

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

October 11, 2019

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

REQUEST FOR APPROVAL TO HOLD PUBLIC MEETINGS AND HEARINGS TO
REPEAL HAWAII ADMINISTRATIVE RULES (HAR) TITLE 13 CHAPTERS 84
AND 89 AND TO AMEND AND COMPILE HAR TITLE 13 CHAPTER 95, TO
UPDATE AND CONSOLIDATE RULES AND STATUTORY PROVISIONS
REGULATING THE TAKE, POSSESSION, AND SALE OF SAMOAN CRAB, KONA
CRAB, AND LOBSTER

Submitted for your consideration and approval is a request to hold public meetings and hearings to repeal Hawaii Administrative Rules (HAR) chapters 13-84 and 13-89 and to amend and compile HAR chapter 13-95 to update and consolidate rules and statutory provisions regulating the take, possession, and sale of Samoan crab, Kona crab, and lobster.

BACKGROUND

Regulations for the take, possession, and sale of Samoan crab, Kona crab, and certain species of lobster are found in various sections of the HAR and Hawaii Revised Statutes (HRS). These regulations are summarized below.

Samoan crab regulations

HAR chapter 13-84, "Samoan Crab", was adopted in 1981 based substantially upon regulations of the Department's former Division of Fish and Game. It prohibits the taking, killing, possession, or sale of any Samoan crab carrying eggs externally, or less than six inches in carapace width.

HAR §13-95-52, adopted in 1998, also prohibits the take, killing, possession, or sale of any Samoan crab with eggs. In addition, it prohibits the take or killing of any Samoan crab with a spear, as well as sale of any speared Samoan crab.

HRS §188-58.5, enacted in 2006, prohibits the taking or killing of any female Samoan crab.

Kona crab regulations

HAR §13-95-51, adopted in 1998, prohibits the take, possession, or sale of any Kona crab less than four inches in carapace length; during the months of May, June, July, and August; while with eggs; or with a spear.

HRS §188-58.5, enacted in 2006, prohibits the taking or killing of any female Kona crab.

Lobster regulations

HAR chapter 13-89, “Spiny Lobster or Ula and Slipper Lobster or Ula Papapa”, was adopted in 1981 based substantially upon regulations of the Department’s former Division of Fish and Game. It regulates the take, killing, possession, and sale of spiny lobster or ula (*Panulirus penicillatus* and *P. marginatus*) and slipper lobster or ula papapa (*Scyllarides squammosus* and *S. haanii*). The rule contains different sets of regulations for waters adjacent to the main Hawaiian islands and waters adjacent to the Northwestern Hawaiian islands. For waters adjacent to the main Hawaiian islands, the rule prohibits the take, killing, possession, or sale of spiny lobster less than three and one-fourth inches in carapace length and slipper lobster less than two and three-fourths inches in tail width. Additionally, lobsters shall not be in a condition where the body is mutilated or the carapace and tail are separated. For waters adjacent to the Northwestern Hawaiian islands, the rule establishes minimum size limits based on tail width, restrictions on where lobster may be caught, and gear specifications. These rules regulate the NWHI commercial lobster fishery, which no longer exists.

HAR §13-95-53, adopted in 1998, prohibits the take, killing, possession, or sale of any spiny lobster during the months of May, June, July, and August; while with eggs; with a spear, or the sale of speared spiny lobster.

HAR §13-95-54, adopted in 1998, prohibits the take, killing, possession, or sale of slipper lobster during the months of May, June, July, and August; while with eggs; with a spear; or the sale of any speared slipper lobster.

HRS §188-58.5, enacted in 2006, prohibits the taking or killing of any female spiny lobster.

PURPOSE

DAR proposes to repeal HAR chapters 13-84 and 13-89 and to amend and compile HAR chapter 13-95 to update and consolidate rules regulating the take and possession of Samoan crab, Kona crab, and lobster. Consolidating these rules into one rule chapter will facilitate compliance by making it easier for the public to find all applicable regulations on these crustacean species.

DAR also proposes to adopt a comparable administrative rule provision to the statutory provisions in HRS §188-58.5. Statutory provisions are difficult to amend as they require

legislative action. Transferring these provisions into administrative rules and eventually requesting the repeal of the corresponding statutory provisions would enable the Department to amend regulations through rulemaking to adaptively manage these resources based on the best available scientific information.

