

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

June 10, 2021

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

REQUEST FOR FINAL APPROVAL TO AMEND AND COMPILE HAWAII
ADMINISTRATIVE RULES (HAR) TITLE 13 CHAPTER 74 TO INCREASE THE
COMMERCIAL MARINE LICENSE (CML) FEE FOR NON-RESIDENTS OF HAWAII
FROM \$100 TO \$250 PER YEAR, TO PROVIDE CLARIFICATION ON BAITFISH SPECIES
AUTHORIZED FOR TAKE UNDER A BAITFISH LICENSE, AND TO REMOVE
UNNECESSARY RULE LANGUAGE

Submitted for your consideration and final approval is a request to amend and compile Hawaii Administrative Rules chapter 13-74 (License and Permit Provisions and Fees for Fishing, Fish, and Fish Products) to increase the CML fee for non-residents of Hawaii from \$100 to \$250 per year, to provide clarification on baitfish species authorized for take under a baitfish license, and to remove unnecessary rule language.

The primary purpose of this proposed action is to increase the CML fee for non-Hawaii State residents from \$100 to \$250 per year. Currently, both residents and non-residents pay a single annual fee of \$100 per license. Previous residency based CML pricing (\$50 for residents, \$200 for non-residents) was discontinued in 2016 as a condition of a settlement agreement between the State and a non-resident commercial fisher who sued the State for charging higher non-resident CML fees. The settlement relied on a federal 9th Circuit Court case,¹ which has since been overturned.² As a result, the State of Hawaii is no longer bound by the settlement agreement and now seeks to reinstate different resident and non-resident CML fees.

The proposed action also includes several non-substantive “housekeeping” amendments to update the scientific names of certain baitfish species, clarify that gold-spot herring (*Herklotsichthys quardrimaculatus*) is a baitfish species that can be legally taken with a commercial bait license, and remove references to outdated licensing fees.

On November 13, 2020, the Board of Land and Natural Resources (“BLNR”) approved the proposed action for public hearing.

¹ *Marilley v. Bonham*, 802 F.3d 958 (9th Cir. 2015) (*Marilley I*), ruled that the State of California could not charge non-residents a higher fee for their commercial fishing license. In *Marilley I*, the Court found that while the state of California’s desire to charge non-residents a higher fee was valid, it ultimately failed to provide adequate reasoning as to why non-residents should pay more.

² *Marilley v. Bonham*, 844 F.3d 841 (9th Cir. 2016) (*Marilley II*), overturned *Marilley I*, holding that California had provided adequate justification for the fee differentials and therefore could lawfully charge the fee differentials.

DAR accepted public testimony on the proposed rules from December 13, 2020 to January 28, 2021 and held a statewide virtual public hearing on January 21, 2021. One written testimony voicing opposition to the amendment (specifically the increase in non-resident CML fee) was submitted by Dr. Eric Kingma, Executive Director of the Hawaii Longline Association (HLA). There were no other written or oral testimonies given. On May 27, 2021 DAR sent a letter to Dr. Kingma addressing some of the concerns raised in his testimony. The minutes from the public hearing, HLA's written testimony, and DAR's response letter are attached as **Exhibit 1**.

Though only one written testimony was received, we recognize that the HLA represents the voice of many, if not all, Hawaii longline fishery participants. DAR appreciates the concerns raised by HLA's testimony, but recommends proceeding with the proposed rule amendments. A Ramseyer draft of the proposed amendment and compilation is attached as **Exhibit 2**.

RECOMMENDATION:

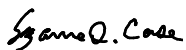
"That the Board give final approval to amend and compile Hawaii Administrative Rules chapter 13-74 (License and Permit Provisions and Fees for Fishing, Fish, and Fish Products) to increase the CML fee for non-residents of Hawaii from \$100 to \$250 per year, to provide clarification on baitfish species 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 D. CASE, Chairperson
Board of Land and Natural Resources

Attachments:

- Exhibit 1 – Public Hearing Minutes
- Exhibit 2 – Ramseyer Draft

ITEM F-4 Exhibit 1

Public Hearing Minutes
Amendment of Hawaii Administrative Rules
CHAPTER 13-74
License and Permit Provisions and Fees for Fishing, Fish, and Fish Products

