

CHAPTER 187A
AQUATIC RESOURCES

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Law Journals and Reviews

Protecting Hawai'i's Fisheries: Creating an Effective Regulatory Scheme to Sustain Hawai'i's Fish Stocks. 29 UH L. Rev. 243.

"PART I. GENERAL PROVISIONS

§187A-1 Definitions. As used in this subtitle, unless the context indicates otherwise:

"Aquaculture" means the propagation, cultivation, or farming of aquatic plants and animals in controlled or selected environments for research purposes, commercial purposes, or stocking purposes.

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

"Board" means the board of land and natural resources.

"Commercial marine dealer" means any person who sells or exchanges, or who is an agent in the transfer of marine life obtained directly from a commercial marine licensee, or any commercial marine licensee who sells or exchanges marine life at retail.

"Commercial marine license" means a license issued to take marine life within or outside the State for commercial purpose.

"Commercial marine licensee" means a person who has been issued a commercial marine license pursuant to section 189-2.

"Commercial purpose" means the taking of marine life for profit or gain or as a means of livelihood where the marine life is taken in or outside of the State, or where the marine life is sold, offered for sale, landed, or transported for sale anywhere in the State.

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

"Fishing" or "to fish" means catching, taking, or harvesting, or attempting to catch, take, or harvest, aquatic life. The use of a pole, line, hook, net, trap, spear, or other gear which is designed to catch, take, or harvest aquatic life, by any person who is in the water, or in a vessel on the water,

or on or about the shore where aquatic life can be caught, taken, or harvested, shall be deemed to be fishing.

"Harvest" means the taking and retaining of marine life by any means whatsoever.

"Marine life" means any type or species of saltwater fish, shellfish, mollusks, crustaceans, coral, or other marine animals, including any part, product, egg, or offspring thereof; or seaweeds or other marine plants, including any part, product, seed, or root thereof.

"Qualified aquaculturist" means a person, or association of persons, actively engaged in aquaculture farming, aquaculture produce processing, or aquaculture product development activities.

"Shark" means any member of the class Chondrichthyes, including but not limited to: inshore species of galapagos shark (*Carcharhinus galapagensis*), reef blacktip shark (*Carcharhinus melanopterus*), gray reef shark (*Carcharhinus amblyrhynchos*), big-nosed shark (*Carcharhinus altimus*), tiger shark (*Galeocerdo cuvier*), blacktip shark (*Carcharhinus limbatus*), smooth hammerhead shark (*Sphyrna zygaena*), reef whitetip shark (*Triaenodon obesus*), scalloped hammerhead shark (*Sphyrna lewini*), sandbar shark (*Carcharhinus plumbeus*), offshore species of white shark (*Carcharodon carcharias*), shortfin mako shark (*Isurus oxyrinchus*), silky shark (*Carcharhinus falciformis*), blue shark (*Prionace glauca*), whale shark (*Rhincodon typus*), thresher shark (*Alopias vulpinus*), oceanic whitetip shark (*Carcharhinus longimanus*), cookie cutter shark (*Isistius brasiliensis*), and megamouth shark (*Megachasma pelagios*). [L 1985, c 94, pt of §1; am L 1991, c 160, §§1, 4; am L 2000, c 277, §3; am L 2001, c 177, §2]

" **[§187A-1.5] State marine waters.** As used in this chapter, state marine waters shall be defined as 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, notwithstanding any law to the contrary. [L 1990, c 126, §1]

" **[§187A-1.6] Applicability of statutes and rules.** This subtitle and any rules under this subtitle relating to fishing which are applicable to state marine waters shall also apply to the following persons in waters outside state marine waters but within the federal conservation zone:

- (1) Residents of the State;
- (2) Any commercial marine licensee; and
- (3) Any permittee or licensee under this subtitle. [L 1991, c 160, §2]

" **§187A-2 Powers and duties of department.** The department shall:

