

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

June 26, 2015

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

REQUEST FOR APPROVAL TO ADOPT A NEW CHAPTER UNDER HAWAII
ADMINISTRATIVE RULES AS TITLE 13 CHAPTER 86, "SEA CUCUMBER", THROUGH
EMERGENCY RULEMAKING PROCEDURES TO PROTECT AGAINST THE
OVERHARVEST OF SEA CUCUMBERS FROM STATE WATERS
(Amended submittal)

Submitted for your consideration and approval is a request to adopt Hawaii Administrative Rules ("HAR") chapter 13-86 via emergency rulemaking provided for under Section 91-3, Hawaii Revised Statutes (HRS), to address the recent spike in the commercial harvest of sea cucumbers that poses an imminent threat to Hawaii's marine ecosystems.

HISTORY

Sea cucumbers are slow moving and virtually defenseless marine invertebrates that are found throughout the world. There are over fifty species of sea cucumber in Hawaii, over half of which can be found in shallow water. Sea cucumbers play an important role in nutrient recycling in marine ecosystems. They feed on organic matter on the sea floor, speeding the breakdown of plant and animal debris.

Sea cucumbers typically reach reproductive maturity between two and five years of age depending on the species. Sea cucumbers spawn by releasing eggs and sperm into the water column where fertilization and subsequent larval development occur. For this reason, the density of sea cucumbers and the distance between males and females are important factors affecting reproductive success. Once population densities are below a certain level, the probability of fertilization is low to negligible. In other areas where sea cucumbers have been heavily harvested, surveys suggest that populations have not recovered, even after closure of the fishery for many years.¹

The harvesting of sea cucumbers has been a highly lucrative international business trade for decades, with most sea cucumber products being exported to China for food or medicine. This in turn has created a boom-bust economy in many countries and has nearly collapsed sea cucumber populations in those areas. Many affected countries have either enacted laws to ban the outright harvesting of sea cucumbers or established management programs to ensure responsible

¹ See Richmond, R.H. 1996. Suggestions for the Management of Sea Cucumber Resources in Micronesia. Technical Report 101. University of Guam Marine Laboratory. November, 1996.

harvesting. Until recently, sea cucumbers have not been commercially harvested on a large scale in Hawaii, and currently there is no rule regulating the take of sea cucumbers from State waters.

Within the past few weeks, the Department of Land & Natural Resources (“Department”) has been made aware of large amounts of sea cucumbers being harvested around the islands of Maui and Oahu. Upon further investigation, the Department has learned that these sea cucumbers may be sold for \$5 each to a newly established company that processes them and exports them to China. Based on reports, observations, and interviews, the Department estimates that there are approximately 17 individuals engaging in sea cucumber harvest on Maui and that each individual harvests an estimated 200 sea cucumbers every day. This translates to about 3,400 sea cucumbers being removed from Maui waters on a daily basis. Photos of recent sea cucumber harvests on Maui and Oahu are attached as **Exhibit 1**. Additional harvesters are reportedly being recruited to help take as many sea cucumbers as possible before any regulations are established. According to anonymous sources, the business intends to ship 1-3 tons of dried sea cucumber from each island to China.

AUTHORITY

The Department of Land & Natural Resources has been delegated the power and duty to “manage and administer the aquatic life and aquatic resources of the State.”² To carry out these duties, the Department is authorized to promulgate rules “for and concerning... the conservation and allocation of the natural supply of aquatic life in any area.”³ The rules may include open and closed fishing seasons, and they must be adopted in accordance with the procedural requirements of Chapter 91, HRS.

Chapter 91, HRS, provides the general procedures for administrative agencies to adopt rules within their statutory authority. In most situations, “prior to the adoption of any rule authorized by law,” an agency must “give at least thirty days’ notice for a public hearing,” and “afford all interested persons opportunity to submit data, views, or arguments,” all of which must be “fully considered” prior to the agency’s decision on adopting the rule.⁴ However, if “an agency finds an imminent peril... to natural resources requires adoption, amendment, or repeal of a rule upon less than thirty days’ notice of hearing, and states in writing its reasons for such finding, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing, including posting of the abbreviated notice and hearing on the Internet as provided in section 91-2.6, as it finds practicable⁵ to adopt an emergency rule to be effective for a period no longer than one hundred twenty days without renewal.”⁶

² HRS §187A-2

³ HRS §187A-5

⁴ HRS §91-3(a).

