that is used in lay net fishing.

"Lay netting" or "lay net fishing method" means a technique of fishing where a person or persons engage in the act of or attempt to engage in the act of

deploying a gill net in the water in a specific location, then retrieving the gill net from the same location, after a certain time period has passed to allow for the capture of aquatic life. The lay net primarily entangles aquatic life within the mesh of the net as the aquatic life swim or move into the stationary lay net. The lay net is most commonly deployed in a straight line or semi-circular configuration. The main characteristics of lay net fishing are the open net configuration, the stationary net, person or persons may chase the aquatic life into the net, and only aquatic life that becomes entangled in the net mesh are captured. This fishing method is also known as set netting, cross netting, pa'ipa'i netting, and moemoe netting.

"Makiawa" [~~or "mikiawa"~~] means any fish [identified] known as *Etrumeus teres* or *Etrumeus micropus* or other recognized synonyms. Makiawa is also known as mikiawa or 'ōmaka.

"Marquesan sardine" means any fish identified as *Sardinella marquesensis* or other recognized synonyms.

"Multi-panel lay net" means a lay net consisting of two or more layers of netting, usually of different mesh size. This gear is also known as a trammel net.

"Nehu" means any fish identified as *Encrasicholina purpurea* or other recognized synonyms.

[~~"'Ōpae"~~] "'Ōpae" or [~~"shrimp" or other recognized synonyms~~] means an invertebrate crustacean of the Order Decapoda, but other than lobsters, crabs, or crayfish. 'Ōpae are also known as shrimp.

"'Ōpelu" means any fish of the genus *Decapterus*. 'Ōpelu are also known as mackerel scad.

"Pua" means any juvenile fish of the species *Mugil cephalus* or any recognized synonym. Pua are also known as pua 'ama, pua 'ama'ama, pua po'olā, or pua 'o'olā. Individuals of this species at other life stages are known as kahaha, 'ama'ama, or 'anae. All life stages of this species are generally known as striped mullet.

"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 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.

"State of Hawai'i aquarium fish permit" means a permit issued by the department to take marine life for aquarium purposes.

"State of Hawai'i aquarium fish permittee" means any person with a valid State of Hawai'i aquarium fish permit issued by the department to take marine life for aquarium purposes.

"Stony coral" means any of the invertebrate species belonging to the Order Scleractinia, characterized by having a hard calcareous skeleton, that are native to the Hawaiian islands.

"Stretched mesh" means the straight line distance between two opposite inner edges of each eye of the net mesh as measured when the eye is stretched to its maximum size.

"Surround gill netting or surround gill net fishing method" means a technique of fishing where a person or persons engage in the act of or attempt to engage in the act of deploying a gill net in the water in such a manner as to completely encircle the aquatic life. The gill net primarily entangles aquatic life within the mesh of the net as the aquatic life swim or move into the surround gill net. The main characteristics of surround gill net fishing are the closed net configuration, the moving net, person or persons chase the aquatic life into the net, and only the aquatic life that entangles in the net mesh are captured.

"Take" means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, or harvest, aquatic life. The use of any gear,

equipment, tool, or any means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, 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 fished for, caught, captured, confined, or harvested, shall be construed as taking.

"Throw net" means a circular net with a weighted outer perimeter designed to be deployed by manually casting or throwing the net over fish or other aquatic life. This gear is also known as a cast net.

"Trap" means any of various fishing devices of mesh, perforated, or solid material made into the shape of a box, container, or enclosure, with one or more openings that allow aquatic life to enter into the interior of the box, container, or enclosure, but restrict exit out, thereby capturing the aquatic life within.