- (1) Manage and administer the aquatic life and aquatic resources of the State;
- (2) Establish and maintain aquatic life propagating station or stations;
- (3) Establish, manage, and regulate public fishing areas, artificial reefs, fish aggregating devices, marine life conservation districts, shoreline fishery management areas, refuges, and other areas pursuant to title 12;
- (4) Subject to this title, import aquatic life for the purpose of propagating and disseminating the same in the State and the waters subject to its jurisdiction;
- (5) Distribute, free of charge, as the department deems to be in the public interest, aquatic life, for the purpose of increasing the food supply of the State; provided that when, in the discretion of the department, the public interest shall not be materially interfered with by so doing, the department may propagate and furnish aquatic life to private parties, upon such reasonable terms, conditions, and prices determined by the department;
- (6) Gather and compile information and statistics concerning the habitat and character of, and increase and decrease in, aquatic resources in the State, including the care and propagation of aquatic resources for protective, productive, and aesthetic purposes, and other useful information, which the department deems proper;
- (7) Enforce all laws relating to the protecting, taking, killing, propagating, or increasing of aquatic life within the State and the waters subject to its jurisdiction; and
- (8) Formulate and from time to time recommend to the governor and legislature such additional legislation necessary or desirable to implement the objectives of title 12. [L 1985, c 94, pt of §1; am L 1998, c 176, §7]

Law Journals and Reviews

Protecting Hawai'i's Fisheries: Creating an Effective Regulatory Scheme to Sustain Hawai'i's Fish Stocks. 29 UH L. Rev. 243.

" **§187A-3 REPEALED.** L 1998, c 176, §9.

" **[\$187A-3.5] Aquaculturist license and license to sell prohibited aquatic life.** (a) Notwithstanding the provisions in subtitle 5 of title 12, or administrative rules adopted thereunder, the department may issue to any qualified aquaculturist a license to fish, possess, rear, and sell any aquatic life whose fishing, possession or sale is prohibited by closed season, minimum size, or bag limit; provided that the qualified aquaculturist rears or reared the aquatic life in an aquaculture facility.

(b) The department may further issue to any person a license to possess or sell or offer for sale any aquatic life whose possession or sale is prohibited by a closed season, minimum size, or bag limit; provided that the aquatic life was reared by a licensed qualified aquaculturist in an aquaculture facility pursuant to subsection (a).

(c) The department may adopt rules pursuant to chapter 91, to implement this section by establishing the licenses, fees, and terms or conditions necessary for the fishing, possession, or sale of aquatic life whose fishing, possession, or sale is prohibited by closed season, minimum size, or bag limit. [L 1995, c 111, §1]

" **§187A-4 Administrator.** The board shall appoint an administrator of aquatic resources who shall have charge, direction, and control of all matters relating to aquatic resources management, conservation, and development activities under this title, and such other matters as the board may direct. The administrator shall be trained and educated in natural resource management. [L 1985, c 94, pt of §1]

" **§187A-5 Rules.** Subject to chapter 91, the department shall adopt, amend, and repeal rules for and concerning the protection and propagation of introduced and transplanted aquatic life, or the conservation and allocation of the natural supply of aquatic life in any area. The rules may include the following:

- (1) Size limits;
- (2) Bag limits;
- (3) Open and closed fishing seasons;
- (4) Specifications and numbers of fishing or taking gear which may be used or possessed; and
- (5) Prescribe and limit the kind and amount of bait that may be used in taking aquatic life, and the conditions for entry into areas for taking aquatic life.

The rules may vary from one county to another and may specify certain days of the week or certain hours of the day in designating open seasons. All rules shall have the force and effect of law. Any person who violates any of the rules adopted pursuant to this section shall be guilty of a petty misdemeanor and upon conviction thereof shall be punished as provided by section 188-70. [L 1985, c 94, pt of §1]

Law Journals and Reviews

Method is Irrelevant: Allowing Native Hawaiian Traditional and Customary Subsistence Fishing to Thrive. 32 UH L. Rev. 203.

