

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

November 13, 2020

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

REQUEST FOR APPROVAL TO HOLD PUBLIC HEARING TO AMEND HAWAII ADMINISTRATIVE RULES CHAPTER 13-74, LICENSE AND PERMIT PROVISIONS AND FEES FOR FISHING, FISH, AND FISH PRODUCTS. THESE AMENDMENTS ARE INTENDED TO RAISE THE COMMERCIAL MARINE LICENSE FEES FROM \$100 TO \$250 PER YEAR FOR NON-RESIDENTS OF HAWAII, TO MAKE NON-SUBSTANTIVE AMENDMENTS TO PROVIDE CLARIFICATION ON BAITFISH SPECIES, AND TO REMOVE UNNECESSARY RULE LANGUAGE.

Submitted for your consideration and approval is a request to hold a public hearing to amend Hawaii Administrative Rules (“HAR”) chapter 13-74 to increase the commercial marine license fee for non-residents of Hawaii.

Proposed Management Measures

The Department of Land and Natural Resources (Department) proposes to increase the commercial marine license (CML) fee for non-residents of Hawaii from its current \$100 to \$250 per year. The Department also proposes to make a number of non-substantive “housekeeping” rule amendments to provide clarification on baitfish species authorized for take under a baitfish license and to remove unnecessary rule language.

Commercial marine license fee increases

Prior to January 2016, the annual fees for the CML were \$50 for residents and \$200 for non-residents. These fees were in effect since September 1, 1999. As a result of the settlement of a lawsuit in which the State was sued for charging a higher fee for non-residents than residents without justifying the difference in amounts, the Department began to charge 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 proposed a rule amendment to raise the annual CML fee to \$150 for both residents and non-residents.^{1,2} On December 8, 2017, the Board voted to

¹ Board of Land & Nat’l Resources Submittal, Item F-1: 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 Are Intended To Establish A License For Dealers, Require Dealer Reporting, And Raise The Commercial Marine License Fees From \$50 To \$150 Per Year (May 27, 2016), available at <https://files.hawaii.gov/dlnr/meeting/submittals/160527/F-1.pdf>

² Board of Land & Nat’l Resources Submittal, Item F-1: Reconsideration of Prior Board Action of May 27, 2016 to Approve Holding Public Hearings to Amend Hawaii Administrative Rules Chapter 13-74, License and Permit Provisions and Fees for Fishing, Fish, and Fish Products. These Amendments are Intended to Require Dealer

raise the annual CML fee to \$100.³ This \$100 CML fee for both residents and non-residents has been in place since January 7, 2018.

The case on which the settlement relied, *Marilley v. Bonham*, 802 F.3d 958 (9th Cir. 2015) (*Marilley I*), was overturned by *Marilley v. Bonham*, 844 F.3d 841 (9th Cir. 2016) (*Marilley II*). In *Marilley I* the court held the State of California violated the Privileges and Immunities Clause of the United States Constitution when it failed to justify its discriminatory treatment of non-residents. California's stated objective, compensation for State expenditures for conservation or enforcement, is valid, but the State has the burden to show that the differential fee charged to non-residents is closely related to a resident's share of the State's expenditures. California failed to present any evidence that the fee differential it charged non-residents approximated the amount in taxes residents contributed to the State's expenditures on commercial fishing. By presenting no evidence, California failed to overcome its burden.

However, in *Marilley II* the State of California did present adequate justification for its fee differential and the court held the State higher fee charged to non-residents was constitutionally valid. In *Marilley II*, California demonstrated that it spent more in enforcement and management of its fisheries than it collected in fees for registration, licenses, and permits. Therefore, because expenditures on the fishery were greater than revenue generated by the fishery, the State was conferring a subsidy on the commercial fishery which benefitted both residents and non-residents. California further demonstrated that the amount of license fees it collected from non-residents did not exceed the non-residents pro-rata share of the benefit conferred. The funds used to subsidize the fishery were generated through California State taxes, which residents paid, but non-residents did not. Therefore, non-residents were "free-riders" to this benefit. And, the State of California could seek compensation from non-residents in the form of a fee differential without violating the Privileges and Immunities Clause. The Supreme Court of the United States previously held that States need not determine the amount of compensation from non-residents with precision, but the must be based on more than a mere assertion.