"Using" means placing in the water or attempting to place in the water. [Eff 12/3/98; am 1/11/02; am and comp 3/2/07; am and comp 3/11/23; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-75-2 Penalty. (a) Any person violating any provision of this chapter or the terms and conditions of any license or permit issued as provided by this chapter, shall be 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 this State. [Eff 12/3/98; am and comp 3/2/07; am and comp 3/11/23; comp] (Auth: HRS §§187A-5) (Imp: HRS §§187A-12.5, 187A-13, 188-70, 189-4)

§13-75-2.5 Asset forfeiture. Any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of this chapter or the terms and conditions of any license or permit issued as provided by this chapter, may be seized and subject to forfeiture as provided by section 199-7 and chapter 712A, HRS. [Eff and comp 3/11/23; comp] (Auth: HRS §187A-5) (Imp: HRS §199-7, ch. 712A)

§13-75-3 Severability. If any provision of this chapter, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff 12/3/98; comp 3/2/07; comp 3/11/23; comp] (Auth: HRS §§187A-5, 1-23) (Imp: HRS §§187A-5, 1-23)

§13-75-4 Disposal of fishing gear. It is unlawful to discard or otherwise dispose of any fishing net, trap, or gear with netting, or parts thereof, in the waters of the State. Any person violating this section shall be subject to penalty under sections 187A-12.5 and 188-70, HRS. [Eff 12/3/98; am and comp 3/2/07; am and comp 3/11/23; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-75-5 Explosives. (a) It is unlawful to possess or use on or near state waters, any explosives or blasting fuse caps, for the purpose of taking aquatic life, except under the terms and conditions of a permit first obtained by the user from the department.

(b) The department may issue permits for the use of explosives consistent with other legal requirements.

(c) Any person found to have violated subsection (a) shall be guilty of a class C felony as provided under 188-70(b), HRS. [Eff 12/3/98; am and comp 3/2/07; comp 3/11/23; comp] (Auth: HRS §§187A-5, 188-23) (Imp: HRS §§187A-5, 188-23)

§13-75-6 Electrofishing devices. (a) It is unlawful to possess or use on or near state waters, any electrofishing devices or any source of electrical energy with appurtenant devices for the introduction of electricity into the water for the purpose of taking aquatic life, except under the terms and conditions of a permit first obtained by the user from the department.

(b) The department may issue permits for the use of electrofishing devices consistent with other legal requirements.

(c) Any person found to have violated subsection (a) of this provision shall be guilty of a class C felony as provided under 188-70(b), HRS. [Eff 12/3/98; am and comp 3/2/07; comp 3/11/23; comp] (Auth: HRS §§187A-5, 188-23) (Imp: HRS §§187A-5, 188-23)

§13-75-7 Poisonous substances. (a) It is unlawful to deposit in, permit to pass into, or place where it can pass into the state waters for the purpose of taking aquatic life, any of the following:

- (1) Any petroleum, coal or oil tar, lampblack, aniline, asphalt, bitumen, or residuary product of petroleum or carbonaceous material or substance;
- (2) Hypochlorous acid or any of its salts, including bleaches commonly sold under various trade names, such as Clorox and Purex, and bleaching powders;

- (3) Preparations containing rotenone, tephrosin, or plant materials from *Barringtonia asiatica*, *Cocculus ferrandianus*, *Hura crepitans*, *Piscidia erythrina*, *Tephrosia purpurea*, *Wikstroemia spp.*; or
- (4) Any other substance or material deleterious to aquatic life; except under the terms and conditions of a permit first obtained by the user from the department.

(b) The department may issue permits to allow the possession or use of stated amounts of these substances poisonous to aquatic life if the department deems the amount in possession is for legitimate purposes or in quantities too small to harm aquatic life.

(c) The possession of these substances without a permit issued by the department by any person on or near the water where fish can be taken, or aboard any fishing vessel or boat is prima facie evidence of a violation of this section.

(d) Any person found to have violated subsection (a) of this provision shall be guilty of a class C felony as provided under 188-70(b), HRS. [Eff 12/3/98; am and comp 3/2/07; comp 3/11/23; comp] (Auth: HRS §§187A-5, 188-23) (Imp: HRS §§187A-5, 188-23)

§13-75-8 Firearms. (a) No person shall pursue, take, or kill any turtle, crustacean, mollusk, aquatic mammal, or fish, except tuna and billfish that have been caught and gaffed, in the State with firearms as defined in section 134-1, HRS.