" **[§187A-5.5] Consistency of state and federal fisheries regulations.** (a) The department shall adopt administrative rules pursuant to chapter 91 for fisheries located in both state and federal waters, that are equivalent to and consistent with federal fisheries regulations for the same waters, to create uniform, complementary, and comprehensive management measures to improve efficiencies in management and effectiveness of enforcement, under the following conditions:

- (1) A federal agency with responsibility for the management of fisheries in federal marine waters around the Hawaiian Islands has:
 - (A) Declared that a fishery is in a state of overfishing, is overfished, or is in some other state of unsustainability; and
 - (B) Promulgated or amended federal fisheries regulations to correct the decline in the fishery; and
- (2) The fishery occurs in both state and federal marine waters.

(b) The board shall annually establish a fishing season, a total fishing quota, or individual fishing quotas, or adopt rules pursuant to chapter 91 relating to bag, size, and gear limits, consistent with federal fisheries regulations that are adopted or declared by the federal government to prevent overfishing and with similar state rules adopted under subsection (a).

(c) If the federal fisheries agency declares a fishery to be sustainable and amends or repeals its regulations accordingly, the department shall amend or repeal any rules for that fishery adopted under subsection (a).

(d) Nothing contained in this section shall be construed to prohibit any person from exercising native Hawaiian gathering rights or traditional cultural practices authorized by law or

permitted by the department pursuant to article XII, section 7, of the Hawaii constitution.

(e) This section shall not apply to the Papahānaumokuākea Marine National Monument.

(f) As used in this section, unless the context clearly indicates otherwise:

"Declared" or "declares" means a public announcement made by a federal agency with the responsibility for the management of fisheries in federal marine waters around the Hawaiian Islands pursuant to the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (P.L. 94-265), as amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (P.L. 109-479), that a fishery in state marine waters is in a state of overfishing, overfished, or in some other state of unsustainability.

"Federal fisheries regulations" means regulations relating to the management of marine fisheries adopted by federal agencies such as the National Marine Fisheries Service or the United States Department of Commerce, and codified in the Code of Federal Regulations.

"Federal marine waters" means the Exclusive Economic Zone established by Presidential Proclamation 5030, 3 Code of Federal Regulations 22, dated March 10, 1983, and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from a baseline starting at the seaward boundary of state territorial seas extending seaward two hundred nautical miles.

"Fishery" or "fisheries" means one or more stocks of marine resources other than marine mammals and birds that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and any fishing for such stocks.

"Overfishing" or "overfished" means a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis. [L 2008, c 112, §1]

" **§187A-6 Special activity permits.** (a) Notwithstanding the provisions of any other law, the department may take aquatic life or possess or use any fishing gear for scientific, educational, management, or propagation purposes, for removal of aquatic species, or for implementing the powers and duties as described by section 187A-2; subject to chapter 195D. The department shall consider using chemicals or electrofishing devices only when it has determined that no other reasonable alternative would be appropriate. The application of chemicals

or operation of electrofishing devices shall be in accordance with established procedures and with the proper training to ensure that the intended results are achieved.

(b) Notwithstanding the provisions of any other law, the department may issue permits, not longer than one year in duration, to any person to take aquatic life, possess or use fishing gear, or engage in any feeding, watching, or other such non-consumptive activity related to aquatic resources, otherwise prohibited by law, in any part of the State, for scientific, educational, management, or propagation purposes, subject to chapter 195D and subject to those restrictions the department deems desirable. The department may revoke any permit for any infraction of the terms and conditions of the permit. Any person whose permit has been revoked shall not be eligible to apply for another permit until the expiration of one year from the date of revocation.

(c) The department may adopt rules pursuant to chapter 91 for the purpose of this section.

(d) For the purposes of this section, unless the context clearly indicates otherwise:

"Fishing gear" means any device, including the use of any chemical or electricity that is either designed to take aquatic life or could be used to take aquatic life. [L 1985, c 94, pt of §1; am L 1991, c 160, §3; am L 1992, c 96, §1; am L 2002, c 96, §1]

" **§187A-6.5 Release and confiscation of harmful aquatic life.** (a) No person shall release any live non-native fish or other live non-native aquatic life being held in an aquarium or other confinement for scientific study, exhibition, display, sale, or for any other purpose, into any waters of the State, except as provided in section 187A-2(4).