HAR chapter 13-84, "Samoaan Crab", would be repealed and the substantive provisions transferred to HAR chapter 13-95.

HAR chapter 13-89, "Spiny Lobster or Ula and Slipper Lobster or Ula Papapa", would be repealed and the substantive provisions relating to lobster regulations in the main Hawaiian Islands would be transferred to HAR chapter 13-95. The provisions relating to the lobster fishery in the northwestern Hawaiian Islands would be repealed.

HAR §13-95-1 (Definitions) would be amended to:

1. Add the definition of "Samoaan crab", based on the scientific name provided in HRS §188-58.5;
2. Amend the definition of "slipper lobster" to correct the spelling of the scientific name *S. haanii*; and
3. Amend the definition of "spiny lobster" to include all species in the genus *Panulirus*, based on the genus name provided in HRS §188-58.5.

HAR §13-95-51 (Kona crab) would be amended to incorporate the existing provision in HRS §188-58.5 that makes it unlawful for any person to take or kill any female Kona crab.

HAR §13-95-52 (Samoaan crab) would be amended to:

1. Incorporate the existing provision in HAR §13-84-1 that makes it unlawful for any person to take, possess, or sell any Samoaan crab less than six inches in carapace width; and
2. Incorporate the existing provision in HRS §188-58.5 that makes it unlawful for any person to take or kill any female Samoaan crab.

HAR §13-95-53 (Spiny lobster) would be amended to:

1. Incorporate the existing provision in HAR §13-89-1(1)(A) that makes it unlawful for any person to take, kill, possess, or sell any spiny lobster less than three and one-fourth inches in carapace length;
2. Incorporate the existing provision in HAR §13-89-1(1)(C) that makes it unlawful for any person to possess or sell any spiny lobster in a condition where the body is mutilated, or the carapace and tail are separated; and

3. Incorporate the existing provision in HRS §188-58.5 that makes it unlawful for any person to take or kill any female spiny lobster.

HAR §13-95-54 (Slipper lobster) would be amended to:

1. Incorporate the existing provision in HAR §13-89-1(1)(B) that makes it unlawful for any person to take, kill, possess, or sell any slipper lobster less than two and three-fourths inches in tail width; and
2. Incorporate the existing provision in HAR §13-89-1(1)(C) that makes it unlawful for any person to possess or sell any slipper lobster in a condition where the body is mutilated, or the carapace and tail are separated.

The proposed administrative rulemaking actions would not result in any substantive changes to existing laws, so the taking, possession, or sale of these resources will not be affected. The proposed rules drafted in Ramseyer format are attached as **Exhibit 1**.

RECOMMENDATIONS:

That the Board:

1. Authorize and approve the holding of statewide public meetings and hearings to repeal HAR chapters 13-84 and 13-89 and to amend and compile HAR chapter 13-95 to update and consolidate rules and statutory provisions regulating Samoan crab, Kona crab, and lobster.
2. Delegate to the Chairperson the authority to appoint hearings officers to conduct the aforementioned public meetings and hearings.

Respectfully submitted,



BRIAN J. NEILSON, Administrator
Division of Aquatic Resources

APPROVED FOR SUBMITTAL



SUZANNE D. CASE, Chairperson
Board of Land and Natural Resources

Attachment:

Exhibit 1 – Proposed rules (Ramseyer format)

Exhibit 1

Repeal of Chapters 13-84 and 13-89 and
Amendment and Compilation of Chapter 13-95
Hawaii Administrative Rules

(date adopted)

1. Chapter 13-84, Hawaii Administrative Rules, entitled "Samoa Crab", is repealed.
2. Chapter 13-89, Hawaii Administrative Rules, entitled "Spiny Lobster or Ula and Slipper Lobster or Ula Papapa", is repealed.
3. Chapter 13-95, Hawaii Administrative Rules, entitled "Rules Regulating the Taking and Selling of Certain Marine Resources", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART V PROTECTED MARINE FISHERIES RESOURCES

CHAPTER 95

RULES REGULATING THE TAKING AND SELLING
OF CERTAIN MARINE RESOURCES

§13-95-1	Definitions
§13-95-1.1	Licenses, permits, and other exemptions
§13-95-2	Penalty
§13-95-3	Severability
§13-95-4	Aholehole
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§13-95-22	Ulua
§13-95-23	Moi
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§§13-95-25 to 49	(Reserved)
§13-95-50	Kuhonu crab
§13-95-51	Kona crab
§13-95-52	Samoan crab
§13-95-53	Spiny lobster
§13-95-54	Slipper lobster
§13-95-55	He'e
§§13-95-56 to 69	(Reserved)
§13-95-70	Stony corals
§13-95-71	Live rocks

§13-95-1 Definitions. As used in this chapter, unless otherwise provided:

"Aholehole" means any fish known as *Kuhlia xenura* or *Kuhlia sandvicensis* or any recognized synonym.