⁵ The Department has found it practicable to post abbreviated notice of the proposed emergency adoption of HAR chapter 13-86 on the Internet pursuant to HRS §91-2.6. The proposed rules can be viewed online at:

<http://dlnr.hawaii.gov/dar/rules-and-public-notice/>

⁶ HRS §91-3(b) (emphases added).

PURPOSE

The Division of Aquatic Resources (“DAR”) proposes to adopt emergency rules prohibiting the take, possession, and sale of sea cucumbers from State waters. Based on the recent emergence of a large-scale commercial fishery for sea cucumbers in Hawaii and the impacts that similar fisheries have had on sea cucumber populations in other parts of the world, DAR believes an immediate ban on all harvest is necessary to prevent an imminent peril to the State’s nearshore marine ecosystems. DAR estimates that three to four thousand sea cucumbers are being harvested each day on Maui alone. At this rate, the Department cannot delay rulemaking to accommodate the usual 30-day notice period required in non-emergency situations.

DAR recognizes that the rule may impact individuals who harvest certain species of sea cucumber for personal consumption. Given the temporary nature of these emergency rules,⁷ DAR believes that a total ban is reasonable and necessary to allow the Department to gather more information on the status of the sea cucumber stock in Hawaii and to assess the impacts of harvest. While the temporary ban is in place, DAR will consult with harvesters and dealers to develop best management practices and long-term management measures that may allow for sustainable harvest of certain species. Potential management measures include minimum/maximum size limits, bag/trip limits, pulse fishing (periodic open seasons), and quotas.

The proposed rules are attached as **Exhibit 2**.

RECOMMENDATIONS:

“That the Board find that there is an imminent peril to the State’s natural resources related to the harvest of sea cucumbers from state waters, which requires adoption of a rule upon less than thirty days’ notice of hearing.”

“That the Board approve the adoption of Hawaii Administrative Rules chapter 13-86, Sea Cucumber.”

Respectfully submitted,

ALTON MIYASAKA, Acting Administrator
Division of Aquatic Resources

APPROVED FOR SUBMITTAL

SUZANNE CASE, Chairperson
Board of Land and Natural Resources

⁷ Pursuant to HRS §91-3(b), emergency rules are effective for a period of not longer than 120 days.

Attachments:

- Exhibit 1 – Photos of recent sea cucumber harvest on Maui and Oahu
- Exhibit 2 – Ramseyer Draft (Amended)

