

CHAPTER 188
FISHING RIGHTS AND REGULATIONS

Part I. Fishing Rights--Repealed

Section

188-1 to 14 Repealed

Part II. Fishing Regulations, Generally

- 188-21, 22 Repealed
- 188-22.5 State marine waters
- 188-22.6 Designation of community-based subsistence fishing area
- 188-22.7 Miloli'i fisheries management area
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 - 188-23 Possession or use of explosives, electrofishing devices, and poisonous substances in state waters prohibited; exception
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 - 188-31 Permits to take aquatic life for aquarium purposes
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 - 188-34 Fishing in Honolulu harbor, Hilo harbor, restricted
 - 188-35 Fishing in certain waters
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 - 188-37 Fishing in the Northwestern Hawaiian Islands
- 188-38, 39 Repealed
- 188-39.5 Manta rays; prohibitions, penalties and fines
- 188-40, 40.5 Repealed
- 188-40.6 Shark feeding; prohibitions; exceptions; penalties
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 - 188-54 to 56 Repealed
 - 188-57 Licenses for certain crustaceans
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- 188-58.5 Female ula (spiny lobsters), Kona crabs, and Samoan crabs; taking or killing prohibited
 - 188-59 to 67 Repealed

188-68 Permits for coral and rock with marine life attached
188-70 Penalties
188-71 Harassment of fishermen; prohibition

Cross References

Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.

Taking a monk seal prohibited, see §195D-4.5.

"PART I. FISHING RIGHTS--REPEALED

§§188-1 to 14 REPEALED. L 1985, c 94, §7.

"PART II. FISHING REGULATIONS, GENERALLY

Cross References

Nonapplicability of fishing regulations to patients of Kalaupapa, see §326-29.

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.

§§188-21, 22 REPEALED. L 1981, c 85, §§31, 32.

" **[\$188-22.5] 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, §2]

" **[\$188-22.6] Designation of community-based subsistence fishing area.** (a) The department of land and natural resources may designate community-based subsistence fishing areas and carry out fishery management strategies for such areas, through administrative rules adopted pursuant to chapter 91, for the purpose of reaffirming and protecting fishing practices customarily and traditionally exercised for purposes of native Hawaiian subsistence, culture, and religion.

(b) Proposals may be submitted to the department of land and natural resources for the department's consideration. The proposal shall include:

- (1) The name of the organization or group submitting the proposal;
- (2) The charter of the organization or group;
- (3) A list of the members of the organization or group;

- (4) A description of the location and boundaries of the marine waters and submerged lands proposed for designation;
- (5) Justification for the proposed designation including the extent to which the proposed activities in the fishing area may interfere with the use of the marine waters for navigation, fishing, and public recreation; and
- (6) A management plan containing a description of the specific activities to be conducted in the fishing area, evaluation and monitoring processes, methods of funding and enforcement, and other information necessary to advance the proposal.

Proposals shall meet community-based subsistence needs and judicious fishery conservation and management practices.

(c) For the purposes of this section:

- (1) "Native Hawaiian" means any descendant of the races inhabiting the Hawaiian Islands prior to 1778; and
- (2) "Subsistence" means the customary and traditional native Hawaiian uses of renewable ocean resources for direct personal or family consumption or sharing. [L 1994, c 271, §1]

Law Journals and Reviews

Propagating Cultural Kīpuka: The Obstacles and Opportunities of Establishing a Community-Based Subsistence Fishing Area. 31 UH L. Rev. 193.

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

" **[§188-22.7] Miloli'i fisheries management area.** The Miloli'i fisheries management area, as defined in the administrative rules of the department of land and natural resources, shall be designated a community-based subsistence fishing area, as provided in section 188-22.6. The department of land and natural resources shall adopt management strategies and other rules consistent with section 188-22.6 that:

- (1) Ensure long-term sustainable populations of fish and other marine species; and
- (2) Encourage the scientific study and understanding of subsistence fishing management. [L 2005, c 232, §2]

Law Journals and Reviews

Propagating Cultural Kipuka: The Obstacles and Opportunities of Establishing a Community-Based Subsistence Fishing Area. 31 UH L. Rev. 193.

