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

November 14, 2014

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

REQUEST FOR APPROVAL AND ADOPTION OF PROPOSED AMENDMENTS TO THE DIVISION OF AQUATIC RESOURCES' ADMINISTRATIVE SANCTIONS SCHEDULE FOR THE PROCESSING OF ALL AQUATIC RESOURCE VIOLATIONS

On October 10, 2014, the Division of Aquatic Resources ("DAR") briefed the Board on DAR's proposal to amend the Department's Civil Resource Violations System ("CRVS") Administrative Sanctions Schedule ("Schedule"). The proposed amendments would replace Part 2 of the Schedule, which the Board adopted on March 13, 2009 pursuant to Hawaii Administrative Rules ("HAR") §13-1-70 and Hawaii Revised Statutes ("HRS") §199D-1. DAR's proposal would significantly expand the Schedule's scope to cover all aquatic resource violations, enabling the department to more effectively enforce DAR's rules and regulations through the issuance of civil citations. The proposed amended Schedule is attached as **Exhibit 1**. The Table of Contents and Parts 1 and 2 of the current Schedule are attached as **Exhibit 2**.

As described in the October 10 briefing and submittal, the use of the CRVS to administratively process DAR violations has a number of benefits, including quicker dispositions, less burdensome evidentiary standards, more uniform imposition of penalties, and no criminal record for minor violations. Furthermore, unlike criminal fines which are deposited into the general fund, all administrative fines would stay within DLNR to support resource management and enforcement. A copy of the October 10 informational briefing submittal, which describes the background, purpose, and content of the proposed Schedule amendments, is attached as **Exhibit 3** for your reference.

DAR's collaboration with the Administrative Proceedings Coordinator and Division of Conservation and Resource Enforcement in the development of the amended Schedule has resulted in strong interdivisional support for the proposal. Accordingly, DAR requests that the Board adopt the proposed Schedule amendments.

RECOMMENDATION

That the Board:

1. Approve and adopt the proposed amendments to the Division of Aquatic Resources' Administrative Sanctions Schedule (Exhibit 1) for the processing of all aquatic resource violations; and

2. Delegate to the Chairperson and the Department's designated administrative hearing officer the authority to administratively process all aquatic resource violations under the Civil Resource Violations System in accordance with the amended Administrative Sanctions Schedule.

Respectfully submitted,

WILLIAM J. AILĀ, JR., Acting Administrator
Division of Aquatic Resources

APPROVED FOR SUBMITTAL

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

Attachments:

1. Proposed amended Part 2 of DLNR's Administrative Sanctions Schedule
2. Current DLNR Administrative Sanctions Schedule: Table of Contents and Parts 1 and 2 (adopted on March 13, 2009)
3. Informational Briefing on Proposed Amendments to the Division of Aquatic Resources' Administrative Sanctions Schedule for the Processing of all Aquatic Resource Violations (*Non-Decisionmaking Item*), dated October 10, 2014 (Agenda Item F-3 for 10/24/14 BLNR meeting)

Exhibit 1

State of Hawaii
Department of Land and Natural Resources
Civil Resource Violations System

ADMINISTRATIVE SANCTIONS SCHEDULE

Amended on __/__/2014

By the Board of Land and Natural Resources

The Administrative Sanctions Schedule adopted by the Board of Land and Natural Resources on March 13, 2009 is amended by replacing Part 2 as follows:

PART 2. DIVISION OF AQUATIC RESOURCES (DAR)

Item 2-0. Statutory Authority.

(a) HRS §187A-12.5(c) authorizes a maximum administrative fine of $1,000 for a first violation, $2,000 for a second violation, and $3,000 for a third violation of HRS Title 12, Subtitle 5, or any rule adopted thereunder.

(b) HRS §187A-12.5(e) authorizes an additional administrative fine of up to $1,000 for each specimen of aquatic life taken, killed, or injured in violation of HRS Title 12, Subtitle 5, or any rule adopted thereunder.

(c) HRS §187A-12.5(b) authorizes a maximum fine of $5,000 for a first violation, $10,000 for a second violation, and $15,000 for a third violation of HRS Title 12, Subtitle 5, or any rule adopted thereunder, involving threatened or endangered species.

(d) HRS §187A-12.5(d) authorizes an additional fine of up to $5,000 for each specimen of threatened or endangered aquatic life taken, killed, or injured in violation of HRS Title 12, Subtitle 5 or any rule adopted thereunder.

Item 2-1. Category 1 Violations – Monthly Reports and Trip Reports.

(a) The Department may issue a violation notice to any person who commits a category 1 violation as described below.

(b) A person commits a category 1 violation if he or she violates any rule adopted under HAR Title 13, Chapter 74, relating to the submittal of monthly reports or trip reports.

(c) Each monthly report or trip report that is past due shall constitute a separate violation.

(d) For category 1 violations, administrative fines shall be imposed as follows:

(1) For a first category 1 violation, an administrative fine of up to $15 shall be assessed if the respondent fully complies with the violation notice within 21 days of service of the notice. The administrative fine shall increase to up to $30 if respondent fails to fully comply within 21 days. In addition to a monetary fine, the respondent shall be required to submit an acceptable monthly report or trip report to the Department for the missing month or trip. (Authority: §187A-12.5, HRS; Implementation: §13-1-71, HAR)

(2) For a second category 1 violation within three months of a first violation within the same year of the license, as determined pursuant to §13-1-71, HAR, a respondent shall be assessed an administrative fine of up to $25, which shall be increased to up to $50 if the respondent fails to fully comply within 21 days. The respondent shall also be required to turn in an acceptable monthly report or trip report for the missing month or trip and all relevant sale receipts. (Authority: §187A-12.5, HRS; Implementation: §13-1-71, HAR)

(3) For a third or subsequent category 1 violation within three months of a second violation within the same year of the license, as determined pursuant to §13-1-71, HAR, a respondent shall be assessed an administrative fine of up to $100, which shall be increased to up to $200 if the respondent fails to fully comply within 21 days. The respondent shall also be required to turn in an acceptable monthly report or trip report for the missing month or trip and all relevant sale receipts. (Authority: §187A-12.5, HRS; Implementation: §13-1-71, HAR)

(e) The Division Administrator, or designated staff, shall review a respondent's report submitted to the Division for completeness, truthfulness, and accuracy. Any report that fails the review shall constitute non-compliance.

