

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawaii 96813

January 13, 2017

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

RECONSIDERATION OF PRIOR BOARD ACTION OF MAY 27, 2016
TO APPROVE HOLDING PUBLIC HEARINGS TO AMEND
CHAPTER 13-74, LICENSE AND PERMIT PROVISIONS AND FEES FOR FISHING, FISH,
AND FISH PRODUCTS HAWAII ADMINISTRATIVE RULES. THESE AMENDMENTS
ARE INTENDED TO REQUIRE DEALER REPORTING AND RAISE THE COMMERCIAL
MARINE LICENSE FEES FROM \$50 TO \$150 PER YEAR.

Submitted for your re-consideration and re-approval is a request to hold Statewide public hearings to amend Hawaii Administrative Rules (“HAR”) chapter 13-74 to make two changes to require seafood dealers to submit timely reports and raise commercial marine license fees. This re-submittal is needed because after the Board approved the request to hold public hearings on these amendments at its meeting of May 27, 2016, the Division of Aquatic Resources, after consultation with the Department of the Attorney General, is offering suggested changes to the proposed amendments of May 27, 2016, that require the Board’s re-consideration and approval.

The Specific Amendments Made Subsequent to the Board’s Approval of May 27, 2016

The Division of Aquatic Resources (DAR), upon consultation with the Attorney General’s (AG) office, is proposing to make the following changes:

Section #1, definitions for the commercial marine dealer, is being removed. DAR originally included this section to begin a public discussion on who the new dealer license provisions would apply to. The AG has concerns that the proposed new definition may be beyond the statutory definition and may exceed the existing authorization. Given this concern and the public discussion may occur without this section, we are recommending that the definition section be removed.

Section #3, commercial marine dealer license, is being removed. DAR originally included this section to begin a public discussion on what the new dealer license provisions would be. Knowing that the public discussion on this matter may occur without this section, we have decided to remove this section from the proposal. The more detailed discussions on the new dealer license will occur during a future comprehensive revision of Chapter 13-74, HAR, so this provision will be deferred to this later revision.

Much of the following information was provided in the May 27, 2016 submittal and is being provided here again for your review. Only the remaining section analyses are presented

Proposed Management Measures

There are two proposed rule changes: 1) to establish a reporting deadline for when primary dealers are required to report their purchases from commercial fishers to the Department, and 2) to raise the commercial marine license fees from its current \$50 to \$150 per year.

Primary Commercial Marine Dealer Purchase Report

State laws require persons catching local marine life for commercial purposes to have a commercial marine license (Section 189-2, Hawaii Revised Statutes (HRS)) and to submit reports of their catches (Section 189-3, HRS). State and Federal fisheries agencies use this fisheries information as the main source of data to determine the status of the stocks. We continually seek to improve these data to provide accurate, complete, and timely information to make good management decisions. The dealer reports verify the information that commercial fishers report to us. This verification helps ensure data accuracy so we can determine how close the fishers reported catch data are to the dealer reported purchase data. A small difference may indicate that the two data sets are similar and that we are likely fairly accurate, while a large difference may indicate that the two data sets are not capturing the same information and our catch estimates may be inaccurate.

The Division would distinguish between two kinds of dealers – primary and secondary. A primary dealer is a business that buys directly from the licensed commercial fisher. This distinction is important because being a primary dealer would trigger the requirement to submit purchase reports. A secondary dealer buys marine life from other dealers. Since the primary dealers are already reporting their purchases, there is no need for the secondary dealers to also report as this information would be duplicative and unnecessary.

Dealers have been submitting these reports for over thirty years but in 1997, Section 189-10, HRS, was amended to remove the specific language that set the deadline when the reports were due to give the Department more flexibility to change the reporting frequency through rule amendments. The unintended consequence of this statutory amendment was to create a legal loophole whereby dealers could evade reporting in the absence of an administrative rule establishing a deadline to submit reports. This proposed rule amendment would not affect dealers who already submit reports, would close the loophole, and also provide legal remedies for delinquent dealer reports. This same approach is what we are currently using to deal with commercial marine license report delinquencies. Use of the CRVS to consistently enforce timely commercial marine license reporting has resulted in a 95% submittal compliance rate, which is an historic high. We envision that a high compliance rate would be achieved with the dealer reporting, as well.