(b) The department or its agents may seize, confiscate, or destroy, as a public nuisance, any fish or other aquatic life found in any waters of the State and whose importation is prohibited or restricted pursuant to rules of the department of agriculture. [L 1993, c 256, §1; am L 1999, c 195, §2]

" **§187A-7 Expenditures.** (a) The department may expend all appropriations made for the purpose of effectuating the objects of title 12.

(b) To further the purposes of title 12, the department may:

- (1) Use lands set apart for the department's use by the governor; and
- (2) Accept gifts and contributions or enter into contracts. Gifts and contributions may be accepted

from, or contracts entered into with, public or private agencies or individuals. Any gifts and contributions accepted under this section to benefit sport fish or sport fishing shall be subject to the requirements specified under section 187A-9.5.

(c) All expenditures by the department shall be approved and certified by the board. [L 1985, c 94, pt of §1; am L 1993, c 143, §2]

" **§187A-8 Cooperation with other governmental authorities.** The department shall endeavor to secure the cooperation and assistance of and shall cooperate with the appropriate agency of the United States or other governmental authorities having an interest in the subject matter of title 12, in every way possible, for the promotion of the purposes of title 12. More specifically, the department may permit the appropriate agency of the United States or other governmental authorities to occupy any land or building and use any appliance, apparatus, or property held or controlled by the department, either independently or in conjunction with the department, upon such terms and conditions as the department and the agency may mutually agree. [L 1985, c 94, pt of §1]

" **§187A-9 Federal aid in sport fish restoration.** The State hereby assents to the provisions of the Federal Aid in Sport Fish Restoration (Dingell-Johnson/Wallop-Breaux) Act (64 Stat. 430, 16 U.S.C. §777), as amended. The department shall perform those acts as may be necessary to the conduct and establishment of cooperative aquatic life restoration, management, development, aquatic education, and recreational boating access projects, as defined in the Act of Congress and in compliance with the Act and regulations adopted by the Secretary of the Interior thereunder; provided that federal aid funds granted under the Act shall be used for the purposes of approved projects, and no funds accruing to the State from license fees paid by sport fishers, including any interest, dividend, or other income earned from the license fees, shall be diverted for any purpose other than as provided for in the Act and regulations adopted pursuant thereto. [L 1985, c 94, pt of §1; am L 1993, c 143, §3]

" **§187A-9.5 Sport fish special fund.** (a) There is established in the department a sport fish special fund.

(b) The following proceeds shall be retained by or transmitted to the department for deposit into the sport fish special fund:

- (1) Moneys collected as fees for sport fishing licenses and permits, attendance of aquatic resources education programs, use of public fishing areas or other fishing grounds for sport fishing purposes, and use of sport fisheries-related facilities;
 - (2) Moneys collected under the provision of any law or rule relating to the importation, taking, catching, or killing of any sport fish;
 - (3) Moneys, other than informers' fees authorized under section 187A-14, collected as fines or bail forfeitures for sport fishing violations of this chapter and chapters 188, 189, and 190;
 - (4) Moneys collected from the sale of any article purchased from the department related to sport fish or sport fishing;
 - (5) Any monetary contributions or moneys collected from the sale of non-monetary gifts to benefit sport fish or sport fishing; and
 - (6) Moneys derived from interest, dividend, or other income from the above sources.
- (c) Expenditures from the sport fish special fund shall be limited to the following:
- (1) For programs and activities to implement title 12, subtitle 5, including the provision of state funds to match federal grants under the Federal Aid in Sport Fish Restoration (Dingell-Johnson/Wallop-Breaux) Act (64 Stat. 430, 16 U.S.C. §777), as amended, for projects concerning sport fish;
 - (2) For acquisition of the use, development, or maintenance of trails and accessways into public fishing areas, fishery management areas, marine life conservation districts, or private lands where public sport fishing is authorized; and
 - (3) For research programs and activities concerning sport fish conservation and management. Research programs and activities conducted under this paragraph may be conducted by personnel of the department or through grants-in-aid to or contracts with the University of Hawaii or other qualified organizations or individuals.
- (d) The proceeds of the sport fish special fund shall not be used as security for, or pledged to the payment of principal or interest on, any bonds or instruments of indebtedness.
- (e) In addition to subsection (c), the department may use moneys in the sport fish special fund for the importation into, and the management, preservation, propagation, enforcement, and protection of sport fishes in, the State; provided that the