Fee analysis

The proposed fee increase would apply only to non-resident CMLs. The Department has conducted an analysis to determine whether the resident and non-resident fees should be different and by how much. The analysis showed that the Department had expenditures of approximately \$1,350,000 for commercial fisheries management and enforcement. In 2018, the Division of Aquatic Resources (DAR) spent approximately \$500,000 to operate its commercial fisheries licensing and data program. In 2019, the Division of Conservation and Resources Enforcement (DOCARE) spent approximately \$850,000 on the enforcement of the State's commercial fisheries. In 2018, the revenue to DAR from the commercial fishery was approximately \$350,000, \$327,000 of which came from CML fees. Therefore, the state conferred a benefit of approximately \$1,000,000 to the commercial fishery. The non-resident pro rata share of this benefit was approximately \$240,000.⁴ The proposed fee differential of

Reporting and Raise The Commercial Marine License Fees From \$50 to \$150 Per Year (January 13, 2017) available at <https://dlnr.hawaii.gov/wp-content/uploads/2017/01/F-1.pdf>

³ See Minutes of December 8, 2017 BLNR meeting, Item F-2 beginning on p.21 of 26, available at <https://dlnr.hawaii.gov/wp-content/uploads/2018/02/Minutes-171208.pdf>

⁴ In 2018, 798 of the 3,308 CMLs issued were to non-residents, or 24%.

\$150 multiplied by the estimated 800 non-resident CML holders would generate an additional \$120,000 for the commercial fishery. This amount would leave the State well within the \$240,000 cap of the potential compensation the State could constitutionally charge.

Where does the money go?

CML fees are deposited into the Commercial Fish Special Fund, authorized under Section 189-2.4, HRS, which is used to support DAR's commercial licensing and fisheries data programs. With this fund in place, DAR can ensure that license fees are used to support commercial fisheries projects and staff. Ensuring sufficient revenues into this fund is especially critical with anticipated general fund budget restraints due to the COVID-19 pandemic.

Additional housekeeping amendments

The Department proposes to amend HAR §13-74-22 (Bait license) to add gold-spot herring to the list of baitfishes authorized for take under a commercial bait license and to update the scientific names provided in the rule for 'Iao, Marquesan sardine, and nehu. In 2007, the Department amended HAR §13-75-14 (Nets, generally), paragraph (2), to add gold-spot herring to the list of baitfish allowed to be taken with a fine mesh net under a commercial bait license. At the same time, the Department amended HAR §13-75-1 (Definitions) to add new definitions for a number of terms, including "gold-spot herring", "'Iao", "Marquesan sardine", and "nehu". The current proposed amendment would update the baitfish list to correctly reflect the species allowed to be taken under a commercial bait license.

The Department proposes to amend HAR §§13-74-10 (Freshwater game fishing license), 13-74-21 (Northwestern Hawaiian Islands fishing permit), 13-74-22 (Bait license), 13-74-40 (Mullet pond operator and closed season sales license), 13-74-41 (Kona crab and lobster closed season sales license), and 13-74-42 (Special marine animal or product possession and sale license) to remove unnecessary language relating to license and permit fees that applied prior to September 1, 1999. This language is no longer applicable and should be removed to prevent confusion regarding current license and permit fees.

RECOMMENDATIONS:

"That the Board approve the holding of a public hearing to amend Hawaii Administrative Rules Chapter 13-74, LICENSE AND PERMIT PROVISIONS AND FEES FOR FISHING, FISH, AND FISH PRODUCTS, to increase the commercial marine license fee for non-residents of Hawaii from \$100 to \$250, to make non-substantive amendments to provide clarification on baitfish species authorized for take under a baitfish license, and to remove unnecessary rule language."