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

" **[\$188-22.8] Limu management area.** (a) There is established a limu management area from the shoreline and extending one hundred fifty feet seaward in Ewa beach from the gunnery range to the boat ramp on Muumuu street.

(b) No person, including a person with a commercial fishing license, shall pick, gather, harvest, or otherwise take limu from within the limu management area beginning no sooner than January 1, 2007; provided that this section shall not apply to a person who has obtained a special permit to pick limu for purposes of replanting.

(c) Beginning no sooner than January 1, 2010, a person, including a person with a commercial fishing license, may hand-pick limu in the limu management area from 6:00 a.m. to 6:00 p.m., only during the months of July, November, and December of each year. A maximum of one pound for all types of limu combined may be hand-picked per day by any person, including any person possessing a commercial fishing license.

(d) This section shall not apply to any person exercising native Hawaiian gathering rights and traditional cultural practices as authorized by law or as permitted by the department of land and natural resources pursuant to article XII, section 7 of the Hawaii state constitution.

(e) The department of land and natural resources shall adopt rules pursuant to chapter 91 necessary for the purposes of this section. [L 2006, c 293, §2]

" **[\$188-22.9] Ha'ena community-based subsistence fishing area; restrictions; regulations.** (a) There is designated the Ha'ena community-based subsistence fishing area on the northwestern coast of Kauai, which shall consist of all state waters and submerged lands bounded by:

- (1) The shoreline of the Ha'ena district;
- (2) A line that follows an imaginary extension of the boundary between Hae'na state park and Na Pali state park that extends seaward for one mile from the shoreline;
- (3) An irregular line one mile offshore that is parallel to the contours of the shoreline; and
- (4) A line that follows an imaginary extension of the boundary between Hae'na and Wainiha, as specified in

the tax map of the county of Kauai, that extends seaward for one mile from the shoreline.

(b) In addition to the provisions of this chapter, the following uses or activities shall be regulated in the Ha'ena community-based subsistence fishing area:

- (1) Any activities with a commercial purpose, as defined in section 187A-1;
- (2) The issuance of any commercial marine license, as defined in section 187A-1;
- (3) The issuance of any aquarium fish permits, pursuant to section 188-31;
- (4) Fishing with the use of gill nets;
- (5) Fishing with self-contained underwater breathing apparatus and spears; and
- (6) Any other use or activity that the department of land and natural resources, in consultation with the inhabitants of the ahupua'a of Ha'ena and other interested parties, deems appropriate.

(c) The department of land and natural resources, as soon as practical, shall consult with as broad a base as possible, group of inhabitants of the ahupua'a of Ha'ena and other interested parties to establish rules for the Ha'ena community-based subsistence fishing area, to include but not be limited to:

- (1) A determination of fishing practices that are customarily and traditionally exercised for purposes of native Hawaiian subsistence, culture, and religion in the fishing area;
- (2) A management plan recognizing existing marine activities permitted by the department of land and natural resources and containing a description of specific activities to be conducted in the fishing area, including evaluation and monitoring processes and methods of funding and enforcement;
- (3) Limits on the harvest of aquatic life, as those terms are defined in section 187A-1, in the fishing area;
- (4) The establishment of no harvesting zones within the fishing area without depriving ahupua'a inhabitants of access to traditional sources of subsistence; and
- (5) A process for the expansion of the fishing area to include other ahupua'a.

The department of land and natural resources shall adopt rules pursuant to chapter 91 necessary for the purpose of this section. [L 2006, c 241, §3]

Propagating Cultural Kipuka: The Obstacles and Opportunities of Establishing a Community-Based Subsistence Fishing Area. 31 UH L. Rev. 193.

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

" **§188-23 Possession or use of explosives, electrofishing devices, and poisonous substances in state waters prohibited; exception.** (a) It is unlawful to possess or use on, in, or near state waters, any explosives, electrofishing devices, or any source of electrical energy with appurtenant devices for the introduction of electricity into the water, for the purpose of taking aquatic life, except under the terms and conditions of a permit first obtained by the user from the department. The department may issue permits for the possession or use of electrofishing devices consistent with other legal requirements.