department, prior to authorizing expenditures or expending funds from the sport fish special fund, first shall attempt to use those funds to maximize the State's participation to secure federal funds under the Federal Aid in Sport Fish Restoration (Dingell-Johnson/Wallop-Breaux) Act, as amended.

(f) Nothing in this section shall be construed as prohibiting the funding with general funds or other funds of programs and activities to implement or enforce title 12, subtitle 5, concerning sport fish management and conservation. [L 1993, c 143, §1; am L 2002, c 86, §3]

" **§187A-10 Agents to sell licenses.** (a) The department may designate agents to sell fishing licenses in accordance with this section. Agents shall report all sales of licenses to the department monthly and not later than the fifteenth day of the month following the month covered by the report. Wilful failure to make a report shall be cause for cancellation of the agency and upon the cancellation a full accounting and settlement for all licenses shall be made forthwith. All fees collected shall be remitted to the department at the same time as the report of license sales is made. If the agents prepay for the licenses, then the fees collected shall be retained by agents, rather than remitted to the department.

(b) Agents shall receive ten per cent of the value of licenses sold. All reports on license sales shall be made on forms supplied by the department. The duly authorized agents of the department may administer oaths as required in license applications. Chapter 40 shall not apply to the agents. [L 1985, c 94, pt of §1; am L 1987, c 93, §1]

" **§187A-11 REPEALED.** L 2002, c 86, §8.

" **§187A-12 University of Hawaii may use land, etc.** The University of Hawaii shall have the privilege, free of charge, of using the land, buildings, apparatus, and appliances of the department for the purposes of a biological laboratory and for research and investigation in connection therewith, so far as the same can be done without material interference with the use of the same as an aquatic life propagation station or for other aquatic-resources activities. The university shall render to the department, in return therefor, such assistance as is reasonably practicable, in connection with the aquatic life propagation station or for other aquatic-resources activities, and as may be mutually agreed upon. [L 1985, c 94, pt of §1]

" **[§187A-12.4 Misrepresentation or false statement in receipts and reports.]** Any person who knowingly misrepresents

any material fact or makes a false statement in any document required by subtitle 5 of title 12, or any rule adopted thereunder, shall be guilty of a petty misdemeanor and punished as provided by law. [L 1999, c 195, §1]

" **[\$187A-12.5] General administrative penalties.** (a) Except as otherwise provided by law, the board is authorized to set, charge, and collect administrative fines and to recover administrative fees and costs, including attorney's fees and costs, or bring legal action to recover administrative fines, fees, and costs, including attorney's fees and costs, or payment for damages or for the cost to correct damages resulting from a violation of subtitle 5 of title 12 or any rule adopted thereunder.

(b) For violations involving threatened or endangered species, the administrative fines shall be as follows:

- (1) For a first violation, a fine of not more than \$5,000;
- (2) For a second violation within five years of a previous violation, a fine of not more than \$10,000; and
- (3) For a third or subsequent violation within five years of the last violation, a fine of not more than \$15,000.

(c) For all other violations the administrative fines shall be as follows:

- (1) For a first violation, a fine of not more than \$1,000;
- (2) For a second violation within five years of a previous violation, a fine of not more than \$2,000; and
- (3) For a third or subsequent violation within five years of the last violation, a fine of not more than \$3,000.

(d) In addition to subsection (b), a fine of up to \$5,000 may be levied for each specimen of threatened or endangered aquatic life taken, killed, or injured in violation of subtitle 5 of title 12 or any rule adopted thereunder.

