

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

March 14, 2014

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

REQUEST FOR FINAL APPROVAL TO AMEND HAWAII ADMINISTRATIVE RULES CHAPTER 13-95, RULES REGULATING THE TAKING AND SELLING OF CERTAIN MARINE RESOURCES, TO MORE EFFECTIVELY REGULATE STONY CORAL AND LIVE ROCK BY CLARIFYING THE DEFINITION OF DAMAGE, TO PRESCRIBE HOW PER SPECIMEN FINES WILL BE CALCULATED, AND TO ELIMINATE THE USE OF AN IMPLEMENT AS A PROVISION IN THE RULE. THE RULES TO BE AMENDED ARE HAWAII ADMINISTRATIVE RULES §13-95-1 DEFINITIONS; §13-95-1.1 LICENSES, PERMITS, AND OTHER EXEMPTIONS; §13-95-2 PENALTY; §13-95-70 STONY CORALS; AND §13-95-71 LIVE ROCKS.

Submitted for your consideration and final approval is a request to amend Hawaii Administrative Rules ("HAR") §§13-95-1, -1.1, -2, -70, and -71, to allow the Department of Land and Natural Resources ("DLNR") to more effectively regulate and protect stony coral and live rock.

The amendments would provide clearer and more enforceable protection for stony coral and live rock. Specifically, the definition of "damage" in HAR §13-95-1 is amended to reflect the types of harms recognized as specific to coral and live rock. The definitions of "live rock" and "stony coral" are amended to correct typos and to clarify what constitutes "live rock" and "stony coral". HAR §13-95-2(b) is amended to clarify how per-specimen fines are to be applied in cases involving damage to coral or live rock. Liability is limited for inadvertent taking, breaking, or damaging stony coral that is less than one-half square meter in area or live rock that is less than one square meter in area. HAR §13-95-70 and §13-95-71 are amended to eliminate the use of an "implement" as an element of the rules prohibiting the take, break, or damage of stony coral and live rock. This clarifies that damage to stony coral or live rock is prohibited however it is caused.

HAR 13-95-1.1 is amended for housekeeping purposes. The amendments correct certain references to "permits" where they should correctly be referred to as "licenses"; consolidate the lists of licenses and permits to simplify the rule; and add to the list conservation district use permits issued pursuant to HRS §190-4.

On March 22, 2013, the Board approved the proposed rule amendments for public hearing. On September 19, 2013, the Governor approved the proposed amendments for public hearing.

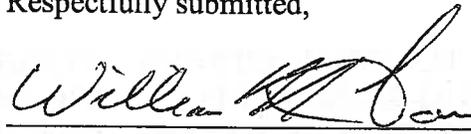
The Division of Aquatic Resources ("DAR") accepted public testimony on the proposed amendments from November 10, 2013 to December 27, 2013 and held public hearings statewide

from December 10-12, 2013. DAR received two testimonies in support, no testimonies in opposition, and four general comments on the proposal. A summary of the public hearings and testimonies is attached as Exhibit 1. The proposed rule amendments in Ramseyer format are attached as Exhibit 2.

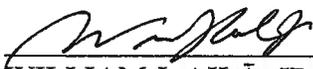
RECOMMENDATION:

“That the Board give final approval to adopt these amendments to HAR §§13-95-1, -1.1, -2, -70, and -71.”

Respectfully submitted,

  
for WILLIAM J. AILÁ, JR., Administrator  
Division of Aquatic Resources

APPROVED FOR SUBMITTAL

  
WILLIAM J. AILÁ, JR., Chairperson  
Board of Land and Natural Resources

Attachments:

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

Exhibit 1

Public Hearing Minutes  
Amending Hawaii Administrative Rules  
CHAPTER 13-95  
Rules Regulating the Taking and Selling of Certain Marine Resources

Hearing Dates/

Locations:

Tuesday, December 10, 2013

Lanai Senior Center, Lanai City, Lanai

Kealakehe High School Cafeteria, Kailua-Kona, Hawaii

Stevenson Middle School Cafeteria, Honolulu, Oahu

Wednesday, December 11, 2013

Aupuni Center, Hilo, Hawaii

Chiefess Kamakahahei Middle School, Lihue, Kauai

Mitchel Pauole Center, Kaunakakai, Molokai

Thursday, December 12, 2013

Maui Waena School Cafeteria, Kahului, Maui

I. Opening

Public Hearings were held statewide.

The Lanai City public hearing was called to order at 1:03 P.M. Skippy Hau, DAR Maui Aquatic Biologist, conducted the Lanai City hearing. Also present was Adam Wong, the DAR Maui Education Specialist.