Respectfully submitted,



BRIAN NEILSON, Administrator

Division of Aquatic Resources

APPROVED FOR SUBMITTAL

Suzanne Q. Case

SUZANNE CASE, Chairperson
Board of Land and Natural Resources

Attachments:

Exhibit 1 – Ramseyer Draft

Amendment and Compilation of Chapter 13-74
Hawaii Administrative Rules

(date of adoption)

1. Chapter 13-74, Hawaii Administrative Rules, entitled "License and Permit Provisions and Fees for Fishing, Fish, and Fish Products", 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 RESOURCE MANAGEMENT

CHAPTER 74

LICENSE AND PERMIT PROVISIONS AND FEES
FOR FISHING, FISH, AND FISH PRODUCTS

Subchapter 1 General Provisions

§13-74-1 Definitions
§13-74-2 General license and permit conditions
§13-74-3 Suspension, revocation, and non-issuance
of licenses and permits, generally
§13-74-4 Penalties, generally
§§13-74-5 to 13-74-9 (Reserved)

Subchapter 2 Recreational Fishing

§13-74-10 Freshwater game fishing license
§§13-74-11 to 13-74-19 (Reserved)

§13-74-1

Subchapter 3 Commercial Fishing

- §13-74-20 Commercial marine license
- §13-74-21 Northwestern Hawaiian Islands fishing permit
- §13-74-22 Bait license
- §§13-74-23 to 13-74-39 (Reserved)

Subchapter 4 Other Licenses and Permits

- §13-74-40 Mullet pond operator and closed season sales license
- §13-74-41 Kona crab and lobster closed season sales license
- §13-74-42 Special marine animal or product possession and sale license
- §13-74-43 Aquaculture license
- §13-74-44 License to sell reared species
- §13-74-45 (Reserved)
- §13-74-46 Commercial marine dealer report

SUBCHAPTER 1

GENERAL PROVISIONS

§13-74-1 Definitions. As used in this chapter, unless otherwise provided:

"Aquatic life" means any type of 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.

"Board" means the board of land and natural resources.

"Bottomfish fishing activity" means those fishing

activities associated with the taking of bottomfish while on a vessel.

"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 to take marine life within or outside the State for commercial purpose.

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

"Commercial purpose" means the taking of marine life for profit or gain or as a means of livelihood where the marine life is taken in or outside of the State, or where the marine life is sold, offered for sale, landed, or transported for sale anywhere in the State.

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

"Fishing" or "to fish" means catching, taking, or harvesting, or attempting to catch, take, or harvest, aquatic life. The use of a pole, line, hook, net, trap, spear, or other gear which is designed to catch, take, 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 caught, taken, or harvested, shall be deemed to be fishing.

"Freshwater game fishes" means those introduced freshwater fishes as listed in section 13-99-2.

"Freshwater game fishing license" means a license issued to take freshwater game fishes.

"Licensee" means any person who has been issued a license pursuant to this chapter.

"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 seaweeds or other marine plants, including any part, product, seed, or root thereof.

"Northwestern Hawaiian Islands" means those

islands, reefs, and shoals, as well as their respective appurtenant reefs and territorial waters of the Hawaiian Islands chain beginning and including Nihoa island to and including Kure island.

"Permittee" means any person who has been issued a permit pursuant to this chapter.

"Person" means an individual, partnership, firm, company, corporation, association, or other entity.

"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.

"Trip" means any bout of fishing activity occurring in state marine waters in the course of a one way or round trip, and generally includes when a vessel has left port or shore until it puts into port or goes ashore, even if not to the point of origin.

[Eff 8/12/93; am 10/18/10; comp]
(Auth: HRS §§187A-5, 188-37, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-6) (Imp: HRS §§187A-5, 188-37, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-6)

§13-74-2 General license and permit conditions.