The specific deadlines are not included in this amendment to provide the Department the ability to change the deadlines based on specific needs. More specifically, the historical deadline for dealer reporting has been by the 10th day of the month following when the transaction occurred. For those transactions involving bottomfish, we are proposing a weekly or bi-weekly deadline

for more frequent, current reporting. This need for updated reporting is to match the current fisher reporting deadline of five days after the date the bottomfish are landed. The more frequent reporting is needed to keep a running total of the catch to accurately monitor the federal annual catch limit, which is also used to manage the Main Hawaiian Islands bottomfish fishery. The fishing season closes when the limit is reached but preparations are needed in advance to legally close the fishery.

The dealer reporting deadline would be implemented immediately upon adoption for those businesses that are already in our system. For those businesses not yet in our system, implementation is planned to occur over a period of six to 12 months to identify and work with these new businesses to develop timely, consistent, and accurate reports.

Commercial marine license fee increases

Prior to January 2016, the annual fees for the commercial marine license (CML) were \$50 for residents and \$200 for non-residents. These fees have been in effect since September 1, 1999. As a result of a recent settlement of a lawsuit in which the State was sued for charging a higher fee for non-residents compared to residents, without justifying the difference in amounts, the Department now charges a flat \$50 CML fee for both residents and non-residents. To make up for the loss in revenue from the reduction in the non-resident CML fees, the Department finds it necessary to raise the annual CML fee to \$150 for both residents and non-residents (see next section for a more detailed explanation). Because the fees have been increased so infrequently, three times in 25 years, (more than 15 years since the last change from \$25 to \$50), they have tended to be relatively large. To lessen the impact of these increases, we propose that the fees be increased in two stages, to \$100 the first year, followed by \$150 the following year. The increase to \$100 per year would occur immediately upon adoption of these amendments. The second increase to \$150 would likely occur on January 1, 2018, but may be dependent upon when the amendment is adopted.

These proposed fee increases would be the same for both residents and non-residents. The Division intends to conduct a study to determine whether the resident and non-resident fees should be different and by how much. Because we do not have this information at the present time, we are proposing the fees be the same, until such time as a fee differential can be determined.

Fee analysis

A review of our licensing annual expenditures indicates that we spent about \$500,000 each year for the last two years. This figure includes personnel costs for five employee salaries plus fringe, not including four neighbor island staff who also issue licenses, and some operating costs (supplies, postage, report book printing, and other miscellaneous costs). An additional \$100,000-\$150,000 per year is expended for maintenance of the on-line website, software/website updates and upgrades. We issue about 4,000 licenses per year, which breaks down to about \$150 per license per year ($\$600,000/4,000 = \150). Current expenses (\$600K) exceed revenues (\$350K) from license fees, with this difference being paid through State general fund and federal appropriations.

Compliance with the recent court approved settlement would reduce our revenues by about \$150,000/year. This projected loss of revenues needs to be compensated with a fee increase for all licenses as there is no other funding source that could recover this loss. We are also anticipating that with the proposed fee increase, a certain unknown percentage of licenses will not be renewed, further reducing projected revenues.

Number of Licenses	Cost Per License	Projected revenues	Implementation Date
4,000	\$50	\$200,000	Present
4,000	\$100	\$400,000	2017
4,000	\$150	\$600,000	2018

In summary, the anticipated loss in license fee revenues will be \$150,000/year. This loss will be replaced with an immediate increase in all license fees from \$50 to \$100/year, which is expected to generate about \$200,000/year. The second fee increase from \$100 to \$150/year is expected to generate another \$200,000/year. These funds will be used to cover the operational expenses in the coming years to add new on-line reporting options and upgrades to the software/website. These increases will enable the licensing system to be more self-sufficient, rather than depend on uncertain State and federal funds into the future. These funds may also be used to provide the required state matching funds for federal funded projects.

Where does the money go?

The few commercial fishers we have asked about a fee increase understand and support the increase, if the fees go back into supporting the commercial fishing program. The license and permit fees are deposited into the Commercial Fish Special Fund, authorized under Section 189-2.4, HRS, and is used to support commercial fishing. With this fund in place, we are assured that these license fees will be used to support commercial fishing projects and staff. One of the current projects is to convert a portion of our licensing software from an obsolete language to a current language. A number of other website fixes are needed to correct on-going problems.

