

State of Hawai'i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawai'i 96813

January 12, 2024

Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

**Request for Final Approval to Adopt Proposed Amendments to and
Compilation of Hawaii Administrative Rules Chapter 13-74, "License and
Permit Provisions and Fees for Fishing, Fish, and Fish Products"**

Submitted for your consideration and approval is a request to adopt the proposed amendments to and compilation of **Hawaii Administrative Rules (HAR) chapter 13-74, "License and Permit Provisions and Fees for Fishing, Fish, and Fish Products"** to:

- 1) Establish and add provisions for a new Nonresident Recreational Marine Fishing License (NRMFL) pursuant to [section 188-72, Hawaii Revised Statutes \(HRS\)](#); ¹
- 2) Establish and add provisions for a new Commercial Marine Vessel License (CMVL) pursuant to [HRS §189-2](#), including an exemption from Commercial Marine License requirements for CMVL holders; ²
- 3) Establish and add provisions for a new Commercial Marine Dealer License (CMDL) pursuant to [HRS §189-10](#); ³
- 4) Increase the fee for the Bait License, the Mullet Pond Operator and Closed Season Sales License, the Kona Crab and Lobster Closed Season

¹ On June 8, 2021, former Governor David Ige signed into law [House Bill 1023](#) as [Act 48 \(2021\)](#). [Act 48 \(2021\)](#) was codified under [HRS §188-72](#), establishing the Nonresident Recreational Marine Fishing License (NRMFL) required for all non-Hawai'i residents.

² On June 8, 2021, former Governor David Ige signed into law [House Bill 1016](#) as [Act 43 \(2021\)](#). [Act 43 \(2021\)](#) was codified within [HRS §189-2](#), establishing the Commercial Marine Vessel License (CMVL) as an alternative to the current requirement that all crew on a commercial fishing vessel each possess their own separate valid Commercial Marine License.

³ HRS §189-10 authorizes the Department of Land and Natural Resources (Department) to issue licenses to commercial marine dealers and to adopt rules for the implementation of a Commercial Marine Dealer License (CMDL). There is currently no such license requirement for commercial marine dealers within the Hawaii Administrative Rules. The current rules only require commercial marine dealers to provide weekly reports to the Department pursuant to HAR §13-74-46. The Department finds it necessary to include provisions for a CMDL within this proposal. A CMDL will allow the Department to keep an accurate accounting of all commercial marine dealers and will also allow for streamlined enforcement and enhanced compliance.

- Sales License, the Special Marine Animal or Product Possession and Sale License, and the Aquaculture License from \$50.00 to \$100.00;⁴
- 5) Remove the Northwestern Hawaiian Islands Fishing Permit;
 - 6) Add a catch reporting requirement for all Bait License holders;
 - 7) Establish a fee for duplicate Aquaculture Licenses and licenses to sell reared species;⁵
 - 8) Give the Department discretion to require additional reports from Aquaculture License holders; and
 - 9) Establish a fee of \$200 for a license to sell reared species.⁶

Additionally, the Department is taking this time to make the following housekeeping amendments throughout the chapter: Adding new definitions and amending current definitions for clarity; removing definitions that are no longer applicable; clarifying that licenses and permits are non-refundable; clarifying the administrative penalty schedule for violations of the chapter; adding asset forfeiture as an administrative enforcement tool within the chapter; and other non-substantive housekeeping amendments for clarity and consistency with other chapters.

PURPOSE

The purpose of this rulemaking action is to implement a new Nonresident Recreational Marine Fishing License (NRMFL), a new Commercial Marine Vessel License (CMVL), and a new Commercial Marine Dealer License (CMDL) and to update fees for various licenses and permits, update and clarify various reporting requirements, add new definitions to for clarity and consistency, and perform other housekeeping measures. The proposed amendments are described in detail in DAR's May 26, 2023 Board submittal (Item F-1), available online at <https://dlnr.hawaii.gov/wp-content/uploads/2023/05/F-1-1.pdf>.

BACKGROUND

On May 12, 2023, the Division of Aquatic Resources (DAR) provided an informational briefing to the Board of Land and Natural Resources (Board) explaining the proposed NRMFL, CMVL, CMDL, and other amendments to HAR Chapter 13-74, including background information, legal authority, and rationale.

On May 26, 2023, the Board approved DAR's request to hold statewide public rulemaking hearings, pursuant to HRS chapter 91, to amend and compile HAR

⁴ As new technology becomes available and the demand for licenses and permits increases, the costs of implementation of the Division's licensing and permitting system grows; therefore, the fee schedule for these licenses and permits must be updated to accommodate the rising costs of implementation in addition to the costs of ensuring the system is up-to-date as new technology is developed. Most fees within the chapter have not been updated since the 1990s.

⁵ See footnote 4.

⁶ See footnote 4.

chapter 13-74, “License and Permit Provisions and Fees for Fishing, Fish, and Fish Products.”

The Department held three hybrid⁷ statewide public hearings via Zoom, with in-person host sites on Hawai‘i Island (Hilo and Kona), Maui, Moloka‘i, Lāna‘i, O‘ahu, and Kaua‘i.⁸ Additionally, written testimony was accepted from July 15, 2023 to October 13, 2023. Upon closing of the public comment period, the testimony was compiled, reviewed, analyzed, and summarized.

PUBLIC TESTIMONY

No one provided testimony at either of the public hearings held on August 17, 2023 (Hilo/Kona in-person host sites) and September 27, 2023 (Maui/Moloka‘i/Lāna‘i in-person host sites). Six individuals provided testimony at the August 16, 2023 public hearing, three at the in-person host site on O‘ahu and three via Zoom. Of these, one testimony was given on behalf of the Hawai‘i Fishermen’s Alliance for Culture and Tradition, Inc. and another on behalf of For the Fishes, a non-governmental organization dedicated to protecting coral reef wildlife. The Department also received written comments from three individuals, one of which was a submitted by For the Fishes to supplement their in-person testimony on August 16, 2023 and another was from the Harvard Law School Animal Law and Policy Clinic.

All except one testimony received was in general support of updating the chapter. One testimony commended the Department for implementing the long-awaited Commercial Marine Vessel License for which commercial fishers have been advocating for years. Other testimony provided suggestions and comments on various provisions for the various licenses within the chapter including the

⁷ The format of the public hearings was a hybrid virtual/in-person format with in-person host sites for those wishing to provide in-person testimony as well as a virtual option via Zoom. The in-person sites had a TV, speakers, microphone, and camera setup and were logged into the Zoom meeting that was shown on the TV for all in attendance to watch. Additionally, the Zoom meetings were broadcast onto DAR’s YouTube channel for those wishing to view the meeting without providing testimony. The Zoom public hearings officer showed a pre-recorded public hearing presentation on the proposed rules and then collected testimony.

⁸ The in-person host sites for the three hybrid public hearings were scheduled as follows:
O‘ahu and Kaua‘i - Wednesday, August 16, 2023, 5:30 p.m.

- Stevenson Middle School Cafeteria, 1202 Prospect Street, Honolulu, Hawai‘i 96822
- Kaua‘i Veterans Center, 3215 Kapule Highway, Līhu‘e, Hawai‘i 96766

Hawai‘i island - Thursday, August 17, 2023, 5:30 p.m.

- State Office Building, Conference Room A, 75 Aupuni Street, Hilo, Hawai‘i 96720
- West Hawai‘i Civic Center – Community Meeting Hale, 74-5044 Ane Keohokālole Highway, Kailua-Kona, Hawai‘i 96740

Maui, Moloka‘i, and Lāna‘i – Wednesday, September 27, 2023, 5:30 p.m.

- Maui DAR Office, 130 Mahalani Street, Wailuku, Hawai‘i 96793
- Kūlana ‘Ōiwi, 600 Maunaloa Highway, Kaunakakai, Hawai‘i 96748
- Division of Boating and Ocean Recreation – Lāna‘i Office, Mānele Small Boat Harbor, Mānele Harbor Road, Lāna‘i City, Hawai‘i 96763

Nonresident Recreational Marine Fishing License, the Commercial Marine Vessel License, the Commercial Marine Dealer License, the Baitfish License, and the Aquaculture License. The minutes from the public hearing, the analysis of public testimony, and the written testimonies are attached as **Exhibit 1**, **Exhibit 2**, and **Exhibit 3**, respectively. The recording of the public hearings can be viewed on the Division of Aquatic Resources' YouTube Channel at: <https://www.youtube.com/@DLNR-DAR>.

KA PA'AKAI ANALYSIS

On September 11, 2000, the Hawaii Supreme Court (Court) ruled in *Ka Pa'akai O Ka 'Āina vs. Land Use Commission, State of Hawai'i*⁹ (Ka Pa'akai) that State and government agencies have an obligation to "preserve and protect traditional and customary Native Hawaiian rights" and that an appropriate analytical framework was needed to assess whether these rights were unduly violated.¹⁰ The Court developed a three-pronged test, dubbed the "Ka Pa'akai Analysis," which is triggered when government agencies consider proposed uses of land and water resources that may impact the exercise of Native Hawaiian traditional and customary rights.

Although the Court stated that an agency's constitutional obligation to reasonably protect Native Hawaiian traditional and customary practices was widely applicable to all agency actions, the Court did not opine as to whether the Ka Pa'akai Analysis could or should be applied outside of contested case hearings. Then, on March 15, 2023, the Court ruled in *Flores-Case 'Ohana v. University of Hawai'i*¹¹ (FCO) that the obligation described in Ka Pa'akai not only applied to contested case hearings, but also to rulemaking actions.¹² In doing so, the Court provided a modified Ka Pa'akai Analysis to be used in rulemaking actions. The analysis outlined in FCO requires agencies to consider:

- (1) The identity and scope of Native Hawaiian traditional and customary rights affected by the rule, if any;
- (2) The extent to which Native Hawaiian traditional and customary rights will be affected or impaired by the rule; and

⁹ [Ka Pa'akai o ka 'Āina v. Land Use Comm'n \(Ka Pa'akai\), 94 Hawai'i 31, 7 p.3d 1068 \(2000\)](#) (Ka Pa'akai)

¹⁰ "Following up on PASH, we recognized in Ka Pa'akai that in contested case hearings, the State and its agencies have an 'affirmative duty ... to preserve and protect traditional and customary native Hawaiian rights' and provided a framework 'to effectuate the State's obligation to protect native Hawaiian customary and traditional practices while reasonably accommodating competing private interests.'" [Flores-Case 'Ohana v. University of Hawai'i, 153 hawaii 76, at 83 \(2023\)](#) (quoting Ka Pa'akai at 45-47, 1082-1084)

¹¹ [Flores-Case 'Ohana v. University of Hawai'i, 153 hawaii 76, \(2023\)](#)

¹² "In sum, the Ka Pa'akai framework applies to administrative rulemaking in addition to contested case hearings. Requiring the State and its agencies to consider Native Hawaiian traditional and customary rights in these contexts effectuate[s] the State's obligation to protect native Hawaiian customary and traditional practices[.]" [Flores-Case 'Ohana v. University of Hawai'i, 153 hawaii 76, at 84 \(2023\)](#)

- (3) Whether the proposed rules reasonably protect Native Hawaiian traditional and customary rights, if they are found to exist, as balanced with the State's own regulatory right.

Subsequently, the Department has provided the following analysis on this proposal's effects on Native Hawaiian traditional and customary practices:

1) Identity and Scope of Native Hawaiian Traditional and Customary Rights Affected by the Rule, if Any

The current proposal establishes a new commercial marine vessel license, a new commercial marine dealer license, and a new nonresident recreational marine fishing license. The commercial marine vessel and the commercial marine dealer licenses clearly do not affect Native Hawaiian traditional and customary practices because commercial activity has not been recognized as a traditional and customary practice protected under the Constitution and the proposed licenses regulate commercial activity which does not directly affect any known Native Hawaiian traditional and customary practices.¹³ However, the Nonresident Recreational Marine Fishing License may affect a nonresident Native Hawaiian exercising their traditional and customary subsistence fishing practices.¹⁴

No other affects to Native Hawaiian traditional and customary practices were identified by any of the other, housekeeping amendments in the proposal. Additionally, there was no feedback during preliminary scoping nor testimony received during the public comment period, conducted pursuant to Chapter 91, HRS, that indicated any traditional and customary practices affected by the proposed amendments to HAR chapter 13-74.