Item 2-2. <u>Category 2 Violations – Certain Non-Extractive Activities.</u>

(a) The Department may issue a violation notice to any person who commits a category 2 violation as described below.

(b) A person commits a category 2 violation if he or she violates any of the following provisions:

(1) Rules adopted under HAR Title 13, Subtitle 4, Part I, relating to feeding of aquatic life within any Marine Life Conservation District ("MLCD");

(2) Rules adopted under HAR Title 13, Subtitle 4, Parts II and III, relating to any non-extractive activity within any Marine Fisheries Management Area ("Marine FMA") or Freshwater Fisheries Management Area ("Freshwater FMA"), including but not limited to entry, swimming, water skiing, camping, fish feeding, catch inspection, property damage, pollution, and reporting, but not including rules relating to the mooring, anchoring, or operation of vessels or the use or possession of unlawful fishing gear or methods as covered under category 3 violations;

(3) Rules adopted under HAR Title 13, Chapter 73, relating to unlawful activity involving fish aggregating devices ("FADs"), including but not limited to mooring to, damaging, or removing any FAD;

(4) Rules adopted under HAR Title 13, Chapter 74, relating to any non-extractive activity, except rules relating to the submittal of monthly reports or trip reports that are covered under category 1 violations, including but not limited to the failure to display a license or identification, allowing another person to use one's license, failure to allow inspection, failure to keep or issue receipts, failure to report, and violations of license terms and conditions; and

(5) Statutory provisions relating to unlawful non-extractive activities, as provided in HRS §§188-40.6 and 188-71.

(c) For category 2 violations, administrative fines shall be imposed as follows:

(1) For a first category 2 violation, an administrative fine of up to $100 shall be assessed if the respondent fully complies with the violation notice within 21 days of service of the notice. The administrative fine shall increase to up to $150 if respondent fails to fully comply within 21 days. (Authority: §187A-12.5, HRS; Implementation: §13-1-71, HAR)

(2) For a second category 2 violation within five years of a previous violation, an administrative fine of up to $200 shall be assessed if the respondent fully complies with the violation notice within 21 days of service of the notice. The administrative fine shall increase to up to $300 if respondent fails to fully comply within 21 days. (Authority: §187A-12.5, HRS; Implementation: §13-1-71, HAR)

(3) For a third or subsequent category 2 violation within five years of the last violation, an administrative fine of up to $400 shall be assessed if the respondent fully complies with the violation notice within 21 days of service of the notice. The administrative fine shall increase to up to $600 if respondent fails to fully comply within 21 days. (Authority: §187A-12.5, HRS; Implementation: §13-1-71, HAR)

Item 2-3. Category 3 Violations – Unlawful Fishing Gear; Unlawful Vessel Activity.

(a) The Department may issue a violation notice to any person who commits a category 3 violation as described below.

(b) A person commits a category 3 violation if he or she violates any of the following provisions:

(1) Rules adopted under HAR Title 13, Subtitle 4, Parts I, II, and III, relating to the use or possession of unlawful fishing gear or methods within any MLCD, Marine FMA, or Freshwater FMA;

(2) Rules adopted under HAR Title 13, Subtitle 4, Parts I, II, and III, relating to unlawful mooring, anchoring, or operation of a vessel within any MLCD, Marine FMA, or Freshwater FMA;

(3) Rules adopted under HAR Title 13, Chapter 74, relating to unlawful fishing for aquatic life without an appropriate license or permit, where a license or permit is required;

(4) Rules adopted under HAR Title 13, Chapter 75, relating to the unlawful possession, sale, disposal, or use of certain regulated fishing gear or methods; and

(5) Statutory provisions relating to unlawful fishing activities in certain areas, as provided in HRS §§188-34, 188-35, 188-36, and 189-2.5.

(c) For category 3 violations, administrative fines shall be imposed as follows:

(1) For a first category 3 violation, an administrative fine of up to $200 shall be assessed if the respondent fully complies with the violation notice within 21 days of service of the notice. The administrative fine shall increase to up to $300 if respondent fails to fully comply within 21 days. (Authority: §187A-12.5, HRS; Implementation: §13-1-71, HAR)

(2) For a second category 3 violation within five years of a previous violation, an administrative fine of up to $400 shall be assessed if the respondent fully complies with the violation notice within 21 days of service of the notice. The administrative fine shall increase to up to $600 if respondent fails to fully comply within 21 days. (Authority: §187A-12.5, HRS; Implementation: §13-1-71, HAR)

(3) For a third or subsequent category 3 violation within 5 years of the last violation, an administrative fine of up to $800 shall be assessed if the respondent fully complies with the violation notice within 21 days of

service of the notice. The administrative fine shall increase to up to $1,200 if respondent fails to fully comply within 21 days. (Authority: §187A-12.5, HRS; Implementation: §13-1-71, HAR)

(d) In addition to any fines assessed for a category 3 violation involving the unlawful possession, sale, disposal, or use of regulated fishing gear or methods in violation of HAR Title 13, Chapter 75, an additional fine shall be assessed for each specimen of aquatic life taken, killed, or injured as a result of the unlawful possession, sale, disposal, or use of the regulated fishing gear or methods. Per specimen fines shall be imposed as follows:

(1) For aquatic life regulated under HRS Title 12, Subtitle 5 or HAR Title 13, Subtitle 4, an administrative fine shall be assessed as provided for in Items 2-4(c), (d), & (e) of this Administrative Sanctions Schedule. (Authority: §187A-12.5, HRS; Implementation: §13-1-71, HAR)

(2) For unregulated aquatic life, an administrative fine of up to $100 per specimen shall be assessed if the respondent fully complies within 21 days of service of the notice. The administrative fine shall increase to up to $150 per specimen if respondent fails to fully comply within 21 days. (Authority: §187A-12.5, HRS; Implementation: §13-1-71, HAR)

Item 2-4. Category 4 Violations – Unlawful Extractive Activity.