"Akule" means any fish identified as *Selar crumenophthalmus* or other recognized synonym. This fish is also known as pa'a'a, halalu, hahalalu, and big-eyed scad.

"Awa" means any fish known as *Chanos chanos* or any recognized synonym.

"Break" means to hit with, or to apply sufficient force to reduce to smaller pieces or to crack without actually separating into pieces.

"Carapace length" means the straight line measurement from the tip of the rostrum to the middle of the trailing edge of the body or carapace, not including the tail.

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

"Damage" means to scrape, smother, poison, or otherwise cause any physical or physiological harm to the living portion of a stony coral or live rock.

"Day" means a twenty-four hour period.

"He'e" means any mollusk known as *Octopus cyanea*, *Octopus ornatus*, or any recognized synonym.

"Kala" means any fish known as *Naso unicornis*, *Naso brevirostris*, *Naso annulatus*, or any recognized synonym.

"Kona crab" means any crab known as *Ranina ranina* or any recognized synonym.

"Kumu" means any fish known as *Parupeneus porphyreus* or any recognized synonym.

"Length" means the straight line measurement from the tip of the snout to the middle of the trailing edge of the tail.

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

"Manini" means any fish known as *Acanthurus triostegus sandvicensis* or any recognized synonym.

"Mitigation" means activities carried out in accordance with this chapter in order to avoid,

minimize, restore, or compensate for losses of certain marine resources due to authorized activities.

"Moano" means any fish known as *Parupeneus multifaciatus* or any recognized synonym.

"Moi" means any fish known as *Polydactylus sexfilis* or any recognized synonym.

"Mullet" means any fish known as *Mugil cephalus* or any recognized synonym.

"Net" means any of various fishing devices of mesh material made into various shapes, such as but not limited to, a bag, sack, pouch, or curtain, used to entangle, surround, or concentrate aquatic life.

"Oio" means any fish known as *Albula glossodonta* or any recognized synonym.

"Opelu kala" means any fish known as *Naso hexacanthus* or any recognized synonym.

"Renewable energy projects" means projects developed by renewable energy producers, as the term is defined in section 171-95, Hawaii Revised Statutes, that reduce the consumption of non-renewable energy resources or produce renewable energy.

"Samoan crab" means any crab known as *Scylla serrata* 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.

"Speared" means to capture aquatic life by stabbing with a spear or other such pointed device. The presence of any puncture wound on the external surfaces of the aquatic life, which are fresh and does not show signs of healing, shall be evidence that the aquatic life was speared.

"Slipper lobster" means any crustacean of the species *Scyllarides squammosus* or [*S. haani*,] *S. haanii*, or recognized synonyms. These animals are also known as rock lobster, mole lobster, shovel-nosed lobster, or ula papapa.

"Spiny lobster" means any crustacean of the [~~species *Panulirus penicillatus* or *P. marginatus*, or recognized synonyms-~~] genus *Panulirus*. These animals

are also known as lobster, Hawaiian spiny lobster, red lobster, green lobster, or ula.

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

"Take" means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, 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.

"Uhu" means any fish known as *Scarus dubius*, *Scarus psittacus*, *Scarus rubroviolaceus*, *Chlorurus sordidus*, *Chlorurus perspicillatus*, or any recognized synonym.

"Ulua" means any fish known as *Caranx ignobilis*, *Caranx lugubris*, *Caranx melampygus*, *Caranx sexfasciatus*, *Carangoides equula*, *Carangoides ferdau*, *Carangoides orthogrammus*, or any recognized synonym. The young of these species are also known as papio.