(b) Any crustacean, mollusk, aquatic mammal, or fish taken or killed in violation of this section, or offered for sale after being taken or killed in violation of this section, shall be confiscated and offered as evidence.

(c) Any person violating this provision shall be subject to penalty as provided under sections 187A-12.5 and 188-70, HRS. Evidence of each specimen may constitute a separate offence. Enforcement of any

offense under this section shall not preclude any prosecution under chapter 134, HRS. [Eff 12/3/98; am and comp 3/2/07; am and comp 3/11/23; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-75-9 Spears. (a) No person shall pursue, take, or kill any crustacean (except introduced freshwater prawns), turtle, or aquatic mammal in the State with a spear.

(b) Any crustacean, mollusk, aquatic mammal, or fish taken or killed or offered for sale in violation of this section shall be confiscated and offered as evidence.

(c) No person shall take any fish by the use of spears, or possess any speared fish which is smaller than the minimum size for the fish as specified in chapter 13-95, HAR, or any rule adopted under section 187A-5, HRS. Any person violating this provision for the first time shall receive a citation. Evidence of each specimen may constitute a separate offense. Any subsequent violation shall be punished as provided for in sections 187A-12.5 and 188-70, HRS; provided that the first subsequent violation shall be considered a first violation for the purposes of section 187A-13, HRS. [Eff 12/3/98; am and comp 3/2/07; am and comp 3/11/23; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-75-10 Throw nets. (a) It is unlawful for any person who is in the water or on or about the shore where fish can be taken to have in the person's possession a throw net with a mesh of less than two inches stretched mesh.

(b) It shall be unlawful for any person to sell or to offer for sale any throw net with a mesh of less than two inches stretched mesh.

(c) Any person violating this provision shall be subject to penalty as provided under sections 187A-12.5 and 188-70, HRS. [Eff 12/3/98; am and comp

3/2/07; am and comp 3/11/23; comp]
(Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-75-11 Drift gill nets. (a) It is unlawful for any person to possess or use any drift gill net in the waters of the State.

(b) Any person violating this section shall be subject to penalty as provided under sections 187A-12.5 and 188-70, HRS. [Eff 12/3/98; am and comp 3/2/07; am and comp 3/11/23; comp]
(Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-75-12 Gill nets. (a) It is unlawful for any person engaged in gill net fishing to:

- (1) Leave the person's net unattended for any amount of time; or
- (2) Leave the net in the water for a period of more than four hours in any twenty-four hour period.

(b) A person engaged in gill net fishing shall complete a visual inspection of the entire net within two hours after the net is first deployed and shall release any threatened, endangered, prohibited, or unwanted species.

(c) Any person violating this section shall be subject to penalty as provided under sections 187A-12.5 and 188-70, HRS. [Eff 12/3/98; am and comp 3/2/07; am and comp 3/11/23; comp]
(Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-75-12.2 Akule nets. (a) It is unlawful for any person without a valid commercial marine license to take akule with any net that has less than two and three-fourths inches stretched mesh, except as provided in subsection (e) or as may be otherwise provided by law.

(b) It is unlawful for any person without a valid commercial marine license to take akule while using the bag net fishing method.

(c) Except as provided in subsection (e) or as may be otherwise allowed by law, it is unlawful for any commercial marine licensee to take akule while using the:

- (1) Lay net fishing method with a net that has less than two and three-fourths inches stretched mesh;
- (2) Surround net fishing method with a net that has less than two and one-half inches stretched mesh; or
- (3) Bag net fishing method with a net that has less than one and one-half inches stretched mesh.