(a) The Department may issue a violation notice to any person who commits a category 4 violation as described below.

(b) A person commits a category 4 violation if he or she violates any of the following provisions:

(1) Rules adopted under HAR Title 13, Subtitle 4, Parts I, II, and III, relating to the unlawful take or possession of aquatic life within any MLCD, Marine FMA, or Freshwater FMA;

(2) Rules adopted under HAR Title 13, Subtitle 4, Part I, relating to the unlawful take, destruction, or possession of geological material within any MLCD;

(3) Rules adopted under HAR Title 13, Chapter 74, relating to the unlawful take, possession, sale, or release of aquatic life without an appropriate license or in violation of license conditions, where a license is required;

(4) Rules adopted under HAR Title 13, Subtitle 4, Part V, relating to the unlawful take, possession, or sale of protected marine fisheries resources;

(5) Rules adopted under HAR Title 13, Subtitle 4, Part VI, relating to the unlawful take, possession, or sale of protected freshwater fisheries resources; and

(6) Statutory provisions relating to the unlawful take, possession, or sale of protected freshwater or marine fisheries resources, including HRS §§188-22.8, 188-39.5, 188-40.7, 188-42.5, 188-43, 188-58.5, and 189-2.5.

(c) For category 4 violations, except as provided in Items 2-4(d) and (e), below, administrative fines shall be imposed as follows:

(1) For a first category 4 violation, an administrative fine of up to $200 per specimen shall be assessed if the respondent fully complies with the violation notice within 21 days of service of the notice. The administrative fine shall increase to up to $300 per specimen if respondent fails to fully comply within 21 days. (Authority: §187A-12.5, HRS; Implementation: §13-1-71, HAR)

(2) For a second category 4 violation within five years of a previous violation, an administrative fine of up to $400 per specimen shall be assessed if the respondent fully complies with the violation notice within 21 days of service of the notice. The administrative fine shall increase to up to $600 per specimen if respondent fails to fully comply within 21 days. (Authority: §187A-12.5, HRS; Implementation: §13-1-71, HAR)

(3) For a third or subsequent category 4 violation within five years of the last violation, an administrative fine of up to $600 per specimen shall be assessed if the respondent fully complies with the violation notice within 21 days of service of the notice. The administrative fine shall increase to up to $900 per specimen if respondent fails to fully comply within 21 days. (Authority: §187A-12.5, HRS; Implementation: §13-1-71, HAR)

(d) For a category 4 violation involving the unlawful capture or killing of a manta ray in violation of HRS §188-39.5, administrative fines shall be imposed as follows:

(1) For a first violation, an administrative fine of up to $2,000 per specimen shall be assessed if the respondent fully complies with the violation notice within 21 days of service of the notice. The administrative fine shall increase to up to $3,000 per specimen if respondent fails to fully comply within 21 days. (Authority: §188-39.5, HRS; Implementation: §13-1-71, HAR)

(2) For a second violation within five years of a previous violation, an administrative fine of up to $5000 per specimen shall be assessed if the respondent fully complies with the violation notice within 21 days of service of the notice. The administrative fine shall increase to up to $6000

per specimen if respondent fails to fully comply within 21 days. (Authority: §188-39.5, HRS; Implementation: §13-1-71, HAR)

(3) For a third or subsequent violation within five years of the last violation, an administrative fine of up to $9000 per specimen shall be assessed if the respondent fully complies with the violation notice within 21 days of service of the notice. The administrative fine shall increase to up to $10,000 per specimen if respondent fails to fully comply within 21 days. (Authority: §188-39.5, HRS; Implementation: §13-1-71, HAR)

(e) For a category 4 violation involving the unlawful possession, sale, offer for sale, trade, or distribution of shark fins in violation of HRS §188-40.7, administrative fines shall be imposed as follows:

(1) For a first violation, an administrative fine of up to $10,000 shall be assessed if the respondent fully complies with the violation notice within 21 days of service of the notice. The administrative fine shall increase to up to $15,000 if respondent fails to fully comply within 21 days. (Authority: §188-40.7, HRS; Implementation: §13-1-71, HAR)

(2) For a second violation within five years of a previous violation, an administrative fine of up to $30,000 shall be assessed if the respondent fully complies with the violation notice within 21 days of service of the notice. The administrative fine shall increase to up to $35,000 if respondent fails to fully comply within 21 days. (Authority: §188-40.7, HRS; Implementation: §13-1-71, HAR)

(3) For a third or subsequent violation within five years of the last violation, an administrative fine of up to $45,000 shall be assessed if the respondent fully complies with the violation notice within 21 days of service of the notice. The administrative fine shall increase to up to $50,000 if respondent fails to fully comply within 21 days. (Authority: §188-40.7, HRS; Implementation: §13-1-71, HAR)

Item 2-5. Category 5 Violations – Unlawful Commercial Activity Within MLCDs; Non-Indigenous Aquatic Species; Ballast Water Management.

(a) The Department may issue a violation notice to any person who commits a category 5 violation as described below.

(b) A person commits a category 5 violation if he or she violates any of the following provisions:

(1) Rules adopted under HAR Title 13, Subtitle 4, Part I, relating to unlawful or unpermitted commercial activity within an MLCD; and

(2) Rules adopted under HAR Title 13, Chapter 76, relating to non-indigenous aquatic species or ballast water management.

(c) For category 5 violations, administrative fines shall be imposed as follows:

(1) For a first category 5 violation, an administrative fine of up to $500 shall be assessed if the respondent fully complies with the violation notice within 21 days of service of the notice. The administrative fine shall increase to up to $750 if respondent fails to fully comply within 21 days. (Authority: §187A-12.5, HRS; Implementation: §13-1-71, HAR)

(2) For a second category 5 violation within five years of a previous violation, an administrative fine of up to $1,000 shall be assessed if the respondent fully complies with the violation notice within 21 days of service of the notice. The administrative fine shall increase to up to $1,500 if respondent fails to fully comply within 21 days. (Authority: §187A-12.5, HRS; Implementation: §13-1-71, HAR)

(3) For a third or subsequent category 5 violation within five years of the last violation, an administrative fine of up to $2,000 shall be assessed if the respondent fully complies with the violation notice within 21 days of service of the notice. The administrative fine shall increase to up to $3,000 if respondent fails to fully comply within 21 days. (Authority: §187A-12.5, HRS; Implementation: §13-1-71, HAR)

Item 2-6. Category 6 Violations – Threatened or Endangered Species.