(b) It is unlawful to deposit in, permit to pass into, or place where it can pass into the state waters for the purpose of taking aquatic life any of the following:

- (1) Any petroleum, coal or oil tar, lampblack, aniline, asphalt, bitumen, or residuary product of petroleum or carbonaceous material or substance;
- (2) Hypochlorous acid or any of its salts, including bleaches commonly sold under various trade names, such as Clorox and Purex, and bleaching powders;
- (3) Preparations containing rotenone, tephrosin, saponins, or plant materials from *Barringtonia acutangula*, *Barringtonia asiatica*, *Barringtonia racemosa*, *Barringtonia longiracemosa*, *Barringtonia speciosa*, *Careya australis*, *Cocculus ferrandianus*, *Cocculus trilobus*, *Cocos nucifera*, *Hura crepitans*, *Hura polyandra*, *Piscidia acuminata*, *Piscidia carthagenensis*, *Piscidia erythrina*, *Planchonia careya*, *Tephrosia purpurea*, *Tephrosia piscatoria*, *Wikstroemia*; and
- (4) Any other substance or material deleterious to aquatic life; except under the terms and conditions of a permit first obtained by the user from the department.

The department may issue permits to allow the possession or use of stated amounts of these substances poisonous to aquatic life if the department deems the amount in possession is for legitimate purposes or in quantities too small to harm aquatic life.

The possession or use of these substances without a permit by any person on, in, or near the water where aquatic life can be taken, or aboard any fishing vessel or boat is prima facie evidence of a violation of this section.

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.

Nothing in this section shall be held or construed to be an amendment of the rules of the department of transportation. [L 1888, c 30, §1; RL 1925, §761; am L 1925, c 41, §2; RL 1935, §366; RL 1945, §1221; RL 1955, §21-54; HRS §188-23; am L 1981, c 85, §33; am L 1982, c 147, §9; am L 2002, c 96, §2]

" **§188-24 REPEALED.** L 1981, c 85, §34.

" **§188-25 REPEALED.** L 1999, c 85, §§5, 17; L 2002, c 151, §1.

" **§§188-26, 27 REPEALED.** L 1981, c 85, §§36, 37.

" **§188-28 REPEALED.** L 1977, c 129, §3.

" **§§188-28.5 to 30.5 REPEALED.** L 1999, c 85, §§6 to 11, 17; L 2002, c 151, §1.

" **§188-31 Permits to take aquatic life for aquarium purposes.** (a) Except as prohibited by law, the department, upon receipt of a written application, may issue an aquarium fish permit, not longer than one year in duration, to use fine meshed traps, or fine meshed nets other than throw nets, for the taking of marine or freshwater nongame fish and other aquatic life for aquarium purposes.

(b) Except as prohibited by law, the permits shall be issued only to persons who can satisfy the department that they possess facilities to and can maintain fish and other aquatic life alive and in reasonable health.

(c) It shall be illegal to sell or offer for sale any fish and other aquatic life taken under an aquarium fish permit unless those fish and other aquatic life are sold alive for aquarium purposes.

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

(d) For the purposes of this section:

(1) "Aquarium purposes" means to hold salt water fish, freshwater nongame fish, or other aquatic life alive in a state of captivity as pets, for scientific study, or for public exhibition or display, or for sale for these purposes; and

(2) "Aquarium fish permit" means a permit issued by the board for the use of fine mesh nets and traps to take salt water fish, freshwater nongame fish, or other aquatic life for aquarium purposes. [L 1953, c 124, §§1, 2, 3; RL 1955, §21-64; am L 1961, c 30, §§1, 2 and c 132, §2; HRS §188-31; am L 1979, c 154, §1; gen ch 1985; am L 1992, c 96, §2]

" **[§188-31.5] Aquarium fish for export; monthly count.** The department of land and natural resources shall adopt rules in accordance with chapter 91 to monitor the aquarium fish catch report and fish dealer's report for export of aquarium fish taken from the waters of the State for aquarium purposes pursuant to section 188-31. A monthly count of the quantities taken of each individual species of aquarium fish exported shall be reported to the board. [L 1989, c 319, §1]

" **§§188-32, 33 REPEALED.** L 1981, c 85, §§41, 42.

