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

1. Section 13-74-1, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

""Bottomfish fishing activity" means those fishing activities associated with the taking of bottomfish while on a vessel."

2. Section 13-74-1, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

""Trip" means any bout of fishing activity occurring in state marine waters in the course of a one way or round trip, and generally includes when a vessel has left port or shore until it puts into port or goes ashore, even if not to the point of origin."

3. 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 officer has probable cause, as provided by law, to believe that such 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 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 as a condition of any license or permit, the report shall be timely submitted 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. A trip report includes such information but is not limited to: start and end dates of the trip, locations fished, hours spent fishing at each location; numbers, kinds and weights of aquatic life caught, released, or lost to predators; 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 a subpoena issued by the department of the attorney general, 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-5, 187A-5.5, 187A-15, 188-37, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-3, 189-3.5, 189-6, 189-10)

(Imp: HRS §§187A-2, 187A-5, 187A-12.4, 187A-

15, 188-37, 188-44, 188-45, 188-50, 188-53, 188-57, 189-2, 189-3, 189-3.5, 189-6, 189-10)

4. 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 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. 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 ] (Auth: HRS §§189-2, 189-3, 189-3.5) (Imp: HRS §§189-2, 189-3, 189-3.5)

5. Section 13-94-2, Hawaii Administrative Rules, is amended by amending the definition of "board" to read:

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

6. Section 13-94-2, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

""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, as defined in section 13-95-1, being captured by entanglement on the netting material."

7. Section 13-94-5, Hawaii Administrative Rules, is amended to read as follows:

"§13-94-5 Bottomfish species. For the purposes of this chapter, the following species are bottomfish:

(1) ʻUlaʻula koaʻe, ruby or longtail snapper, or onaga (*Etelis coruscans*);
(2) ʻUlaʻula or ehu (*Etelis carbunculus*);
(3) Kalekale (*Pristipomoides sieboldii*);
(4) ʻOpakapaka (*Pristipomoides filamentosus*);
(5) ʻUkikiki or gindai (*Pristipomoides zonatus*);
(6) Hapuʻu, hapuʻupuʻu, or Hawaiian grouper (*Epinephelus quernus*); and
(7) Lehi or rusty jobfish (*Aphareus rutilans*)."

[Eff: 6/1/98; am ] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

8. Section 13-94-6, Hawaii Administrative Rules, is amended to read as follows:

"§13-94-6 Restricted bottomfish fishing gears.

(a) Certain fishing gears shall be prohibited to restrict their use in the taking of bottomfish. Except as may be otherwise authorized by law, it is unlawful for any person to take bottomfish with any trap, trawl, bottomfish longline or net; provided that scoop nets may be used to bring on board a vessel any bottomfish that has already been caught by authorized fishing gear.

(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)

9. 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,] to take or possess more than [five onaga, five ehu, or a combined total of five of both.]a combined total of five bottomfish per day." [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]emergency 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]12/8/06, 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. Section 13-94-9, Hawaii Administrative Rules, is amended to read as follows:

"§13-94-9 Bottomfish fishing vessel identification number. (a) The department may register, and assign a bottomfish fishing vessel identification number to, any vessel used to fish for bottomfish. The purpose of the number is to enable identification of vessels used to fish for bottomfish from a distance while on the open ocean. The bottomfish fishing vessel identification number shall be valid for a one year period from the date registered, and must be annually renewed. It is unlawful for the vessel owner to take bottomfish from a vessel with a vessel identification number that does not have current registration."

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[Eff: 6/1/98, am ] (Auth: §187A-5) (Imp: §187A-5)

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

"§13-94-11 Bottomfish fishing seasons, other restrictions. (a) There is established an annual bottomfish fishing season for the taking of bottomfish in the main Hawaiian islands to prevent overfishing in this fishery.

(b) The board shall approve a closure of the fishing season for bottomfish in state marine waters when closure is needed in order to match a federal closed season, or is dictated when a catch limit is reached either by a total fishing quota or by

individual quotas, as determined and announced by the National Marine Fisheries Service.

(c) While a bottomfish fishing season is closed, it is unlawful for any person to fish for, possess, or sell bottomfish, or for any dealer to sell bottomfish, except as provided in section 13-94-14.

(d) When a bottomfish fishing season is open, any person may take, possess, and sell bottomfish, subject to the provisions of this chapter, and as may be otherwise provided by law." [Eff ] (Auth: HRS §§187A-5, 187A-5.5, 187A-6, 189-6) (Imp: HRS §§187A-5, 187A-5.5, 187A-6, 189-6)

13. 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) Notwithstanding the provisions of section 13-94-11(d), while a bottomfish closed fishing season is in effect, a person with a valid federal bottomfish fishing permit for the Northwestern Hawaiian Islands federal waters, and a valid commercial marine license, may take and possess bottomfish from the above-described area.

(b) Notwithstanding the provisions of section 13-94-11(d), while a bottomfish closed fishing season is in effect, a person may sell bottomfish, with:

(1) A valid federal bottomfish fishing permit for the Northwestern Hawaiian Islands federal waters, and a valid commercial marine license, provided that the bottomfish were caught from the waters of the above-described area;

(2) A valid special marine product license under section 13-74-42 and proper receipts as required under section 189-11, HRS, provided that the bottomfish were caught from the waters of the above-described areas or lawfully imported into the State; or

(3) A valid aquaculture license under section 13-74-43 or valid license to sell reared

species under section 13-74-44.

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

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

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

16. 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.

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

APPROVED FOR PUBLIC HEARING:

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Deputy Attorney General