(a) The Department may issue a violation notice to any person who commits a category 6 violation as described below.

(b) A person commits a category 6 violation if he or she commits any violation of Subtitle 5 of Title 12, HRS, or any rule adopted thereunder, involving a threatened or endangered species.

(c) For category 6 violations, administrative fines shall be imposed as follows:

(1) For a first category 6 violation, an administrative fine of up to $4000 shall be assessed if the respondent fully complies with the violation notice within 21 days of service of the notice. The administrative fine shall increase to up to $5000 if respondent fails to fully comply within 21 days. (Authority: §187A-12.5, HRS; Implementation: §13-1-71, HAR)

(2) For a second category 6 violation within five years of a previous violation, an administrative fine of up to $8,000 shall be assessed if the respondent fully complies with the violation notice within 21 days of service of the

notice. The administrative fine shall increase to up to $10,000 if respondent fails to fully comply within 21 days. (Authority: §187A-12.5, HRS; Implementation: §13-1-71, HAR)

(3) For a third or subsequent category 6 violation within five years of the last violation, an administrative fine of up to $12,000 shall be assessed if the respondent fully complies with the violation notice within 21 days of service of the notice. The administrative fine shall increase to up to $15,000 if respondent fails to fully comply within 21 days. (Authority: §187A-12.5, HRS; Implementation: §13-1-71, HAR)

(d) In addition to any fines assessed for a category 6 violation, an additional fine of up to $5,000 shall be assessed for each specimen of threatened or endangered aquatic life taken, killed, or injured. (Authority: §187A-12.5, HRS)

Appendix 2-A. DAR Administrative Sanctions Table

Item No.	Violation	No. of Offense	Fine (Paid in 21 Days)	Fine (Late)	Other Sanctions*
Item 2-1. Category 1 Violations – Month and Trip Reports					
2-1(b)	Failure to file monthly report or trip report	First	$15	$30	Back report required
		Second	$25	$50	Back report required; sale receipts required
		3rd or more	$100	$200	Back report required; sale receipts required
Item 2-2. Category 2 Violations – Certain Non-Extractive Activities					
2-2(b)(1)	Unlawful feeding of aquatic life within MLCD	First	$100	$150	
		Second	$200	$300	
		3rd or more	$400	$600	
2-2(b)(2)	Any other non-extractive unlawful activity within Marine or Freshwater FMA	First	$100	$150	
		Second	$200	$300	
		3rd or more	$400	$600	
2-2(b)(3)	Violation of any FAD rule	First	$100	$150	
		Second	$200	$300	
		3rd or more	$400	$600	
2-2(b)(4)	Any other non-extractive violation of HAR Title 13, Chapter 74	First	$100	$150	
		Second	$200	$300	
		3rd or more	$400	$600	
2-2(b)(5)	Statutory violations	First	$100	$150	
		Second	$200	$300	
		3rd or more	$400	$600	
Item 2-3. Category 3 Violations – Unlawful Fishing Gear; Unlawful Vessel Activity					
2-3(b)(1)	Use or possession of unlawful fishing gear or methods within MLCD, Marine FMA, or Freshwater FMA	First	$200	$300	
		Second	$400	$600	
		3rd or more	$800	$1,200	

Item No.	Violation	No. of Offense	Fine (Paid in 21 Days)	Fine (Late)	Other Sanctions*
2-3(b)(2)	Unlawful mooring, anchoring, or operation of a vessel within MLCD, Marine FMA, or Freshwater FMA	First	$200	$300	
		Second	$400	$600	
		3rd or more	$800	$1,200	
2-3(b)(3)	Unlawful fishing for aquatic life without an appropriate license, where a license is required	First	$200	$300	
		Second	$400	$600	
		3rd or more	$800	$1,200	
2-3(b)(4)	Unlawful possession, use, sale, or disposal of certain fishing gear or methods in violation of HAR Title 13, Chapter 75	First	$200	$300	$100 per specimen or according to Items 2-4(c), (d), & (e)
		Second	$400	$600	
		3rd or more	$800	$1,200	
2-3(b)(5)	Statutory violations	First	$200	$300	
		Second	$400	$600	
		3rd or more	$800	$1,200	
Item 2-4. Category 4 Violations – Unlawful Extractive Activity					
2-4(b)(1)	Unlawful take of aquatic life from within MLCD, Marine FMA, or Freshwater FMA	First	$200/specimen	$300/specimen	
		Second	$400/specimen	$600/specimen	
		3rd or more	$600/specimen	$900/specimen	
2-4(b)(2)	Unlawful take of geological material from within MLCD	First	$200/specimen	$300/specimen	
		Second	$400/specimen	$600/specimen	
		3rd or more	$600/specimen	$900/specimen	
2-4(b)(3)	Unlawful take, possession, sale, or release of aquatic life without	First	$200/specimen	$300/specimen	
		Second	$400/specimen	$600/specimen	