2) Extent to Which Native Hawaiian Traditional and Customary Rights Will Be Affected or Impaired by the Rule

Assuming a nonresident Native Hawaiian may assert a subsistence fishing right under Article XII, section 7 of the Constitution, they would incur an added burden of applying and paying for a license to practice their traditional and customary subsistence fishing practices.

¹³ "When undertaking this analysis, the agency is not required to negative any and all native Hawaiian rights claims regardless of how implausible the claimed right may be." [Flores-Case 'Ohana v. University of Hawai'i, 153 Hawai'i 76, 85 \(2023\)](#) (quotation marks omitted) (quoting [State v. Hanapi, 89 Hawai'i 177, 184 \(1998\)](#)).

¹⁴ There is no precedent that extends the rights outlined in Article XII, section 7 of the Hawai'i State Constitution to nonresident Native Hawaiians; however, for the purposes of this analysis we will err on the side of caution and assume that nonresident Native Hawaiians may assert those rights.

3) Reasonable Protections for Native Hawaiian Traditional and Customary Rights, if They are Found to Exist, as Balanced with the State's Own Regulatory Right

There are no reasonable protections that can be implemented to mitigate the added burdens on nonresident Native Hawaiians wishing to exercise their traditional and customary subsistence fishing rights.

The burden of obtaining a license for nonresident Native Hawaiians is not unreasonable. The Department is planning on offering an online license portal as well as an option to obtain a license in-person at any of the DAR offices. The alternative: Not requiring nonresident Native Hawaiians to obtain a permit would make enforcement extremely difficult.

The Department further argues that requiring nonresident Native Hawaiians to pay a fee to obtain a license is also not unreasonable. The rationale for charging a fee for nonresidents and not for residents is because all residents pay taxes that contribute to the State's management of the aquatic resources of the State. Nonresidents, on the other hand, do not pay state taxes; thus, the license fee is a means to ensure nonresidents equally contribute to the management of Hawai'i's aquatic resources if they are going to extract those resources while they are here. Because resident Native Hawaiians are subject to State taxes the same as every other resident of the State, it is reasonable to also require nonresident Native Hawaiians to pay the fee for the Nonresident Recreational Marine Fishing License to take aquatic life while they are here.

Further, differentiating between Hawaiian and non-Hawaiian nonresidents would make the program unreasonably burdensome to implement in a way that would maintain the functionality of the program.¹⁵ The alternative would be to allow self-reporting of whether or not an applicant is Hawaiian and their intended practice is a traditional and customary Native Hawaiian fishing practice protected under the constitution without any way of verifying

¹⁵ For example, the current implementation framework differentiates residents from nonresidents, which is easily proved through various methods (i.e. driver's license, state ID, official documents, etc.), however, if we were to differentiate between Hawaiian and non-Hawaiian nonresidents, we would need to validate whether or not the applicant is a descendant of a native Hawaiian who lived in Hawai'i prior to 1778, which would require significantly more time and resources to validate.

Additionally, arguably not all types of subsistence fishing that would require a nonresident recreational marine fishing license would be protected under the Constitution (i.e. a fishing tour where tourists pay to get taken out onto a boat and take home whatever they catch to eat). If so, then the implementation of the license would be further complicated because the licensee would need to prove that their intended practice would be a valid traditional and customary practice protected under the Constitution using the criteria and frameworks provided by the Court, requiring even more time and resources.

the truth of their assertion, an easily exploitable loophole with no consequences for untruthful applicants.

Therefore, the Department believes that the proposal's adverse effects to any identified Native Hawaiian traditional and customary practices are minimal and, when balanced with the State's regulatory right, is overwhelmingly outweighed by the State's interest in regulating nonresident extraction of aquatic life in Hawai'i.

CHANGES TO PROPOSED RULE AMENDMENTS


Based on the comments received and on internal discussions, the Department has decided to move forward with the proposal without any substantive changes. However, the Department has incorporated minor, non-substantive edits that were suggested by the Governor's office for clarity.

A redlined version of HAR chapter 13-74 showing the changes made to the version that was presented for public hearing is attached as **Exhibit 4** and the final proposed amendment and compilation of HAR chapter 13-74 drafted in Ramseyer format is attached as **Exhibit 5**.

RECOMMENDATIONS:

"That the Board approve the amendment and compilation of Hawaii Administrative Rules chapter 13-74, "License and Permit Provisions and Fees for Fishing, Fish, and Fish Products" as set forth in **Exhibit 5** attached hereto."

Respectfully submitted,



for

BRIAN J. NEILSON, Administrator,
Division of Aquatic Resources

APPROVED FOR SUBMITTAL



DAWN N. S. CHANG, Chairperson
Board of Land and Natural Resources

Attachments:

Exhibit 1 – Public Hearing Minutes

Exhibit 2 – Analysis of Testimony

Exhibit 3 – Written Testimony

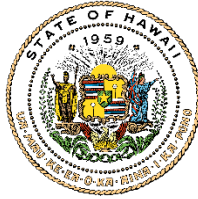
Exhibit 4 – Draft HAR 13-74 (Redlined Ramseyer Version)

Exhibit 5 – Draft HAR 13-74 (Ramseyer Format)

Item F-1, Exhibit 1

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII' DEPARTMENT OF LAND AND NATURAL RESOURCES KA 'OIHANA KUMUWAIWAI 'ĀINA

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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

PUBLIC HEARING MINUTES

Amendments to and Compilation of Hawaii Administrative Rules Chapter 13-74, "License and Permit Provisions and Fees for Fishing, Fish, and Fish Products"

Hearing Date: August 16, 2023, 5:30 p.m. (O'ahu and Kaua'i)
Hearing Type: Hybrid Zoom with In-Person Host Sites
Host Site Locations:

- 1) Stevenson Middle School Cafeteria
1202 Prospect Street
Honolulu, Hawai'i 96822
- 2) Kaua'i Veterans Center
3215 Kapule Highway
Līhu'e, Hawai'i 96766

The full recording of the O'ahu and Kaua'i public hearing is available on the DAR
YouTube Channel at <https://youtu.be/Wsku4J2t4go?si=u5Wk5IX-ptH3AyXp>

Hearing Date: August 17, 2023, 5:30 p.m. (Hawai'i Island)
Hearing Type: Hybrid Zoom with In-Person Host Sites
Host Site Locations:

- 1) Aupuni Center Conference Room
101 Pauahi Street, Suite #1
Hilo, Hawai'i 96720
- 2) West Hawai'i Civic Center -
Community Meeting Hale
74-5044 Ane Keohokālole Highway
Kailua-Kona, Hawai'i 96740

The full recording of the Hawai'i Island public hearing is available on the DAR
YouTube Channel at https://youtu.be/8W9JYutfNt8?si=gvp8LaHyesYS_njX

Hearing Date: September 27, 2023, 5:30 p.m. (Maui Nui)
Hearing Type: Hybrid Zoom with In-Person Host Sites
Host Site Locations:

- 1) Maui DAR Office
130 Mahalani Street
Wailuku, Hawai'i 96793

- 2) Kūlana ‘Ōiwi
600 Maunaloa Highway
Kaunakakai, Hawai‘i 96748
- 3) Division of Boating and Ocean Recreation –
Lāna‘i Office, Mānele Small Boat Harbor,
Mānele Harbor Road,
Lāna‘i City, Hawai‘i 96763

The full recording of the Maui Nui public hearing is available on the DAR YouTube Channel at <https://www.youtube.com/watch?v=DFIFU71AhDY>

I. INTRODUCTION

A. Opening Remarks

1. Introductions
2. Call to order
 - a. August 16 (O‘ahu and Kaua‘i) – 5:33 p.m.
 - b. August 17 (Hawai‘i Island) – 5:33 p.m.
 - c. September 27 (Maui Nui) – 5:33 p.m.
3. Brief description of the proposal
4. Availability of draft rules for review
5. How to watch YouTube live stream

B. Purpose, Approval, and Notice

1. Purpose of the public hearing
2. Approval to conduct this public hearing was obtained from the Board of Land and Natural Resources at their board meeting on May 26, 2023.
3. The Legal Notices of the August 16 and 17 public hearings were published in the July 15, 2023 Saturday issues of the Garden Island and West Hawai‘i Today newspapers and the July 16, 2023 Sunday issues of the Honolulu Star Advertiser and Hawai‘i Tribune Herald newspapers. The Legal Notice of the September 27 public hearing was published in the August 27, 2023 Sunday issue of the Honolulu Star Advertiser. Additionally, notice of this public hearing was posted on the Draft Rules and Public Notices page of the DAR website (where digital copies of the draft rules in Ramseyer format can be found) as well as posted on the Announcements page of the DAR website.

C. Hearing Procedures

1. Step-by-step overview of how the hearing will be conducted
2. Instructions on how to provide testimony
3. Step-by-step instructions on how testimony will be collected

II. PRE-RECORDED SLIDES WITH VOICE OVER

A. Proposed amendments to Hawaii Administrative Rules Chapter 13-74, “License and Permit Provisions and Fees for Fishing, Fish, and Fish Products”

1. Brief description and summary of the proposed amendments to HAR chapter 13-74.

III. TESTIMONIES

A. Collection of Oral/Video Testimonies

1. YouTube live streaming reminder for those not wishing to provide testimony but still wish to view the proceedings
2. Reminder on how to provide testimony and the process that testimony will be collected
3. Collection of in-person testimony on **Kaua’i** [No testifiers]
4. Collection of in-person testimony on **O’ahu** [Three testifiers]
5. Collection of **O’ahu** and **Kaua’i** Zoom testimony [Three testifiers]
6. Collection of in-person testimony in **Hilo** [No testifiers]
7. Collection of in-person testimony in **Kona** [No testifiers]
8. Collection of **Hawai’i Island** Zoom testimony [No testifiers]
9. Collection of in-person testimony on **Lāna’i** [No testifiers]
10. Collection of in-person testimony on **Moloka’i** [No testifiers]
11. Collection of in-person testimony on **Maui** [No testifiers]
12. Collection of **Maui Nui** Zoom testimony [No testifiers]
13. Last call for all others wishing to provide testimony who were not called or for those wishing to provide additional testimony

B. Written Testimony

1. Announcement of deadline to provide written testimony: **Friday, October 13, 2023**
2. Instructions on how to provide written testimony via postal mail or via e-mail

IV. NEXT STEPS AND ADJOURNMENT

C. Extended Timeline

1. Outline of the projected timeline of the rules
2. Last call for questions

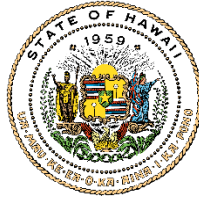
D. Adjournment

1. August 16 (O’ahu and Kaua’i) – 6:36 p.m.
2. August 17 (Hawai’i Island) – 5:57 p.m.
3. September 27 (Maui Nui) – 5:57 p.m.

Item F-1, Exhibit 2

JOSH GREEN, M.D.
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**STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
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LAND
STATE PARKS

**ANALYSIS OF PUBLIC HEARINGS AND TESTIMONY ON PROPOSED
AMENDMENT AND COMPILATION OF HAR CHAPTER 13-74, "LICENSE AND
PERMIT PROVISIONS AND FEES FOR FISHING, FISH, AND FISH PRODUCTS"**

I. BACKGROUND

The Department held three hybrid statewide public hearings via Zoom, with in-person host sites on Hawai'i Island (Hilo and Kona), Maui, Moloka'i, Lāna'i, O'ahu, and Kaua'i. Notice was published in the Garden Island and West Hawai'i Today on Saturday, July 15, 2023 and in the Honolulu Star-Advertiser and the Hawai'i Tribune Herald on Sunday, July 16, 2023 for the hearings held on August 16 and 17, 2023. Notice was published in the Honolulu Star Advertiser on Sunday August 27, 2023 for the hearing held on September 27, 2023. No one provided testimony at either of the public hearings held on August 17, 2023 (Hilo/Kona in-person host sites) and September 27, 2023 (Maui/Moloka'i/Lāna'i in-person host sites). Six individuals provided testimony at the August 16, 2023 public hearing, three at the in-person host site on O'ahu and three via Zoom. Of these, one testimony was given on behalf of the Hawai'i Fishermen's Alliance for Culture and Tradition, Inc. and another on behalf of For the Fishes, a non-governmental organization dedicated to protecting coral reef wildlife. The Department also received written comments from three individuals, one of which was a submitted by For the Fishes to supplement their in-person testimony on August 16, 2023 and another was from the Harvard Law School Animal Law and Policy Clinic.