Hearing Location: Statewide virtual hearing

Hearing Date: January 21, 2021

I. Introduction

A. Opening

1. It is now 5:36 P.M. and this Public Hearing is called to order.
2. This is a formal Public Hearing on the proposed amendment of Hawaii Administrative Rules (HAR) §13-74, License and Permit Provisions and Fees for Fishing, Fish, and Fish Products. The primary amendment would modify HAR §13-74-20 (Commercial marine license) to increase the Commercial Marine License (CML) fee for non- residents from \$100 to \$250 per year. The proposed amendments also include 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.

As required by law, the proposed rules have been drafted in Ramseyer format, copies of which can be found on the DAR website, the link to which is included in the chat.

3. My name is Bryan Ishida, and I am an Aquatic Biologist with the Division of Aquatic Resources; I will be conducting tonight’s public hearing. With me are Community-Based Fishing Area Planner Luna Kekoa and Legal Fellow Ryan McDermott from the DAR Oahu office.

B. Purpose

4. The purpose of this hearing is to provide the public the opportunity to provide comments in the form of oral and written testimony on these proposed amendments to the administrative rules regulating licensing and permits for fishing and fish products.
5. Because most of you have pre-registered, we currently have a record of everyone in attendance. If there is anyone on this call who has not registered, please make us aware of your presence by placing your name in the chat at this time.

6. Those wishing to provide oral testimony who have not pre-registered can request to do so in the chat now.
7. When it is time to testify, I will call the names in the order in which they signed up.

C. Present staff and others

1. Public attending & signing in:

There were no requests for oral testimony as of COB (5:00 pm) January 21, 2021. Aside from DAR representatives, there were no other individuals in attendance during the virtual public hearing.

II. Background

- A. Between September 1999 and January 2016, Hawaii State CML fees were \$50 for state residents, and \$200 for non-state residents. The State of Hawaii discontinued the non-resident fee differential as a condition of a settlement agreement between the State and a non-resident fisher, who sued the State for charging higher non-resident CML fees. Following the settlement, DLNR charged a flat fee of \$50 to all CML holders. To make up for the loss in revenue, DLNR proposed a rule amendment to raise the annual CML fee to \$150 for both residents and non-residents. On December 8, 2017, the Board of Land Natural Resources voted to raise the annual CML fee instead to \$100. This \$100 CML fee for both residents and non-residents has been in place since January 7, 2018.

The settlement with the State of Hawaii leading to the removal of the non-resident CML fee differential relied on a federal 9th Circuit Court case, which ruled that the State of California could not charge non-residents a higher fee for their commercial fishing license. The Court found that while the state of California's desire to charge non-residents a higher fee was valid, it ultimately failed to provide adequate reasoning as to why non-residents should pay more. However, in 2016, the 9th Circuit reheard the case *en banc* and reversed the decision, finding that California had provided adequate justification for the fee differentials and therefore California could lawfully charge the fee differentials. As a result of the invalidation of this legal precedent, the State of Hawaii is no longer bound by the settlement agreement and now seeks to reinstate different resident and non-resident CML fees.

Increasing the non-resident CML fee is critical for DAR to continue operating its commercial fisheries licensing and data collection programs. Budget cuts due to the COVID-19 pandemic have resulted in the need to increase license revenues to fund key commercial fishery staff and related operating expenses.

- B. Approval to conduct this public hearing was obtained from the Board of Land and Natural Resources on November 13, 2020.
- C. A copy of the proposed administrative rules is available for inspection on the DAR website at the link included in the chat. During this hearing we want to record your thoughts on the proposed rules.

III. Notice of public hearing

- A. The Legal Notice of this public hearing was published in the December 13, 2020, Sunday issue of the Honolulu Star Advertiser.

