

RAMSEYER DRAFT
(10/26/07)

DEPARTMENT OF LAND AND NATURAL RESOURCES
Amendments to Chapters 13-74 and 13-94
Hawaii Administrative Rules
Date of Adoption

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

“§13-74-2 General license and permit conditions.

Except as otherwise provided:

- (1) All licenses and permits issued pursuant to this chapter are non-transferable and shall be valid for not longer than one year from the date of issuance. A duplicate license or permit may be issued upon affidavit that the original has been lost or destroyed, and upon payment of a duplicate license fee; provided that the duplicate license or permit shall expire on the same date as when the original license or permit would have expired;
- (2) A licensee or permittee shall show the license or permit and confirming identification upon the demand of any officer authorized to enforce the fishing laws of the State. No person shall refuse any such officer the examination of the license or permit and confirming identification, or inspection of any bag or container of any kind used to carry any aquatic life or any vehicle or conveyance used to transport any aquatic life if [such] the officer has probable cause, as provided by law, to believe that [such] the bag, container, vehicle, or conveyance contains evidence of a violation of the fishing laws of the State. Failure or refusal to show the license or permit and confirming identification or examination and search of any bag, container, vehicle, or conveyance shall be prima facie evidence of a violation of this chapter and sufficient cause for the immediate revocation of the license or permit by the board;
- (3) No licensee or permittee shall allow any other person to carry, display, or use the license or permit, except if the license or permit is issued to a vessel;
- (4) The department or its agents may issue licenses and permits as authorized by law, and with such conditions necessary to manage, protect, and conserve aquatic life;

- (5) Should a monthly report be required by any license or permit [such], the report shall be rendered to the department as a true and correct statement of such information the department may require, on or before the tenth day of the following month in which the aquatic resources were taken or purchased, except for the Kona crab and lobster closed season sales license issued pursuant to section 13-74-41 whose report shall be rendered five days after the end of each of the closed season months on forms either furnished by, or approved by the department;[and]
- ~~(6) Should a trip report be required by any license or permit, or registration, the report shall be rendered to the department as a true and correct statement of such information the department may require, on or before the third day following the last day of each trip in which aquatic life was landed; and~~
- ~~[(6)](7)Any information submitted to the department as required under this section or chapters 187A, 188, and 189, HRS, shall be confidential and shall not be disclosed, except when required under court order or by the state attorney general’s office subpoena, or with the prior written consent of the person submitting the information, or under cooperative agreements with United States government agencies for the exchange and use of the information specifically to manage aquatic resources. The department may establish procedures to preserve the confidentiality of submitted information, except that the department may release or make public information in the aggregate or summary form that does not directly or indirectly disclose the identity of any person who submits information.” [Eff 8/12/93; am 1/15/99; am] (Auth: HRS §§187A-2, 187A-5, 188-37, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-3, 189-6, 189-10, 199) (Imp: HRS §§187A-2, 187A-5, 188-37, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-3, 189-6, 189-10, 199)~~

2. Chapter 13-74, Hawaii Administrative Rules, is amended by adding a new section 13-74-11 in subchapter 2 to read as follows:

“§13-74-11 Non-commercial bottomfish registration, bottomfish reports, and compliance. (a) Unless otherwise provided by law, it is unlawful for any person to take bottomfish from the main Hawaiian islands for non-commercial purposes without first registering with the department.

(b) It is unlawful for any person who is registered as a non-commercial bottomfish fisher, to fail to submit the trip reports, if so required. The non-

commercial bottomfish trip reports shall be subject to the provisions of this chapter. Persons issued commercial marine licenses pursuant to section 13-74-20 shall submit reports of their fishing activities as required under section 189-3, HRS, this chapter, or as may be otherwise provided by law.

(c) Should the National Marine Fisheries Service require persons taking bottomfish for non-commercial purposes in federal waters of the main Hawaiian islands to possess a valid federal non-commercial bottomfish permit and to report their fishing activity, a person issued this permit and who complies with all federal reporting requirements shall be considered to have complied with the requirements of subsections (a) and (b); provided that the person includes all bottomfishing activity conducted in both state and federal waters, on the federal report. Persons who have not included their bottomfishing activity in state waters on the federal report or who are not in compliance with the federal requirements shall be considered to be in violation of subsections (a) and (b), respectively.”