(e) In addition to subsection (c), a fine of up to \$1,000 may be levied for each specimen of all other aquatic life taken, killed, or injured in violation of subtitle 5 of title 12 or any rule adopted thereunder.

(f) Any criminal penalty for any violation of subtitle 5 of title 12 or any rule adopted thereunder shall not be deemed to preclude the State from recovering additional administrative fines, fees, and costs, including attorney's fees and costs. [L 1998, c 243, §1]

" **§187A-13 General penalty; community service.** (a) Any person violating this chapter or any rule adopted thereunder for which a penalty is not otherwise provided, shall be guilty of a

petty misdemeanor and, in addition to any other penalties, shall be fined not less than:

- (1) \$250 for a first offense;
- (2) \$500 for a second offense; and
- (3) \$1,000 for a third or subsequent offense.

(b) The court may require the defendant to complete an aquatic resources educational class administered by the department in addition to or in lieu of paying all or any part of any monetary fine authorized by this section.

(c) The court may direct the defendant to perform community service as administered by the department in lieu of paying any monetary fine authorized by this section. [L 1985, c 94, pt of §1; am L 1999, c 195, §3; am L 2016, c 67, §1]

" **§187A-14 Informer's fee.** One-half of the fine imposed and collected in all cases wherein the defendant has been convicted for a violation of subtitle 5 of title 12 or any rule adopted thereunder shall be paid to the person giving the information leading to the arrest of the person so convicted; provided that this section shall not apply if the informer is a regular salaried sheriff, deputy sheriff, police officer, warden or constable, or officer or agent of the department. [L 1985, c 94, pt of §1; am L 1989, c 211, §10; am L 1990, c 281, §11; am L 1999, c 195, §4]

" **§187A-15 Rights of inspection of catch.** Any agent of the department upon whom the board has conferred powers of police officers or any other enforcement officer of the State shall have the authority to conduct examinations and searches of:

- (1) The contents of any bag or container of any kind used to carry aquatic life; or
- (2) Any vehicle or conveyance used to transport aquatic life;

if such agent or officer has probable cause, as provided by law, to believe that such bag, container, vehicle, or conveyance contains evidence of a violation of subtitle 5 of title 12 or any rule adopted thereunder. No person shall refuse any enforcement officer of the department or any other enforcement officer of the State such examination and search. [L 1991, c 202, §1; am L 1999, c 195, §5]

"PART II. FISHING RIGHTS

§187A-21 Public fishing grounds. Except as otherwise provided by law, all fishing grounds appertaining to any government land or otherwise belonging to the government, except ponds, shall be and are forever granted to the people, for the

free and equal use by all persons; provided that for the protection of these fishing grounds, the department may manage and regulate the taking of aquatic life. [L 1985, c 94, pt of §1]

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Protecting Hawai'i's Fisheries: Creating an Effective Regulatory Scheme to Sustain Hawai'i's Fish Stocks. 29 UH L. Rev. 243.

" **§187A-22 Use of adjoining lands.** No person who has bought any government land, or obtains the land by lease or other title, has or shall have greater right than any other person over any fishing ground not included in the title, although adjacent to the land. [L 1985, c 94, pt of §1]

" **§187A-23 Konohiki rights.** (a) The fishing grounds from the reefs, and where there happens to be no reefs, from the distance of one geographical mile seaward of the beach at low watermark, in law, shall be considered the private fishery of the konohiki, whose lands by ancient regulations, belong to the same. These vested fishing rights for the private fishery must be established by proceedings in conformity with section 96 of the Organic Act, and for which judgment has been entered in any circuit court. The established private fishery shall not be disturbed, except to the extent of the reservations and prohibitions set forth in this section, or by law or rule.

(b) The konohiki shall be considered in law to hold the private fishery for the equal use by the konohiki and the tenants on their respective lands, and the tenants shall be allowed to take for home consumption or commercial purposes, any aquatic life of the fisheries, subject to the restrictions imposed by the konohiki as provided in this section, or by law or rule.