In total, the Department received nine testimonies (three written and six oral). One testimony was a duplicate (oral and written)

All except one testimony received was in general support of updating the chapter. One testimony commended the Department for implementing the long-awaited Commercial Marine Vessel License for which commercial fishers have been advocating for years. Other testimony provided suggestions and comments on various provisions for the various licenses within the chapter including the Nonresident Recreational Marine Fishing License, the Commercial Marine Vessel License, the Commercial Marine Dealer License, the Baitfish License, and the Aquaculture License. The following analysis describes the comments and recommendations received in testimony and explains the Department's response, including rationale for moving forward without making any substantive changes to the proposal.

II. TESTIMONY WITH COMMENTS/SUGGESTED EDITS

A. *Section 13-74-1, Hawaii Administrative Rules, "Definitions"*

1. One testimony was concerned with the removal of the definition of "board" and with the transfer of authority to suspend, revoke, or refuse to issue licenses or permits from the Board to the Department in general.

Department Response

The Department appreciates the testimony but has decided to move forward with the proposal as it is written. The proposed amendment does not, by itself, transfer any authority from the Board to the Department. The Board, as the head of the Department, maintains the authority to issue, suspend, revoke, or refuse issuance of licenses and permits. The Board sometimes delegates authority to the Chair or Administrator of a division to make certain administrative decisions such as when to suspend, revoke, or refuse to issue a license or permit. Replacing "board" with "department" clarifies this and provides consistency with statutory language.

2. Multiple testimonies were concerned with the definition of "qualified aquaculturist" and the lack of specific qualifications to determine a qualified aquaculturist.

Department Response

The Department appreciates the testimony but has decided to move forward with the proposal as it is written. HAR §13-74-43(a) already requires "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." Including this in the definition of "qualified aquaculturist" is redundant and unnecessary. Further, creating new qualifications (as suggested by the testimony) is beyond the scope of the proposed rule amendment and would require additional public hearings.

B. *Section 13-74-11, Hawaii Administrative Rules, "Nonresident Recreational Marine Fishing License"*

1. One testimony suggested that fees go directly to the Department for use by Division of Aquatic Resources (DAR) and Division of Conservation and Resources Enforcement (DOCARE) staff rather than into the general fund.

Department Response

By law, NRMFL fees must be deposited into the Department's Sport Fish Special Fund and can only be used for eligible sport fish projects.¹

¹ [HRS §187A-9.5](#), Sport fish special fund.

C. *Section 13-74-23, Hawaii Administrative Rules, “Commercial Marine Vessel License”*

1. There were multiple suggestions regarding the boat lengths used for the tiered fee schedule including:
 - Omitting boats less than 22 feet in length from being able to obtain a Commercial Marine Vessel License
 - Amending the top tier of non-longline vessels to “Over 40 feet” in length;

Department Response

The Department appreciates the testimony and notes the suggestion. However, the Department has decided to move forward with the proposal as it is written. This proposal is a result of an extensive scoping process that included input from numerous commercial fishing vessel operators.²

2. One testimony suggested to go by number of persons on a vessel instead of length of vessel for the tiered fee schedule.

Department Response

The Department appreciates the testimony and notes the suggestion. However, the Department has decided to move forward with the proposal as it is written. This proposal is a result of an extensive scoping process that included input from numerous commercial fishing vessel operators. In addition to overall support for the proposed tiered fee schedule by commercial vessel operators, the Department believes that a tiered fee schedule built on vessel length is the most consistent fee framework. A tiered fee schedule built around number of persons on the vessel, as suggested, doesn’t take into account the fact that crew sizes differ from trip to trip. However, vessel size is constant and would remain the same throughout the duration of a permit. Therefore, the Department believes that the current framework based on vessel length is more appropriate and fair.

3. One testimony suggested to add a subsection (k) with provisions requiring persons operating under a CMVL to be on board the vessel and allowing only the CMVL holder to transfer fish to a commercial marine dealer.

² DAR reached out directly to known stakeholders and stakeholder representatives to gather feedback on the proposed rules as they were being developed. Below is a list of stakeholder meetings held, along with a brief summary of meeting highlights. On **June 2, 2022**, DAR held an in-person meeting with Hawai’i longline fishery representatives to discuss the proposed CMVL rules for longline vessels. The longline fishery representatives expressed overall support for the CMVL and felt the \$1,500 fee was reasonable. On **April 3, 2023**, DAR held a Zoom meeting with commercial marine dealers to discuss the proposed CMDL rules. Some dealers expressed concern that the \$100 annual license fee was burdensome for small businesses, which could drive some dealers to purchase fish “under the table,” resulting in a loss of dealer data. Instead, a reduced CMDL fee of \$10 per year was suggested. On **April 6, 2023**, DAR held a Zoom meeting with fishing charter operators to discuss the proposed CMVL and NRMFL rules. Some operators expressed concern that the NRMFL fees would hurt their business, while some expressed support for fees as long as revenues were spent appropriately. On **May 4, 2023**, DAR held an in-person meeting with fishing charter operators at Honokōhau Harbor to discuss the CMVL and NRMFL.

Department Response

The proposed CMVL rules are designed to provide flexibility to commercial fishing vessel owners, operators, and crew. It is DAR's intent that the holder of the CMVL does not need to be onboard the vessel while it is being operated. The holder of the CMVL is, however, responsible for accurately reporting all fishing activity and catch information. Likewise, it is DAR's intent that crew or representatives of the CMVL holder are allowed to transport and sell fish under the CMVL. To facilitate enforcement, DAR is planning to establish transport logs to document the authorization of individuals to transport and sell fish on behalf of a CMVL holder. The CMVL holder will be responsible for accurately reporting sales under the CMVL.

4. One testimony commented that the authorizing statute states that commercial marine license holders "shall be eligible to apply" for a CMVL which indicates that the license is discretionary and suggested that the language change to reflect a discretionary license rather than the non-discretionary language that is currently in the proposal.

Department Response

The statutory language stating that a commercial marine license holder "shall be eligible to apply" for a CMVL indicates that the license is optional. It is discretionary in the sense that a commercial fisher has discretion to obtain a CMVL. However, the Department does not have discretion in issuing the CMVL. The Department must issue it upon application by a qualified CML holder.

5. Multiple testimonies suggested that there should be provision that allows only the vessel licensee to sell to a commercial marine dealer.

Department Response

It is DAR's intent that crew or representatives of the CMVL holder are allowed to transport and sell fish under the CMVL. To facilitate enforcement, DAR is planning to establish transport logs to document the authorization of individuals to transport and sell fish on behalf of a CMVL holder. The CMVL holder will be responsible for accurately reporting sales under the CMVL.

6. One testimony pointed out inconsistencies throughout the section with the interchangeable use of "person" and "individual" and suggested making it uniform for clarity.

Department Response

The terms "person" and "individual" have different meanings. The use of these different terms in different parts of the section is intentional to differentiate who may obtain a CMVL and who is responsible for submitting fishing reports.

7. One testimony posed multiple open-ended questions: What happens if the owner is not on the vessel? What happens if the operator is not the owner?

What happens if the person who is issued a commercial marine vessel license wants to go the market if they have to leave the license on the vessel?

Department Response

The Department has considered these scenarios in drafting the rules. The owner of the CMVL does not need to be on the vessel while it is fishing. The CMVL itself, however, does need to be on the vessel while it is fishing. An operator (e.g., the captain) may obtain a CMVL for the vessel, even if the operator is not the owner of the vessel. Alternatively, an operator may operate the fishing vessel under a CMVL issued to the owner of the vessel. If the individual who is issued the CMVL wants to go to the market, they can bring their license with them. The CMVL must only be on the vessel while it is engaged in fishing activity. None of these questions warrant making changes to the proposed rules.

III. TESTIMONY WITH COMMENTS AND SUGGESTIONS BEYOND THE SCOPE OF THIS RULEMAKING ACTION

A. *Section 13-74-11, Hawaii Administrative Rules, "Nonresident Recreational Marine Fishing License"*

1. One testimony suggested that DAR establish a recreational resident fishing license with no charge for minors, seniors, and Native Hawaiians to capture data and get in-kind funding from the federal government.

Department Response

Although the Department appreciates the suggestion, the Department respectfully declines, at this time, to include the suggested edits into this proposal. Proposing a new recreational fishing license for residents would require starting the rulemaking process over which would significantly delay these crucial updates this chapter. Additionally, establishing a new resident noncommercial fishing license would require specific legislative authorization.

B. *Section 13-74-20, Hawaii Administrative Rules, "Commercial Marine License"*

1. One testimony suggested adding a new provision for a Professional Commercial Marine License for certain fishing methods and gear that require specialized experience.

Department Response

Although the Department appreciates the constructive feedback, the Department respectfully declines, at this time, to include the suggested edits into this proposal. The only substantive changes that were noticed for HAR §13-74-20, "Commercial Marine License" were to add provisions implementing the new Commercial Marine Vessel License. Therefore, any substantive changes would require starting the rulemaking process over which would significantly delay these crucial updates this chapter. Instead, the Department has noted these

suggestions and will discuss the feasibility of initiating a rulemaking action in the future to address these concerns.

C. *Section 13-74-22, Hawaii Administrative Rules, "Baitfish License"*

1. One testimony indicated concern that there was no way for the public to identify baitfish license holders and believed that public perception would be that it was legal to use a fine mesh net.

Department Response

Although the Department appreciates the constructive feedback, the Department respectfully declines, at this time, to include the suggested edits into this proposal. The only substantive changes that were noticed for HAR §13-74-22, "Baitfish License" were an increased license fee and a new reporting requirement for bait license holders. Therefore any substantive changes would require starting the rulemaking process over which would significantly delay these crucial updates this chapter. Instead, the Department has noted these suggestions and will discuss the feasibility of initiating a rulemaking action in the future to address these concerns. Additionally, the Department feels that the concerns address can be partially addressed through increased education and outreach to make the public aware of the current laws and exemptions for baitfish license holders.

D. *Section 13-74-40 Hawaii Administrative Rules, "Mullet Pond Operator and Closed Season Sales License"*

1. One testimony suggested to repeal the Mullet Pond Operator License in favor of the Aquaculture License.

Department Response

The Department appreciates the testimony and notes the suggestion. However, the Department has decided to move forward with the proposal as it is written. The only substantive change that were noticed for HAR §13-74-40, "Mullet Pond Operator and Closed Season Sales License" was an increased fee. Therefore any substantive change, including repeal of the section, would require starting the rulemaking process over which would significantly delay these crucial updates this chapter. Instead, the Department has noted these suggestions and will discuss the feasibility of initiating a rulemaking action in the future to address these concerns.

E. *Section 13-74-43, Hawaii Administrative Rules, "Aquaculture License"*

1. The following concerns/suggestions were made for substantive changes to the aquaculture license provisions:
 - Add a provision to allow a valid licensee to catch pua and sell extra pua to another facility that is also similarly licensed because some

ponds do not have the crew to catch their own pua and if they can buy it from another pond;

- Add a provision requiring a licensee to be able to keep the aquatic organisms at their facility healthy; and
- Add a provision that requires continued monitoring instead of qualifications for issuance of the permit because it is impossible to tell if someone is capable of keeping aquatic life healthy before they have any aquatic life in their facility.

