

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

January 13, 2012

Board of Land
and Natural Resources
Honolulu, Hawaii

Request for Approval To Hold A Public Hearing to Adopt New
Hawaii Administrative Rules, Chapter 13-77, Oahu Aquarium Life Management

Submitted for your consideration and approval is a request to hold a public hearing to adopt new Hawaii Administrative Rules (HAR) to manage the activities of aquarium collectors for Oahu only. In August 2011, a group of experienced commercial aquarium collectors from Oahu presented to the Department a proposal for regulations on their fishery. They recognized the need for better management of the fishery to reduce the potential for waste of limited resources and implement conservation measures that would ensure the long-term viability of the fishery.

This process has not been without its challenges. All Oahu commercial collectors are not in full agreement with all provisions in this proposal. The Division has presented, in this draft rule, what we believe to be the best options going forward, with the support of the majority of Oahu commercial collectors. Many of the provisions in this draft rule may potentially reduce incomes but they are willing to make these sacrifices for the long-term goals stated above.

RECOMMENDATION:

“That the Board approve the holding of a public hearing for the adoption of Chapter 13-77, Oahu Aquarium Life Management.”

Respectfully submitted,



GUY KAULUKUKUI
Acting Administrator

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR.
Chairperson

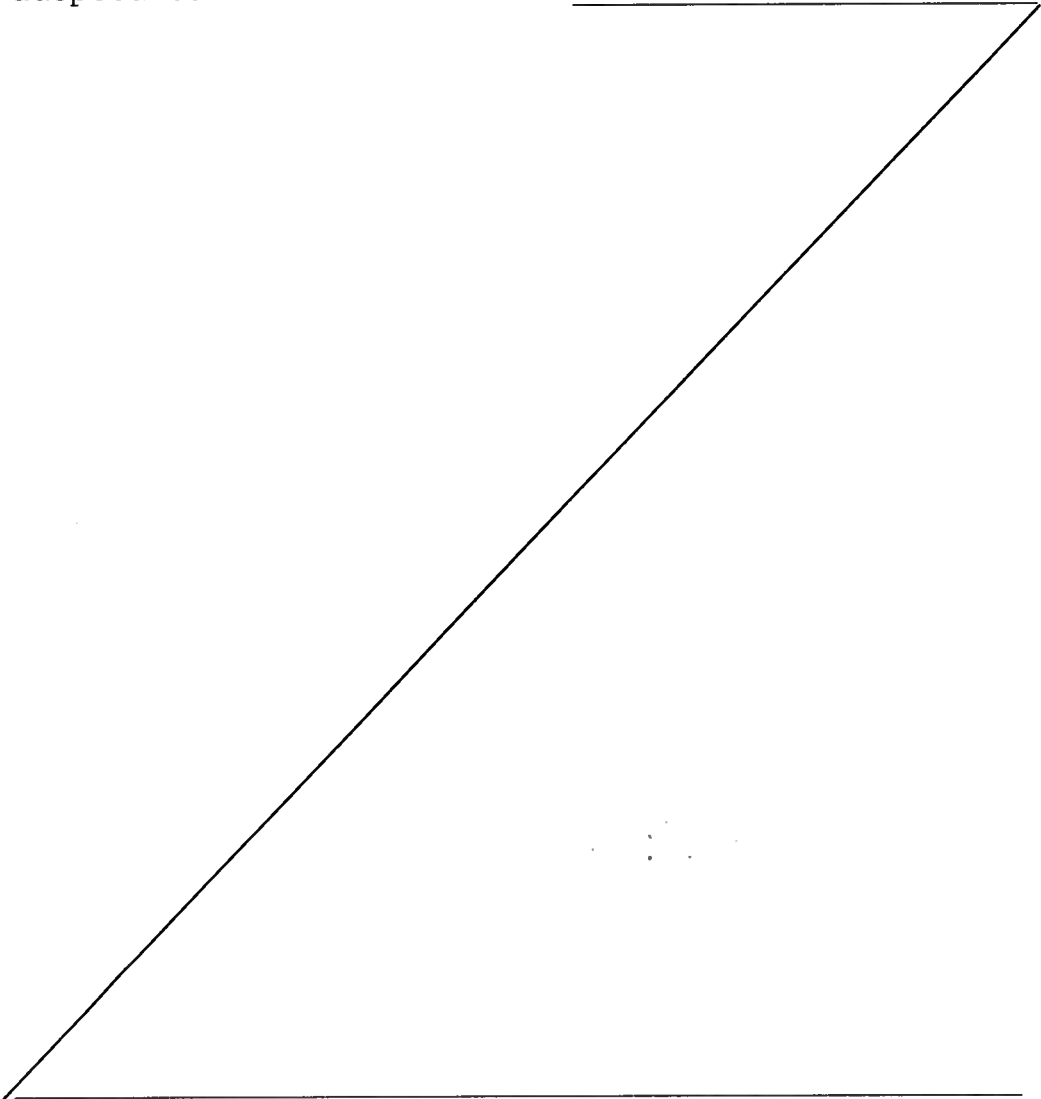
Ramseyer Draft
(12/21/2011)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-77
Hawaii Administrative Rules