"Weke" means any fish known as *Mulloidichthys flavolineatus* or any recognized synonym. These fish are also known as goatfish, yellowstripe goatfish, weke a, and the young of this fish is known as oama. [Eff 12/03/98; am 1/11/02; am 12/09/02; am 12/19/02; am 5/01/14; am 10/19/18; am and comp]
(Auth: HRS §§187A-3.5, 187A-5, 190-3) (Imp: HRS §§187A-3.5, 187A-5, 190-3)

§13-95-1.1 Licenses, permits, and other exemptions. Notwithstanding the provisions of this chapter, the department may issue the following licenses and permits to exempt persons from the provisions of this chapter:

§13-95-1.1

- (1) Licenses issued pursuant to sections 187A-3.5, 188-44, 188-57, or 189-6, HRS;
- (2) Permits issued pursuant to sections 187A-6, 188-23, 188-37, 188-68, or 190-4, HRS; or
- (3) As may be otherwise provided by law. [Eff 12/19/02; am 5/01/14; comp]
(Auth: HRS §§187A-3.5, 187A-6, 188-44, 188-45, 188-57, 188-68, 190-3) (Imp: HRS §§187A-3.5, 187A-6, 188-23, 188-37, 188-44, 188-45, 188-57, 188-68, 190-4)

§13-95-2 Penalty. (a) A person violating any section of this chapter may be subject to any applicable criminal or administrative penalties or both. 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.

(b) For the purpose of calculating the administrative penalties for violations of this chapter, if a fine per specimen may be applicable, fines per specimen may be imposed on the following basis:

- (1) For finfish, each individual;
- (2) For invertebrates, not including stony corals or live rock, each individual;
- (3) For solitary (having a single polyp) stony corals, each individual;
- (4) For colonial stony corals:
 - (A) Each damaged head or colony less than one square meter in surface area; or
 - (B) For a colony greater than one square meter in surface area, each square meter of colony surface area and any fraction remaining constituting an additional specimen;
- (5) For live rocks, each individual; but if the violation involves greater than one square meter of bottom area, on the basis of each

square meter of bottom area. [Eff 12/03/98; am 5/01/14; comp] (Auth: HRS §§187A-5, 188-53, 190-3) (Imp: HRS §§183C-7, 187A-5, 187A-12.5, 187A-13, 188-53, 188-70, 189-4, 190-5)

§13-95-3 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] (Auth: HRS §§187A-5) (Imp: HRS §§187A-5, 1-23)

§13-95-4 Aholehole. It shall be unlawful for any person to take, possess, or sell any aholehole less than five inches in length. [Eff 12/03/98; am 12/19/02; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-5 Manini. It shall be unlawful for any person to take, possess, or sell any manini less than five inches in length. [Eff 12/03/98; am 12/19/02; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-6 Moano. It shall be unlawful for any person to take, possess, or sell any moano less than seven inches in length. [Eff 12/03/98; am 12/19/02; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-7

§13-95-7 Kumu. It shall be unlawful for any person to take, possess, or sell any kumu less than ten inches in length. [Eff 12/03/98; am 12/19/02; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-8 Mullet. (a) It shall be unlawful for any person to take, possess, or sell any mullet less than eleven inches in length.

(b) It is unlawful for any person to wilfully fish for, or attempt to take by any means whatsoever, from any of the waters within the jurisdiction of the State, or to sell, or have in possession any mullet during the months of December, January, February, and March; provided that any owner or operator of a fish pond may lawfully catch the young mullet known as pua during the closed season, for the purpose of stocking the owner's or operator's pond; and provided further that any owner or operator of a fish pond or any commercial marine dealer may lawfully sell pond raised mullet during the closed season after first procuring a license to do so pursuant to sections 13-74-40 or 13-74-43. [Eff 12/03/98; am 12/19/02; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-9 Awa. It shall be unlawful for any person to take, possess, or sell any awa less than nine inches in length. [Eff 12/03/98; am 12/19/02; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-10 Oio. It shall be unlawful for any person to take, possess, or sell any oio less than

fourteen inches in length. [Eff 12/03/98; am
12/19/02; comp] (Auth: HRS §187A-5)
(Imp: HRS §187A-5)

§13-95-11 Kala. It shall be unlawful for any
person to take, possess, or sell any kala less than
fourteen inches in length. [Eff 12/03/98; am
12/19/02; comp] (Auth: HRS §187A-5)
(Imp: HRS §187A-5)

§13-95-12 Opelu kala. It shall be unlawful for
any person to take, possess, or sell any opelu kala
less than sixteen inches in length. [Eff 12/03/98; am
12/19/02; comp] (Auth: HRS §187A-5)
(Imp: HRS §187A-5)

§13-95-13 Opakapaka. It shall be unlawful for
any person to possess with the intent to sell, or
offer for sale, any opakapaka less than one pound in
weight.