Department Response

Although the Department appreciates the constructive feedback, the Department respectfully declines, at this time, to include the suggested edits into this proposal. The only substantive changes that were noticed for HAR §13-74-43, “Aquaculture License” were to update the license fee (HAR §13-74-43(k)), establish a fee for duplicate aquaculture licenses (HAR §13-74-43(k)), and give the Department the discretion to require additional reports from aquaculture license holders (HAR §13-74-43(h)(4)). Therefore any substantive changes would require starting the rulemaking process over which would significantly delay these crucial updates this chapter. Instead, the Department has noted these suggestions and will discuss the feasibility of initiating a rulemaking action in the future to address these concerns.

2. One testimony suggested that new aquaculture operations (not including traditional fishpond operations) should require consultation with community/kānaka of the area both where collections occur and where the facility is located.

Department Response

The Department appreciates the testimony and notes the suggestion. However, the Department has decided to move forward with the proposal as it is written. The Department agrees that community consultation plays an important role in successfully management Hawai‘i’s marine resources. Subsequently, the Department believes that this suggestion can be incorporated in ways other than in the rules themselves, such as license terms and conditions.

F. Section 13-74-45, Hawaii Administrative Rules, “Commercial Marine Dealer License”

1. One testimony suggested to add “at retail” and “exported from the state.”

Department Response

It was unclear where “at retail” and “exported from the state” was suggested to be added.

2. One testimony suggested that there should be licensing and reporting requirements for commercial marine dealers who are exporting marine species outside of the State.

Department Response

HRS §189-10(b) authorizes the Department to require a license of any person to export any marine life taken within the jurisdiction of the State for commercial purpose. The Department did not include an export license in the proposed rule package but has noted this suggestion and will consider the feasibility of initiating a rulemaking action in the future to implement an export license requirement.

G. *General Suggestions*

1. One testimony suggested to restructure the chapter to consolidate it by provision type (e.g., fees) into subchapters

Department Response

The Department appreciates the testimony and notes the suggestion. However, the Department has decided to move forward with the proposal as it is written. Restructuring of the chapter would require a significant amount of planning and internal discussions. The Department has noted these suggestions and will discuss the feasibility of initiating a rulemaking action in the future to address these concerns.

2. One testimony suggested to include other statutorily authorized/mandated permits/licenses into the chapter

Department Response

The Department appreciates the testimony and notes the suggestion. However, the Department has decided to move forward with the proposal as it is written. Implementation of new permits requires extensive scoping and planning before undergoing the rulemaking process. The Department has strategically prioritized implementation of the three new permits included in this proposal. The Department has noted these suggestions and will discuss the feasibility of initiating a rulemaking action in the future to address these concerns.

I. TESTIMONY IN OPPOSITION

- A. *Opposition to the Repeal of Section 13-74-21, Hawaii Administrative Rules, "Northwestern Hawaiian Islands Fishing Permit"*

Department Response

The Department appreciates the individual's participation and testimony and notes the opposition to the removal of the Northwestern Hawaiian Islands Fishing Permit. However, the Department has decided to move forward with the removal of the Northwestern Hawaiian Islands Fishing Permit. Although this was a

substantive amendment to the chapter, it was housekeeping in nature because the Department no longer issues fishing permits for the Northwestern Hawaiian Islands. The fishing permit was created before the designation of the Papahānaumokuākea Marine National Monument. The current management framework of the monument has rendered the Northwestern Hawaiian Island Fishing Permit as redundant and moot as the Monument co-managing agencies have since developed an extensive permitting process to review any requests for extraction within the Monument.

Item F-1, Exhibit 3

Sakoda, David

From: Courtland Pang [REDACTED]
Sent: Wednesday, August 9, 2023 10:22 PM
To: DLNR.AR.DLNR.Aquatics
Cc: Neilson, Brian J; Ishida, Bryan R; Sakoda, David
Subject: [EXTERNAL] Testimony for Amendment 13-74-23

Follow Up Flag: Follow up
Flag Status: Flagged

Aloha:

I am writing pursuant to DLNR Chairperson Dawn Chang's July 14, 2023 Public Hearing Notice:

FOR THE PROPOSED AMENDMENT AND COMPILATION OF HAWAII ADMINISTRATIVE RULES CHAPTER 13-74, "LICENSE AND PERMIT PROVISIONS AND FEES FOR FISHING, FISH, AND FISH PRODUCTS"

That Notice provided instructions that written testimony be submitted to DAR by August 25, 2023.

Accordingly, I write to provide testimony in STRONG SUPPORT of specifically the proposed amendment, as written, to add 13-74-23 which would provide for a Commercial Marine Vessel License (CMVL). With 13-74-23, DAR has done an excellent job of fulfilling the intent of the Legislature to simplify and streamline the existing process wherein every fisher aboard a vessel must have his/her own individual license. Even more outstanding is that DAR has made the fee structure equitable for the longline and non-longline boats and even the smaller boat fishers. Well done, DAR!

I STRONGLY SUPPORT 13-74-23 as written!

Mahalo nui,
Courtland Pang



October 13, 2023

Division of Aquatic Resources
1151 Punchbowl Street, Room 330
Honolulu, HI 96813,
VIA Email : DAR.Testimony@hawaii.gov

RE: Comments on proposed amendment and compilation of Hawaii Administrative Rules (HAR) chapter 13-74, “License and Permit Provisions and Fees for Fishing, Fish, and Fish Products.”

Mr. Sakoda,

For the Fishes, dedicated to protecting coral reef wildlife, provides the following comments on the above-referenced proposal to amend chapter 13-74.

1. Marine Dealer License. As explained below, we have significant concerns with this section and we also offer a solution.

Background: In 2016, the Board approved for public hearing draft amendments for HAR 13-74 that included language for a marine dealer license. According to the Board submittal (attached), the marine dealer license language was to serve as a “placeholder” and as “early notice to the public” on information such as “who are dealers” and “what types of businesses would be subject to this new licensing and reporting requirement.” Importantly, the submittal also explained why commercial marine dealer licenses and related reporting are extremely important: marine dealer reports **verify** the information reported by commercial fishers. A large difference between the two can indicate catch estimates that are inaccurate and result in management that is less effective.

After consulting with the Dept. of the Attorney General, DAR removed the marine dealer license language and returned to the Board in 2017 for re-consideration and re-approval. While the general public was never given the “early notice” as intended, the language originally proposed is informative, especially where it varies from the new language proposed now.

Of concern is the current draft’s omission of a key section contained with the earlier version pertaining to exports and retail sales by commercial marine licensees. Where the earlier draft considered commercial marine licensees that engaged in these practices as marine dealers, the current version does not. Specifically, the original language included (emphasis added):

“(a) The department may issue a commercial marine dealer license to any person. . . or to any **commercial marine licensee to export marine life** taken within the jurisdiction of the State for commercial purpose **or to sell or exchange marine life at retail.**”

(c) **No commercial marine licensee shall export any marine life** taken within the jurisdiction of the State for commercial purpose without possessing a valid commercial marine dealer license.”

(d) **No commercial marine licensee shall sell or exchange marine life at retail** without possessing a valid commercial marine dealer license.”

In the new version, commercial marine licensees who sell their own catch at retail are *not* considered marine dealers, and those who export their catch out of the state are given no consideration whatsoever (HAR §13-74-45 (a)). Both would be subject only to the existing reporting required for commercial marine licensees – a method of self-reporting that is unverified and unverifiable without additional requirements. Thus, these groups of commercial fishers are given a pass when it comes to catch verification, which is highly problematic for a number of reasons, including:

- a) Per the existing definition (HAR §13-74-1), commercial marine dealers include commercial marine licensees who sell or exchange marine life at retail. However, in this current proposal, this type of marine dealer is excluded from the dealer licensing requirement, a key part of the catch verification system.
- b) Commercial marine licensees have historically directly exported tens to hundreds of thousands of reef fishes and invertebrates that they’ve taken from Hawaii’s reefs annually for the aquarium pet trade on the continent, and they seek to do so again as soon as possible.

The direct export of catch by commercial marine licensees is significant enough that the legislature granted the department the ability to require a specific license for this purpose (see HRS § 188-10 (b)); and, as noted above, it was to be prohibited without a marine dealer license.

Therefore, for consistency and to ensure proper catch validation, we suggest that the rule should reflect the language referenced above, as found in the attached Board submittal from 2016.

2. Those provided the privilege of possessing an Aquaculture Facility License must be defined as more than simply “engaging in aquaculture.” New aquaculture facilities should be subject to inspection by DAR and by routine visits after a permit is issued. Further, there must be some nationally recognized standards and practices for responsible aquaculture operations. There have already been a number of businesses who have falsely claimed to be engaging in aquaculture and others, who have been engaging in aquaculture but without the required licenses or permits.

In addition, any aquaculture operation must consult with stakeholders in the impacted community—both where any marine life will be collected AND where the facility will hold the marine life. Cultural consultation should be required. There is also growing evidence demonstrating the environmental harm of aquaculture operations. Aquaculture Facilities and their licensees must provide evidence that their operations will not impact natural resources, including water and soil, and also that any wildlife being reared will be treated humanely, and in accordance with best practices and all rules, regulations and all local, state and federal laws.

We support the below language changes to Chapter 13-74-43 (h) 4, 5 and 6, proposed by Harvard Law School Animal Law and Policy clinic and the below requirements for the issuance of any new AFL to a “qualified aquaculturist.” These changes may be incorporated into rule or the terms and conditions for the issuance of any new AFL’s.

A “qualified aquaculturist” must have received training and/or certification in nationally accepted aquaculture standards including breeding, growth/feeding, disease/treatment, humane handling, transport and disposal and conduct preliminary and ongoing assessments of environment and cultural impacts, including ethical evaluations.

Thank you for your attention to this testimony.

Sincerely,

Inga Gibson, Policy Director, Pono Advocacy,
Rene Umberger, Executive Director, For the Fishes

Suggested Additions to § 13-74-43, Hawaii Administrative Rules:

[Additions are indicated in **bold, underlined** text]

Hawaii Administrative Rules

§13-74-43 Aquaculture license

* * *

(h) The department may require licensees:

* * *

(3) To provide a list of names of [~~commercial marine dealers~~] any person 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~~[.]~~;

(4) To submit additional monthly reports, trip reports, aquatic life health and fatality reports, or other reports as required by the department;

(5) To demonstrate the ability to maintain aquatic life or live rock alive and in good health at all times in accordance with standards as may be required by the department; and

(6) To provide access for the inspection of any aquaculture facilities licensed under this section to any officers or agents authorized to enforce the laws of the State as may be required by the department to ensure compliance with the provisions of this section.

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

May 27, 2016

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

REQUEST FOR APPROVAL TO HOLD PUBLIC HEARINGS TO AMEND HAWAII
ADMINISTRATIVE RULES CHAPTER 13-74, LICENSE AND PERMIT PROVISIONS AND
FEES FOR FISHING, FISH, AND FISH PRODUCTS. THESE AMENDMENTS ARE
INTENDED TO ESTABLISH A LICENSE FOR DEALERS, REQUIRE DEALER
REPORTING, AND RAISE THE COMMERCIAL MARINE LICENSE FEES FROM \$50 TO
\$150 PER YEAR.

Submitted for your consideration and approval is a request to hold Statewide public hearings to amend Hawaii Administrative Rules ("HAR") chapter 13-74 to make a number of changes to require seafood dealers to be licensed and to submit monthly reports and commercial marine license fees.

Proposed Management Measures

There are three proposed rule changes: 1) to require marine dealers in local marine life to obtain a license from the department, 2) to require primary dealers to report regularly to the department their purchases from commercial fishers, and 3) to raise the commercial marine license fees from its current \$50 to \$150 per year.

Marine Dealer License

Act 307, Session Laws of Hawaii 1997, authorized the Department to require a commercial marine dealer license. The dealer license would facilitate tracking marine life as it moves through the markets, would identify those businesses that trade in local marine life, and would identify which dealers are purchasing directly from licensed fishers to trigger a requirement to submit regular reports of such purchases. Although authorized to require the license in 1997, the Division has not implemented this authority because of changing priorities, there was no immediate need to implement the dealer license until the comprehensive license and permit revisions, and there was an effective means to enforce reporting. The establishment of the Civil Resource Violations System (CRVS) in 2009 provides this effective enforcement tool. The urgent need to increase commercial license fees (see section on fee increases) is the main driver for why we are making these amendments now.