(date)

1. Chapter 77 of Title 13, Hawaii Administrative Rules, entitled "Oahu Aquarium Life Management" is adopted to read as follows: _____



"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART IV FISHERIES RESOURCE MANAGEMENT

CHAPTER 77

OAHU AQUARIUM LIFE MANAGEMENT

Subchapter 1 General Provisions

- §13-77-1 Intents and purposes
- §13-77-2 Definitions
- §13-77-3 Penalties
- §13-77-4 Exemptions
- §13-77-5 Severability
- §13-77-6 Oahu prohibited activities

Subchapter 1

General Provisions

§13-77-1 Intents and purposes. It is the department's intention to manage the use of fine mesh traps or fine mesh nets, other than throw nets, for the collection of aquatic life from the waters of Oahu for aquarium purposes. The purpose of this chapter is to manage the use of fine mesh net gears to take aquatic life intended for live displays in aquarium. [Eff] (Auth: HRS §§187A-5, 188-31) (Imp: HRS §§187A-5, 188-31)

§13-77-2 Definitions. As used in this chapter unless otherwise provided:

"Achilles tang" means any marine fish species known as *Acanthurus achilles* or any recognized synonym.

"Aquarium purposes" means to hold salt water fish, fresh water nongame fish, or other aquatic life alive in a state of captivity as pets, for scientific study, or for public exhibition or display, or for sale for these purposes.

"Aquarium fish permit" means a permit issued by the department pursuant to section 188-31, HRS, for the use of fine mesh nets and traps to take salt water fish, fresh water nongame fish, or other aquatic life for aquarium purposes.

"Cleaner wrasse" means any marine fish species known as *Labroides phthirophagus* or any recognized synonym.

"Commercial marine license" means a license issued by the department for the taking of marine life for commercial purposes issued pursuant to section 189-2, HRS.

"Bandit angelfish" means any marine fish species known as *Apolemichthys arcuatus* or any recognized synonym. This species is also known as banded angel, *Holocanthus arcuatus*, and *Desmoholocanthus arcuatus*.

"Department" means the department of land and natural resources.

"Kole" means any marine fish species known as *Ctenochaetus strigosus* or any recognized synonym.

"Length" means the straight-line measurement from the tip of the snout to the middle of the trailing edge of the tail.

"Moorish idol" means any marine fish species known as *Zanclus cornutus* or any recognized synonym.

"Naso tang" means any marine fish species known as *Naso literatus* or any recognized synonym.

"Ornate butterflyfish" means any marine fish species known as *Chaetodon ornatissimus* or any recognized synonym.

"Oval butterflyfish" means any marine fish species known as *Chaetodon lunulatus* or any recognized synonym.

"Permittee" means a person who has a valid aquarium fish permit.

"Person" means any individual, trust, firm, joint stock company, or corporation, including, but not limited to, a government corporation, partnership, or association.

"Potter's angel" means any marine fish species known as *Centropyge potteri* or any recognized synonym.

"Reticulated butterflyfish" means any marine fish species known as *Chaetodon reticulatus* or any recognized synonym.

