

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

December 8, 2017

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

**REQUEST FOR APPROVAL TO HOLD PUBLIC HEARINGS TO AMEND HAWAII
ADMINISTRATIVE RULES CHAPTER 13-74, LICENSE AND PERMIT PROVISIONS AND
FEES FOR FISHING, FISH, AND FISH PRODUCTS. THESE AMENDMENTS WOULD
ESTABLISH A NEW VESSEL LICENSE FOR COMMERCIAL FISHING**

Submitted for your consideration and approval is a request to hold Statewide public hearings to amend Hawaii Administrative Rules (“HAR”) chapter 13-74 to implement a new license for vessels used during commercial fishing trips.

The Department is authorized under section 189-2, Hawaii Revised Statutes (HRS), to issue commercial marine licenses (CML) to persons taking marine life for commercial purposes. The CML is currently issued to individuals who are commercial fishing. The proposed amendments would create a new type of commercial marine license that would include the vessel as an integral part of boat-based commercial fishing activities. This new license would be called the commercial marine vessel license (CMVL).

The public discussions regarding the details of the CMVL have not yet fully occurred and we expect that changes to this version of the draft rules will need to be made after those discussions. We are requesting the Board to give preliminary approval to these draft rules. Should substantive changes be needed, we will re-submit the rules for the Board’s reconsideration.

The fishers have been asking the Department to create a vessel license for many years and this request was echoed again during the recent commercial marine license fee increases. The need to have individuals separately licensed under the CML caused problems when random and infrequent visitors or part-time crew members are needed for a commercial fishing trip. It’s not always easy to plan far in advance to get a CML for these people. Now that the fees could potentially be raised to \$150 each, the infrequent fisher is less inclined to get an individual CML since they fish so little they would not recover the fee cost.

The main benefit of the CMVL for the fisher is its convenience. The CMVL would cover everyone on board under one license and eliminates the need for individual licenses. The crew could change with every trip and no additional license would be needed. The one license may also be cheaper, depending on how much the vessel license fee is and the number of crew changes that would occur during the year. For those fishers that have slightly larger vessels with

crews of 3 persons, the vessel license may make more sense. For those fishers that only fish by themselves, they might opt to only get the one CML instead of the CMVL.

For the Division, the vessel license clarifies who would report for the vessel. This clearly identifies for us, the one person responsible for reporting the fishing activity for a vessel rather than trying to get reporting compliance from many part-time fishers.

On the other hand, the vessel license could reduce revenues as CML holders move under the CMVL and not renew their individual CML. The Division is considering what fee to charge for the CMVL to minimize the loss of revenues. The longline vessels would be charged a higher fee because of the normally larger crews needed to adequately work the larger vessel. This increased longline fee may support a lower non-longline fee. The Division is considering an “introductory” low CMVL non-longline fee to encourage these fishers to get the new license, try it out, and see what the benefits might be for them. It comes down to the minimum amount of revenues needed to support the licensing operations. We expect the fee will be a major discussion topic during the public portion of the rule making process.

Internally, the other major challenge is how sales of the catch from CMVLs will be handled. Because individual crew members would no longer have CMLs, they would not be able to sell fish directly to the markets. To address this, the Division is proposing a transport log system to track sales from the CMVL. This is based on a California model that is currently in use there, following a recommendation from DOCARE.

The transport log is a written document that identifies the CMVL where the catch originated, the name of the person who is designated to transport the catch to the markets, which markets are to receive the catch, and the date(s) the transport occurs. An enforcement officer intercepting the CMVL seller during the delivery at the market would check the transport log to ensure that the sale is properly documented.

The transport log would also address another challenge regarding the delivery of the catch to the market by persons other than the person who caught the marine life. Currently, family and friends are taking the catch to the market on behalf of the fisher, sometimes without documents, or have found creative ways to enable the legal transaction. The transport log approach would clearly identify and delegate delivery agents for the vessel and the catch from that trip. The transport log may be subject to abuse but we believe that the overall benefit from this approach will be worth the risk.

Fee analysis

As explained in our earlier submittal during the CML fee increases, we issue about 4,000 licenses per year, of which about 3,000 are non-longline and 1,000 are longline. We are using \$300 per non-longline CMVL and \$1,500 per longline CMVL to estimate projected revenues. The longline vessels are easier to estimate so we will review this group first.