This proposed dealer license amendment would initially function as a placeholder until more comprehensive amendments to all licenses and permits are completed in the next few years. Including some of the dealer license specifics, such as who are dealers, at this time, provides

early notice to the public on what types of businesses would be subject to this new licensing and reporting requirements. As such, we do not expect this new license to be implemented immediately upon approval. In the meantime, we will be meeting with dealers to more fully discuss this new licensing requirement.

Primary Commercial Marine Dealer Purchase Report

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

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

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

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

Commercial marine license fee increases

Prior to January 2016, the annual fees for the commercial marine license (CML) were \$50 for residents and \$200 for non-residents. These fees were in effect since September 1, 1999. As a

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

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

Fee analysis

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

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

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

In summary, the anticipated loss in license fee revenues will be \$150,000/year. This loss will be replaced with an immediate increase in all license fees from \$50 to \$100/year, which is expected to generate about \$200,000/year. The second fee increase from \$100 to \$150/year is expected to generate another \$200,000/year. These funds will be used to cover the operational expenses in

These increases will enable the licensing system to be more self-sufficient, rather than depend on uncertain State and federal funds into the future. These funds may also be used to provide the required state matching funds for federal funded projects.

Where does the money go?

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

Business and Public Impacts


The proposed dealer license has been discussed with a limited number of dealers who are in support. They see the license as a way to level the playing field. Existing requirements that are placed on the legitimate businesses are many but not all businesses are operating within the law. Requiring a license would ensure that all businesses are not only in compliance but that all are subject to the same standards. It would also identify those businesses that are not known to us so we may open lines of communication with them about the current market regulations and other relevant information.

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

RECOMMENDATIONS:

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

Respectfully submitted,


BRUCE S. ANDERSON, Administrator
Division of Aquatic Resources

APPROVED FOR SUBMITTAL

A handwritten signature in black ink, appearing to read 'Suzanne Case', is written over a horizontal line.

SUZANNE CASE, Chairperson
Board of Land and Natural Resources

Attachment:

Exhibit 1 – Ramseyer Draft

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to Chapter 13-74

Hawaii Administrative Rules

(date of adoption)

1. Section 13-74-1, Hawaii Administrative Rules, is amended by amending the definition of "commercial marine dealer" to read:

"Commercial marine dealer" means any:

(a) Person who sells or exchanges, or who is an agent in the transfer of, marine life obtained:

- 1) Directly from a commercial marine licensee who took the marine life;
- 2) From another dealer;
- 3) From a licensed aquaculture facility; or
- 4) From an importer whose marine life is regulated under state law, or

(b) Person who exports marine life taken within the jurisdiction of the State for commercial purpose;
or

(c) Commercial marine licensee who sells or exchanges locally caught marine life they took themselves at retail." [Eff 8/12/93; am 10/18/10; am] (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, 189-10)

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

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

taking of marine life in or outside of the State shall obtain a commercial marine license.

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

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

(1) Residents, \$50;

(2) All other persons, \$200;

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

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

(e) No person may:

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

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

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

3. Chapter 13-74, Hawaii Administrative Rules, is amended by adding a new section 13-74-45 to read as follows:

"§13-74-45 Commercial marine dealers. (a) The department may issue a commercial marine dealer license to any person to sell or exchange, or act as an agent in the transfer of, marine life obtained directly from a commercial marine licensee, or to any commercial marine licensee to export marine life taken within the jurisdiction of the State for commercial purpose or to sell or exchange marine life at retail.

(b) No person shall sell or exchange, or act as an agent in the transfer of, marine life obtained directly from a commercial marine licensee without possessing a valid commercial marine dealer license.

(c) No commercial marine licensee shall export any marine life taken within the jurisdiction of the State for commercial purpose without possessing a valid commercial marine dealer license.

(d) No commercial marine licensee shall sell or exchange marine life at retail without possessing a valid commercial marine dealer license.

(e) A person applying for the commercial marine dealer license shall provide to the department the name and physical location of the place of business.

(f) A separate commercial marine dealer license shall be required for each place of business, even if one person owns or operates several places of business, provided that a person who owns or operates a business consisting of only mobile places of business may be issued one marine dealer license per vehicle.

(g) It is unlawful for any commercial marine dealer to sell or offer for sale, to purchase or attempt to purchase, to exchange, or to act as an agent in the transfer of, any marine life taken within the jurisdiction of the State for commercial purpose, that is obtained from any person whom the department has required to have, but does not have, a valid commercial marine license, commercial marine dealer license, or other license or permit authorizing such sale, purchase, exchange, or transfer for commercial purpose.

(h) Every commercial marine dealer shall issue receipts to the person from whom marine life is obtained and shall provide the following information on the receipt:

- (1) The date of the issuance;
- (2) The name and commercial marine license number of the person to whom the receipt is issued;
- (3) The species, numbers, weights, and values of each of the varieties of marine life obtained; and
- (4) The signature of the commercial marine dealer who issued the receipt.

Any commercial marine dealer who takes the dealer's own marine life shall issue a sales receipt with the same information.

(i) The commercial marine dealer 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." [Eff] (Auth:

HRS §189-10) (Imp: HRS §§189-10, 189-11)

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

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

- (1) The name, address, and telephone number of the commercial marine dealer;
- (2) The time period for which the report is being submitted;

- (3) The species, numbers, weights, and values of each of the varieties of marine life landed in the State that the dealer obtained, purchased, transferred, exchanged, or sold during the reporting period;
 - (4) The name and current license number of the commercial marine licensee from whom the marine life was obtained or purchased; and
 - (5) Other information as required on forms provided by, or as directed in writing by, the department.
- (b) Reports shall be submitted to the department monthly or weekly as provided in writing by the department." [Eff _____] (Auth: HRS §189-10) (Imp: HRS §189-10)

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

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

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

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

SUZANNE D. CASE
Chairperson
Board of Land and Natural
Resources

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General

DRAFT

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October 13, 2023

David Sakoda
Division of Aquatic Resources
Hawaii Department of Land and Natural Resources

Via email: DAR.Testimony@hawaii.gov; DLNR.Aquatics@Hawaii.gov

**Re: Testimony on Proposed Amendments to Chapter 13-74, Hawaii Administrative Rules,
“License and Permit Provisions and Fees for Fishing, Fish, and Fish Products”**

Dear Mr. Sakoda:

We are writing on behalf of the Harvard Law School Animal Law & Policy Clinic to provide testimony on the Proposed Amendments to Chapter 13-74, Hawaii Administrative Rules, “License and Permit Provisions and Fees for Fishing, Fish, and Fish Products” (“Proposed Amendments”). We are grateful for the opportunity to provide testimony on the Proposed Amendments and appreciate your time and consideration of our suggestions.

Our testimony here is confined to Hawaii Administrative Rules § 13-74-43 and proposes additional language related to qualified aquaculturist and aquaculture facility licensing. We offer these suggested additions as ways in which to strengthen the ability of the Division of Aquatic Resources (DAR) to uphold its existing regulations. If adopted, these additions would better enable DAR to enforce its established requirement that prospective licensees “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.”¹ These additions would provide notice to potential licensees and prospectively empower DAR to enforce its regulations in situations in which licensees (or license applicants) are failing to keep the aquatic life in their facilities alive and healthy.²

¹ Haw. Admin. R. § 13-74-43(a).

² In a notable recent example, the Kanaloa Octopus Farm, which applied to DAR for an aquaculture facility license in January 2023, Application no. 36385, failed repeatedly in its attempts to breed and raise day octopuses in Hawaii, resulting in total paralarvae fatalities. See Harvard Law School Animal Law & Policy Clinic, et al., *Letter to Brian Neilson, Division of Aquatic Resources, Hawaii Department of Land and Natural Resources, Re: Request for Denial of Aquaculture Facility License to Kanaloa Octopus Farm* 5–8 (July 11, 2023), <https://animal.law.harvard.edu/wp-content/uploads/DAR-KOF-Complaint.pdf>; Catherine Cruz, *Octopus Eco-tours and Conservation are the Focus of this Big Island Facility*, Haw. Pub. Radio (Jan. 13, 2023), <https://www.hawaiipublicradio.org/the-conversation/2023-01-13/octopus-eco-tours-and-conservation-big-island-facility> (Kanaloa Octopus Farm stating that it did not know how to raise octopuses or what to feed octopus paralarvae); Susanne Rust, *Hawaii Orders Facility to Stop Capturing and Keeping Octopuses*, L.A. Times (Feb. 15, 2023), <https://www.latimes.com/california/story/2023-02-15/hawaii-says-octopus-farm-operated-without-proper-permits> (“[N]o one has been able to close the life cycle of potentially commercially productive captive octopuses. While Kanaloa

The additions we suggest are included in the attached Appendix. In summary, these three suggested additions to Hawaii Administrative Rules § 13-74-43 would:

1. Amend § 13-74-43(h)(4) as proposed to empower DAR to specifically require licensees to submit reports on the health and fatalities of aquatic life at their aquaculture facilities.

Comment: The proposed regulations would enable DAR to require monthly and other reports from licensees. The addition of this suggested language, however, will provide additional notice to licensees and structure to the type of information DAR may require. Health and fatality reports should include information related to aquatic life injuries or accidents, disease or pest outbreaks, numbers of premature aquatic life fatalities at aquaculture facilities, and other information relevant to the health and survival of aquatic life held by licensees. To facilitate efficient reporting, DAR should develop a standardized form that it may use to collect this information from licensed qualified aquaculturists and aquaculture facilities.

2. Add § 13-74-43(h)(5) to require licensees to demonstrate their ongoing ability to keep aquatic life alive and healthy, in alignment with DAR's existing license requirement in § 13-74-43(a).

Comment: § 13-74-43(a) does not provide any detail concerning the requirement that licensees be “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.”³ Without additional specificity, this language is difficult for licensees to interpret and challenging to enforce because it points to no specific standard, leaving it to licensees to determine applicable “industry-wide standards.” In order to facilitate its determination of whether licensees are able to keep aquatic life in their facilities alive and healthy, DAR should develop or specify applicable aquatic animal welfare standards. Such standards would provide both an assessment framework to DAR that would assist with its enforcement of its regulations as well as guidelines for licensees that would assist them to comply with DAR's requirements. Any aquatic animal welfare standards developed or specified by DAR should include considerations such as water quality standards, stocking densities, enclosure enrichment requirements, disease prevention and control measures, and humane handling and slaughter methods. Model aquatic animal welfare considerations and standards are available for reference or incorporation.⁴

3. Add § 13-74-43(h)(6) to require licensees to provide access for inspection of licensed aquaculture facilities.

Comment: Under DAR's current aquaculture facility license “Specific Terms and Conditions,” licensees must “allow inspections upon the demand of any officer authorized to enforce the laws of the State.”⁵ It is unclear how far the scope of such

and some commercial octopus farms have been able to produce viable larvae from eggs fertilized in captivity, they have not been able to keep those small octopuses living beyond 13 days.”).

³ Haw. Admin. R. § 13-74-43(a).

⁴ See, e.g., Aquatic Life Institute, *Aquaculture Welfare Guide* (Mar. 2022), <https://ali.fish/aquaculture-welfare-guide>.

⁵ DAR, Aquaculture Facility License, Specific Terms and Conditions (Jan. 10, 2022), https://dlnr.hawaii.gov/dar/files/2021/01/aquaculture_facility_spec_tc_rev.pdf.

inspections may extend, beyond the “[i]nitial site inspection.”⁶ For instance, under the existing regulations, licensees are required to make available for inspection their receipts⁷ and copies of their aquaculture facility licenses,⁸ as well as “any bag or container of any kind that could reasonably be used to carry any aquatic life or any vehicle or conveyance used to transport any aquatic life.”⁹ The current regulations do not explicitly provide for the inspection of aquaculture facilities to verify compliance with DAR’s provisions. Specifically, the regulations do not explicitly empower inspection of the facilities themselves in order to enforce DAR’s requirement that licensees be able to keep aquatic life in their aquaculture facilities healthy and alive. Given the differences between the aquaculture facility license terms and conditions and the current regulations, there may be ambiguity around the extent of inspection authority. Adding this suggested language to the regulations would strengthen the authority to inspect facilities in order to improve regulatory enforcement and compliance.