" **§188-34 Fishing in Honolulu harbor, Hilo harbor, restricted.** (a) It is unlawful to take or kill fish by means of any draw, drag, or seine net in the waters of the harbor of Honolulu; provided that commercial marine licensees as defined in chapter 187A may take bait fish by means of any draw, drag, or seine net during periods scheduled by the harbor master.
(b) It is unlawful to take or kill fish by means of any net in the waters of that portion of the bay of Hilo bounded by the breakwater, a line from the outer end of the breakwater to Alealea Point, and the shoreline from Alealea Point to the inshore end of the breakwater; provided that commercial marine and pond operators with appropriate licenses issued by the department of land and natural resources may take bait fish or pua, or persons may use throw net, opae net, crab net, or nehu net not longer than fifty feet to take nehu for family consumption or bait purposes. [L 1911, c 38, §1; RL 1925, §769; RL 1935, §383; am L 1941, c 223, §1; RL 1945, §1230; RL 1955, §21-67; am L 1961, c 110, §1; HRS §188-34; am L 1981, c 85, §43; am L 1986, c 339, §11; am L 1987, c 131, §1; am L 2005, c 218, §1; am L 2006, c 241, §5; am L 2010, c 4, §1]

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.

" **§188-35 Fishing in certain waters.** (a) Except as otherwise provided in this section, it is unlawful for any person to fish in or take aquatic life from the waters:

- (1) Of the Waikiki reclamation canal, Oahu;
- (2) Of the drainage canal constructed in connection with Kapiolani Boulevard, Oahu;
- (3) Of the Kapalama drainage canal, Oahu;
- (4) Off Heeia-Kea wharf, Oahu;
- (5) Within that portion of Waialua Bay delineated on the seaward boundary by lines drawn one hundred yards seaward of and parallel to the Haleiwa Harbor Breakwater and one hundred yards seaward of and parallel to the Haleiwa Beach Groin including the extension to the intercept of these lines and the inland boundary consisting of a line drawn ten yards downstream of and parallel to the Anahulu Bridge, Oahu;
- (6) Within that portion of Pokai Bay including the Pokai Boat Harbor and the Waianae Small Boat Harbor delineated on the seaward boundary by a straight line drawn from Kaneilio Point to Lahilahi Point with the northwestern boundary to be delineated by a straight line extending from the southernmost tip of the point immediately seaward of Waianae High School on a southwest azimuth to the intercept of the seaward boundary extending from Kaneilio Point to Lahilahi Point, Oahu; and
- (7) Of the Kapaa and Waikaea canals, Kauai.

(b) With reference to any of the places or areas named above, any person may, subject to applicable laws and rules, fish with one line, or one rod and line, provided the line shall not have more than two hooks; or may take crabs with not more than ten nets, provided the nets shall not exceed two feet in diameter; or may take shrimps for bait purposes only with a hand net, provided the net shall not exceed three feet in any dimension; provided that in the Waikiki reclamation canal any person may take up to fifty tabai or mosquito fish, or o'opu akupa, or tilapia or any combination thereof, per day, for noncommercial purposes only, with a single small mesh net, provided that the net including any handle and other attachment thereto shall not exceed three feet in any dimension.

(c) An owner or operator of a fishpond may take pua or other small fish, using nets, with a license obtained from the department of land and natural resources and under rules the department may adopt, for the purpose of stocking the fishpond.

(d) Commercial marine licensees, with a license from the department of land and natural resources, may take nehu, iao, or

any other species of baitfish as authorized by section 188-45, using nets for bait purposes only.