(d) It is unlawful for any commercial marine licensee to keep akule within a bag net in the ocean for more than three days without notifying the department. The person must explain the reasons for keeping the akule and when the bag net will be removed. The chairperson or an authorized representative of the department may require the immediate removal of the akule from the bag net if the action is necessary to prevent the unacceptable waste of the akule or to alleviate an unacceptably high public safety risk.

(e) Notwithstanding the provisions of subsections (a) through (d), and section 13-75-14(7), a person may use:

- (1) A landing net of any mesh size; provided that the opening of the landing net is less than four feet in any dimension, excluding the handle; or
- (2) A throw net with a mesh of two inches or greater.

(f) Anyone violating any provision of this section shall be subject to penalty under sections 187A-12.5 and 188-70, HRS. Each violation may constitute a separate offense. [Eff 1/11/02; am and comp 3/2/07; am and comp 3/11/23; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-75-12.4 Lay nets. (a) No person shall use or possess any lay net in State waters without first obtaining a lay net permit. Lay net permits shall be non-transferrable and shall expire on June 30 of each year.

(b) The fee for issuance or renewal of a lay net permit shall be \$25, provided that the fee shall be waived for Hawai'i residents and members of the armed forces of the United States on active duty in the State and their spouses and minor children. The fee for a duplicate permit shall be \$10.

(c) The department may revoke, suspend, or withhold issuance or renewal of a lay net permit for any violation of this section, provided that any revocation, suspension, or withholding of a lay net permit shall not exceed three months unless a longer period not to exceed two years is approved by the board.

(d) It is unlawful for any person within the jurisdiction of state waters to:

- (1) Possess or use a lay net that, except as provided in section 13-60.4-6, is:
 - (A) Longer than one hundred twenty-five feet in length when set end to end, or more than seven feet in stretched height; or
 - (B) Of less than two and three-fourths inches stretched mesh, except as provided in section 13-52-2(2)(A);
- (2) Possess or use a multi-panel lay net;
- (3) Possess or use a lay net that does not have at least four identification tags as specified by the department. Each identification tag must legibly display the lay net permit number of the person possessing or using the net. At least one identification tag must be attached at each end of both the net float line and the net lead line for a total of at least four attachment points on each lay net; or
- (4) Fish with more than one lay net at a time.

(e) It is unlawful for any person using the lay net fishing method to:

- (1) Use a lay net that is not marked by surface buoys as specified by the department. The buoys shall legibly display the lay net permit number of the person using the lay net, be marked with reflective tape, and be visible above the surface of the water. The buoys shall be attached to each end of the float line for a total of two buoys for each lay net;
- (2) Use a lay net within two hundred fifty feet of another lay net, except as provided in section 13-60.4-6;
- (3) Use a lay net in water greater than twenty-five feet in depth; provided that a person with a commercial marine license may use a lay net in water depths up to eighty feet, except as provided in section 13-60.4-6;
- (4) Use a lay net for more than four hours during any one set; provided that the same person shall not set any other lay net within twenty-four hours after the ending of the set;
- (5) Leave a lay net unattended for any amount of time, provided that a lay net shall be considered unattended if the lay net or surface buoys are not within eyesight of the person using the lay net;
- (6) Retrieve a lay net in such a manner as to cause any stony coral to break from its attachment to the bottom or to break into smaller pieces. Any stony coral brought to the surface in the net shall be considered prima facie evidence of a violation of this section;
- (7) Fail to complete inspection of an entire lay net within two hours after the beginning of the set. The person lay net fishing shall inspect the lay net and release any threatened, endangered, prohibited, or unwanted species;