Item No.	Violation	No. of Offense	Fine (Paid in 21 Days)	Fine (Late)	Other Sanctions*
	appropriate license or in violation of license conditions	3rd or more	$600/specimen	$900/specimen	
2-4(b)(4)	Unlawful take, possession, or sale of protected marine fisheries resources	First	$200/specimen	$300/specimen	
		Second	$400/specimen	$600/specimen	
		3rd or more	$600/specimen	$800/specimen	
2-4(b)(5)	Unlawful take, possession, or sale of protected freshwater fisheries resources	First	$200/specimen	$300/specimen	
		Second	$400/specimen	$600/specimen	
		3rd or more	$600/specimen	$900/specimen	
2-4(b)(6)	Statutory violations	First	$200/specimen or according to Items 2-4(d) or (e)	$300/specimen or according to Items 2-4(d) or (e)	
		Second	$400/specimen or according to Items 2-4(d) or (e)	$600/specimen or according to Items 2-4(d) or (e)	
		3rd or more	$600/specimen or according to Items 2-4(d) or (e)	$900/specimen or according to Items 2-4(d) or (e)	
Item 2-5. Category 5 Violations – Unlawful commercial activity within MLCDs; Non-Indigenous Aquatic Species; Ballast Water Management					
2-5(b)(1)	Unlawful or unpermitted commercial activity within MLCD	First	$500	$750	
		Second	$1,000	$1,500	
		3rd or more	$2,000	$3,000	
2-5(b)(2)	Violation of any rule involving non-indigenous aquatic species or ballast water management	First	$500	$750	
		Second	$1,000	$1,500	
		3rd or more	$2,000	$3,000	

Item No.	Violation	No. of Offense	Fine (Paid in 21 Days)	Fine (Late)	Other Sanctions*
Item 2-6. Category 6 Violations – Threatened or Endangered Species					
2-6(b)	Violation of Title 12, Subtitle 5, HRS, or any rule adopted thereunder, involving a threatened or endangered species	First	$4,000	$5,000	$5,000 per specimen
		Second	$8,000	$10,000	
		3rd or more	$12,000	$15,000	

* In addition to any administrative sanctions that may be listed in this column, a regulatory permit or license issued to or held by the respondent may be subject to suspension under Item 1-5 of this Schedule and to revocation under Item 1-6.

Exhibit 2

State of Hawaii
Department of Land and Natural Resources
Civil Resource Violations System

ADMINISTRATIVE SANCTIONS SCHEDULE

Adopted on March 13, 2009

By the Board of Land and Natural Resources

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Appendix 3-A. DOBOR Administrative Sanctions Table

State of Hawaii
Department of Land and Natural Resources
Civil Resource Violations System

ADMINISTRATIVE SANCTIONS SCHEDULE

Adopted on March 13, 2009

By the Board of Land and Natural Resources

The following Administrative Sanctions Schedule is adopted as a guideline for the Department of Land and Natural Resources to be used under the Civil Resource Violations System (CRVS).

PART 1. GENERAL PROVISIONS

Item 1-1. Objective

This Administrative Sanctions Schedule ("Schedule") seeks to provide a Department-wide standard policy guideline for all divisions of the Department of Land and Natural Resources (DLNR or "Department") in processing the civil resource violations so as to promote:

- Voluntary compliance of state law for the protection of Hawaii's natural and cultural resources,
- Fair and cost-effective process for all parties involved, and
- Deterrence of violations.

Item 1-2. Legal Authority

This Schedule is adopted pursuant to §171-6 and Chapter 199D, Hawaii Revised Statutes (HRS), §13-1-70, Hawaii Administrative Rules (HAR), and other statutes and administrative rules of the Department.

Item 1-3. Applicability

The Department shall follow this Schedule when processing a civil resource violation under the CRVS pursuant to Chapter 13-1, Subchapter 7, HAR.

Item 1-4. Denial of Application for Cause

If a person is a respondent in a pending case with the CRVS, the Department may deny any application submitted by such person to the Department for any regulatory permit, license, or a renewal of such, or may issue one with additional conditions upon full payment of the CRVS fines assessed, subject to the review by a hearing officer and the Board or its delegate if the CRVS case is properly contested.

Item 1-5. Delegation of Power to Suspend Permits and Licenses Issued by the Department

(a) Unless otherwise provided by law or in this Schedule, if a respondent has been issued a CRVS violation notice for any violation related to a particular DLNR permit or license issued to or held by the respondent and fails to comply with the notice within 21 days of the service of the notice, the Chairperson is authorized to suspend the permit or license until the respondent comes into full compliance with all sanctions and requirements imposed through the CRVS.

(b) A suspension of a permit or license shall mean that the permitee or licensee is not entitled to conduct any activity pursuant to the permit or license until such time as the permit or license is reinstated. Suspension of a permit or license will not affect the expiration of the term of the permit or license.

(c) The Chairperson may reinstate a suspended permit or license for good cause at any time upon petition of the respondent.

(d) The Division Administrator shall reinstate a suspended permit or license upon a determination that the respondent has come into full compliance with the law and all violation notices previously issued.

Item 1-6. Delegation of Power to Revoke Permits and Licenses Issued by the Department

(a) Unless otherwise provided in this Schedule, if a respondent is found to have committed three offenses under this Schedule in the past twelve months for any violation of state law or the terms or conditions of a particular DLNR permit or license issued to or held by the respondent, the Chairperson is authorized to revoke the permit or license for a period not to exceed six month.

(b) If a permit or license revoked under this Schedule expires before the end of the revocation period, the revocation shall continue to be enforced by denying any application for the renewal or new issuance of a permit or license until the revocation period is over.

(c) For good cause, the Chairperson may withdraw a revocation of a permit or license.

(d) After the revocation period, the Division Administrator may reissue a revoked permit or license upon the respondent's application for renewal and payment of the fee that the Department charges for the renewal of the permit or license.

Item 1-7. Interpretation of the Schedule

The Chairperson and a hearing officer appointed pursuant to §13-1-57, HAR, shall have the power to interpret this Schedule, subject to review by the Board.

Item 1-8. Standard Forms

(a) The Chairperson may make minor modifications and corrections to a standard form adopted by the Board for use in the CRVS if deemed necessary.

(b) The Department shall use the standard form of Notice of Civil Resource Violation(s), as attached in Appendix 1-A, when preparing a violation notice pursuant to §13-1-62, HAR.

Item 1-9. Effective Dates

This Schedule and its subsequent amendments shall be effective upon adoption by the Board.

Appendix 1-A. Standard Form – Notice of Civil Resource Violation(s)

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
NOTICE OF CIVIL RESOURCE VIOLATION(S)

Notice No. CRVS – 09 – Date:

TO RESPONDENT: Any administrative proceedings instituted pursuant to this Notice shall not preclude the State from pursuing separate criminal prosecution against you for an offense committed in the same course of conduct.