(e) The department may issue licenses at its discretion and at any time may revoke any or all licenses when, in its judgment, the action is necessary to preserve the stock of fish in the canals or waters. [L 1923, c 41, §§1, 2; RL 1925, §770; RL 1935, §384; am L 1943, c 26, §1 and c 195, §§1, 2; RL 1945, §1231; am L 1947, c 19, §1; am L 1949, c 154, §1; am L 1951, c 58, §1; am L 1955, c 118, §1; RL 1955, §21-68; am L 1957, c 230, §1; am L Sp 1959 2d, c 1, §22; am L 1961, c 29, §1 and c 132, §2; HRS §188-35; am L 1974, c 169, §1; am L 1978, c 164, §1; am L 1979, c 38, §1; am L 1981, c 85, §44; am L 1983, c 145, §1; am L 1987, c 21, §1; am L 1989, c 101, §1; am L 1993, c 80, §1]

Cross References

Rulemaking, see chapter 91.

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.

" **§188-36 Hawaii marine laboratory refuge.** It is unlawful for any person within the Hawaii marine laboratory refuge to take any aquatic life. Nothing in this section shall apply to any officer, faculty member, employee, or student of the University of Hawaii or licensee of the board of regents of the University of Hawaii, while employed in catching or taking aquatic life for scientific purposes.

The Hawaii marine laboratory refuge consists of the reefs and bay waters surrounding the island of Moku-o-loe located in Kaneohe Bay, island of Oahu, from the high water mark on the island extending outward to "twenty-five feet beyond the outer edges of the reefs".

All laws enacted for the protection of aquatic life or wildlife shall likewise apply to the Hawaii marine laboratory refuge, except that no person or persons, other than those designated by this section, shall be authorized to catch or take aquatic life in the refuge.

The Hawaii marine laboratory refuge shall continue only as long as the regents of the University of Hawaii maintain the Hawaii marine laboratory on the island of Moku-o-loe, island of Oahu. [L 1953, c 85, §§1, 2; RL 1955, §21-69; HRS §188-36; am L 1981, c 85, §45]

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.

" **§188-37 Fishing in the Northwestern Hawaiian Islands.** (a) The department of land and natural resources may adopt rules relating to the taking of marine life in the Northwestern Hawaiian Islands, where, in the judgment of the department the action will not deplete the stocks of marine life in the area; the rules may include open and closed seasons, size limits, methods and appliances, and establishment of permits for taking marine life.

(b) Those islands, reefs, and shoals, as well as their respective appurtenant reefs and territorial waters, of the Hawaiian Islands chain beginning and including Nihoa Island to and including Kure Island shall be referred to as the Northwestern Hawaiian Islands.

(c) The department may issue permits to those persons with a valid commercial marine license issued pursuant to section 189-2 who own or operate a vessel deemed capable by the department for effectively taking marine life within the Northwestern Hawaiian Islands, and whenever the department deems necessary, it may limit the number of permits issued to take marine life in any particular area and such limitation shall be on the basis of the order of application for permits. Issuance of permits shall be limited to persons utilizing methods or appliances approved by rule of the department, which need not be legal elsewhere within the State, and these permittees may take species of marine life, when and as approved by rule of the department. The fee for the Northwestern Hawaiian Islands taking permit shall be established by the department by rules adopted in accordance with chapter 91.

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. [L 1953, c 57, §§1, 2; RL 1955, §21-70; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §188-37; am L 1978, c 97, §1; am L 1981, c 85, §46; am L 1988, c 117, §1; am L 2002, c 86, §4]

Cross References

Lobster taking, see §189-6.

" **§§188-38, 39 REPEALED.** L 1981, c 85, §§47, 48.

" **[\$188-39.5] Manta rays; prohibitions, penalties and fines.**

(a) No person shall knowingly capture or kill a manta ray within state marine waters.

(b) Any person violating this section or any rule adopted pursuant to this section shall be guilty of a misdemeanor and shall be fined:

- (1) \$500 for a first offense;
- (2) \$2,000 for a second offense; and
- (3) \$10,000 for a third or subsequent offense.