[Eff:] (Auth: HRS §187A-8) (Imp: §187A-8)

3. 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, \$25;

(2) All other persons, \$50.

(3) Duplicate license, \$0.50.

(d) Beginning September 1, 1999, the] (c) The fee for the commercial marine license shall be:

(1) Residents, \$50;

(2) All other persons, \$200;

(3) Duplicate license, \$10.

(d) The department may require persons issued the commercial marine license to submit reports of their fishing activity. The reports shall be submitted to the department monthly; provided that persons taking bottomfish in the main

Hawaiian islands shall, in addition to their monthly report, submit trip reports of their bottomfish fishing activity. The monthly and trip reports shall be subject to section 13-74-2, section 189-3, HRS, or as may be otherwise provided by law.” [Eff: 8/12/93; am 1/15/99; am](Auth: HRS §§189-2, 189-3) (Imp: HRS §§189-2, 189-3)

4. Chapter 13-94, Hawaii Administrative Rules, is amended by adding a new section 13-94-11 to read as follows:

“§13-94-11 Closed fishing season. (a) The board of land and natural resources authorizes the department of land and natural resources to establish a closed fishing season for bottomfish.

(b) The department shall announce a closed fishing season for bottomfish for state marine waters when closure is needed due to the attainment of a catch limit for bottomfish, as determined and announced by the National Marine Fisheries Service, and agreed to by the department.

(c) The department shall announce a closed fishing season at or near the attainment of the federally-determined catch limit for bottomfish in advance of the effective date if possible, that begins the closed fishing season period and shall advise the public when fishing can resume.

(d) It is unlawful for any person to fish for, possess, or sell bottomfish, or for any dealer to sell bottomfish during any closed fishing season except as provided in section 187A-6, HRS, and section 13-94-14.” [Eff :] (Auth: HRS §§187A-5, 187A-6, 189-6) (Imp: HRS §§187A-5, 187A-6, 189-6)

5. Chapter 13-94, Hawaii Administrative Rules, is amended by adding a new section 13-94-12 to read as follows:

“§13-94-12 Non-commercial bottomfish registration, reports, and compliance. (a) The requirements for a non-commercial bottomfish registration, reporting and compliance are provided in chapter 13-74.” [Eff :] (Auth: HRS §187A-8) (Imp: §187A-8)

6. Chapter 13-94, Hawaii Administrative Rules, is amended by adding a new section 13-94-14 to read as follows:

“§13-94-14 Exceptions. (a) It is unlawful for any person to take or possess bottomfish while in a vessel in the main Hawaiian islands during any closed season, as provided in section 13-94-11, except that a person with a valid

federal bottomfish fishing permit for the Northwestern Hawaiian Islands federal waters or for other waters under federal jurisdiction where bottomfish can be taken and a valid commercial marine license issued pursuant to section 13-74-20, may possess bottomfish caught from the above-described areas.

(b) It is unlawful for any person to sell bottomfish during any closed season, as provided in section 13-94-11, except that:

(1) A person with a valid federal bottomfish fishing permit for the Northwestern Hawaiian Islands federal waters or for other waters under federal jurisdiction where bottomfish can be taken and a valid commercial marine license issued pursuant to section 13-74-20, may sell bottomfish caught from the waters of the above-described areas;

(2) A commercial marine dealer with a valid special marine product license, issued pursuant to section 13-74-42, and proper receipts as required under section 189-11, HRS, may possess and sell bottomfish from the Northwestern Hawaiian Islands or for other waters under federal jurisdiction where bottomfish can be taken; and

(3) A commercial marine dealer with a valid special marine product license, issued pursuant to section 13-74-42, and proper receipts as required under section 189-11, HRS, may possess and sell bottomfish imported into the State.

(c) Persons issued a special activity permit pursuant to section 187A-6, HRS, or other exemptions provided by law, may be exempted from the provision of this chapter.” [Eff :] (Auth: HRS §§187A-6, 189-6) (Imp: HRS §§187A-6, 189-6)

7. Section 13-94-7, Hawaii Administrative Rules, is amended to read as follows:

“§13-94-7 Non-commercial bag limits. (a) A limit on the number of bottomfish that may be taken for non-commercial purposes shall be established to conserve bottomfish resources.