(b) It shall be unlawful for any person to take
with spear or possess any speared opakapaka less than
one pound in weight. [Eff 12/3/98; comp
] (Auth: HRS §187A-5) (Imp: HRS
§187A-5)

§13-95-14 Onaga. It shall be unlawful for any
person to possess with the intent to sell, or offer
for sale, any onaga less than one pound in weight.

(b) It shall be unlawful for any person to take
with spear or possess any speared onaga less than one
pound in weight. [Eff 12/3/98; comp]
(Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-15

§13-95-15 Uku. (a) It shall be unlawful for any person to possess with the intent to sell, or offer for sale, any uku less than one pound in weight.

(b) It shall be unlawful for any person to take with spear or possess any speared uku less than one pound in weight. [Eff: 12/3/98; comp]
(Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-16 Uhu. It shall be unlawful for any person to take, possess, or sell any uhu less than twelve inches in length. [Eff 12/03/98; am 12/19/02; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-17 Ahi. (a) It shall be unlawful for any person to possess with the intent to sell, or offer for sale, any ahi less than three pounds in weight.

(b) It shall be unlawful for any person to take with spear or possess any speared ahi less than three pounds in weight. [Eff: 12/3/98; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-18 Opelu. It shall be unlawful for any person at any time, to fish for or take, or be engaged in fishing or taking opelu with fish or animal bait within the waters off the coast of South Kona, island of Hawaii, between the Kiilae-Keokea boundary and the Kapua-Kaulanamauna boundary, except with hook and line. [Eff 12/3/98; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-19 Akule. (a) It shall be unlawful for any person to take any akule measuring less than eight and one-half inches in length, with a net during the months of July, August, September, and October.

(b) It is unlawful for any person, other than marine seafood dealers, to possess or sell more than two hundred pounds of akule measuring less than eight and one-half inches in length per day during July, August, September, and October; except as may be otherwise provided by law. [Eff 12/03/98; am 1/11/02; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-20 Iao. (a) It shall be unlawful for any person at any time to sell, offer for sale, or trade, any dried or cured iao taken from the waters within the jurisdiction of the State.

(b) It is unlawful for any person to fish for, catch, or take in or from any of the waters within the jurisdiction of the State any iao; provided that the department may issue licenses pursuant to section 13-74-22, to take iao for use as bait only. [Eff: 12/3/98; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-21 Nehu. (a) It shall be unlawful for any person at any time to sell, offer for sale, or trade, any dried or cured nehu taken from the waters within the jurisdiction of the State.

(b) It is unlawful for any person to fish for, catch, or take in or from any of the waters within the jurisdiction of the State any nehu; provided that the department may issue licenses pursuant to section 13-74-22, to take nehu for use as bait only and as maybe otherwise allowed under chapter 13-90. [Eff 12/3/98; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-22

§13-95-22 Ulua. (a) It is unlawful for any person to take or possess any ulua less than ten inches in length.

(b) It is unlawful for any person to sell any ulua less than sixteen inches in length.

(c) It is unlawful for any person to take or possess more than twenty ulua measuring more than ten inches in length per day; provided that a commercial marine licensee may take, possess, and sell more than twenty such ulua; and further provided that a commercial marine dealer may possess and sell more than twenty such ulua with receipts issued for the purchase pursuant to section 189-11, Hawaii Revised Statutes. [Eff 12/19/02; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

Historical Note: Section 13-95-22 is based substantially upon Chapter 87 of Title 13. [Eff 5/26/81; am 1/25/82; R 12/19/02] Chapter 87 of Title 13 was based substantially upon Regulation 19 of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii. [Eff 3/28/58; am 10/6/58; R 5/26/81]

§13-95-23 Moi. (a) It is unlawful for any person to take, possess, or sell any moi less than eleven inches in length.

(b) It is unlawful for any person to take, possess, or sell more than fifteen moi per day during September through May; provided that a commercial marine dealer may possess and sell more than fifteen moi with receipts issued for the purchase pursuant to section 189-11, Hawaii Revised Statutes.