The Kailua-Kona public hearing was called to order at 6:00 P.M. William Walsh, the DAR Kona Aquatic Biologist, conducted the Kailua-Kona hearing. Also present was John Kahiapo, the DAR Big Island Information and Education Specialist.

The Honolulu public hearing was called to order at 6:31 P.M. Alton Miyasaka, the Acting Commercial Fisheries Program Manager with the Division of Aquatic Resources, conducted the Honolulu hearing. Also present were David Sakoda, DLNR Marine Law Fellow, and Randy Honebrink from the Oahu office.

The Hilo public hearing was called to order at 6:00 P.M. John Kahiapo, the DAR Big Island Information and Education Specialist, conducted the Hilo hearing. Also present was Gerri Kahili from the Hilo DAR office.

The Lihue public hearing was called to order at 6:04 P.M. Don Heacock, the DAR Kauai Aquatic Biologist, conducted the Kauai hearing. Also present was Katie Thomson from the Kauai DAR office.

The Kaunakakai public hearing was called to order at 1:45 P.M. Russell Sparks, DAR Maui Aquatic Biologist, conducted the Kaunakakai hearing. Also present was Susan Baker from the Maui DAR office.

The Kahului public hearing was called to order at 5:32 P.M. Russell Sparks, DAR Maui Aquatic Biologist, conducted the Kahului hearing. Also present was Skippy Hau, DAR Maui Aquatic Biologist.

## II. Background

- A. Hawaii Administrative Rules sections 13-95-70 and -71, regulating the take or damage of stony corals and live rocks, were originally adopted in 1998 to implement statutory protections afforded by the legislature. In 2002, the Board of Land and Natural Resources amended the rule to remove an “intent” requirement and to define the terms “break” and “damage.” The express purpose of those amendments was to broaden the applicability of the rules protecting stony coral and live rock. In 2009, the Department began developing the current proposed amendments to further clarify certain ambiguous language and to enhance protection for stony coral and live rock.
- B. Approvals to conduct this public hearing were obtained from the Board of Land and Natural Resources on March 22, 2013, the Small Business Regulatory Review Board on May 23, 2013, and Governor Abercrombie on September 9, 2013.
- C. Copies of the proposed rule amendments were made available at the public hearings.

## III. Notice of public hearing

- A. The Legal Notice of the public hearings was published in the November 10, 2013, Sunday issue of the Honolulu Star Advertiser.

## IV. Hearing procedures

- A. The hearings officer explained the proposed changes to the administrative rules. Each person who wanted to testify was given 3 minutes or more to provide their testimony.

## V. Testimonies

Kailua-Kona: Five persons from the public and one newspaper reporter attended. No testimony was presented.

Lanai City: Two persons from the public attended. Two testimonies were presented. One testified in support of the proposed rule amendments. The other provided comments, but did not specify whether she supported or opposed the amendments.

Honolulu: One person from the public and two news reporters attended. The lone public attendee provided comments neither supporting nor opposing the proposed amendments. He noted that there was an exemption from liability for inadvertent anchor damage to less than ½ square meter of coral if not more frequently than once per year, and expressed concerns about how this would be enforced and how it would affect fishermen who anchor in the same area more than once a year. He also commented that it might be difficult to enforce the prohibition on damaging coral through the introduction of material into the water.

Hilo: No one from the public attended.

Lihue: Five persons from the public attended. No testimony was presented.

Kaunakakai: One person from the public and one news reporter attended. No testimony was presented.

Kahului: Eight persons from the public and one news reporter attended. Two testimonies were presented. One testified in support of the proposed amendments. The other provided comments neither in support nor opposition, but expressing the need for better enforcement and greater stakeholder consultation and collaboration in developing solutions to care for the reefs.

Other: Interested persons were also given the opportunity to submit written testimony to the Department by Friday, December 27, 2013. DAR received one written testimony submitted by email. The testimony provided comments on the definition of “live rock” and expressed concern that the term “visible marine life” may be ambiguous.

## VI. Adjournment

- A. The Kailua-Kona Public Hearing was adjourned at 6:12 P.M. The Lanai City hearing was adjourned at 1:24 P.M. The Honolulu hearing was adjourned at 6:50 P.M. The Hilo hearing was adjourned at 6:30 P.M. The Lihue hearing was adjourned at 6:33 P.M. The Kaunakakai hearing was adjourned at 1:45 P.M. The Kahului hearing was adjourned at 6:04 P.M.

Exhibit 2

Ramseyer Format 8/5/13

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to Chapter 13-95  
Hawaii Administrative Rules

(Date of adoption)

1. Section 13-95-1, Hawaii Administrative Rules, is amended by amending the definitions of "damage", "live rock", and "stony coral" to read:

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

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"Damage" means to [smash, trample,] scrape, smother, poison, or otherwise cause [extensive injury resulting in irreparable] any physical or physiological harm [or death.] to the living portion of a stony coral or live rock.

