

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

May 27, 2016

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

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

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

Proposed Management Measures

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

Marine Dealer License

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

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

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

Primary Commercial Marine Dealer Purchase Report

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

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

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

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

Commercial marine license fee increases

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

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

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

Fee analysis

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

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

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

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

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

Where does the money go?

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

Business and Public Impacts


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

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

RECOMMENDATIONS:

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

Respectfully submitted,



BRUCE S. ANDERSON, Administrator
Division of Aquatic Resources

APPROVED FOR SUBMITTAL

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

SUZANNE CASE, Chairperson
Board of Land and Natural Resources

Attachment:

Exhibit 1 – Ramseyer Draft

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to Chapter 13-74
Hawaii Administrative Rules

(date of adoption)

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

"Commercial marine dealer" means any:

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

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

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

(c) Commercial marine licensee who sells or exchanges locally caught marine life they took themselves at retail." [Eff 8/12/93; am 10/18/10; am] (Auth: HRS §§187A-5, 188-37, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-6) (Imp: HRS §§187A-5, 188-37, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-6, 189-10)

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

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

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

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

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

(1) Residents, \$50;

(2) All other persons, \$200;

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

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

(e) No person may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The commercial marine dealer shall keep all receipts on file and be able to present such receipts for inspection upon demand of any officer authorized to enforce the laws of the State. The receipts shall be kept for not less than twenty-four months after the transaction date or until the regulated aquatic life is no longer in the licensee's possession, whichever is longer. The department may approve the use of documents other than the receipts as written records of the transaction." [Eff

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

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

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

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

- (3) The species, numbers, weights, and values of each of the varieties of marine life landed in the State that the dealer obtained, purchased, transferred, exchanged, or sold during the reporting period;
- (4) The name and current license number of the commercial marine licensee from whom the marine life was obtained or purchased; and
- (5) Other information as required on forms provided by, or as directed in writing by, the department.

(b) Reports shall be submitted to the department monthly or weekly as provided in writing by the department." [Eff _____] (Auth: HRS §189-10) (Imp: HRS §189-10)

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

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

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

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

SUZANNE D. CASE
Chairperson
Board of Land and Natural
Resources

Ramseyer Format (4/22/16)

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General

DRAFT