IV. Hearing procedures

- A. This hearing will be conducted as follows:
 - 1. I will explain the proposed changes to the administrative rules.
 - 2. Then I will call on those who have signed up to testify as they are listed on the sign in sheet.
 - 3. Please keep your testimony brief and on the subject in order to allow all those who came today, the opportunity to testify. Each person providing testimony will be given 3 minutes.
 - 4. After those who signed up have presented their testimonies, I will ask if anyone else wishes to testify.
 - 5. After all persons have given their testimonies, and if you wish to add to your testimony, you will be provided an additional 3 minutes.
 - 6. We are recording this hearing to make a written record, so please state your name for the record before giving your testimony. Make sure to speak clearly into the microphone so we accurately record your testimony for the record.
 - 7. Please remember to respect the opinions of all testifiers and that this hearing is not an opportunity for accusations or rebuttals. There may be differing opinions. Everyone will have an opportunity to voice their opinion for the department to consider.
 - 8. All testimony should be directed to me, not to the audience. If you have a question, please direct it to me, and I will find the most appropriate person to answer.

V. Rule Explanation

Summary of Proposed Rule Amendments

Specific proposed amendments are as follows:

HAR §13-74-20 (Commercial Marine Licenses) would be amended to remove the single CML fee of \$100, and instead be replaced with “\$100 for residents; and \$250 for all other persons.”

The aforementioned “housekeeping” rule amendments are as follows:

HAR §13-74-22 (Bait License) would be amended to provide updated scientific names for several species. ‘Iao will be changed from *Pranesus insularum* to *Atherinomorus insularum*, Marquesan sardine will change from *Harengula vittati* to *Sardinella marquensis*, and Nehu will change from *Stolephorus purpureus* to *Encrasicholina purpurea*. These name changes reflect updated taxonomic classification only, not changes to the species themselves.

HAR §13-74-22 (Bait License) would additionally be amended to add gold-spot herring (*Herklotsichthys quardrimaculatus*) to the list of species that can be legally taken with a commercial bait license.

Lastly, HAR §13-74-10 (Freshwater Game Fishing License), HAR §13-74-21 (Northwest Hawaiian Islands Fishing Permit), HAR §13-74-22 (Bait License), HAR §13-74-40 (Mullet Pond Operator and Closed Season Sale License), HAR §13-74-41 (Kona Crab and Lobster Closed Season Sales License), and HAR §13-74-42 (Special Marine Animal or Product Possession and Sale License) will all be amended to remove references to outdated licensing fees.

VI. Testimonies

- A. We will now begin the testimony portion of the hearing. As I call on you, please state your name, and state clearly whether you support, oppose, or have no position on the proposed rule.

There were no requests to submit oral testimony during the statewide virtual public hearing.

- B. Written testimonies: Persons unable to attend today or wishing to present additional comments, may mail or email written testimony to us by January 28, 2021.

Please mail testimonies to:
Department of Land and Natural Resources
Division of Aquatic Resources
1151 Punchbowl Street, Room 330
Honolulu, HI 96813

Written testimony may also be submitted by email to:
DLNR.aquatics@hawaii.gov

One written testimony was received from Hawaii Longline Association (HLA) Executive Director Eric Kingma in which he notes the HLAs opposition to the proposed amendment. A copy of this written testimony is attached below. There were no further written testimonies received by January 28, 2021.

VII. Decision-making on the proposals:

- A. Based on the testimonies presented, the Department will submit its findings and recommendations to the Board of L&NR.
- B. If approved by the Board, the Department of the Attorney General will conduct a final legal review. If approved, the proposed rules will be given to the Governor for his final approval.
- C. Should the Governor grant approval, certified copies will be filed with the Lt. Governor's office, and after 10 days, it becomes effective as law.
- D. Are there any questions regarding this process?

VIII. Adjournment

- A. On behalf of the Board of Land and Natural Resources and DAR, thank you for attending this public hearing. This public hearing is now adjourned.
Time: 5:37 P.M.
- B. Thank you for taking time out from your day to attend this hearing.