COMPLAINT: The undersigned official/officer of the Department of Land & Natural Resources (DLNR) states that the named respondent did commit the civil resource violation(s) noted below.

A. RESPONDENT INFORMATION				
Last Name / Company Name	First Name, M.I.		Sex ☐ M ☐ F	Date of Birth
Street Address	City			State & ZIP (Country)
ID Type	Issued By	ID No.	Juvenile ☐	Phone

B. VEHICLE / VESSEL INFORMATION (If applicable)			
☐ Vehicle ☐ Vessel	License Plate No., VIN / Vessel Type, ID, Name	License State	Year / Make / Model / Color

C. STATEMENT OF FACTS			
Date	Time	☐ a.m. ☐ p.m.	Violation Site: Island / Location / TMK
DESCRIPTION: (Specify any witness, evidence, damage, injury and seizure. Attach additional sheet if needed.)			

D. CITATION(S)			E. FINES ASSESSED	
No.	Authority	Civil Resource Violation	Comply in 21 days	After 21 days
1	§		$	$
2	§		$	$
3	§		$	$
		TOTAL ADMINISTRATIVE FINE ASSESSED >>>	**$**	**$**

F. OTHER SANCTIONS AND REQUIREMENTS
TO RESPONDENT: In addition to any fines assessed in Section E, you must comply with the following sanctions and/or requirements within 21 days of the service of this Notice, unless a different period is provided in this section below:

G. ISSUANCE AND SERVICE		
F.I. & Last Name	Agency	Signature
Service: ☐ In Person ☐ Certified Mail ☐ Unoccupied vehicle/vessel	Issued by APO:	

H. ACKNOWLEDGEMENT
I acknowledge the receipt of this Notice. This is not an admission of responsibility.
Respondent Signature

>>> CONTINUE TO BACK PAGE >>>

I. SUMMONS TO RESPONDENT

Pursuant to §199D-1, HRS, and §13-1-63, HAR, you are hereby summoned and required to submit an answer to this Notice within twenty-one (21) days from the date of service of this Notice. Submit your answer, payment, statement and/or evidence to DLNR/APO, 1151 Punchbowl Street, Room 130, Honolulu, Hawaii 96813, or at www.hawaii.gov/dlnr/apo. If you fail to answer within 21 days, a default decision for the relief demanded in this Notice will be entered against you, and you may be subject to additional actions without further notice to you.

J. ANSWER BY RESPONDENT (Required)

INSTRUCTIONS:

1. You have three options in answering this Notice. CHOOSE ONLY ONE and check the corresponding box below. Sign and date your answer and return it to the DLNR Administrative Proceedings Office (DLNR/APO) at the address listed above or answer at the website address listed above.
2. If you choose Option 1, include with your answer payment in the amount stated in the first column of Section E if you are answering within 21 days of receiving this Notice or in the amount stated in the second column if after 21 days. Make your check payable to State of Hawaii. For credit card payment, see attached envelope. You are also required to comply with all sanctions and requirements specified in Section F. Your case will be concluded.
3. If you choose Option 2, include with your answer a statement and evidence showing the mitigating circumstances. A hearing officer will review your request and render a decision without holding a hearing, and may adopt, modify or reverse any sanctions assessed in this Notice. This decision is final and may not be contested or appealed.
4. If you choose Option 3, include with your answer a statement and evidence showing the reasons of your contest. A Notice of Administrative Hearing will be mailed to you within 30 days of your answer.
5. If answer by mail, return this original page to DLNR/APO. Retain a copy of everything you submit for your records. For inquiries, contact DLNR/APO at (808) 587-1496, DLNR.CO.APO@hawaii.gov or www.hawaii.gov/dlnr/apo.

☐ **Option 1: Comply**	☐ **Option 2: Request Mitigation**	☐ **Option 3: Contest**
I DO NOT contest this Notice, and have complied with all sanctions assessed herein.	**I DO NOT contest this Notice, but request mitigation in the assessed sanctions.**	**I DO contest this Notice, and request an administrative contested case hearing.**

STATEMENT OF RESPONDENT: (Please type or write legibly. Use additional sheet if necessary.)

Print your name:	**Signature:**	**Date:**
Address:	**E-Mail:**	**Phone:**

PART 2. DIVISION OF AQUATIC RESOURCES (DAR)

Item 2-1. Violations Pertaining to the Filing of Commercial Marine License (CML) Fishing Catch Reports (§189-3, §187A-12.5, HRS)

(a) §187A-12.5, HRS, authorizes a maximum fine of $1,000 for a first violation, $2,000 for a second violation, and $3,000 for a third violation.

(b) Each monthly catch report that is past due shall constitute a separate violation.

(c) For a first offense of §189-3, HRS, an administrative fine of up to $15 shall be assessed if the respondent fully complies with the violation notice within 21 days of the service of the violation notice. The administrative fine shall increase up to $30 if the respondent fails to fully comply within 21 days. In addition to a monetary fine, the respondent shall be required to submit an acceptable monthly catch report to the Department for the missing month. (Authority: §187A-12.5, HRS)

(d) For a second offense within three months of a first offense within the same year of the CML, as determined pursuant to §13-1-71, HAR, a respondent shall be assessed an administrative fine of up to $25, which shall be increased up to $50 if the respondent fails to fully comply within 21 days. The respondent shall also be required to turn in an acceptable monthly catch report for the missing month and all relevant sale receipts. (Authority: §187A-12.5, HRS; Implementation: §13-1-71, HAR)

(e) For a third offense or thereafter within three months of a second offense within the same year of the CML, as determined pursuant to §13-1-71, HAR, a respondent shall be assessed an administrative fine of up to $100, which shall be increased up to $200 if the respondent fails to fully comply within 21 days. The respondent shall also be required to turn in an acceptable monthly catch report for the missing month and all relevant sale receipts. (Authority: §187A-12.5, HRS; Implementation: §13-1-71, HAR)

(f) The Division Administrator shall review a respondent's report submitted to the Division for completeness, truthfulness and accuracy. Any report that fails the review shall constitute non-compliance.