Exhibit 1



PHOTO 9

Exhibit 1



PHOTO 12

Exhibit 1

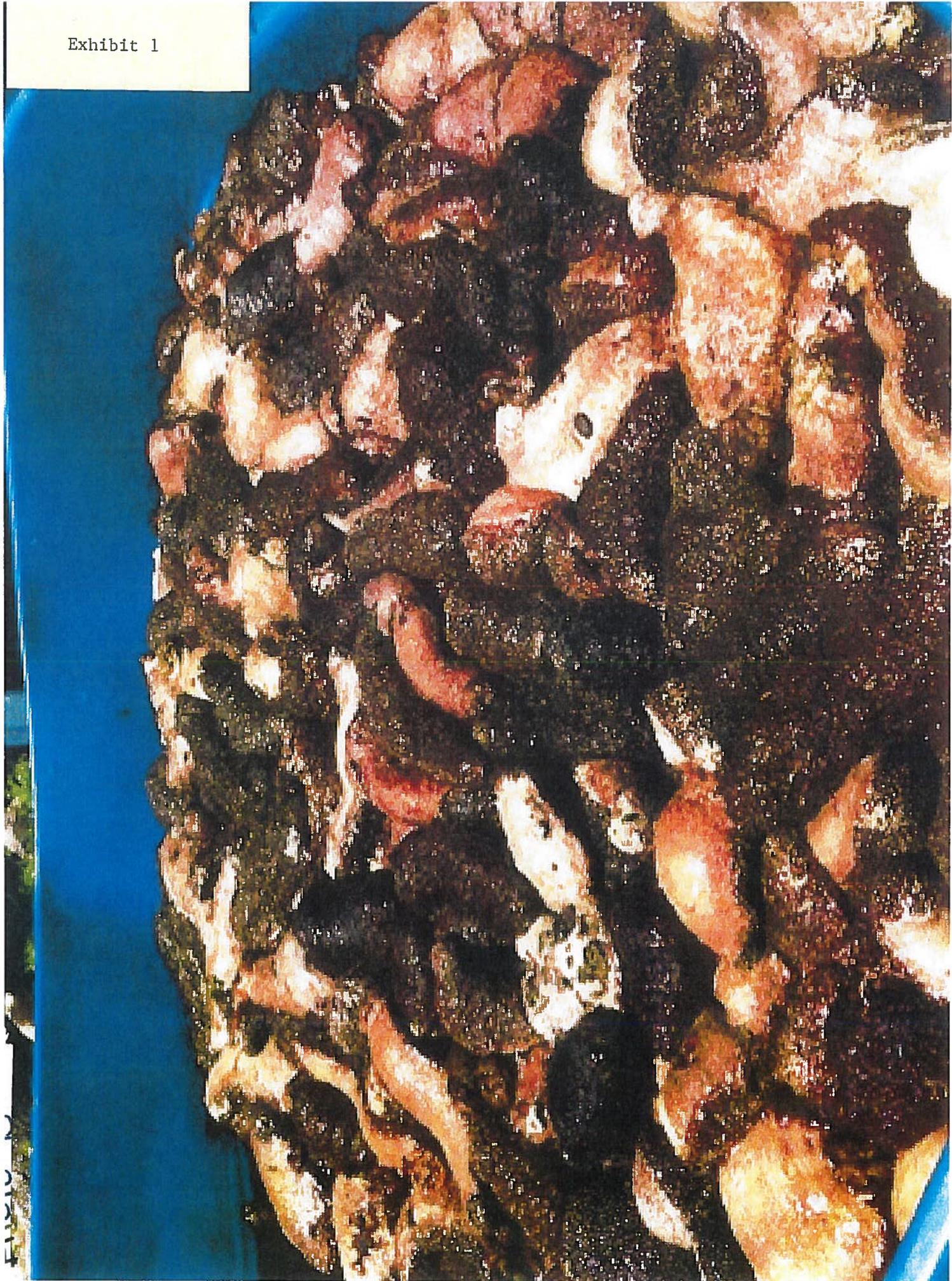


Exhibit 1