(c) It is unlawful for any person to take, possess, or sell any moi during June, July, and August. [Eff 12/19/02; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

Historical Note: Section 13-95-23 is based substantially upon Chapter 88 of Title 13. [Eff 5/26/81; am and comp 12/20/86; R 12/19/02] Chapter 88 of Title 13 was based substantially upon Regulation 20 [Eff: 3/20/58; am 10/6/58; am 7/9/59; am 5/4/68; R 5/26/81] and Regulation 21 [Eff: 3/28/58; am 10/6/58; am 7/9/59; R 5/26/81] of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii.

§13-95-24 Weke. (a) It is unlawful for any person to take or possess more than fifty weke less than seven inches in length per day.

(b) It is unlawful for any person to sell any weke less than seven inches in length. [Eff 12/19/02; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

Historical Note: Section 13-95-24 is based substantially upon Chapter 88 of Title 13. [Eff 5/26/81; am and comp 12/20/86; R 12/19/02] Chapter 88 of Title 13 was based substantially upon Regulation 20 [Eff: 3/20/58; am 10/6/58; am 7/9/59; am 5/4/68; R 5/26/81] and Regulation 21 [Eff: 3/28/58; am 10/6/58; am 7/9/59; R 5/26/81] of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii.

§13-95-50 Kuhonu crab. (a) It shall be unlawful for any person to possess with the intent to sell, or offer for sale, any kuhonu crab less than four inches in length or in width across or along its back.

(b) It is unlawful for any person to catch or take from any bays, harbors, or other waters of the State, or to expose or offer for sale, or to hold in possession with the intent of exposing or offering for

§13-95-50

sale, or to kill, any kuhonu crab while with eggs. Any kuhonu crab with eggs caught must immediately be returned to the waters from which the crab was taken. The possession of any kuhonu crab, showing indications of the eggs having been scraped or removed therefrom, shall be prima facie evidence of the violation of this section.

(c) No person shall pursue, take, or kill any kuhonu crab in the State with a spear.

(d) No person shall offer for sale any speared kuhonu crab. [Eff 12/3/98; comp]
(Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-95-51 Kona crab. (a) It ~~[shall be]~~ is unlawful for any person to take, possess, or sell any Kona crab less than four inches in carapace length.

(b) It is unlawful for any person to take, possess, or sell any Kona crab taken from the waters within the jurisdiction of the State during the months of May, June, July, and August.

(c) The possession of any Kona crab by any person during the months of May, June, July, and August shall be prima facie evidence that the person is guilty of a violation of this section; provided that any commercial marine dealer may sell, or any hotel, restaurant, or other public eating house may serve Kona crab lawfully caught during the open season by first procuring a license to do so pursuant to section 13-74-41.

(d) It is unlawful for any person to take, possess, or sell any Kona crab while with eggs. Any Kona crab with eggs caught must immediately be returned to the waters from which the crab was taken. The possession of any Kona crab, showing indications of the eggs having been scraped or removed therefrom, shall be prima facie evidence of the violation of this section.

(e) ~~[No person shall]~~ It is unlawful for any person to pursue, take, or kill any Kona crab in the State with a spear.

(f) ~~[No person shall]~~ It is unlawful for any person to possess or sell any speared Kona crab.

(g) It is unlawful for any person to take or kill any female Kona crab. [Eff 12/03/98; am 12/19/02; am and comp] (Auth: HRS §187A-5) (Imp: HRS §§187A-5, 188-58.5)

§13-95-52 Samoan crab. (a) It is unlawful for any person to take, possess, or sell any Samoan crab less than six inches in width measured across the carapace or back.

~~[(a)]~~ (b) It is unlawful for any person to [catch or take from any bay, harbor, or other waters of the State, or to expose or offer for sale, or to hold in possession with the intent of exposing or offering for sale, or to kill,] take, kill, possess, or sell any [samean] Samoan crab [while] with eggs. Any [samean] Samoan crab with eggs caught must immediately be returned to the waters from which the [samean] Samoan crab was taken. The possession of any [samean] Samoan crab, showing indications of the eggs having been scraped or removed therefrom, shall be prima facie evidence of the violation of this section.

~~[(b)]~~ (c) ~~[No person shall]~~ It is unlawful for any person to pursue, take, or kill any [samean] Samoan crab in the State with a spear.

~~[(c)]~~ (d) ~~[No person shall offer for sale]~~ It is unlawful for any person to possess or sell any speared [samean] Samoan crab.