Appendix 2-A. DAR Administrative Sanctions Table

Item No.	Authority	Violation	No. of Offense	Fine (In 21 Days)	Fine (Late)	Other Sanctions*
2-1	HRS §189-3; HRS §187A-12.5	Failing to file a CML fishing catch report	First	Up to $15	Up to $30	Back report required
			Second	Up to $25	Up to $50	Back report required; sale receipts required
			Third	Up to $100	Up to $200	Back report required; sale receipts required

* In addition to any administrative sanctions that may be listed in this column, a regulatory permit or license issued to or held by the respondent may be subject to suspension under Item 1-5 of this Schedule and to revocation under Item 1-6.

Exhibit 3

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

October 10, 2014

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

INFORMATIONAL BRIEFING ON PROPOSED AMENDMENTS TO THE DIVISION OF AQUATIC RESOURCES' ADMINISTRATIVE SANCTIONS SCHEDULE FOR THE PROCESSING OF ALL AQUATIC RESOURCE VIOLATIONS
(NON-DECISION MAKING ITEM)

This submittal provides an overview of the Department's Civil Resource Violations System ("CRVS") and describes the Division of Aquatic Resources' ("DAR") proposal to amend the CRVS Administrative Sanctions Schedule ("Schedule"). The proposed amendments would replace Part 2 of the Schedule, which the Board adopted on March 13, 2009 pursuant to Hawaii Administrative Rules ("HAR") §13-1-70 and Hawaii Revised Statutes ("HRS") §199D-1. DAR's proposal would significantly expand the Schedule's scope of application to cover all aquatic resource violations, enabling the department to more effectively enforce DAR's rules and regulations through the issuance of civil citations. A copy of the proposed Schedule amendments, as well as the Table of Contents and Parts 1 and 2 of the current Schedule, are provided for your review.

BACKGROUND

In 2004, the Hawaii Legislature passed Act 142, which established the civil natural resource violations system.[1] The law provides a mechanism for administratively processing violations of Departmental regulations for which administrative penalties have been authorized by law. In February 2009, the Department adopted Hawaii Administrative Rules ("HAR") §§13-1-51 through -72, to implement the Civil Resource Violations System ("CRVS").

The CRVS rules require the Board to adopt an administrative sanctions schedule ("Schedule") to provide guidance and promote consistency in the assessment of administrative sanctions.[2] Agents of the Department must refer to the Schedule when issuing a civil citation, more properly known as a Notice of Civil Resource Violation(s) ("Notice"). In March 2009, the Board adopted the Schedule, which was very limited in its application to aquatic resource violations. Specifically, the only types of aquatic resource violations covered under the Schedule are violations pertaining to the filing of Commercial Marine License ("CML") fishing catch reports. The Schedule does not cover other types of aquatic resource violations such as the taking of undersized fish, fishing with illegal gear, and fishing in prohibited areas. Without administrative

[1] *See* HAW. REV. STAT chapter 199D
[2] *See* HAW. ADMIN. R. §13-1-70

sanctions established for these other types of aquatic resource violations, enforcement officers are unable to issue civil Notices for violations of other aquatic resource rules. Instead, most aquatic resource violations are prosecuted criminally through the district courts, which can be time consuming, requires a higher evidentiary burden of proof, and often results in minimal or no penalty. Any monetary fines that are collected in the district courts are deposited back into the general fund and do not benefit the Department or the resource.

PURPOSE

The proposed amendments would expand the scope of application of the CRVS Schedule to cover all aquatic resource violations administered by the Division of Aquatic Resources ("DAR"). The amended Schedule is intended to enhance and streamline the Department's enforcement function by giving enforcement officers the option to issue civil citations for all violations of aquatic resource laws. Officers would still retain the option to prosecute aquatic resource violations through the criminal system when appropriate. The imposition of administrative sanctions against a person for a civil resource violation does not preclude criminal prosecution against the same person for a criminal offense committed in the same course of conduct, and vice versa.[3] Additionally, DAR would retain the ability to bring direct administrative enforcement actions before the Board where appropriate, such as for vessel groundings and other large-scale resource damage cases. However, it is DAR's intent that the majority of aquatic resource violations will be processed through civil Notices issued under CRVS.

Some of the benefits of utilizing CRVS instead of criminal prosecution include faster processing, standardized fines, and no criminal record for violators. In addition, monetary fines that are collected would stay within DLNR and could be directed back towards management and enforcement rather than disappearing into the general fund. A recent survey of cases conducted by the Judiciary found that from July 1, 2011 to December 31, 2013 (a period of 2 ½ years), there were approximately 1,700 cases involving violations of DLNR rules and statutes. Over 500 of these cases, or around 30%, were aquatic resource violations. The vast majority were petty misdemeanor cases handled by the district courts. Expanding the Schedule to enable the Department to process these types of cases through CRVS would not only reduce the burden on the Courts, but would help to ensure consistency and fairness in the imposition of penalties for aquatic resource violations.

PROPOSED SCHEDULE FOR AQUATIC RESOURCE VIOLATIONS

Under the proposed Schedule, violations are grouped into six different categories of varying degree with maximum administrative fines for each category. Penalty amounts were developed in consultation with DAR and DOCARE staff, and are based on a number of considerations including level of culpable intent, potential to cause harm to aquatic resources, actual resource damage, and other social, cultural, ecological, and economic considerations. Fines are intentionally set on the higher end because the CRVS process allows for a hearing officer to reduce, but not increase, established fines based on the specific facts and circumstances of the

[3] *See* HAW. ADMIN. R. §13-1-53

violation. Graduated penalties within each category are designed to deter repeat violations and to provide an incentive for timely compliance.

Category 1 covers violations of rules relating to the submittal of monthly reports and trip reports that are required of commercial marine licensees and bottomfishers, respectively. The violations covered under Category 1 are essentially the same violations covered by the existing Schedule, the only difference being the addition of trip report violations which are not covered under the current Schedule. Penalties for Category 1 violations mirror the penalties established in the current Schedule.