(c) In addition to any other penalty imposed under this section, a person violating this section shall be subject to:

- (1) An administrative fine of not more than \$10,000 for each manta ray captured or killed in violation of this section;
- (2) Seizure and forfeiture of any captured manta rays, commercial marine license, vessel, and fishing equipment; and
- (3) Assessment of administrative fees and costs, and attorney's fees and costs.

(d) The criminal penalties and administrative fines and costs shall be assessed per manta ray captured or killed in violation of this section.

(e) This section shall not prohibit special activity permits allowed under section 187A-6; provided that the permit issued does not allow a take that exceeds the potential biological removal level; and provided further that the department shall adopt rules to define a "take" and determine when a take exceeds the potential biological removal level. [L 2009, c 92, §2]

" **§188-40 REPEALED.** L 1999, c 85, §§12, 17; L 2002, c 151, §1.

" **§188-40.5 REPEALED.** L 2010, c 148, §3.

" **[\$188-40.6] Shark feeding; prohibitions; exceptions;**

penalties. (a) Except as provided in subsection (b), or as otherwise provided by law, it shall be unlawful for any person to conduct any activity related to the feeding of sharks in state marine waters.

(b) Persons may engage in the feeding of sharks for traditional Hawaiian cultural or religious practices; provided that the feeding is not part of a commercial activity.

(c) Persons engaged in the taking of marine life that results in captured, injured, or dead fish being incidentally

eaten by sharks shall not be considered in violation of this section; provided that the purpose of the taking of marine life is not the feeding of sharks.

(d) The department may issue permits to engage in activities otherwise prohibited by law, in accordance with section 187A-6, or as may be otherwise authorized by law.

(e) As used in this section:

"Commercial activity" means to engage in any action or to attempt to engage in any action for compensation in any form. The action or actions may include, but are not limited to, providing, or attempting to provide, guide services, charters, tours, and transportation to and from the location or locations for which such services are provided.

"Compensation" means money, barter, trade, credit, and other instruments of value, goods, and other forms of payment.

"Feeding" means the introduction of or an attempt to introduce any food or other substance into the water to attract marine life for any purpose other than to take the marine life. [L 2002, c 127, §2]

" **§188-40.7] Shark fins; prohibited.** (a) It shall be unlawful for any person to possess, sell, offer for sale, trade, or distribute shark fins.

(b) Notwithstanding subsection (a), any person who holds a license or permit issued by the department of land and natural resources to conduct research or for educational purposes possesses, sells, offers for sale, trades, or distributes shark fins shall not be subject to the penalties in this section.

(c) Prior to July 1, 2011, any restaurant holding a valid certificate, permit, or license issued by the department of health under section 321-11 may possess, sell, offer for sale, trade, or distribute shark fins possessed by that restaurant as of July 1, 2010 which are prepared for consumption.

(d) Any person violating this section or any rule adopted pursuant to this section shall be penalized as follows:

- (1) For a first offense, by an administrative fine of not less than \$5,000 and not more than \$15,000;
- (2) For a second offense, by an administrative fine of not less than \$15,000 and not more than \$35,000. In addition, shark fins, commercial marine licenses, vessels, fishing equipment, or other property involved in a violation of this section shall be subject to seizure and forfeiture pursuant to chapter 712A; and
- (3) For a third or subsequent offense, by an administrative fine of not less than \$35,000 and not more than \$50,000 or by imprisonment of not more than one year, or both. In addition, shark fins,

commercial marine licenses, vessels, fishing equipment, or other property involved in a violation of this section shall be subject to seizure and forfeiture pursuant to chapter 712A.

(e) In addition to any penalties imposed under subsection (d), any person violating this section or any rule adopted under it shall be subject to any other penalties authorized by section 188-70, and may be assessed administrative fees and costs, and attorney's fees and costs.

(f) The department may adopt rules pursuant to chapter 91 necessary for the purposes of this section.

(g) For the purpose of this section, "shark fin" means the raw or dried fin or tail of a shark. [L 2010, c 148, §2]

Law Journals and Reviews

Think Globally, Act Locally: How Innovative Domestic American Efforts to Reduce Shark Finning May Accomplish What the International Community Has Not. 34 UH L. Rev. 125 (2012).