(b) Unless otherwise authorized by law, it is unlawful for any person[, without a current commercial marine license issued pursuant to section 13-74-20,] who possesses a valid federal non-commercial bottomfish fishing permit pursuant to section 13-94-12 to take or possess more than [five onaga, five ehu, or a combined total of five of both.] a combined total of five fish of any bottomfish species as listed in section 13-94-5 per non-commercial bottomfish fishing trip.

(c) This section shall not be applicable after September 1, 2008 or on a date announced by the department, whichever comes first. [Eff: 6/1/98; am] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

8. Section 13-94-2, Hawaii Administrative Rules, is amended by amending one and adding five new definitions to read as follows:

““Board” means [the] board [of the department] of land and natural resources.

“Bottomfishing activity” means those fishing activities associated with the taking of bottomfish while on a vessel.

“Commercial marine license” means a license issued pursuant to section 13-74-20.

“Department” means department of land and natural resources.

“Kona crab net” means a type of fishing gear consisting of a metal frame over which is stretched netting material, and that is deployed on the bottom with the kona crab being captured by entanglement on the netting material as the kona crab crawls over the net.

“Non-commercial bottomfish fishing trip” means a fishing trip, with the use of a vessel, whose purpose is to take bottomfish for non-commercial use. For the purposes of this section, this definition shall apply when none of the catch of bottomfish is sold or intended for sale or no individual on the vessel has been issued a valid commercial marine license. [Eff: 6/1/98, am] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

9. Section 13-94-6, Hawaii Administrative Rules, is amended by amending subsection (b) to read as follows:

“§13-94-6 Restricted bottomfish fishing gears. ***

(b) Except as may be otherwise authorized by law, it is unlawful for any person, while on board a vessel, to possess both bottomfish and any trap, trawl, bottomfish longline, or net other than scoop net or Kona crab net.” [Eff 6/1/98, am] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

10. Section 13-94-8, Hawaii Administrative Rules, is amended to read as follows:

“§13-94-8 Bottomfish restricted fishing areas. (a) The department will restrict fishing in certain areas to conserve the spawning populations of bottomfish.

(b) To aid enforcement of this section, the department intends to restrict all fishing for and possession of bottomfish within the restricted fishing areas. It is unlawful for any person to take or possess bottomfish while in a vessel that is drifting or anchoring within any bottomfish restricted fishing area, except in times of emergencies or as may be otherwise authorized by law.

(c) The department will gather and consider the following information when selecting the bottomfish restricted fishing areas:

- (1) Identify the fishing areas where spawning onaga and ehu are caught;
- (2) Restrict fishing in about twenty percent of the known fishing areas where spawning onaga and ehu are caught;
- (3) Distribute the bottomfish restricted fishing areas in the most effective manner to consider the potential benefits and limit negative impacts on bottomfish fishing opportunities;
- (4) Suggestions from bottomfish fishers statewide; and
- (5) Any other relevant information.

(d) Due to the critical need of some bottomfish species for conservation measures, the department may need to respond quickly to establish or modify bottomfish restricted fishing areas. The bottomfish restricted fishing areas shall be established or amended by formal board action at a publicly noticed meeting. The bottomfish restricted fishing areas are attached at the end of this chapter as Exhibit A, entitled the “Bottomfish Restricted Fishing Areas” 4/24/98, or as may be amended by subsequent board action and a copy of the amended Exhibit A shall be filed with the Office of the Lieutenant Governor.

[(e) The department will, in consultation with fishermen and other relevant persons, evaluate the bottomfish restricted fishing areas no later than July 1, 2003 to monitor their effectiveness and proceed to establish or amend the onaga and ehu restricted areas, as necessary.]” [Eff: 6/1/98; am] (Auth: HRS §§ 187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

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

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

13. The amendments to chapters 13-74 and 13-94, 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.

Laura H. Thielen, Chairperson
Board of Land and Natural Resources

APPROVED AS TO FORM:

Deputy Attorney General