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

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

\*\*\*"

[Eff 12/03/98; am 1/11/02; am 12/09/02; am 12/19/02; am ] (Auth: HRS §§187A-3.5, 187A-5, 190-3) (Imp: HRS §§187A-3.5, 187A-5, 190-3)

2. Section 13-95-1.1, Hawaii Administrative Rules, is amended to read as follows:

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

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

3. Section 13-95-2, Hawaii Administrative Rules, is amended by amending subsection (a) and adding a new subsection (b) to read as follows:

"§13-95-2 Penalty. (a) A person violating any section of this chapter [shall be punished as provided by law.] may be subject to any applicable criminal or administrative penalties or both. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State.

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

- (1) For finfish, each individual;
- (2) For invertebrates, not including stony corals or live rock, each individual;
- (3) For solitary (having a single polyp) stony corals, each individual;
- (4) For colonial stony corals:
  - (A) Each damaged head or colony less than one square meter in surface area; or
  - (B) For a colony greater than one square meter in surface area, each square meter of colony surface area and any fraction remaining constituting an additional specimen;
- (5) For live rocks, each individual; but if the violation involves greater than one square meter of bottom area, on the basis of each square meter of bottom area." [Eff 12/03/98; am ] (Auth: HRS §§187A-5, 188-53, 190-3) (Imp: HRS §§183C-7, 187A-5, 187A-12.5, 187A-13, 188-53, 188-70, 189-4, 190-5)

4. Section 13-95-70, Hawaii Administrative Rules, is amended to read as follows:

"§13-95-70 Stony corals. (a) [It is unlawful for any person to take stony coral, or to break or damage any stony coral with a crowbar, chisel, hammer, or any other implement.] Except as otherwise provided in this section or authorized by law:

- (1) Subject to subsection (b), it is unlawful for any person to take, break, or damage any stony coral, except as provided in sections 171-58.5 and 205A-44, HRS;
- (2) It is unlawful for any person to damage any stony coral by any intentional or negligent activity causing the introduction of

sediment, biological contaminants, or  
pollution into state waters;

[(b) It is unlawful for any person to sell any stony coral; except that stony coral rubble pieces or fragments imported for the manufacture and sale of coral jewelry or stony coral obtained through legal dredging operations in Hawaii for agricultural or other industrial uses may be sold.]

(3) It is unlawful for any person to sell any stony coral; except that stony coral rubble pieces or fragments imported for the manufacture and sale of coral jewelry, or dead stony coral obtained through legal dredging operations in Hawaii for agricultural or other industrial uses, may be sold.

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

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

(c) Any person found in violation of any provision of this section pursuant to a criminal prosecution shall be subject to penalty as provided under section 187A-13, HRS. Any person found in violation of any provision of this section pursuant to civil or administrative action shall be subject to penalty as provided under section 187A-12.5, HRS."

[Eff 12/03/98; am 12/09/02; am ] (Auth: HRS §§187A-5, 189-6, 190-3) (Imp: HRS §§187A-6, 187A-12.5, 187A-13, 189-6, 190-1, 190-3, 190-5)

5. Section 13-95-71, Hawaii Administrative Rules, is amended to read as follows:

"§13-95-71 Live rocks. (a) [It is unlawful for any person to take live rock, or to break or damage with crowbar, chisel, or any other implement, any rock or coral to which marine life is visibly attached or affixed.] Except as otherwise provided in this section or authorized by law:

(1) Subject to subsection (b), it is unlawful for any person to take, break, or damage any live rock;

(2) Subject to subsection (b), it is unlawful for any person to damage any live rock by any intentional or negligent activity causing the introduction of sediment, biological contaminants, or pollution into state waters; and

[(b) It is unlawful for any person to sell any rock or coral to which marine life is visibly attached or affixed.]

(3) It is unlawful for any person to sell any live rock.

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

(c) Any person found in violation of any provision of this section pursuant to a criminal prosecution shall be subject to penalty as provided under section 187A-13, HRS. Any person found in violation of any provision of this section pursuant to civil or administrative action shall be subject to penalty as provided under section 187A-12.5, HRS."

[Eff 12/03/98; am 12/09/02; am ] (Auth: HRS §§187A-5, 189-6, 190-3) (Imp: HRS §§187A-6, 187A-12.5, 187A-13, 189-6, 190-1, 190-3, 190-5)

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

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

8. These amendments to chapter 13-95, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

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WILLIAM J. AILA, JR.  
Chairperson  
Board of Land and Natural  
Resources

APPROVED FOR PUBLIC HEARING:

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Deputy Attorney General