- (8) Discard, abandon, or leave any lay net, or portion thereof, in the water for longer than four hours;
 - (9) Use a lay net in freshwater streams or stream mouths; or
 - (10) Use a lay net during the period from one-half hour after sunset to one-half hour before sunrise.
- (f) It is unlawful for any person to falsely identify any lay net.
- (g) Any lay net, within the jurisdiction of state waters, that does not have proper identification tags or surface buoys as required in subsections (d) and (e), shall be considered contraband and subject to immediate seizure by the department.
- (h) It is unlawful for any person to use a lay net in the following areas as provided in the table describing the boundary coordinates or locations for the prohibited fishing areas, located at the end of this chapter, entitled, "Table of Descriptions of Lay Net Fishing Prohibited Areas", dated April 19, 2006; and in the maps located at the end of this chapter, entitled, "Map of Lay Net Fishing Prohibited Area: Maui", dated April 19, 2006; "Map of Lay Net Fishing Prohibited Areas: O'ahu", dated April 19, 2006; and "Map of Lay Net Fishing Prohibited Area: Kane'ohē Bay, O'ahu", dated April 19, 2006:
- (1) Island of Maui;
 - (2) Kawaihoa Point to Keahi Point, O'ahu;
 - (3) Mokapu Point to Wailea Point, O'ahu; or
 - (4) Kane'ohē Bay, O'ahu.
- (i) Any person violating any subsection of this provision shall be subject to penalty as provided under sections 187A-12.5 and 188-70, HRS. Each violation may constitute a separate offense. [Eff and comp 3/2/07; am 12/26/13; am and comp 3/11/23; comp] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

§13-75-12.5 State waters around Moloka'i, special rules. (a) Notwithstanding the provisions of

section 13-75-12.4, it is unlawful for any person in State waters of the island of Moloka'i to use a lay net:

- (1) That is longer than 750 feet in length when set end to end, or more than seven feet in stretched height; or
 - (2) That has a stretched mesh of less than two and three-fourths inches.
- (b) Notwithstanding the provisions of section 13-75-12.4, any person using a lay net in State waters of the island of Moloka'i shall:
- (1) First obtain a lay net permit from the department;
 - (2) Attach at least four identification tags to each lay net as specified by the department. Each identification tag must legibly display the lay net permit number or numbers of the person or persons using the net. At least one identification tag must be attached at each end of both the net float line and the net lead line for a total of at least four attachment points on each lay net;
 - (3) Mark each lay net with at least two surface buoys, one at each end of its total length. The surface buoys shall display the lay net permit number or numbers of the person or persons using the lay net, be marked with reflective tape, and be large enough to be visible to the naked eye from a distance of 1,320 feet;
 - (4) Not set a lay net for more than twelve hours during any one set; provided that the same person shall not set any other lay net within twenty-four hours after the ending of the set;
 - (5) Leave a distance of at least 1,320 feet from any other lay nets that are already set; and
 - (6) Complete at least two inspections of the entire length of lay net set, and shall release any unwanted, prohibited, threatened or endangered species.

(c) Any person violating any subsection of this provision shall be subject to penalty as provided under sections 187A-12.5 and 188-70, HRS. Each violation may constitute a separate offense. [Eff 7/12/07; am and comp 3/11/23; comp] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

§13-75-13 Bullpen traps. (a) It is unlawful for any person to use bullpen traps with a stretched mesh of less than two inches.

(b) It is unlawful for any person to capture or attempt to capture aquatic life with a bullpen trap which exceeds two thousand feet in total length. The total length of a bullpen trap shall include the length of the guide or guides and pen.

(c) It is unlawful for any person engaged in bullpen trap fishing to leave the trap in the same place for a period of more than sixteen hours.

(d) It is unlawful for any person to capture or attempt to capture aquatic life with a bullpen trap within one thousand yards from the shoreline, except as provided in subsection (e).

(e) Notwithstanding subsection (d), it is lawful to capture or to attempt to capture aquatic life with a bullpen trap in the area seaward from five hundred yards from the shoreline of the island of Moloka'i west of Kaunakakai wharf and in the area seaward from two hundred yards from the shoreline of the island of Moloka'i east of Kaunakakai wharf; provided that the department may designate other areas of similar characteristics in which the use of bullpen traps within one thousand yards from the shoreline may be allowed under this subsection.