January 27, 2021

Brian Neilson
Division of Aquatic Resources
1151 Punchbowl Street, Room 330
Honolulu HI 96813
Sent electronically via email to: DLNR.Aquatics@hawaii.gov

Dear Brian:

Mahalo for the opportunity to provide comments on the proposed amendments to the HAR § 13-

74. The Hawaii Longline Association (HLA), which represents all active Hawaii-based longline vessels (around 135 currently), does not support the proposed amendments to increase non-resident CML permit fees from \$100/year to \$250. HLA mainly opposes in principle, as the rationale for the fee increase does not match the on-the-water reality with respect to our fishery. In addition, increased costs for Hawaii longline vessel owners are concerning due to the significant economic impact experienced by the Hawaii longline fleet during the pandemic. For example, the Hawaii longline fishery led the Nation in terms of economic impact from the pandemic, experiencing a 45% reduction in revenue between March-July 2020 and losing an estimated \$40 million in revenue in 2020.¹

While the economic situation of the fleet and proposed increase CML costs are not trivial, HLA has significant concern regarding the underlying basis for the proposed non-resident CML fee. For example, DLNR notes that 798 (24%) of the 3000 CMLs holders are non-resident.² DLNR further notes that these non-residents can be classified as “free riders” to the local management benefits as they do not pay taxes.³

DLNR fails to present key information regarding non-CML holders and in which fisheries they operate. HLA surmises that over 90% of the non-resident CML holders are from the Hawaii longline fleet (nearly 700 foreign crew and 30 non-resident captains). HLA requests HDAR provide a count of nonresident CML holders and attribution to a specific fishery sector (e.g., longline, handline, troll, bottomfish).

¹ <https://media.fisheries.noaa.gov/2021-01/Updated-COVID-19-Impact-Assessment.pdf>

² Neilson, B. November 13, 2020. Briefing document submitted to BLNR 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. ³ Ibid.

Approximately 99% of Hawaii-based longline vessels are owned by Hawaii residents and these local vessel owners pay the annual CML fees for their non-resident crew. Most longline vessel captains pay for their own CMLs fees, there are examples of vessel owners covering these costs for their captains as well. Therefore, DLNR's assertion that non-residents CML holders are non-tax contributing free riders to the system is not factual. Each Hawaii longline vessel is a small business contributing hundreds of thousands of dollars annually to the local economy and tax revenue including GET taxes for vessel

support services. In this regard, the bulk of the non-resident CMLs fees are not for free riders but in fact paid for by locally registered businesses owned by Hawaii residents.

What is being proposed here then is really an increased fee on Hawaii's largest fishery sector to help offset DLNR's budget shortfall. While HLA understands the position DLNR faces with a limited budget, the reality of the situation is much different than the supporting rationale being used by DLNR, which is based on the California litigation with regards to limited non-resident tax contributions.

Secondly, but no less significant, is DLNR's assertion that that non-resident CML holders are benefiting from State fisheries expenditures. This argument does not hold water because the Hawaii longline fishery, which is paying for over 90% of non-resident CML fees, is not managed by DLNR, but rather is a federally managed fishery. Hawaii longline vessels do not fish in State waters, but fish beyond 75 nm in the US EEZ around Hawaii and mostly in international waters (beyond 200 nautical miles from shore). Moreover, Hawaii longline captains and crew do not report landings to the State, nor does the State conduct management or research activities benefiting the fishery or fishery participants.³ The assertion that the non-resident CMLs holders are benefiting from DLNR management expenditures is not accurate to the extent proposed and therefore should not be used as rationale for the proposed fee increase with respect to the Hawaii longline fleet. While DLNR notes that non-resident fishermen in California contribute to that state's management and enforcement burden, this is not the case for the Hawaii longline fishery and DLNR expenditures.

In closing, HLA understands that the State is in a significant monetary deficit because of the pandemic and is looking for ways to rectify the situation. HLA stands ready to work with DLNR on options related to CML fees collected from the Hawaii LL fishery that are appropriate, but HLA cannot support the proposed fee increase based on DLNR's rationale. For example, HLA supports DLNR's legislative proposals to create a vessel CML rather individual CMLs and would be happy to discuss applicable vessel CML fees when appropriate. However, the rationale provided for the non-resident CML fee increase is not consistent with the State of California legal case because Hawaii residents (longline vessel owners) are paying for the bulk of non-resident CMLs rather

³ Pursuant to federal regulations, Hawaii longline vessels report their catch data on a per trip basis directly to the National Marine Fisheries Service

than out of state 'free riders.' HDAR's proposal on this matter is not consistent with the on-the-water reality of this issue. For these reasons, HLA opposes this proposal and asks the DLNR to rescind it.