Except as otherwise provided:

- (1) All licenses and permits issued pursuant to this chapter are non-transferable and shall be valid for not longer than one year from the date of issuance. A duplicate license or permit may be issued upon affidavit that the original has been lost or destroyed, and upon payment of a duplicate license fee; provided that the duplicate license or permit shall expire on the same date as when the original license or permit would have expired;
- (2) A licensee or permittee shall show the license or permit and confirming

identification upon the demand of any officer authorized to enforce the fishing laws of the State. No person shall refuse any such officer the examination of the license or permit and confirming identification, or inspection of any bag or container of any kind used to carry any aquatic life or any vehicle or conveyance used to transport any aquatic life if such officer has probable cause, as provided by law, to believe that such bag, container, vehicle, or conveyance contains evidence of a violation of the fishing laws of the State. Failure or refusal to show the license or permit and confirming identification or examination and search of any bag, container, vehicle, or conveyance shall be prima facie evidence of violation of this chapter and sufficient cause for the immediate revocation of the license or permit by the board;

- (3) No licensee or permittee shall allow any other person to carry, display, or use the license or permit, except if the license or permit is issued to a vessel;
- (4) The department or its agents may issue licenses and permits as authorized by law, and with such conditions necessary to manage, protect, and conserve aquatic life;
- (5) Should a monthly report be required by any license or permit such report shall be rendered to the department as a true and correct statement of such information the department may require, on or before the tenth day of the following month in which the aquatic resources were taken or purchased, except for the Kona crab and lobster closed season sales license issued pursuant to section 13-74-41 whose report shall be rendered five days after the end of each of the closed season months on forms either furnished by, or approved by the

- department;
- (6) Should a trip report be required as a condition of any license or permit, the report shall be timely submitted to the department as a true and correct statement of such information the department may require, on or before the fifth day following the last day of each trip in which aquatic life was landed. A trip report includes such information but is not limited to: start and end dates of the trip, locations fished, hours spent fishing at each location; numbers, kinds and weights of aquatic life caught, released, or lost to predators; and
- (7) Any information submitted to the department as required under this section or chapters 187A, 188, and 189, HRS, shall be confidential and shall not be disclosed, except when required under court order or by the state attorney general's office subpoena, or with the prior written consent of the person submitting the information, or under cooperative agreements with United States government agencies for the exchange and use of the information specifically to manage aquatic resources. The department may establish procedures to preserve the confidentiality of submitted information, except that the department may release or make public information in the aggregate or summary form that does not directly or indirectly disclose the identity of any person who submits information. [Eff 8/12/93; am 1/15/99; am 10/18/10; comp] (Auth: HRS §§187A-5, 187A-5.5, 188-37, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-3, 189-3.5, 189-6, 189-10) (Imp: HRS §§187A-2, 187A-5, 187A-12.4, 187A-15, 188-37, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-3, 189-3.5, 189-6, 189-10)

§13-74-3 Suspension, revocation and non-issuance of licenses and permits, generally. Except as may be otherwise provided, the board may:

- (1) Suspend any and all licenses and permits issued pursuant to this chapter when such action is necessary for the protection and conservation of the aquatic life;
- (2) Revoke any license or permit issued pursuant to this chapter for any infraction of the terms and conditions of the license or permit and any person whose license or permit was revoked shall not be eligible to be issued another license or permit until the expiration of one year from the date of revocation, unless another time period is specified;
- (3) In any proceeding for the revocation of a commercial marine license issued pursuant to section 13-74-20, the licensee shall be given notice and opportunity for hearing in conformity with chapter 91, HRS. Upon revoking the license, the board may specify a period of time during which the commercial licensee shall not be eligible to be issued another license; provided that the period shall not exceed one year from the date of revocation; and
- (4) Refuse to issue any license or permit to a person who is not legally admitted to the United States, who does not provide proper identification, who has unresolved violations of any license or permit issued pursuant to this chapter, or for other just cause. Should the department refuse to issue any license or permit, the department shall give the person notice and an opportunity for hearing in accordance with chapter 91, HRS. [Eff 8/12/93; am 1/15/99; comp

] (Auth: HRS §§187A-5, 188-

§13-74-3

37, 188-44, 188-45, 188-50, 188-53, 189-2, 189-5, 189-6) (Imp: HRS §§187A-5, 188-37, 188-44, 188-45, 188-50, 188-53, 189-2, 189-3, 189-5, 189-6)