DAR has the authority to adopt these three proposed additions under Hawaii Revised Statute § 187A-3.5.

We thank you for your consideration of the additions and actions suggested in this testimony. We stand at your disposal should you have any questions or if we can be of assistance.

Sincerely,



Kelley McGill
Clinical Fellow
Animal Law & Policy Clinic



Rachel Mathews
Acting Director, Animal Law & Policy Clinic
Lecturer on Law, Harvard Law School

⁶ DAR, Aquaculture Facility License, <https://dlnr.hawaii.gov/dar/licenses-and-permits/aquaculture-facility-license/>.

⁷ Haw. Admin. R. § 13-74-43(c).

⁸ Haw. Admin. R. § 13-74-43(i).

⁹ Haw. Admin. R. § 13-74-2(2); *see also* Haw. Rev. Stat. § 187A-15.

Appendix

Suggested Additions to § 13-74-43, Hawaii Administrative Rules:

[Additions are indicated in **bold, underlined** text]

Hawaii Administrative Rules

§13-74-43 Aquaculture license

* * *

(h) The department may require licensees:

* * *

(3) To provide a list of names of [~~commercial marine dealers~~] any person 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~~[-]~~;

(4) To submit additional monthly reports, trip reports, **aquatic life health and fatality reports**, or other reports as required by the department;

(5) To demonstrate the ability to maintain aquatic life or live rock alive and in good health at all times in accordance with standards as may be required by the department; and

(6) To provide access for the inspection of any aquaculture facilities licensed under this section to any officers or agents authorized to enforce the laws of the State as may be required by the department to ensure compliance with the provisions of this section.

Item F-1, Exhibit 4

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
§13-74-4.5	Asset forfeiture
§§13-74-5 to 13-74-9	(Reserved)

Subchapter 2 Recreational Fishing

§13-74-10	Freshwater game fishing license
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"Baitfish" means any of the species listed in section 13-74-22.

"Baitfishing report" means a monthly report that is furnished to the department with respect to any baitfish taken.

~~["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.

"Catch report" means a monthly report that every commercial marine licensee shall furnish to the department with respect to the marine life taken.

"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] any 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 marine vessel license" means a license issued to an individual for a specific vessel that allows all crew on board the vessel to take marine life within or outside the State for commercial purpose without requiring each crew member to possess an individual commercial marine license.

"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", "fishing activities", 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]~~ that 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]~~ is 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.

"License period" means the period of time during which the license is or was valid.

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

"Main 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 the island of Ni'ihau-island to and including the islandBig Island of Hawai'i.

"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.

"Nonresident" means any individual who is not a resident of the State of Hawai'i.

~~["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.

"Qualified aquaculturist" means a person, or association of persons, actively engaged in aquaculture farming, aquacultural produce processing, or aquacultural product development activities.

"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[7] or obtaining a license or permit, or has filed or paid the individual's State income taxes for the previous tax period[-], or has established domicile in the State. Domicile may be established by providing documentation including a valid Hawai'i driver's license or identification card, a valid school identification card, or any other official document issued to the individual within the previous thirty days from a government agency, financial institution, insurance company, or utility company.

"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 8/27/21; am and comp] (Auth: HRS §§187A-5, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-6) (Imp: HRS §§187A-5, 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-refundable and non-transferable and ~~[shall be]~~ are 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 that could reasonably be 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.] reasonably believes that the person is, or recently has been, engaged in fishing activities.

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] is prima facie evidence of a violation of this chapter and sufficient cause for the immediate revocation of the license or permit by the ~~[board;]~~ department;

- (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]~~ for 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]~~ is 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 8/27/21; am and comp]
- (Auth: HRS §§187A-5, 187A-5.5, 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, 188-44, 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]~~ department 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]~~ any license or permit issued pursuant to ~~[section 13-74-20,]~~ this chapter, the licensee or permittee shall be given notice and opportunity for hearing in conformity with chapter 91, HRS. Upon revoking the license~~[,]~~ or permit, the ~~[board]~~ department may specify a period of time during which the ~~[commercial]~~ licensee or permittee 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 8/27/21;
am and comp] (Auth: HRS
§§187A-5, 188-44, 188-45, 188-50, 188-53,
189-2, 189-5, 189-6) (Imp: HRS §§187A-5,
188-44, 188-45, 188-50, 188-53, 189-2, 189-
3, 189-5, 189-6)

§13-74-4 Penalties, generally. (a) [A] Unless
otherwise provided, any person violating any provision
of this chapter, or the terms and conditions of any
license or permit issued [as provided by] pursuant to
this chapter, ~~[shall be punished as provided by law.]~~
is subject to:

- (1) Administrative penalties as provided by
section 187A-12.5, HRS~~r~~;
- (2) Criminal penalties as provided by sections
187A-13, 188-70, and 189-4, HRS; and
- (3) Any other penalty as provided by law.

(b) Unless otherwise expressly provided, the
remedies or penalties provided by this chapter are
cumulative to each other and to the remedies or
penalties available under all other laws of the State.
[Eff 8/12/93; am 1/15/99; comp 8/27/21; am and comp
] (Auth: HRS §§187A-5, 188-44, 188-45,
188-50, 188-53, 188-57, 189-2, 189-6) (Imp: HRS
§§187A-5, 187A-12.5, 187A-13, 188-45, 188-50, 188-53,
189-2, 189-6)

§13-74-4.5 Asset forfeiture. Any equipment,
article, instrument, aircraft, vehicle, vessel,
business record, or natural resource used or taken in
violation of this chapter or any of the terms and
conditions of any license or permit issued pursuant to
this chapter may be seized and subject to forfeiture
as provided by section 199-7 and chapter 712A, HRS.
[Eff and comp] (Auth: HRS §§187A-5,
187A-12.5, 188-44, 188-45, 188-50, 188-53, 188-57,

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]~~ freshwater game fish without first obtaining a freshwater game fishing license, provided that children ~~[exempt by this section]~~ below-under nine years of age may fish without a license ~~[only]~~ when accompanied by a licensed adult.

(b) ~~[Licenses]~~ Freshwater game fishing 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:]~~ is:

- (1) Minors ~~[between nine and]~~ under fifteen years of age, \$3;
- (2) Residents ~~[over]~~ between fifteen ~~[and-under]~~ years of age, up to, but not including, sixty-five years of age, \$5;
- (3) Persons sixty-five years of age and older, free;
- (4) Persons not qualifying under paragraph (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]~~ spouses and children fifteen years of age and over, \$5;
 - (B) ~~[7-Day]~~ Seven-day tourist license which is valid for only seven days from the date of issue, \$10; and

- (C) Tourist license which is valid for only thirty days from the date of issue, \$20; and
- (5) Duplicate license, \$1. [Eff 8/12/93; am 1/15/99; am and comp 8/27/21; am and comp] (Auth: HRS §§187A-5, 188-50) (Imp: HRS §§187A-5, 188-50)

§13-74-11 Nonresident recreational marine fishing license.

(a) It is unlawful for any nonresident of the State who has attained the age of fifteen, except members of the armed forces of the United States on active duty in the State and their spouses and minor children, to fish for, take, or catch any marine life for noncommercial or recreational purposes without first obtaining a nonresident recreational marine fishing license.

(b) Licenses shall require the person's name, address, date of birth, height, weight, color of hair and eyes, and such other information as the department may require.

(c) The fee for the nonresident recreational marine fishing license ~~is shall be~~:

- (1) For a one-day fishing license, \$20;
(2) For a seven-day fishing license, \$40; and
(3) For an annual fishing license, \$70.

(d) Any person violating this section ~~is shall be~~ subject to administrative penalties as provided by section 187A-12.5, HRS. [Eff and comp] (Auth: HRS §188-72) (Imp: HRS §§187A-12.5, 188-72)

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~~[-]~~; provided that a valid commercial marine vessel license issued pursuant to section 13-74-23 shall satisfy the commercial marine license requirement for all persons taking marine life for commercial purposes aboard a validly-licensed vessel.

(b) ~~[Additionally, any]~~ 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~~[-]~~; provided that a valid commercial marine vessel license issued pursuant to section 13-74-23 shall satisfy the commercial marine license requirement for all persons providing charter services for the taking of marine life aboard a validly-licensed vessel.

~~[(b)] (c)~~ ~~[Licenses to persons with proof of identity to engage in the activities described in subsection (a)]~~ Commercial marine licenses shall require the person's name, address, age, place of birth, ~~[length of residence in the State,]~~ residency, height, weight, color of hair and eyes, citizenship, and such other information as the department may require. The department may require an applicant for a commercial marine license to show proof of identity prior to issuance or renewal of a license.

~~[(e)] (d)~~ The fee for the issuance or renewal of a commercial marine license ~~[shall be:]~~ is:

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

The fee for a duplicate license ~~[shall be]~~ is \$10.

~~[(d)] (e)~~ No person may:

- (1) Renew a commercial marine license more than two months prior to its expiration date; or
- (2) Be issued more than one commercial marine license at any one time~~[-]~~; provided that a person may hold a commercial marine license simultaneously with commercial marine vessel licenses or other licenses issued pursuant to this chapter.

~~[(e)] (f) [The department may require persons—~~
~~issued the commercial marine license to] Commercial~~
~~marine licensees shall~~ submit reports of their fishing
activity. Such reports shall be submitted to the
department monthly~~[+]~~ pursuant to section 13-74-2(5);
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.]~~ pursuant to
section 13-74-2(6). ~~[The monthly]~~ Monthly and trip
reports ~~[shall be]~~ are subject to section 13-74-2, ~~and~~
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 8/27/21; 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 \$50 and the duplicate—~~
~~license fee shall be \$10.] [Eff 8/12/93; am 1/15/99;~~
~~am and comp 8/27/21; R] (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 (*Atherinomorus insularum*);
- (2) Marquesan sardine (*Sardinella marquensis*);
- (3) Nehu (*Encrasicholina purpurea*);
- (4) Piha (*Spratelloides delicatulus*);
- (5) "Tabai" (*Mollienesis* spp.);
- (6) Threadfin shad (*Dorosoma petenense*); and
- (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]~~ is 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]~~ is ~~[\$50]~~ \$100, and the duplicate license fee ~~[shall be]~~ is \$10.

(f) Each person issued a bait license shall, in addition to monthly catch reports pursuant to section 13-74-20, submit baitfishing reports to the

department. The baitfishing reports shall be submitted monthly in a form and manner provided by the department. The catch reports and baitfishing reports ~~areshall be~~ subject to section 13-74-2; ~~and~~ sections 189-3 and 189-3.5, HRS; ~~7~~ and as may be otherwise provided by rule or law. [Eff 8/12/93; am 1/15/99; am and comp 8/27/21; 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]

13-74-23 Commercial marine vessel license. (a)

The department shall, upon receipt of a valid application and appropriate fee payment, issue a commercial marine vessel license to any qualified individual.

(b) A qualified individual is anyone who:

- (1) Possesses a valid commercial marine license;
- (2) Is at least eighteen years old;
- (3) Provides proof of identify; and
- (4) Does not have any unmet child support obligations pursuant to section §189-2, HRS.

(c) Any qualified individual applying for a commercial marine vessel license shall file an application on an approved application form that is available from the department. The application shall be completed in its entirety. Failure to provide a completed application or providing false or misleading information on the application may result in delay or denial of the application.

(d) A commercial marine vessel license ~~is-shall-be~~ valid from the date of issuance and shall expire on the expiration date of the licensee's commercial marine license. A commercial marine vessel license ~~is-shall-only-be~~ valid only for a specific vessel and is nontransferable. A qualified individual may obtain and possess more than one commercial marine vessel license at a time.