"Small mesh" means a net, trap, or other fishing gear with mesh, whose mesh size is smaller than the legal limit as provided in section 13-75-14.

"State" means the state of Hawaii.

"State marine waters" means those waters extending from the upper reaches of the wash of the waves on shore seaward to the limit of the State's police power and management authority, including the United States territorial sea.

"Waters of Oahu" means, for enforcement purposes, marine waters from the shoreline around the island of Oahu seaward for three nautical miles.

"Yellow tang" means any marine fish species known as *Zebrasoma flavescens* or any recognized synonym.
 [Eff] (Auth: HRS §§187A-5, 188-31) (Imp: HRS §§187A-5, 188-31)

§13-77-3 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 187A-3.5, HRS;
- (2) Permits issued pursuant to section 187A-6, HRS;

- (3) Licenses issued pursuant to section 189-6, HRS;
- (4) Exemptions for small mesh hand nets as provided in section 13-75-14(8), HAR, and
- (5) As may be otherwise provided by law. [Eff] (Auth: HRS §§187A-3.5, 187A-6, 189-6) (Imp: HRS §§187A-3.5, 187A-6, 189-6)

§13-77-4 Penalties. A person violating any provision of this chapter shall be guilty of a petty misdemeanor, subject to civil and administrative penalties, and punished as provided by law. [Eff] (Auth: HRS §§187A-12.5, 187A-13, 187A-32) (Imp: HRS §§187A-12.5, 187A-13)

§13-77-5 Severability. The provisions of these rules are declared to be severable, and if any portion, or the application thereof, to any person or property is held invalid for any reason, the validity of the remainder of these rules or the application of the remainder to other persons or property shall not be affected. [Eff] (Auth: HRS §§187A-5, 188-31) (Imp: HRS §§187A-5, 188-31)

§13-77-6 Oahu prohibited activities. (a) Beginning on January 1, 2013, it is unlawful for any person, while possessing a small mesh net authorized under a valid aquarium fish permit, in or on the waters of Oahu, to possess a small mesh net that is:

- (1) More than thirty (30) feet long; provided that two or more permittees may join two nets, each no more than thirty (30) feet long, for a total net length of no more than sixty (60) feet long; and
- (2) More than six (6) feet in height.

(b) It is unlawful for any person with a valid commercial marine license, while possessing a small mesh net authorized under a valid aquarium fish permit and in or on the waters of Oahu, to possess a small mesh net and take or possess a daily bag limit of more than:

- (1) One hundred (100) yellow tang;
- (2) Seventy-five (75) kole;
- (3) Fifty (50) potter's angel;
- (4) Fifty (50) naso tang;
- (5) Twenty-five (25) moorish idol; or
- (6) Ten (10) achilles tang.

(c) It is unlawful for any person with a valid commercial marine license, while possessing a small mesh net authorized under a valid aquarium fish permit and in or on the waters of Oahu, to possess a small mesh net and to take or possess more than six (6) of any of the following per day:

- (1) Yellow tang less than 1.5 inches or more than 5 inches in length;
- (2) Kole more than 5 inches in length; or
- (3) Cleaner wrasse of any size.

(d) It is unlawful for any person, while possessing a small mesh net authorized under a valid aquarium fish permit and in or on the waters of Oahu, to take or possess more than two bandit angelfish more than five and a half (5.5) inches in length, per day.

(e) It is unlawful for any person to operate a vessel on the waters of Oahu with more than the combined daily bag limits as provided in sections (b) and (c) for the number of permittees on board the vessel, or with more than three daily bag limits, regardless of the number of permittees on board.

(f) It is unlawful for any person, while possessing a small mesh net authorized under a valid aquarium fish permit while in or on the waters of Oahu, to possess a small mesh net and to take or possess any of the following species:

- (1) Ornate butterflyfish;
- (2) Oval butterflyfish; and

- (3) Reticulated butterflyfish." (Auth: HRS §§187A-5, 188-31) (Imp: HRS §§187A-5, 188-31)

2. The adoption of chapter 13-77, 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.

William J. Aila, Jr.,
Chairperson, Board of Land
and Natural Resources

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General