There are about 140 longline vessels in the fleet with a mostly non-resident crew of up to seven per vessel. Prior to 2017, the CML non-resident fee was \$200/year. The \$200 x 7 crew equaled \$1,400/year for each vessel. The \$1,500 CMVL longline fee proposed would be a modest

increase over what used to be charged. Under a CML new fee of \$150 x 7 crew, the fee would have been \$1,050/year so the proposed \$1,500 would be a larger, but still affordable, increase.

If we multiply 140 vessels x \$1,500/CMVL, we would generate \$210,000 per year. If we charge \$150 per crew, we have \$150 x 1,000 longline CML equals \$150,000 per year from the sale of individual CMLs. The difference in revenues between what we would make using the higher CMVL fees and what we are currently generating under the CML, we would make \$210,000 - \$150,000 = \$60,000. We are expecting all longline vessels to purchase the CMVL instead of the CML so we are projecting revenues to be + \$60,000 per year from the longline fleet.

For the non-longline fleet, of the 3,000 CMLs currently issued, about 10% (or 300) of these are issued to crew members. If we expect all 10% to not renew their individual CMLs and go under the CMVL, we are projecting a revenue loss of \$150 x 300 CML = \$45,000.

There are about 2,000 non-longline vessels, we multiply the number of vessels 2000 x \$300 = \$600,000/year. We are currently generating 3,000 CML x \$150 each = \$450,000 per year from the sale of non-longline CMLs per year. The difference in projected revenues between what we are currently generating under the CML and what we would make using the CMVL fees, we would make \$450,000 vs \$600,000/year.

	Lic cost	CML	CMVL
2016	\$50/\$200	\$350,000	\$ -
2017	\$50	\$200,000	\$ -
2018	\$150	\$600,000	\$ -
2018	\$300/\$1500		\$810,000

Annual revenues generated prior to suit (in orange)

Annual revenues generated after suit (in blue)

Projected revenues with fee increase (in yellow)

Projected revenues with vessel license if all vessels get licensed (in green)

Projected revenues in 2018 assume all licenses are renewed

Where does the money go?

Similar to the CML, the revenues generated from a CMVL would be 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. During the recent hearings to increase the CML fees, fishers asked why license fees would go to funding staff since staff funding currently comes from the general fund. Licensing staff is generally not funded by general funds. The Oahu office has a full-time licensing clerk that is entirely funded from the Commercial Fish Special Fund, with those funds coming from license fees. We also have staff that are federally funded. The federal agencies have warned us that future funding may be reduced and to prepare for more of the funding burden to be shifting to the state. Staff duties, in addition to issuing licenses, include report processing (logging, reviewing, verification, compliance), database management and security, unit administration, and basic industry statistics. The value of the State's commercial fisheries is estimated to be more than \$55M/year.

While we cannot predict the amount of the federal reduction at this time, we expect some reductions will occur. If we waited until the reductions occurred to raise the fees, we would not be able to continue the current level of support and service. Current staff includes General funded staff (2), Federal funded staff (3), and Special funded staff (2).

Business and Public Impacts

The proposed CMVL has been discussed with a number of commercial fishers, many of whom were engaged during the recent statewide public hearings in September and October 2017 to raise the CML fees. All fishers we spoke to were in support of the idea but were concerned about the fees. They see the CMVL as potentially reducing their total license fee costs, improving license compliance, and simplify the licensing process. No one we talked to opposed the concept of the CMVL.

RECOMMENDATIONS:

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

Respectfully submitted,



for

BRUCE S. ANDERSON, PhD. Administrator
Division of Aquatic Resources

APPROVED FOR SUBMITTAL



SUZANNE CASE, Chairperson
Board of Land and Natural Resources

Attachments:

Exhibit 1 – Ramseyer Draft

Ramseyer Format (11/28/17)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to Chapter 13-74
Hawaii Administrative Rules

(date of adoption)

1. Section 13-74-1, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

""Commercial marine vessel license" means a license issued to operate a vessel to take marine life within or outside the state for commercial purpose."

2. Section 13-74-1, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

""Commercial marine vessel licensee" means the individual to whom the department has issued a commercial marine vessel license pursuant to section 13-74-23."

3. Section 13-74-1, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

""Longline vessel" means a fishing vessel that has a valid Hawaii longline limited access permit pursuant to federal law 50 CFR 665.801 (Title 50, Chapter VI, Part 665, Subpart F)."