(c) A konohiki each year may set apart one given species or variety of aquatic life natural to the private fishery, by giving public notice by posting at least three written or printed notices in conspicuous places on the land or fishery, to the tenants and others residing on the land, signifying by name, the kind of aquatic life which has been set apart for exclusive use by the konohiki; provided that the konohiki may not reserve more than one kind of aquatic life, if the konohiki possesses other private fisheries which are immediately adjacent to each other. The notice shall be substantially in the following form:

NOTICE

Fishing for (name of aquatic life) in private fishery
is hereby prohibited between (specific period).

Konohiki.

The specific aquatic life set apart shall be exclusively for the use of the konohiki within the specified period, and neither the tenants nor others shall take the reserved aquatic life within the private fishery. The konohiki may bring legal action against any person to recover the value of the reserved aquatic life which has been taken within the private fishery.

(d) The konohiki, upon consultation with the tenants of their lands and in lieu of setting apart one given species or variety of aquatic life for exclusive use as allowed in this section, may prohibit during certain months of the year, all taking of aquatic life within the private fishery; provided that during the fishing season within the private fishery, the konohiki may exact up to one-third of the aquatic life taken within the private fishery from each fisher among the tenants. In such case, the konohiki shall give notice as prescribed in this section.

(e) If the specific aquatic life which has been reserved within the private fishery for exclusive use by the konohiki goes onto the public fishing grounds, such aquatic life may be taken by any person.

(f) The konohiki shall not have any power to impose any tax or restriction upon the tenants regarding the private fisheries, except as provided by this section, or by law or rule.

(g) The vested fishing rights for a private fishery when established may be condemned for use as a public ground; provided that the private fishery shall continue until judgment is entered upon the condemnation proceedings and the compensation named therein has been paid or tendered to the konohiki, or others interested therein, or until an order of possession has been issued as provided in sections 101-28 to 101-32.

(h) Any person who takes any aquatic life which has been set apart for the konohiki's exclusive use or to which the konohiki is otherwise entitled as provided in this section or who aids and abets the taking or who without lawful authority fishes in or upon the private fishery shall be punished as provided in section 187A-13. [L 1985, c 94, pt of §1]

Note

The amendment made by L 2014, c 218, §8 is not included in this section.

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Method is Irrelevant: Allowing Native Hawaiian Traditional and Customary Subsistence Fishing to Thrive. 32 UH L. Rev. 203.

"[PART III.] ALIEN AQUATIC ORGANISMS

[\$187A-31] Definitions. For the purposes of this part, "high risk vessel" includes fishing and recreational vessels and floating structures, such as barges, dry docks, drilling rigs, and cranes, which have spent extended periods of time tied up in out-of-state ports. [L 2000, c 134, pt of §2]

" **[\$187A-32] Alien aquatic organisms; lead agency; rules.**
(a) The department is designated as the lead state agency for preventing the introduction and carrying out the destruction of alien aquatic organisms through the regulation of ballast water discharges and hull fouling organisms. The department may establish an interagency team to address the concerns relating to alien aquatic organisms.

(b) The department may adopt rules in accordance with chapter 91, including penalties, to carry out the purposes of this part. The rules may include standards for the department and the United States Coast Guard to use as part of their respective inspection protocols. The rules may also include implementation of a course of action in relation to the arrival or pending arrival of a high risk vessel.

(c) The governor may enter into an agreement with the United States Secretary of Transportation to carry out the purposes of this part, including but not limited to the enforcement of state law. [L 2000, c 134, pt of §2]

"[PART IV.] AQUATIC MITIGATION BANKS

[\$187A-41] Aquatic mitigation banking. The department is authorized to establish and operate aquatic mitigation banks, the purpose of which shall be to restore, create, enhance, or preserve aquatic habitats or resources as compensatory mitigation where a person is required to provide compensatory mitigation prospectively and the use of banked mitigation is approved by the agency requiring mitigation, or for past damages to aquatic habitats or resources. [L 2016, c 211, pt of §2]

" **[§187A-42] Rules.** The department may adopt rules pursuant to chapter 91 necessary for the purposes of this part. [L 2016, c 211, pt of §2]