§13-74-4 Penalties, generally. A person violating this chapter, or the terms and conditions of any license or permit issued as provided by this chapter, shall be punished as provided by law. [Eff 8/12/93; am 1/15/99; comp] (Auth: HRS §§187A-5, 187A-12.5, 188-37, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-6) (Imp: HRS §§187A-5, 187A-12.5, 188-37, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-6, 189-13)

SUBCHAPTER 2

RECREATIONAL FISHING

§13-74-10 Freshwater game fishing license. (a) No person, except children below nine years of age, shall fish, take, or catch any introduced fresh water game fish without first obtaining a freshwater game fishing license, provided that children exempt by this section may fish without a license only when accompanied by a licensed adult.

(b) Licenses shall require the person's name, address, domicile, or residence, length of residence in the State, age, race, height, weight, and color of hair and eyes.

~~[(c) The fee for the freshwater game fishing license shall be:~~

- ~~(1) Minors between nine and fifteen years of age, \$1.50;~~
- ~~(2) Residents over fifteen and under sixty five years of age, \$3.75;~~
- ~~(3) Persons sixty five years of age and older,~~

~~free;~~

~~(4) Persons not qualifying under (1), (2), or (3) but over fifteen years of age, \$7.50 except that:~~

~~(A) Members of the armed forces of the United States on active duty in the State whether qualifying as a resident or not, and their spouse and children fifteen years of age and over, \$3.75;~~

~~(B) Tourist license which is valid for only thirty days from the date of issue, \$3.75;~~

~~(5) Duplicate license, \$0.50.~~

~~(d) Beginning September 1, 1999, the] (c) The~~
fee for the freshwater game fishing license shall be:

- (1) Minors between nine and fifteen years of age, \$3;
- (2) Residents over fifteen and under sixty-five years of age, \$5;
- (3) Persons sixty-five years of age and older, free;
- (4) Persons not qualifying under (1), (2), or (3) but over fifteen years of age, \$25, except that:
 - (A) Members of the armed forces of the United States on active duty in the State whether qualifying as a resident or not, and their spouse and children fifteen years of age and over, \$5;
 - (B) 7-Day tourist license which is valid for only seven days from the date of issue, \$10;
 - (C) Tourist license which is valid for only thirty days from the date of issue, \$20;
- (5) Duplicate license, \$1. [Eff 8/12/93; am 1/15/99; am and comp] (Auth: HRS §§187A-5, 188-50) (Imp: HRS §§187A-5, 188-50)

SUBCHAPTER 3

COMMERCIAL FISHING

§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 issuance or renewal of a commercial marine license shall be [~~\$100.~~]:

- (1) \$100 for residents; and
- (2) \$250 for all other persons.

The fee for a duplicate license shall be \$10.

(d) 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.

(e) 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 1/7/18; am and comp]
(Auth: HRS §§189-2, 189-3, 189-3.5) (Imp: HRS §§189-2, 189-3, 189-3.5)

§13-74-21 Northwestern Hawaiian Islands fishing permit. (a) The department may issue permits to commercial marine licensees who own or operate a vessel deemed capable by the department for effectively taking marine life within the Northwestern Hawaiian Islands, to fish for such marine life, or utilize methods or appliances which may be regulated or prohibited elsewhere within the State. The department may limit the number of permits issued to take marine life in any particular area and such limitation shall be on the basis of the order of application for permits.

(b) A separate permit shall be required for each fishing vessel or independent fishing operation, regardless of whether several vessels or operations are owned or conducted by the same person, and shall be carried aboard each vessel or otherwise be readily available for inspection at all times.