4. Section 13-74-1, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

""Primary transaction" means any action involving the initial transfer of catch from a vessel licensed under section 13-74-23 to the

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buyer or buyers, or their agent or agents, and does not include subsequent transfers between buyers or their agents."

5. Section 13-74-1, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Vessel charter fishing services" means any action involving the hiring or use of a vessel for a fee or other compensation, with or without crew, to fish for marine life. [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)

6. Chapter 13-74, Hawaii Administrative Rules, is amended by adding a new section 13-74-23 to read as follows:

§13-74-23 Commercial marine vessel license.

(a) The department shall, upon receipt of a valid application, issue a commercial marine vessel license to any qualified individual to operate a vessel to fish for marine life within or outside the state for commercial purposes. A qualified individual is one who is at least eighteen years old, is legally admitted to the United States, provides proper identification, does not have any unresolved violations of any license or permit issued pursuant to this chapter, and does not have any unmet child support or student loan obligations as provided in subsections 189-2(e) and (f), HRS.

(b) Unless otherwise authorized by law, it is unlawful for any person to operate a vessel to fish for marine life within or outside the state for commercial purposes, without first obtaining:

- (1) A commercial marine vessel license issued pursuant to this section; or
- (2) A commercial marine license issued pursuant to section 13-74-20.

(c) Unless otherwise authorized by law, it is unlawful for any person to operate a vessel to provide

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vessel charter fishing services within or outside the state for commercial purposes, without first obtaining:

- (1) A commercial marine vessel license issued pursuant to this section; or
- (2) A commercial marine license issued pursuant to section 13-74-20.

(d) Clients on a vessel that provides vessel charter fishing services are not required to be licensed under this section; provided that clients who sell or attempt to sell their catch are required to obtain a commercial marine license.

(e) Any individual applying for the commercial marine vessel license to engage in the activities described in subsections (b) or (c) shall provide to the department:

- (1) The individual's name, address, age, place of birth, length of residence in the State, height, weight, color of hair and eyes, and citizenship;
- (2) A business name and contact information, if any;
- (3) The vessel name and any government-issued identifying number;
- (4) The vessel owner's name and contact information; and
- (5) Any other relevant information the department may require.

(f) Unless otherwise exempted in writing, every commercial marine vessel licensee shall submit to the department a report of all marine life taken while using the vessel. Such reports shall be submitted monthly to the department; provided that persons taking bottomfish as defined in chapter 13-94, in the main Hawaiian islands, shall, unless exempted, in addition to their monthly report for species other than bottomfish, submit trip reports of their bottomfish fishing activity. The reports shall be subject to section 13-74-2, HAR, sections 189-3 and 189-3.5, HRS, and as may be otherwise provided by law or as a term or condition of the license. Reports shall contain information on fishing effort

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activities, any catch, crew or passengers, and any other relevant information the department may require on department issued or approved, printed, written, or electronic forms.

(g) The fee for the commercial marine vessel license shall be:

- (1) \$400 for any vessel other than a longline vessel;
- (2) \$1,500 for a longline vessel; and
- (3) \$10 for a duplicate license.

(h) Unless allowed by the department, a commercial marine vessel licensee shall not renew a commercial marine vessel license earlier than three months prior to its expiration date.

(i) Each vessel shall have a separate commercial marine vessel license, even if the same individual operates multiple vessels.

(j) The commercial marine vessel licensee shall issue a transport log to designate themselves or any other adult individual to sell or attempt to sell, either in part or in whole, the marine life taken while on the commercial marine vessel. The transport log shall document the commercial marine vessel licensee number and name, species and weight of the marine life to be sold, the markets where the marine life will be sold, the transport date, the person or persons authorized to deliver the catch, and any other relevant information the department may require. The transport log is required only for primary transactions. The commercial marine vessel licensee must retain the transport logs for a period not less than 12 months from the date of the log.

(k) It is unlawful for any person to sell or attempt to sell, without a transport log, marine life taken during that trip while on the vessel that is licensed under a commercial marine vessel license. The person so designated under the transport log shall keep such log in their possession for the duration of the delivery and shall immediately provide such log and a valid personal identification to an officer of the department authorized to enforce this chapter, upon demand, at any time during the delivery." [Eff

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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)

7. New material is underscored.

8. 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