Category 2 covers violations of rules or statutes relating to certain non-extractive activities, such as unlawful feeding of aquatic life within Marine Life Conservation Districts ("MLCDs"), unlawful non-extractive activities within Fisheries Management Areas ("FMAs"), unlawful activities involving fish aggregating devices, non-extractive violations of license requirements (excluding reporting requirements covered under Category 1), and non-extractive statutory violations. A first Category 2 violation carries an administrative fine of $100, increasing to $200 for a second violation within 5 years of the first and to $300 for a third or subsequent violation within 5 years of the previous violation. Fines for Category 2 violations increase by 50% if the respondent fails to comply within 21 days.

Category 3 covers violations of rules or statues involving unlawful fishing gear and unlawful vessel activity. These include violations relating to the use or possession of unlawful fishing gear or methods within MLCDs, FMAs, and other statutorily designated areas; unlawful mooring, anchoring, or operation of vessels within MLCDs and FMAs; unlawful fishing without an appropriate license or permit where one is required; and the unlawful possession, sale, disposal, or use of certain regulated fishing gear or methods. The fine for a first Category 3 violation is $200, increasing to $400 for a second violation within 5 years of the first and to $800 for a third or subsequent violation within 5 years of the previous violation. Fines for Category 3 violations increase by 50% if the respondent fails to comply within 21 days. For Category 3 violations involving the unlawful possession, sale, disposal, or use of regulated fishing gear or methods in violation of HAR Ch. 13-75, an additional fine is imposed for each specimen of aquatic life taken, killed, or injured as a result of the violation. For regulated aquatic life, per specimen fines are assessed according to the penalty schedule established for Category 4 violations (Items 2-4(c), (d), and (e)). For unregulated aquatic life, fines are $100 per specimen, increasing to $150 if the respondent fails to comply within 21 days.

Category 4 covers violations of rules or statutes relating to extractive or destructive activity. Examples include the unlawful take or possession of aquatic life within MLCDs or FMAs; the unlawful take, destruction, or possession of geological material within MLCDs; the unlawful take, possession, sale, or release of aquatic life without an appropriate license or in violation of license conditions where a license is required; and the unlawful take, possession, or sale of protected (*i.e.* regulated) marine or freshwater fisheries resources. Aquatic resources have vastly differing commercial, recreational, and ecosystem values. Due to this diversity and the need to establish penalties that can be uniformly applied to all Category 4 violations, the Schedule prescribes per specimen fines that are designed to be significant enough to deter poaching. A fine of $200 per specimen is established for a first Category 4 violation, increasing to $400 per specimen for a second violation within 5 years of the first and to $600 per specimen for a third or

subsequent violation within 5 years of the previous violation. Fines for Category 4 violations increase by 50% if the respondent fails to comply within 21 days.

Certain aquatic resources are specially protected by statute and carry their own unique statutorily established penalties. The administrative fine for the unlawful capture or killing of a manta ray in violation of HRS §188-39.5 is $2,000 per specimen for a first violation, increasing to $5,000 per specimen for a second violation within 5 years of the first and to $9,000 per specimen for a third or subsequent violation within 5 years of the previous violation. Fines increase by $1,000 per specimen if the respondent fails to comply within 21 days. The administrative fine for the unlawful possession, sale, offer for sale, trade, or distribution of shark fins in violation of HRS §188-40.7 is $10,000 for a first violation, increasing to $30,000 for a second violation within 5 years of the first and to $45,000 for a third or subsequent violation within 5 years of the previous violation. Fines increase by $5,000 if the respondent fails to comply within 21 days.

Category 5 covers violations of rules relating to commercial activities within MLCDs, non-indigenous aquatic species, and ballast water management. Because these rules only apply to commercial tour operations and to masters or operators of vessels, the Schedule imposes higher penalties to provide a greater deterrence to potential violators. The higher penalties also reflect the seriousness of Category 5 violations, especially those that could result in the introduction and spread of harmful aquatic invasive species into State waters. The fine for a first Category 5 violation is $500, increasing to $1,000 for a second violation within 5 years of the first and to $2,000 for a third or subsequent violation within 5 years of the previous violation. Fines for Category 5 violations increase by 50% if the respondent fails to comply within 21 days.

Category 6 covers violations of any DAR rule or statute involving a threatened or endangered species. HRS §187A-12.5 specifically authorizes the imposition of higher administrative penalties for Category 6 violations. The fine for a first Category 6 violation is $4,000, increasing to $8,000 for a second violation within 5 years of the first and to $12,000 for a third or subsequent violation within 5 years of the previous violation. Fines for Category 6 violations increase by 25% if the respondent fails to comply within 21 days.

CONCLUSION

In its five years of operation, CRVS has proven highly successful in raising compliance with DAR's commercial fishing report requirements. Before implementation of CRVS, the fishing report compliance rate (by the deadline on the 10th day of the following month) was only 33%. Currently, the monthly compliance rate averages about 75% by the report deadline, and about 95% by the end of the following month. The expansion of CRVS to cover all aquatic resource violations is likewise expected to result in increased compliance with a broader range of aquatic resource laws. The increased use of administrative proceedings is part of a larger movement to improve enforcement of and compliance with natural resource laws throughout the State. DLNR has been collaborating with staff from the Judiciary to explore how administrative proceedings under CRVS can effectively complement criminal and appellate proceedings under the new environmental court system that will take effect next July.

DAR has prepared this briefing to provide you with a better understanding of what CRVS is and how DAR proposes to expand it. In a few weeks, DAR will request the Board to adopt the

proposed Schedule amendments described herein. In the meantime, please do not hesitate to contact us if you have any further questions or concerns. Inquiries and comments can be addressed to David Sakoda, DLNR Marine Law Fellow, at (808) 587-0104 or via email at David.Sakoda@hawaii.gov.

Respectfully submitted,

FRAZER MCGILVRAY, Administrator
Division of Aquatic Resources

APPROVED FOR SUBMITTAL

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

Attachments:

1. Proposed Amendments to DLNR Administrative Sanctions Schedule, dated 9/23/14
2. Current DLNR Administrative Sanctions Schedule: Table of Contents and Parts 1 and 2 (adopted on March 13, 2009)