(f) Any person violating any portion of this section shall be subject to penalty as provided under sections 187A-12.5 and 188-70, HRS. Each violation may constitute a separate offense. [Eff 12/3/98; am and comp 3/2/07; am and comp 3/11/23; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-75-14 Nets, generally. (a) It is unlawful for any person to use nets made of or using netting with a stretched mesh of less than two inches, except that:

- (1) Pond owners or operators who hold a valid license issued under section 13-74-40, may use nets of smaller mesh to take young mullet or pua for stocking their fish ponds;
- (2) Commercial marine licensees who hold a valid bait license issued under section 13-74-22, may use nets of smaller mesh to take nehu, 'iao, marquesan sardine, gold-spot herring, or any other species for which an open season may be declared by the department for use as bait;
- (3) All persons may use nets of smaller mesh to take shrimp or 'opae, 'ōpelu, makiawa, or mikiawa;
- (4) [Aquarium] State of Hawai'i aquarium fish [collectors] permittees with a valid state of Hawai'i aquarium fish permit issued pursuant to [section 188-31, HRS,] chapter 13-77.1 may use [traps and] nets [for aquarium fish and other aquatic life] of smaller mesh to take marine life for commercial aquarium purposes in conformance with the terms and conditions of the permit[, provided that non-commercial aquarium fish collectors shall be limited to a combined total of five fish or aquatic life specimens per person per day];
- (5) All persons may use a net with mesh of not less than one and one-half inches to take akule; provided that no akule measuring less than eight and one-half inches in total length from the tip of the snout to the tip of the tail shall be taken with a net during the months of July, August, September, and October;

- (6) All persons engaged in surround net fishing with scuba, may use nets with mesh of not less than one and one-half inches only to bag and transport the fish captured with legal gear to the shore or the boat; and
- (7) All persons may use hand nets or scoop nets of smaller mesh to take fish or other marine life for noncommercial purposes only; provided that the net, including any handle and other attachment thereto, shall not exceed three feet in any dimension.

(b) Any person violating this provision shall be subject to penalty as provided under sections 187A-12.5 and 188-70, HRS. Each violation may constitute a separate offense. [Eff 12/3/98; am and comp 3/2/07; am and comp 3/11/23; am and comp]
 (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-75-15 Traps. (a) It is unlawful for any person to use any type of trap which is not portable or which is more than ten feet in length or six feet in height or width.

(b) Except for ~~[traps of smaller mesh to take shrimp or 'ōpae, and for]~~ the entrance cone and as provided in subsections (c) and (d), it shall also be unlawful to use traps made with the following material:

- (1) ~~[With netting having]~~ Netting with a stretched mesh of less than two inches; or
- (2) ~~[Made with plastic]~~ Plastic, wire, coated wire, or any other stiff material with a rigid mesh of less than two inches long by one inch wide.

(c) Traps made with netting with a stretched mesh of less than two inches or traps made with plastic, wire, coated wire, or any other stiff material with a rigid mesh of less than two inches may be used to take shrimp or 'ōpae.

(d) Commercial aquarium fish collectors with a valid state of Hawai'i aquarium fish permit issued pursuant to chapter 13-77.1 may use traps of smaller

mesh to take marine life for commercial aquarium purposes in conformance with the terms and conditions of the permit.

~~[(e)]~~ (e) Any person violating any portion of this provision shall be subject to penalty as provided under sections 187A-12.5 and 188-70, HRS." [Eff 12/3/98; am and comp 3/2/07; am and comp 3/11/23; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

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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 to reflect these amendments and compilation are not underscored.

6. The adoption of chapter 13-77.1 and amendments to and compilation of chapters 13-60.4 and 13-75, 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 [INSERT DATE OF BLNR FINAL APPROVAL] and filed with the Office of the Lieutenant Governor.

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

APPROVED FOR PUBLIC HEARINGS:

JOHN E. DUBIEL
Deputy Attorney General