(e) The fee for the issuance or renewal of a commercial marine vessel license ~~is-shall-be~~:

- (1) \$100 for any vessel less than twenty-two feet in length that is not used for longline fishing;
- (2) \$200 for any vessel twenty-two feet in length or greater that is not used for longline fishing; and
- (3) \$1,500 for any vessel used for longline fishing, as defined in section 189-2.5, HRS.

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

(f) If a commercial marine vessel license is issued for a longline vessel, the commercial marine vessel licensee shall file an annual report with the department that contains the following information about all crew members who worked aboard the longline vessel during the license period:

- (1) Identity;
- (2) Nationality;
- (3) Arrival date in Hawai'i
- (4) Departure date; and
- (5) Any other information the department may require.

The longline annual report shall be submitted to the department within thirty days of the end of the license period.

(g) If a commercial marine vessel license is issued for a vessel providing charter services for the taking of marine life, the license shall satisfy the commercial marine license requirement for all crew members. The commercial marine vessel license does not exempt charter fishing vessel passengers or customers from the requirement to have a nonresident recreational marine fishing license or any other license required by law. For purposes of this section, a "passenger" is any individual on board a vessel who is not a member of the vessel's crew.

(h) If a vessel for which a commercial marine vessel license is obtained is lost, destroyed, stolen, sold, transferred, or otherwise no longer in the possession or control of the licensee, the licensee shall immediately notify the department, and the

license shall be terminated.

(i) The commercial marine vessel license shall be kept aboard the vessel at all times while participating in commercial fishing activities and shall be made available for inspection upon demand.

(j) Persons issued a commercial marine vessel license shall submit reports of the vessel's fishing activity. Such reports shall be submitted to the department monthly pursuant to section 13-74-2(5); provided that persons taking bottomfish, as defined in chapter 13-94, in the main Hawaiian islands shall, in addition to their monthly reports for species other than bottomfish, submit trip reports of their bottomfishing activity pursuant to section 13-74-2(6).
~~M~~The monthly and trip reports ~~are 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 and comp

] (Auth: HRS §§189-2, 189-3, 189-3.5)

(Imp: HRS §§189-2, 189-3, 189-3.5)

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]~~ is 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 \$50]~~ is \$100, and the duplicate license fee ~~[shall be]~~ is \$10. [Eff 8/12/93; am 1/15/99; am and comp 8/27/21; 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. The report shall list the amount of remaining Kona crab and lobster in the licensee's inventory as of the end of the month.

(c) The fee for the Kona crab and lobster closed season sales license ~~[shall be \$50]~~ is \$100, and the duplicate license fee ~~[shall be]~~ is \$10. [Eff 8/12/93; am 1/15/99; am and comp 8/27/21; 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 the licensee is an importer:
 - (A) Species imported, source, quantity, and arrival date; and
 - (B) Name and address of buyers, species sold, quantity, and date of such sale;
- (2) If the licensee is a wholesaler:
 - (A) Source, quantity, and date purchased; and
 - (B) Name and address of buyers, species sold, quantity, and date of such sale;
- (3) If the licensee is a retailer or restaurant:
 - (A) Source and date of purchase; and
 - (B) Species and quantity sold [7]; and
- (4) [And any] aAny other such information the department may require.
- (d) The fee for the special marine animal or product possession and sale license [shall be \$50] is \$100, and the duplicate license fee [shall be] is \$10.
[Eff 8/12/93; am 1/15/99; am and comp 8/27/21; 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~~[7]~~ a license to fish for, rear, possess, or sell any ~~[regulated]~~ aquatic life~~[7]~~ whose fishing, possession, or sale is prohibited by closed season, minimum size, or bag limit; provided that 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] aquaculturist 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]~~. Harvesting, collecting, or otherwise obtaining live rocks from the wild[.] is strictly prohibited.

(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]~~ the 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]~~ any person that will buy or obtain any regulated aquatic life that ~~[were]~~ was reared in the licensee's aquaculture facility. Any changes to the list shall be in writing~~[-]~~; and

- (4) To submit additional monthly reports, trip reports, or other reports as required by the department.

(i) ~~[Each aquaculture facility shall have a separate license,]~~ A separate license shall be obtained for each aquaculture facility that rears, possesses, or sells regulated aquatic life, 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]~~ prohibited by a closed season, [or when regulated by a] minimum size, or bag limit as specified in subtitle 5 ~~[or]~~ of title 12, HRS, or administrative rules.

(k) The license fee ~~[shall be \$50.]~~ is \$100, and the duplicate license fee is shall be \$10. [Eff 8/8/96; comp 8/27/21; am and comp]

(Auth: HRS §§187A-3.5, 187A-5, 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]~~ any aquatic life~~[7]~~ whose possession or sale is prohibited by a closed season, minimum size, or bag limit; provided that ~~[a qualified aquaculturist has reared]~~ the ~~[regulated]~~ aquatic life was reared 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,]~~ A separate license shall be obtained for each market outlet that sells or offers for sale the regulated aquatic life, 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]~~ prohibited by 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]~~ \$200. The license isshall be valid for not longer than two years ~~[from the date of issuance.], and the duplicate license fee isshall be~~ \$10. [Eff 8/8/96; am 5/22/00; comp 8/27/21; am and comp
] (Auth: HRS §§187A-3.5, 187A-5)
(Imp: HRS §§187A- 3.5, 187A-5)

§13-74-45 Commercial marine dealer license. (a)

No person shall sell, offer for sale, exchange, or act as an agent in the sale, exchange, or transfer of marine life obtained directly from a commercial marine licensee, unless the person~~y~~ possesses a valid commercial marine dealer license; provided that a commercial marine licensee who sells or exchanges self-caught marine life at retail and complies with the reporting requirements of section 13-74-2 shall not be required to hold a commercial marine dealer license.

(b) A commercial marine dealer licensee shall

not sell or offer for sale, purchase or attempt to purchase, exchange, or act as an agent in the sale, exchange, or transfer of any marine life taken within the jurisdiction of the State for commercial purpose that is obtained from any person who does not have a valid commercial marine license, commercial marine dealer license, or other license or permit authorizing such sale, purchase, exchange, or transfer for commercial purpose.

(c) Each market outlet where marine life that is obtained directly from a commercial marine licensee is sold for commercial purposes shall have a separate commercial marine dealer license, even if one person owns or operates several market outlets. A copy of the license shall be kept at the market outlet and shall be made available for immediate inspection upon the demand of any officer or agent authorized to enforce the laws of the State.

(d) The fee for a commercial marine dealer license ~~is-shall-be~~ \$100 and the duplicate license fee ~~is-shall-be~~ \$10.

(e) Every holder of a commercial marine dealer license shall comply with the reporting requirements of ~~section~~ 13-74-46.

(f) For purposes of this section, "market outlet" means a location where marine life is sold or offered for sale. A market outlet can be a physical location such as a retail market or restaurant or an online location such as a website specifically designed to facilitate the sale of marine life. [Eff and comp] (Auth: HRS §189-10) (Imp: HRS §189-10)

§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 8/27/21; 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.

DAWN N.S. CHANG
Chairperson
Board of Land and Natural
Resources

APPROVED AS TO FORM:

Deputy Attorney General

Item F-1, Exhibit 5

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
§13-74-4.5	Asset forfeiture
§§13-74-5 to 13-74-9	(Reserved)

Subchapter 2 Recreational Fishing

§13-74-10	Freshwater game fishing license
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§13-74-11 Nonresident recreational marine fishing
license

§§13-74-12 to 13-74-19 (Reserved)

Subchapter 3 Commercial Fishing

§13-74-20 Commercial marine license

§13-74-21 Repealed

§13-74-22 Bait license

§13-74-23 Commercial marine vessel license

§§13-74-24 to 13-74-39 (Reserved)

Subchapter 4 Other Licenses and Permits

\$13-74-40 Mullet pond operator and closed season
sales license

S13-74-41 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 Commercial marine dealer license

§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.

"Baitfish" means any of the species listed in section 13-74-22.

"Baitfishing report" means a monthly report that is furnished to the department with respect to any baitfish taken.

~~["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.

"Catch report" means a monthly report that every commercial marine licensee shall furnish to the department with respect to the marine life taken.

"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] any 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 marine vessel license" means a license issued to an individual for a specific vessel that allows all crew on board the vessel to take marine life within or outside the State for commercial purpose without requiring each crew member to possess an individual commercial marine license.

"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", "fishing activities", 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]~~ that 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]~~ is 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.

"License period" means the period of time during which the license is or was valid.

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

"Main 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 the island of Ni'ihau to and including the island of Hawai'i.

"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.

"Nonresident" means any individual who is not a resident of the State of Hawai'i.

~~["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.

"Qualified aquaculturist" means a person, or association of persons, actively engaged in aquaculture farming, aquacultural produce processing, or aquacultural product development activities.

"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[7] or obtaining a license or permit, or has filed or paid the individual's State income taxes for the previous tax period[-], or has established domicile in the State. Domicile may be established by providing documentation including a valid Hawai'i driver's license or identification card, a valid school identification card, or any other official document issued to the individual within the previous thirty days from a government agency, financial institution, insurance company, or utility company.

"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 8/27/21; am and comp] (Auth: HRS §§187A-5, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-6) (Imp: HRS §§187A-5, 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-refundable and non-transferable and ~~[shall be]~~ are 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 that could reasonably be 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.] reasonably believes that the person is, or recently has been, engaged in fishing activities.

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]~~ is prima facie evidence of a violation of this chapter and sufficient cause for the immediate revocation of the license or permit by the [board,] department;

- (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]~~ for 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~~] is 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 8/27/21; am and comp]
- (Auth: HRS §§187A-5, 187A-5.5, 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, 188-44, 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]~~ department 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]~~ any license or permit issued pursuant to ~~[section 13-74-20,]~~ this chapter, the licensee or permittee shall be given notice and opportunity for hearing in conformity with chapter 91, HRS. Upon revoking the license~~[7]~~ or permit, the ~~[board]~~ department may specify a period of time during which the ~~[commercial]~~ licensee or permittee 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 8/27/21;
am and comp] (Auth: HRS
§§187A-5, 188-44, 188-45, 188-50, 188-53,
189-2, 189-5, 189-6) (Imp: HRS §§187A-5,
188-44, 188-45, 188-50, 188-53, 189-2, 189-
3, 189-5, 189-6)

§13-74-4 Penalties, generally. (a) [A] Unless otherwise provided, any person violating any provision of this chapter, or the terms and conditions of any license or permit issued [as provided by] pursuant to this chapter, [shall be punished as provided by law.] is subject to:

- (1) Administrative penalties as provided by section 187A-12.5, HRS;
- (2) Criminal penalties as provided by sections 187A-13, 188-70, and 189-4, HRS; and
- (3) Any other penalty as provided by law.

(b) Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of the State.
[Eff 8/12/93; am 1/15/99; comp 8/27/21; am and comp
] (Auth: HRS §§187A-5, 188-44, 188-45,
188-50, 188-53, 188-57, 189-2, 189-6) (Imp: HRS
§§187A-5, 187A-12.5, 187A-13, 188-45, 188-50, 188-53,
189-2, 189-6)

§13-74-4.5 Asset forfeiture. Any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of this chapter or any of the terms and conditions of any license or permit issued pursuant to this chapter may be seized and subject to forfeiture as provided by section 199-7 and chapter 712A, HRS.
[Eff and comp] (Auth: HRS §§187A-5,
187A-12.5, 188-44, 188-45, 188-50, 188-53, 188-57,

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]~~ freshwater game fish without first obtaining a freshwater game fishing license, provided that children ~~[exempt by this section]~~ under nine years of age may fish without a license ~~[only]~~ when accompanied by a licensed adult.