(e) It is unlawful for any person to take or kill any female Samoan crab. [Eff 12/3/98; am and comp] (Auth: HRS §187A-5) (Imp: HRS §§187A-5, 188-58.5)

Historical note: Subsection 13-95-52(a) is based substantially upon chapter 84 of title 13. [Eff 5/26/81; am 1/25/82; R] Chapter 84 of Title 13 was based substantially upon Regulation 14 of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii. [Eff 11/25/41

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(Governor's approval date); am 7/28/47; am and ren 3/28/58; R 5/26/81]

§13-95-53 Spiny lobster. (a) It is unlawful for any person to take, kill, possess, or sell any spiny lobster less than three and one-fourth inches in carapace length, measured in a straight line along the carapace or head, from the ridge between the two largest spines above the eyes to the rear edge of the carapace.

~~[(a)]~~ (b) It is unlawful for any person to take, kill, possess, or sell ~~[, or offer for sale, or have in possession]~~ any spiny lobster taken from the waters within the jurisdiction of the State during the months of May, June, July, and August.

~~[(b)]~~ (c) The possession of any spiny lobster by any person during the months of May, June, July, and August shall be prima facie evidence that the person is guilty of a violation of this section; provided that any commercial marine dealer may sell, or any hotel, restaurant, or other public eating house may serve spiny lobster lawfully caught during the open season by first procuring a license to do so pursuant to section 13-74-41.

~~[(c)]~~ (d) It is unlawful for any person to ~~[eat or take from any bay, harbor, or other waters of the State, or to expose or offer for sale, or to hold in possession with the intent of exposing or offering for sale, or to kill,]~~ take, kill, possess, or sell any spiny lobster while with eggs. Any spiny lobster with eggs caught must immediately be returned to the waters from which the spiny lobster was taken. The possession of any spiny lobster, showing indications of the eggs having been scraped or removed therefrom, shall be prima facie evidence of the violation of this section.

~~[(d)]~~ (e) ~~[No person shall]~~ It is unlawful for any person to pursue, take, or kill any spiny lobster in the State with a spear.

~~[(e)]~~ (f) ~~[No person shall offer for sale]~~ It is unlawful for any person to possess or sell any speared spiny lobster.

(g) It is unlawful for any person to possess or sell any spiny lobster in a condition where the body is mutilated, or the carapace and tail are separated.

(h) It is unlawful for any person to take or kill any female spiny lobster. [Eff 12/3/98; am and comp] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-57, 188-58.5)

Historical note: Subsections 13-95-53(a) and (g) are based substantially upon Chapter 89 of Title 13. [Eff 5/26/81; am 6/6/83; am 6/25/84; am and comp 2/6/87; am and comp 5/5/88; am and comp 8/14/89; R

] Chapter 89 of Title 13 was based substantially upon Regulation 22 of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii. [Eff 3/28/58; am 10/6/58; am 7/9/59; am 7/18/59 (Governor's approval date); am 9/17/60 (Governor's approval date); am 8/4/78; R 5/26/81]

§13-95-54 Slipper lobster. (a) It is unlawful for any person to take, kill, possess, or sell any slipper lobster less than two and three-fourths inches in tail width, measured in a straight line across the widest spot of the tail between the first and second abdominal segments.

~~[(a)]~~ (b) It is unlawful for any person to take, kill, possess, or sell~~[, or offer for sale, or have in possession]~~ any slipper lobster taken from the waters within the jurisdiction of the State during the months of May, June, July, and August.

~~[(b)]~~ (c) The possession of any slipper lobster by any person during the months of May, June, July, and August shall be prima facie evidence that the person is guilty of a violation of this section; provided that any commercial marine dealer may sell, or any hotel, restaurant, or other public eating house

may serve slipper lobster lawfully caught during the open season by first procuring a license to do so pursuant to section 13-74-41.

~~[(e)]~~ (d) It is unlawful for any person to ~~[catch or take from any bay, harbor, or other waters of the State, or to expose or offer for sale, or to hold in possession with the intent of exposing or offering for sale, or to kill,]~~ take, kill, possess, or sell any slipper lobster while with eggs. Any slipper lobster with eggs caught must immediately be returned to the waters from which the slipper lobster was taken. The possession of any slipper lobster, showing indications of the eggs having been scraped or removed therefrom, shall be prima facie evidence of the violation of this section.

~~[(d)]~~ (e) ~~[No person shall]~~ It is unlawful for any person to pursue, take, or kill any slipper lobster in the State with a spear.

