

JAN 25 2012

A BILL FOR AN ACT

RELATING TO AQUATIC RESOURCES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to title 12, subtitle 5, to be
3 appropriately designated and to read as follows:

4 **"CHAPTER**

5 **SPEARFISHING**

6 **§ -1 Definitions.** As used in this chapter, the
7 following terms shall have the following respective meanings,
8 unless the context requires otherwise:

9 "Aquatic life" means any type or species of mammal, fish,
10 amphibian, reptile, mollusk, crustacean, arthropod,
11 invertebrate, coral, or other animal that inhabits the
12 freshwater or marine environment, and includes any part,
13 product, egg, or offspring thereof; or freshwater or marine
14 plants, including seeds, roots, and other parts thereof.

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

17 "Spear" means any device or implement, excluding dive
18 knives, either hand held, released completely by the user, or



1 attached by line to another device, which is used to impale
2 aquatic life by means of a pointed or sharpened tip.

3 "Speared" means pierced, impaled, penetrated, stuck, or run
4 through by a sharp, pointed implement.

5 "Take" means to fish for, catch, or harvest, or to attempt
6 to fish for, catch, or harvest, aquatic life. The use of any
7 gear, equipment, tool, or any means to fish for, catch, capture,
8 or harvest, or to attempt to fish for, catch, capture, or
9 harvest aquatic life by any person who is in the water, or in a
10 vessel on the water, or on or about the shore where aquatic life
11 can be fished for, caught, or harvested, shall be construed as
12 taking.

13 "Underwater breathing apparatus" means any equipment
14 adapted, designed, or commonly used to enable a diver to breathe
15 while underwater, including but not limited to self contained
16 underwater breathing apparatus regulators, high pressure
17 cylinders, rebreathers, surface nexus underwater breathing
18 apparatuses, and hookah rigs.

19 **§ -2 Possession of underwater breathing apparatus and**
20 **spear prohibited.** No person who is in the water, in a vessel on
21 the water, or on or about the shore, shall concurrently possess



1 any spear and any underwater breathing apparatus other than a
2 snorkel, except as permitted under section -5.

3 **§ -3 Possession of underwater breathing apparatus and**
4 **speared aquatic life prohibited.** No person who is in the water,
5 in a vessel on the water, or on or about the shore, shall
6 concurrently possess any speared aquatic life and any underwater
7 breathing apparatus other than a snorkel, except as permitted
8 under section -5.

9 **§ -4 Taking of aquatic life with spear and underwater**
10 **breathing apparatus prohibited.** No person shall take any
11 aquatic life by spear while using any underwater breathing
12 apparatus, except as permitted under section -5. Possession
13 of a spear or any speared aquatic life concurrent with
14 possession of any underwater breathing apparatus shall
15 constitute prima facie, rebuttable evidence that a person is
16 guilty of a violation of this section.

17 **§ -5 Invasive species take permit.** (a) The department
18 may issue an invasive species take permit for the concurrent
19 possession and concurrent use of an underwater breathing
20 apparatus and a spear to take invasive species of aquatic life.
21 A permit issued pursuant to this section:



1 (1) Shall be valid for a period of up to twenty-four
2 hours;

3 (2) Shall specify the species of invasive aquatic life to
4 be taken by the permittee; and

5 (3) May include additional terms and conditions as the
6 department deems necessary for the purposes of this
7 chapter.

8 (b) Permittees shall consent to the inspection of any
9 cooler, fish bag, or other container capable of containing
10 speared aquatic life by any law enforcement officer or duly
11 authorized agent of the department while engaging in activities
12 authorized by the invasive species take permit.

13 (c) The department may revoke a permit for any violation
14 of this section, or of the terms and conditions of any permit
15 issued pursuant to this section. A person whose permit has been
16 revoked shall not be eligible to apply for another permit until
17 one year after the date of revocation.

18 (d) The department shall identify and maintain a list of
19 all invasive species of aquatic life for which a permit may be
20 obtained pursuant to this section.

21 **§ -6 Penalties.** (a) Any person who violates this
22 chapter shall be guilty of a petty misdemeanor and shall be



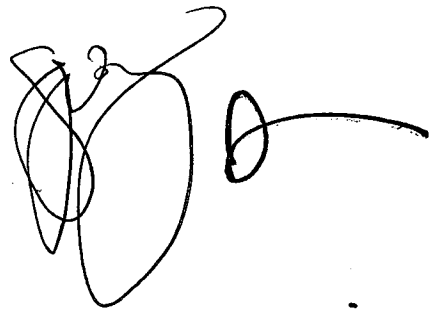
1 fined as provided in section 187A-12.5 for each separate
2 offense. Each date of violation shall constitute a separate
3 offense.

4 (b) Any equipment, article, instrument, aircraft, vehicle,
5 vessel, business record, or aquatic life used or taken in
6 violation of any provision of this chapter may be seized and
7 subject to forfeiture pursuant to section 199-7 and chapter
8 712A."

9 SECTION 2. This Act shall take effect upon its approval.

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AM N. W.



S.B. NO. 2897

Report Title:

Scuba Spearfishing; Aquatic Life; Penalties; DLNR

Description:

Prohibits concurrent possession of a spear or speared aquatic life and underwater breathing apparatus by any person who is in the water, in a vessel on the water, or on or about the shore. Prohibits taking of aquatic life by spear. Authorizes DLNR to issue permits allowing possession and use of a spear to take non-native aquatic life, and exempts permit holders from penalties. Establishes civil and criminal penalties for each separate offense and authorizes asset forfeiture.

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