(b) ~~[Licenses]~~ Freshwater game fishing 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:]~~ is:

- (1) Minors ~~[between nine and]~~ under fifteen years of age, \$3;
- (2) Residents ~~[over]~~ fifteen ~~[and under]~~ years of age, up to, but not including, sixty-five years of age, \$5;
- (3) Persons sixty-five years of age and older, free;
- (4) Persons not qualifying under paragraph (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]~~ spouses and children fifteen years of age and over, \$5;
 - (B) ~~[7-Day]~~ Seven-day tourist license which is valid for only seven days from the date of issue, \$10; and

- (C) Tourist license which is valid for only thirty days from the date of issue, \$20; and
- (5) Duplicate license, \$1. [Eff 8/12/93; am 1/15/99; am and comp 8/27/21; am and comp] (Auth: HRS §§187A-5, 188-50) (Imp: HRS §§187A-5, 188-50)

§13-74-11 Nonresident recreational marine fishing license.

(a) It is unlawful for any nonresident of the State who has attained the age of fifteen, except members of the armed forces of the United States on active duty in the State and their spouses and minor children, to fish for, take, or catch any marine life for noncommercial or recreational purposes without first obtaining a nonresident recreational marine fishing license.

(b) Licenses shall require the person's name, address, date of birth, height, weight, color of hair and eyes, and such other information as the department may require.

(c) The fee for the nonresident recreational marine fishing license is:

- (1) For a one-day fishing license, \$20;
- (2) For a seven-day fishing license, \$40; and
- (3) For an annual fishing license, \$70.

(d) Any person violating this section is subject to administrative penalties as provided by section 187A-12.5, HRS. [Eff and comp

] (Auth: HRS §188-72) (Imp: HRS §§187A-12.5, 188-72)

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~~[-]~~; provided that a valid commercial marine vessel license issued pursuant to section 13-74-23 shall satisfy the commercial marine license requirement for all persons taking marine life for commercial purposes aboard a validly-licensed vessel.

(b) ~~[Additionally, any]~~ 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[-]; provided that a valid commercial marine vessel license issued pursuant to section 13-74-23 shall satisfy the commercial marine license requirement for all persons providing charter services for the taking of marine life aboard a validly-licensed vessel.

~~[(b)]~~ (c) ~~[Licenses to persons with proof of identity to engage in the activities described in subsection (a)]~~ Commercial marine licenses shall require the person's name, address, age, place of birth, [length of residence in the State,] residency, height, weight, color of hair and eyes, citizenship, and such other information as the department may require. The department may require an applicant for a commercial marine license to show proof of identity prior to issuance or renewal of a license.

~~[(e)]~~ (d) The fee for the issuance or renewal of a commercial marine license [shall be:] is:

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

The fee for a duplicate license ~~[shall be]~~ is \$10.

~~[(d)]~~ (e) No person may:

- (1) Renew a commercial marine license more than two months prior to its expiration date; or
- (2) Be issued more than one commercial marine license at any one time[-]; provided that a person may hold a commercial marine license simultaneously with commercial marine vessel licenses or other licenses issued pursuant to this chapter.

~~[(e)]~~ (f) ~~[The department may require persons issued the commercial marine license to]~~ Commercial marine licensees shall submit reports of their fishing activity. Such reports shall be submitted to the department monthly~~[+]~~ pursuant to section 13-74-2(5); 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.]~~ pursuant to section 13-74-2(6). ~~[The monthly]~~ Monthly and trip reports ~~[shall be]~~ are subject to section 13-74-2, and 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 8/27/21; 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 \$50 and the duplicate license fee shall be \$10.]~~ [Eff 8/12/93; am 1/15/99; am and comp 8/27/21; R] (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 (*Atherinomorus insularum*);
- (2) Marquesan sardine (*Sardinella marquensis*);
- (3) Nehu (*Encrasicholina purpurea*);
- (4) Piha (*Spratelloides delicatulus*);
- (5) "Tabai" (*Mollienesia* spp.);
- (6) Threadfin shad (*Dorosoma petenense*); and
- (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~~] is 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 \$50~~] is \$100, and the duplicate license fee [~~shall be~~] is \$10.

(f) Each person issued a bait license shall, in addition to monthly catch reports pursuant to section 13-74-20, submit baitfishing reports to the

department. The baitfishing reports shall be submitted monthly in a form and manner provided by the department. The catch reports and baitfishing reports are subject to section 13-74-2; sections 189-3 and 189-3.5, HRS; and as may be otherwise provided by rule or law. [Eff 8/12/93; am 1/15/99; am and comp 8/27/21; 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]

13-74-23 Commercial marine vessel license. (a)

The department shall, upon receipt of a valid application and appropriate fee payment, issue a commercial marine vessel license to any qualified individual.

(b) A qualified individual is anyone who:

(1) Possesses a valid commercial marine license;

(2) Is at least eighteen years old;

(3) Provides proof of identify; and

(4) Does not have any unmet child support obligations pursuant to section 189-2, HRS.

(c) Any qualified individual applying for a commercial marine vessel license shall file an application on an approved application form that is available from the department. The application shall be completed in its entirety. Failure to provide a completed application or providing false or misleading information on the application may result in delay or denial of the application.

(d) A commercial marine vessel license is valid from the date of issuance and shall expire on the expiration date of the licensee's commercial marine license. A commercial marine vessel license is valid only for a specific vessel and is nontransferable. A qualified individual may obtain and possess more than one commercial marine vessel license at a time.

(e) The fee for the issuance or renewal of a

commercial marine vessel license is:

- (1) \$100 for any vessel less than twenty-two feet in length that is not used for longline fishing;
- (2) \$200 for any vessel twenty-two feet in length or greater that is not used for longline fishing; and
- (3) \$1,500 for any vessel used for longline fishing, as defined in section 189-2.5, HRS.

The fee for a duplicate license is \$10.

(f) If a commercial marine vessel license is issued for a longline vessel, the commercial marine vessel licensee shall file an annual report with the department that contains the following information about all crew members who worked aboard the longline vessel during the license period:

- (1) Identity;
- (2) Nationality;
- (3) Arrival date in Hawai'i
- (4) Departure date; and
- (5) Any other information the department may require.

The longline annual report shall be submitted to the department within thirty days of the end of the license period.

(g) If a commercial marine vessel license is issued for a vessel providing charter services for the taking of marine life, the license shall satisfy the commercial marine license requirement for all crew members. The commercial marine vessel license does not exempt charter fishing vessel passengers or customers from the requirement to have a nonresident recreational marine fishing license or any other license required by law. For purposes of this section, a "passenger" is any individual on board a vessel who is not a member of the vessel's crew.

(h) If a vessel for which a commercial marine vessel license is obtained is lost, destroyed, stolen, sold, transferred, or otherwise no longer in the possession or control of the licensee, the licensee shall immediately notify the department, and the license shall be terminated.

(i) The commercial marine vessel license shall be kept aboard the vessel at all times while participating in commercial fishing activities and shall be made available for inspection upon demand.

(j) Persons issued a commercial marine vessel license shall submit reports of the vessel's fishing activity. Such reports shall be submitted to the department monthly pursuant to section 13-74-2(5); provided that persons taking bottomfish, as defined in chapter 13-94, in the main Hawaiian islands shall, in addition to their monthly reports for species other than bottomfish, submit trip reports of their bottomfishing activity pursuant to section 13-74-2(6). Monthly and trip reports are subject to section 13-74-2; sections 189-3 and 189-3.5, HRS; and as may be otherwise provided by law. [Eff and comp
] (Auth: HRS §§189-2, 189-3, 189-3.5)
(Imp: HRS §§189-2, 189-3, 189-)3.5

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]~~ is 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 \$50~~] is \$100, and the duplicate license fee [~~shall be~~] is \$10. [Eff 8/12/93; am 1/15/99; am and comp 8/27/21; 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. The report shall list the amount of remaining Kona crab and lobster in the licensee's inventory as of the end of the month.

(c) The fee for the Kona crab and lobster closed season sales license [~~shall be \$50~~] is \$100, and the duplicate license fee [~~shall be~~] is \$10. [Eff 8/12/93; am 1/15/99; am and comp 8/27/21; 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 the licensee is an importer:

- (A) Species imported, source, quantity, and arrival date; and
- (B) Name and address of buyers, species sold, quantity, and date of such sale;
- (2) If the licensee is a wholesaler:
 - (A) Source, quantity, and date purchased; and
 - (B) Name and address of buyers, species sold, quantity, and date of such sale;
- (3) If the licensee is a retailer or restaurant:
 - (A) Source and date of purchase; and
 - (B) Species and quantity sold~~[-]~~; and
- (4) ~~[And any]~~ Any other such information the department may require.
- (d) The fee for the special marine animal or product possession and sale license ~~[shall be \$50]~~ is \$100, and the duplicate license fee ~~[shall be]~~ is \$10.
[Eff 8/12/93; am 1/15/99; am and comp 8/27/21; 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~~[-]~~ whose fishing, possession, or sale is prohibited by closed season, minimum size, or bag limit; provided that 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]~~ aquaculturist 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]~~. Harvesting, collecting, or otherwise obtaining live rocks from the wild[-] is strictly prohibited.

(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]~~ the 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]~~ any person that will buy or obtain any regulated aquatic life that ~~[were]~~ was reared in the licensee's aquaculture facility. Any changes to the list shall be in writing~~[+]~~; and
- (4) To submit additional monthly reports, trip reports, or other reports as required by the department.

(i) ~~[Each aquaculture facility shall have a separate license,]~~ A separate license shall be obtained for each aquaculture facility that rears, possesses, or sells regulated aquatic life, 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]~~ prohibited by a closed season, [or when regulated by a] minimum size, or bag limit as specified in subtitle 5 ~~[or]~~ of title 12, HRS, or administrative rules.

(k) The license fee ~~[shall be \$50.]~~ is \$100, and the duplicate license fee is \$10. [Eff 8/8/96; comp 8/27/21; am and comp] (Auth: HRS §§187A-3.5, 187A-5, 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]~~ any aquatic life~~[7]~~ whose possession or sale is prohibited by a closed season, minimum size, or bag limit; provided that ~~[a qualified aquaculturist has reared]~~ the ~~[regulated]~~ aquatic life was reared 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,]~~ A separate license shall be obtained for each market outlet that sells or offers for sale the regulated aquatic life, 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]~~ prohibited by 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]~~ \$200. The license is valid for not longer than two years [from the date of issuance.], and the duplicate license fee is \$10. [Eff 8/8/96; am 5/22/00; comp 8/27/21; am and comp

] (Auth: HRS §§187A-3.5, 187A-5)

(Imp: HRS §§187A- 3.5, 187A-5)

§13-74-45 Commercial marine dealer license. (a)

No person shall sell, offer for sale, exchange, or act as an agent in the sale, exchange, or transfer of marine life obtained directly from a commercial marine licensee, unless the person possesses a valid commercial marine dealer license; provided that a commercial marine licensee who sells or exchanges self-caught marine life at retail and complies with the reporting requirements of section 13-74-2 shall not be required to hold a commercial marine dealer license.

(b) A commercial marine dealer licensee shall not sell or offer for sale, purchase or attempt to purchase, exchange, or act as an agent in the sale, exchange, or transfer of any marine life taken within

the jurisdiction of the State for commercial purpose that is obtained from any person who does not have a valid commercial marine license, commercial marine dealer license, or other license or permit authorizing such sale, purchase, exchange, or transfer for commercial purpose.

(c) Each market outlet where marine life that is obtained directly from a commercial marine licensee is sold for commercial purposes shall have a separate commercial marine dealer license, even if one person owns or operates several market outlets. A copy of the license shall be kept at the market outlet and shall be made available for immediate inspection upon the demand of any officer or agent authorized to enforce the laws of the State.

(d) The fee for a commercial marine dealer license is \$100 and the duplicate license fee is \$10.

(e) Every holder of a commercial marine dealer license shall comply with the reporting requirements of section 13-74-46.

(f) For purposes of this section, "market outlet" means a location where marine life is sold or offered for sale. A market outlet can be a physical location such as a retail market or restaurant or an online location such as a website specifically designed to facilitate the sale of marine life. [Eff and comp] (Auth: HRS §189-10) (Imp: HRS §189-10)

§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 8/27/21; 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.

DAWN N.S. CHANG
Chairperson
Board of Land and Natural
Resources

APPROVED AS TO FORM:

Deputy Attorney General