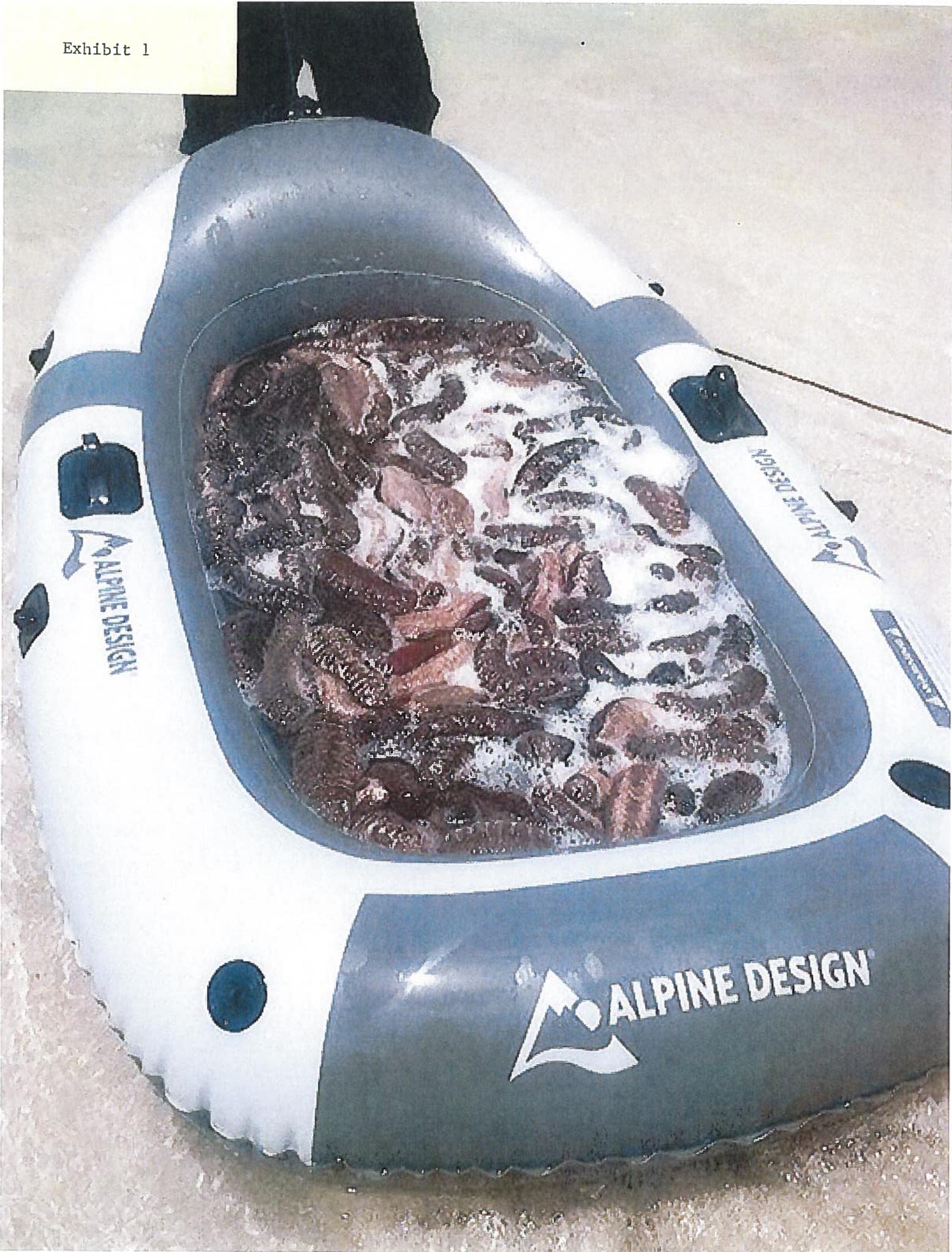


Exhibit 1



Exhibit 1

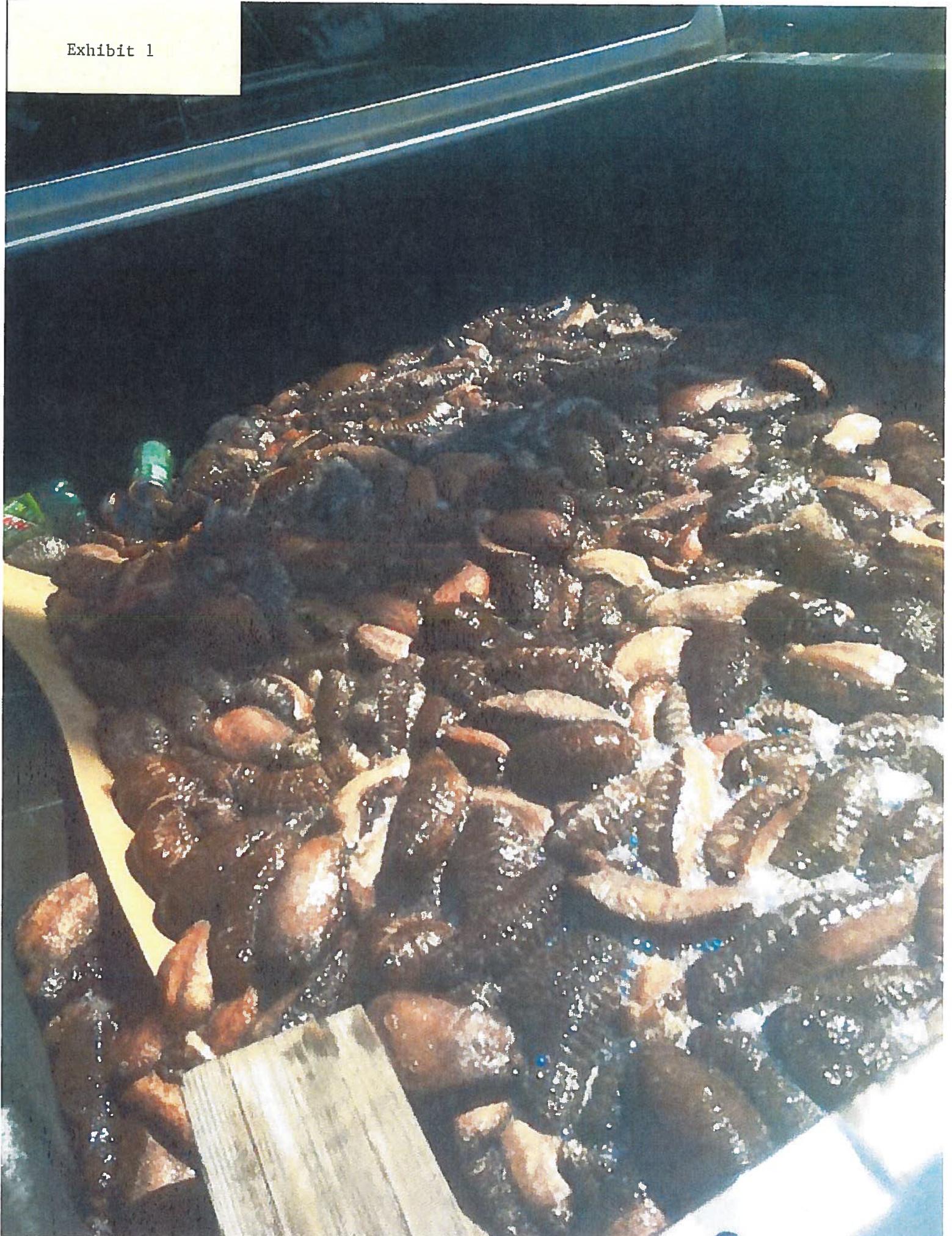


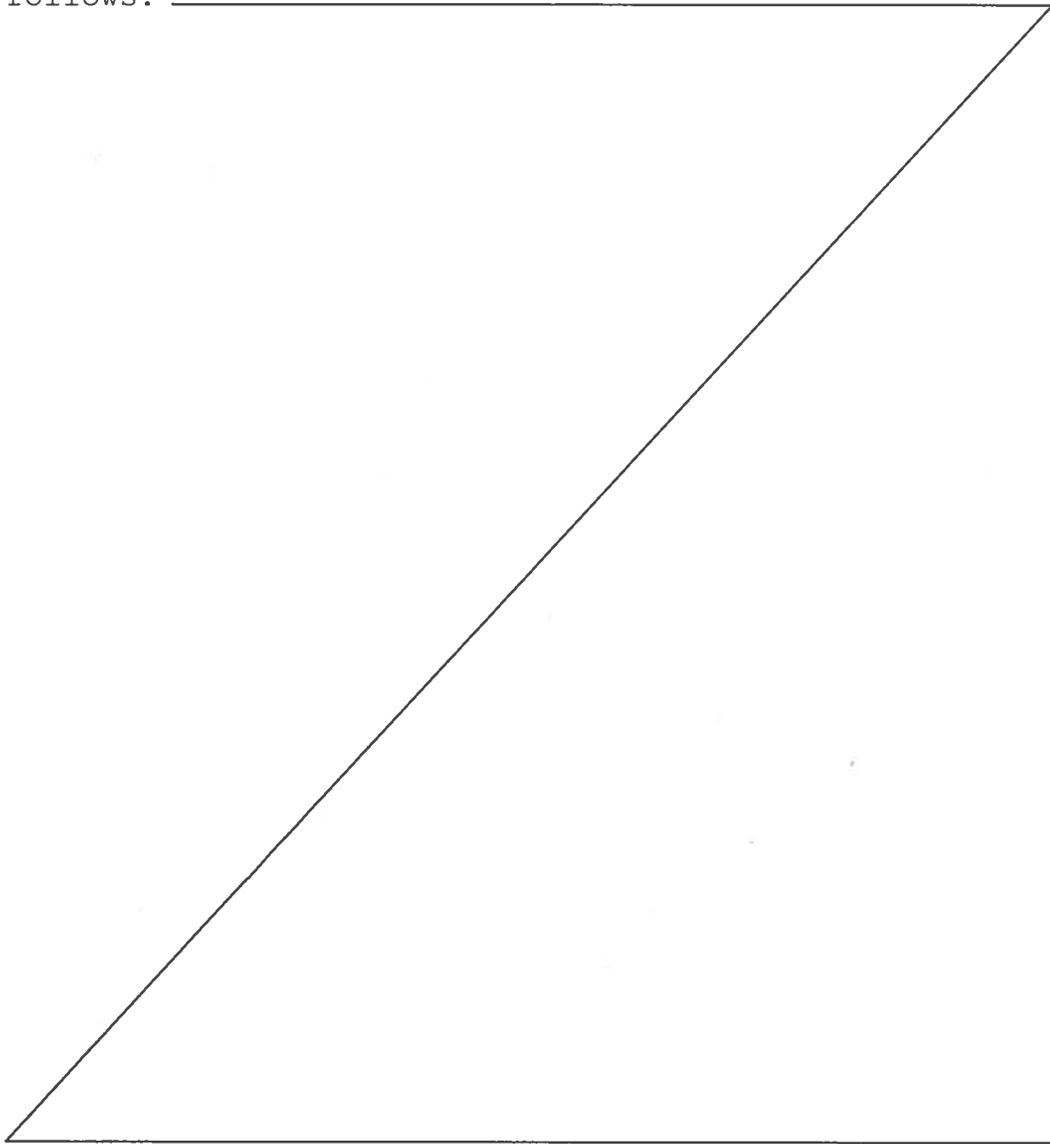
Exhibit 2 (Amended)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-86
Hawaii Administrative Rules