Business and Public Impacts

The Department already receives monthly dealer reports from about 300 businesses. The proposed dealer reporting requirement would not change the reporting practices of these dealers as they will continue to submit their reports as they currently are. Businesses that are not currently reporting would now be required to submit reports. They should have been reporting for some time now and would be held accountable with this amendment. Our estimate is that about 300-500 new dealers, who are not already in our system, would be licensed annually under this provision. The impacts of more frequent reporting for bottomfish dealers will be discussed with those dealers that would be affected.

The proposed fee increases for commercial fishers have been initially discussed with select part time fishers prior to this amendment. They are opposed to any fee increases but understand that the loss of revenues has left the Department with few options. They asked that the fee increases be graduated, so we are proposing a two-step increase. Full-time commercial fishers support this increase and have advocated for even higher fees if it drove part-time fishers out of the business

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of selling fish. The Division is considering a tiered fee structure, separating part-time and full-time licensing, in future amendments in response to this information.

RECOMMENDATIONS:

“That the Board re-approve the holding of Statewide public hearings for the revised amendments to Hawaii Administrative Rules Chapter 13-74, LICENSE AND PERMIT PROVISIONS AND FEES FOR FISHING, FISH, AND FISH PRODUCTS.”

Respectfully submitted,



BRUCE S. ANDERSON, Administrator
Division of Aquatic Resources

APPROVED FOR SUBMITTAL



SUZANNE CASE, Chairperson
Board of Land and Natural Resources

Attachments:

Exhibit 1 – Ramseyer Draft (1/13/17)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to Chapter 13-74
Hawaii Administrative Rules

(date of adoption)

1. Section 13-74-20, Hawaii Administrative Rules, is amended to read as follows:

"§13-74-20 Commercial marine license. (a) No person shall take marine life for commercial purposes whether the marine life is caught or taken within or outside of the State, without first obtaining a commercial marine license. Additionally, any person providing vessel charter services in the State for the taking of marine life in or outside of the State shall obtain a commercial marine license.

(b) Licenses to persons with proof of identity to engage in the activities described in subsection (a) shall require the person's name, address, age, place of birth, length of residence in the State, height, weight, color of hair and eyes, citizenship, and such other information as the department may require.

(c) The fee for the commercial marine license shall be[:

(1) Residents, \$50;

(2) All other persons, \$200;

(3) Duplicate license, \$10.] \$100. The fee for a duplicate license shall be \$10.

(d) Beginning January 1, 2018, the fee for the commercial marine license shall be \$150. The fee for a duplicate license shall be \$10.

(e) No person may:

(1) Renew a commercial marine license more than two months prior to its expiration date; or

(2) Be issued more than one commercial marine license at any one time.

[(d)] (f) The department may require persons issued the commercial marine license to submit reports

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

2. Chapter 13-74, Hawaii Administrative Rules, is amended by adding a new section 13-74-46 to read as follows:

"§13-74-46 Commercial marine dealer report. (a) Every commercial marine dealer shall submit to the department a report of all marine life obtained, purchased, transferred, exchanged, or sold during the report period. Reports shall contain the following information:

- (1) The name, address, and telephone number of the commercial marine dealer;
- (2) The time period for which the report is being submitted;
- (3) The species, numbers, weights, and values of each of the varieties of marine life landed in the State that the dealer obtained, purchased, transferred, exchanged, or sold during the reporting period;
- (4) The name and current license number of the commercial marine licensee from whom the marine life was obtained or purchased; and
- (5) Other information as required on forms provided by, or as directed in writing by, the department.

(b) Reports shall be submitted to the department monthly or weekly as provided in writing by the

Ramseyer Format (1/13/17)

department." [Eff _____] (Auth: HRS §189-10) (Imp: HRS §189-10)

5. Material, except source notes, to be repealed is bracketed. New material is underscored.

6. Additions to update source notes to reflect these amendments are not underscored.

7. These amendments to chapter 13-74, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

SUZANNE D. CASE
Chairperson
Board of Land and Natural
Resources

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General