(c) The fee for the Northwestern Hawaiian Islands fishing permit shall be [~~\$1. Beginning September 1, 1999, the fee shall be~~] \$50 and the duplicate license fee shall be \$10. [Eff 8/12/93; am 1/15/99; am and comp] (Auth: HRS §188-37) (Imp: HRS §188-37)

Historical note: §13-74-21 is based substantially upon chapter 13-46. [Eff 5/28/81; am 1/25/82; R 8/12/93]

§13-74-22 Bait license. (a) The department may issue to commercial marine licensees a license to take the following baitfishes for which an open season is declared:

- (1) Iao (~~[Pranesus]~~ Atherinomorus insularum);

- (2) Marquesan sardine (~~[*Harengula vittata*]~~
Sardinella marquensis);
- (3) Nehu (~~[*Stolephorus purpureus*]~~ *Encrasicholina purpurea*);
- (4) Piha (*Spratelloides delicatulus*);
- (5) "Tabai" (*Mollienesia* spp.);
- (6) Threadfin shad (*Dorosoma petenense*) [-];
- (7) Gold-spot herring (*Herklotsichthys quadrimaculatus*).

(b) Licenses for taking baitfishes other than nehu shall be issued for fishing operations where the fish caught are landed in the State, and where no baitfish caught are sold or transferred except for bait purposes.

(c) Licenses for taking nehu shall be issued only to persons employed on live-bait tuna boats, and only if their principal means of livelihood is derived from tuna fishing and the sale of tuna, where the fish caught are landed in the State, and the nehu is not sold to others.

(d) A separate license shall be required for each fishing vessel or independent fishing operation, regardless of whether several vessels or operations are owned or conducted by the same person, and shall be carried aboard each vessel or otherwise be readily available for inspection at all times.

(e) The fee for the bait license shall be [~~\$1.—~~
~~Beginning September 1, 1999, the fee shall be~~] \$50 and the duplicate license fee shall be \$10. [Eff 8/12/93; am 1/15/99; am and comp] (Auth: HRS §§187A-5, 188-45) (Imp: §§187A-5, 188-45)

Historical note: §13-74-22 is based substantially upon chapter 13-72. [Eff 5/26/81; am 1/25/82; R 8/12/93]

SUBCHAPTER 4

OTHER LICENSES AND PERMITS

§13-74-40 Mullet pond operator and closed season sales license.

(a) The department may issue to any owner or operator of a fish pond a license to lawfully catch young mullet, known as pua, during the closed season, for the purpose of stocking the owner's or operator's pond, and provided that any owner or operator of a fish pond and any dealer may lawfully sell such pond raised mullet during the closed season with such a license granting this privilege.

(b) A separate license shall be required for each fish pond or market operation, regardless of whether several fish pond or market operations from which the mullet are sold are owned or operated by the same person, and shall be readily available for inspection at all times.

(c) The fee for the mullet pond operator and closed season sales license shall be [~~\$5. Beginning September 1, 1999, the fee shall be~~] \$50 and the duplicate license fee shall be \$10. [Eff 8/12/93; am 1/15/99; am and comp] (Auth: HRS §188-44) (Imp: HRS §188-44)

§13-74-41 Kona crab and lobster closed season sales license.

(a) The department may issue a license to a commercial marine dealer, or any restaurant to sell or serve during the closed season, Kona crabs or lobsters lawfully caught during the open season.

(b) Each licensee shall submit a report to the department within five days after the end of each of the closed season months.

~~[(c) The fee for the Kona crab and lobster closed season and sales license shall be:~~

- ~~(1) Wholesale dealer, \$5;~~
- ~~(2) Retail markets, \$2.50;~~
- ~~(3) Hotel or restaurants, \$1.~~

~~(d) Beginning September 1, 1999, the] (c) The fee for the Kona crab and lobster closed season sales license shall be \$50 and the duplicate license fee shall be \$10. [Eff 8/12/93; am 1/15/99; am and comp] (Auth: HRS §188-57) (Imp: HRS §188-57)~~

§13-74-42 Special marine animal or product possession and sale license. (a) The department may issue a license to an importer, wholesaler, retailer, or restaurant to possess, sell, or offer for sale, any fish, shellfish, crustacean, or other marine animal, or any product made from such marine animals taken outside of the waters of the State, when such taking, possession, or sale of the same species is restricted if taken within the waters of the State.

(b) Licenses shall require the business' name, address, telephone number, name of applicant, and any other information the department may require.