~~[(e)]~~ (f) ~~[No person shall offer for sale]~~ It is unlawful for any person to possess or sell any speared slipper lobster.

(g) It is unlawful for any person to possess or sell any slipper lobster in a condition where the body is mutilated, or the carapace and tail are separated.

[Eff 12/3/98; am and comp] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-57)

Historical note: Subsections 13-95-54(a) and (g) are based substantially upon chapter 89 of title 13 [Eff 5/26/81; am 6/6/83; am 6/25/84; am and comp 2/6/87; am and comp 5/5/88; am and comp 8/14/89; R

] Chapter 89 of title 13 was based substantially upon regulation 22 of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii. [Eff 3/28/58; am 10/6/58; am 7/9/59; am 7/18/59 (Governor's approval date); am 9/17/60 (Governor's approval date); am 8/4/78; R 5/26/81]

§13-95-55 He'e. It shall be unlawful for any person to take, possess, or sell any he'e less than one pound in weight. [Eff 12/19/02; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

Historical Note: Section 13-95-55 is based substantially upon Chapter 86 of Title 13. [Eff 5/26/81; R 12/19/02] Chapter 86 of Title 13 was based substantially upon Regulation 18 of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii. [Eff 3/28/58; am 10/6/58; R 5/26/81]

§13-95-70 Stony corals. (a) Except as otherwise provided in this section or authorized by law:

- (1) Subject to subsections (b) and (c), it is unlawful for any person to take, break, or damage any stony coral, except as provided in sections 171-58.5 and 205A-44, HRS;
- (2) It is unlawful for any person to damage any stony coral by any intentional or negligent activity causing the introduction of sediment, biological contaminants, or pollution into state waters;
- (3) It is unlawful for any person to sell any stony coral; except that stony coral rubble pieces or fragments imported for the manufacture and sale of coral jewelry, or dead stony coral obtained through legal dredging operations in Hawaii for agricultural or other industrial uses, may be sold.

(b) No liability shall be imposed under subsection (a)(1) of this section for inadvertent breakage, damage, or displacement of an aggregate area of less than one half square meter of coral if caused by:

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- (1) A vessel with a single anchor damage incident, in an area where anchoring is not otherwise prohibited, and not more frequently than once per year; or
- (2) Accidental physical contact by an individual person.

(c) The Department may authorize damage to stony corals for the development or operation of renewable energy projects and shall require mitigation to offset any stony coral losses.

(d) Any person found in violation of any provision of this section pursuant to a criminal prosecution shall be subject to penalty as provided under section 187A-13, HRS. Any person found in violation of any provision of this section pursuant to civil or administrative action shall be subject to penalty as provided under section 187A-12.5, HRS. [Eff 12/03/98; am 12/09/02; am 5/01/14; am 10/19/18; comp] (Auth: HRS §§187A-5, 189-6, 190-3) (Imp: HRS §§187A-6, 187A-12.5, 187A-13, 189-6, 190-1, 190-3, 190-5)

§13-95-71 Live rocks. (a) Except as otherwise provided in this section or authorized by law:

- (1) Subject to subsections (b) and (c), it is unlawful for any person to take, break, or damage any live rock;
- (2) Subject to subsection (b), it is unlawful for any person to damage any live rock by any intentional or negligent activity causing the introduction of sediment, biological contaminants, or pollution into state waters; and
- (3) It is unlawful for any person to sell any live rock.

(b) No liability shall be imposed under subsections (a)(1) or (a)(2) of this section for inadvertent breakage, damage, or displacement of an aggregate area of less than one square meter of live rock bottom cover.

(c) The Department may authorize damage to live rock for the development or operation of renewable energy projects and shall require mitigation to offset any live rock losses.

(d) Any person found in violation of any provision of this section pursuant to a criminal prosecution shall be subject to penalty as provided under section 187A-13, HRS. Any person found in violation of any provision of this section pursuant to civil or administrative action shall be subject to penalty as provided under section 187A-12.5, HRS." [Eff 12/03/98; am 12/09/02; am 5/01/14; 10/19/18; comp] (Auth: HRS §§187A-5, 189-6, 190-3) (Imp: HRS §§187A-6, 187A-12.5, 187A-13, 189-6, 190-1, 190-3, 190-5)

4. Material, except source 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 repeal of chapters 13-84 and 13-89 and amendments to and compilation of chapter 13-95, 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