HLA looks forward to working with HDAR on more appropriate CML categories and fee structures for the Hawaii longline fishery. Mahalo for your consideration of HLA's comments on this matter.

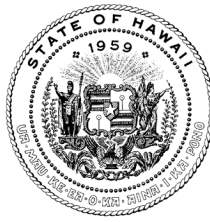
Sincerely,

A handwritten signature in blue ink, appearing to read "E.K.K." followed by a stylized flourish.

Eric K. Kingma, PhD
Executive Director

Cc: Suzanne Case, BLNR Chair

DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF AQUATIC RESOURCES
1151 PUNCHBOWL STREET, ROOM 330
HONOLULU, HAWAII 96813

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

May 27, 2021

Eric K. Kingma, PhD
Executive Director
Hawaii Longline Association
Sent via email to: eric.k.kingma@gmail.com

Aloha Eric,

Thank you for your comments regarding DAR's proposed amendment to HAR 13-74. We recognize that the Hawaii longline fishery, in particular the deep-set longline fishery, remains overwhelmingly the largest contributor to the State's total production of seafood including the majority of locally caught fish consumed in State. The value of the Hawaii longline fishery is noted daily in our ease of access to high-quality sashimi, fresh poke, and global reputation as a premier destination for premium seafood.

Without a doubt, the majority of all non-resident CML holders today are crew or vessel operators associated with the longline fishery. Accordingly, the longline fishery will see the highest increase in total CML expenditure in comparison to others if the proposed amendment is passed. However, the proposed amendment is not a targeted attack on the longline fishery at all, but rather a continuation of a commonplace policy that predates the longline fishery's now characteristic use of majority non-resident crew. The original intent of charging higher non-resident CML fees was not to levy unfair fees against the longline fishery. In fact, between 1993 and 2004 DAR granted an average of only 129 non-resident CMLs statewide annually.¹ The now widespread use of majority non-resident crew did not precede the non-resident CML, but rather became adopted as a fishery standard in more recent years. If significant change has been seen in this case, it has been the composition of the longline fishery, not the policies of DAR.

To be clear, the intent of this proposed amendment is absolutely to help alleviate ongoing budget shortfalls though not caused by the COVID-19 pandemic, certainly exacerbated by it. The practice of charging non-residents higher fees to extract natural resources is present in every State of the US including here in Hawaii, where both hunting and recreational freshwater fishing non-resident licenses are priced in excess of four-times that of their resident counterparts. We believe that the unique practices and characteristics of the Hawaii longline fishery do not warrant

¹ From 1993 to 1999, the CML fees were \$25 for residents and \$50 for non-residents. From 1999 to 2016, CML fees were \$50 for residents and \$200 for non-residents.

its exemption from this amendment nor should they have any bearing on the State's right to reinstate fair and reasonable residency-based CML pricing akin to what is widely accepted in other seafood-producing states across the nation.

DAR recognizes the proactive efforts that the Hawaii Longline Association (HLA) has taken to improve transparency, crew working conditions, and fishing practices. We have in turn worked hard to improve processes and policies that directly benefit the Longline fishery, including increased efforts to provide quick turn-around of CML applications in light of COVID-19 restrictions, and support of a commercial marine vessel license. We will continue to collaborate with the HLA and hope that the longline fishery remains a leader in Hawaii's sustainable fisheries.

Mahalo,

A handwritten signature in black ink, appearing to read 'Brian J. Neilson', with a stylized flourish at the end.

Brian J. Neilson
Administrator

ITEM F-4 Exhibit 2

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

§13-74-1

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);

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- (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,

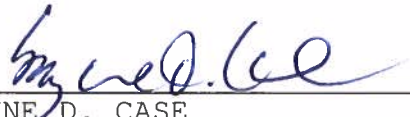
- purchased, transferred, exchanged, or sold during the reporting period;
- (4) The name and current license number of the commercial marine licensee from whom the marine life was obtained or purchased; and
 - (5) Other information as required on forms provided by, or as directed in writing by, the department.
- (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 FOR PUBLIC HEARING:



Deputy Attorney General
Daniel A. Morris