(c) Each licensee shall furnish to the department monthly reports that include the following information:

- (1) If licensee is an importer:
 - (A) Species imported, source, quantity, and arrival date;
 - (B) Name and address of buyers, species sold, quantity, and date of such sale;
- (2) If licensee is a wholesaler:
 - (A) Source, quantity, and date purchased;
 - (B) Name and address of buyers, species sold, quantity, and date of such sale;
- (3) If licensee is a retailer or restaurant:
 - (A) Source and date of purchase;
 - (B) Species and quantity sold.
- (4) And any other such information the department may require.

(d) The fee for the special marine animal or product possession and sale license shall be [~~\$2.50. Beginning September 1, 1999, the fee shall be~~] \$50 and the duplicate license fee shall be \$10. [Eff 8/12/93; am 1/15/99; am and comp] (Auth: HRS §189-6) (Imp: HRS §189-6)

Historical note: §13-74-42 is based substantially upon chapter 13-71. [Eff 5/26/81; R 8/12/93]

§13-74-43 Aquaculture license. (a) After review of a written application, the department may issue to any qualified aquaculturist, a license to fish for, rear, possess or sell any regulated aquatic life, provided the qualified aquaculturist rears or reared the regulated aquatic life in an aquaculture facility for commercial purpose. To qualify for a license a qualified aquaculturists must satisfy the department that the qualified aquaculturist is able to maintain aquatic life or live rock alive and in good health in an aquaculture facility at all times in accordance with industry-wide standards.

(b) The licensee shall make and issue a receipt whenever a transaction concerning regulated aquatic life occurs. The receipt shall be a written record of the transaction and shall include:

- (1) The transaction date;
- (2) The name and address of the licensee, the name of the person issuing the receipt, and the name and address of the person to whom the receipt is issued, except that the name and address of the person to whom the receipt is issued are not required if the transaction is with a person who will not resell the regulated aquatic life;
- (3) The name, weight, number or other appropriate measure of quantity, and value of all regulated aquatic life involved in the transaction; and
- (4) Any other information the department may require.

(c) The licensee shall keep all receipts on file and be able to present such receipts for inspection upon demand of any officer authorized to enforce the laws of the State. The receipts shall be kept for not less than twenty-four months after the transaction date or until the regulated aquatic life is no longer in the licensee's possession, whichever is longer. The department may approve the use of documents other than the receipts as written records of the transaction.

(d) The licensee shall submit to the department a summary report on or before July 31st of each year, covering the previous twelve-month period between July 1st to June 30th. The report shall provide an accounting of the regulated aquatic life received, bought, sold, transferred, or exchanged. The accounting shall include the items involved in a transaction, the sum of the weight, number or other appropriate unit of quantity, and value, along with any other information the department may require.

(e) Licensees that rear live rocks shall only use rocks for producing live rocks obtained from legal sources such as quarries or dredging operations and may not fish for live rocks from the wild.

(f) Unless authorized in writing by the department, licensees shall not:

- (1) Release cultured aquatic life or live rock into state waters;
- (2) Fish for, in state waters, any regulated aquatic life or live rock;
- (3) Fish in areas where fishing is restricted by law; or
- (4) Use gear that the department has declared illegal except for small meshed nets, provided the net is not a small meshed thrownet.

(g) The department may restrict or prohibit the rearing of any aquatic life as authorized by this section, such as those species whose entry into or possession in the State is restricted or prohibited pursuant to the rules of the department of agriculture, those species that the state or federal governments may list as threatened or endangered, or any aquatic life the department may determine to be unsuitable for commercial rearing in the State or otherwise potentially detrimental to living aquatic resources in the State.