(date of adoption)

1. Chapter 13-86, Hawaii Administrative Rules,
entitled "Sea Cucumber", is adopted to read as
follows: _____



"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART V PROTECTED MARINE FISHERIES RESOURCES

CHAPTER 86

SEA CUCUMBER

- §13-86-1 Definitions
- §13-86-2 Prohibited activities
- §13-86-3 Penalty

§13-86-1 Definitions. As used in this chapter, unless otherwise provided:

"Sea cucumber" means any echinoderm species of aquatic life in the class Holothuroidea.

"Take" means to catch, kill, remove, capture, confine, or harvest, or to attempt to catch, kill, remove, capture, confine, or harvest. [Eff] (Auth: HRS §190-3) (Imp: HRS

§190-3)

§13-86-2 Prohibited activities. (a) No person shall take, possess, sell, or offer for sale, any sea cucumber from the waters of the State.

(b) This section shall not prohibit the possession or sale of sea cucumbers taken or possessed on or before the effective date of this chapter, provided further that any commercial marine dealer selling or offering for sale any sea cucumber on or after the effective date of this chapter shall keep receipts on file pursuant to HRS §189-11. [Eff

] (Auth: HRS §§189-10, 190-3) (Imp:
HRS §§189-10, 189-11, 190-3)

§13-86-3 Penalty. (a) Any person violating any provision of this chapter shall be subject to:

- (1) Administrative penalties as provided by section 187A-12.5, HRS;
- (2) Criminal penalties as provided by section 190-5, 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 this State." [Eff] (Auth: HRS §190-3)
(Imp: HRS §§187A-12.5, 190-5)

2. The Department of Land & Natural Resources finds that the immediate adoption of these emergency rules is necessary to prevent an imminent peril to natural resources, due to the sudden increase in commercial harvest of sea cucumbers and the particular vulnerability of the resource to overfishing.

3. The adoption of chapter 13-86, Hawaii Administrative Rules, shall take effect upon filing with the Office of the Lieutenant Governor, and shall be effective for no more than 120 days after such filing without renewal.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format, pursuant to the requirements of sections 91-4 and 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

SUZANNE CASE
Chairperson
Board of Land and Natural
Resources

APPROVED AS TO FORM:

Deputy Attorney General