(h) The department may require licensees:

- (1) Who fish in the wild for regulated aquatic life to report such catches and to include in the report the species, numbers, size, fishing location, amount of fishing effort,

and any other information for the purpose of this license. The regulated aquatic life taken from the wild may only be used for stocking into the aquaculture facility as juveniles or used as adults to provide broodstock material. The licensee may not sell or offer for sale any regulated aquatic life taken from the wild that is less than the minimum size as specified by law;

- (2) To obtain a Conservation District Use Permit pursuant to chapter 13-53, Hawaii Administrative Rules (HAR) and a Right of Entry Permit pursuant to chapter 171, HRS, in addition to any other requirement of law; and
- (3) To provide a list of names of commercial marine dealers that will buy or obtain any regulated aquatic life that were reared in the licensee's aquaculture facility. Any changes to the list shall be in writing.

(i) Each aquaculture facility shall have a separate license, even if one person owns or operates several aquaculture facilities. A copy of the license shall be available for inspection upon the demand of any officer authorized to enforce the laws of the State, including whenever the regulated aquatic life are fished for, delivered, transported, or sold. The license shall be kept at the facility for immediate inspection.

(j) For purposes of this section:

"Aquaculture facility" means any farm, ranch, hatchery, pond, workplace, or place of business that is designed or intended for the rearing, breeding, or culturing of aquatic life or live rock in a controlled or managed salt, brackish, or freshwater environment.

"Regulated aquatic life" means any aquatic life or live rock whose fishing for, possession, or sale is regulated during a closed season, or when regulated by a minimum size or bag limit as specified in subtitle 5 or title 12 or administrative rules.

(k) The license fee shall be \$50. [Eff 8/8/96; comp] (Auth: HRS §§187A-3.5, 187A-5,

§13-74-44

188-44, 188-68) (Imp: HRS §§187A-3.5, 187A-5, 188-44, 188- 68)

§13-74-44 License to sell reared species. (a)

The department may issue to any person a license to possess, sell, or offer for sale regulated aquatic life, provided that a qualified aquaculturist has reared the regulated aquatic life in a licensed aquaculture facility.

(b) The licensee shall keep a receipt issued by the licensed aquaculture facility when receiving or buying the regulated aquatic life.

(c) The licensee shall issue a receipt to the person to whom the regulated aquatic life is sold or transferred. The receipt shall be a written record of the transaction and shall include:

- (1) The transaction date;
- (2) The names and addresses of the licensee, the person issuing the receipt, and the person to whom the receipt is issued, except that the name and address of the person to whom the receipt is issued are not required if the transaction is with a person that will not resell the regulated aquatic life;
- (3) The name, weight, number or other appropriate measure of quantity, and value of all regulated aquatic life involved in the transaction; and
- (4) Any other information the department may require.

(d) The licensee shall keep on file and be able to present for inspection upon demand of any officer authorized to enforce the laws of the State, a copy of all receipts for not less than twenty-four months after the transaction date or until the regulated aquatic life is no longer in the licensee's possession, whichever is longer. The department may approve the use of documents other than the receipts as written records of the transaction.

(e) Each market outlet that sells or offers for

sale the regulated aquatic life shall have a separate license, even if the same person owns or operates several outlets. The license shall be kept at the market outlet for immediate inspection upon demand of any officer authorized to enforce the laws of the State.

(f) The department may require submittal of monthly reports, pursuant to the purposes of this section.

(g) For the purposes of this section:

"Licensed aquaculture facility" means any aquaculture facility licensed pursuant to section 13-74-43.

"Regulated aquatic life" means any aquatic life or live rock whose fishing for, possession, or sale is regulated during a closed season, or when regulated by a minimum size or bag limit as specified in subtitle 5 of title 12 or administrative rules.

(h) The fee for the license shall be waived with the license valid for not longer than two years from the date of issuance. [Eff 8/8/96; am 5/22/00; comp] (Auth: HRS §§187A-3.5, 187A-5)
(Imp: HRS §§187A- 3.5, 187A-5)

§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 a weekly reporting period, which begin on Sundays and end on the following Saturdays. A report shall be submitted to the department by the Tuesday following the end of each weekly reporting 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 weekly." [Eff 1/7/18; comp _____] (Auth: HRS §189-10) (Imp: HRS §189-10)

2. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes and other notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of 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 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 AS TO FORM:

Deputy Attorney General