" **§188-41 REPEALED.** L 1999, c 85, §§13, 17; L 2002, c 151, §1.

" **§188-42 REPEALED.** L 1981, c 85, §49.

" **[§188-42.5] Hihiwai, hapawai, and opae kala'ole selling prohibited.** It shall be unlawful for any person at any time to sell or offer for sale any hihiwai, hapawai, and opae kala'ole taken from any of the waters within the jurisdiction of the State. [L 1993, c 48, §1]

" **§188-43 Hinana and oopu, taking of, prohibited.** It is unlawful for any person to fish for, or attempt to take any of the fish known as hinana or oopu, by means of traps or weirs. [L 1937, c 41, §§1, 2; RL 1945, §1235; RL 1955, §21-76; HRS §188-43; am L 1981, c 85, §50]

" **§188-44 Licenses for mullet.** (a) The department may issue a license to any owner or operator of a fishpond to lawfully catch the young mullet known as pua during the closed season, for the purpose of stocking the owner's or operator's pond, and lawfully sell pond raised mullet during the closed season.

(b) The department may adopt rules pursuant to chapter 91 necessary for the purpose of this section and to set reasonable fees. [L 1888, c 58, §§1, 2, 3; am L 1903, c 8, §2; RL 1925, §§763, 764, 765; am L 1925, c 193, §§1, 2, 3; am imp L 1927, c

264; am L 1933, c 174, §2; RL 1935, §§370, 371; am L 1935, c 85, §1; RL 1945, §1236; RL 1955, §21-77; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §188-44; am L 1981, c 85, §51; gen ch 1985; am L 1991, c 184, §2; am L 1992, c 163, §1; am L 1999, c 85, §§1, 17; am L 2002, c 151, §1]

" **§188-45 Licenses for nehu, iao, and other baitfish.** The department may issue to commercial marine licensees, as defined in chapter 187A, licenses to take nehu, iao, or any other species for use as bait only. The department may adopt rules pursuant to chapter 91 for the purposes of this section. The licenses may be issued by the department upon terms and conditions the department may deem necessary to conserve the supply of the fish within state waters. The license may be summarily revoked for a violation of any term or condition of the license, and any or all licenses may be revoked summarily whenever, in the judgment of the department, the action is necessary for the conservation of the fish. [L 1929, c 206, §§1, 2; am L 1931, c 258, §1; am L 1933, c 54, §1; RL 1935, §390; am L 1943, c 54, §1; RL 1945, §1237; am L 1947, c 179, §1; RL 1955, §21-78; am L Sp 1959 2d, c 1, §22; am L 1961, c 101, §1 and c 132, §2; HRS §188-45; am L 1974, c 222, §1; am L 1981, c 85, §52; gen ch 1985; am L 1986, c 339, §12; am L 1999, c 85, §§2, 17; am L 2002, c 151, §1]

" **§188-46 REPEALED.** L 1999, c 85, §§14, 17; L 2002, c 151, §1.

" **§§188-47 to 49 REPEALED.** L 1981, c 85, §§54 to 56.

" **§188-50 License; application; fees; restrictions.** (a) It is unlawful for any person, except children below nine years of age, to fish, take, or catch any introduced freshwater game fish without first obtaining a license. Children exempt by this section may fish, provided they are accompanied by a licensed person. The department of land and natural resources may adopt rules pursuant to chapter 91 necessary for the purposes of this chapter and to set fees for freshwater game fish fishing.

(b) The licenses may be issued by agents of the department of land and natural resources upon written application in such form as may be prescribed by the department together with payment of a fee. The fees for licenses and duplicate licenses shall be established by the department by rules adopted in accordance with chapter 91.

(c) No person to whom a license has been issued under this section shall permit any other person to carry, display, or use the license for any purpose. Every person to whom a license has

been issued under this section shall show the license upon demand of any officer authorized to enforce the fishing laws of the State. No person shall refuse any officer the examination or inspection of any bag or container of any kind used to carry fish or any vehicle or conveyance used to transport fish.

The department, upon written application, may issue a permit to a club or group of minors, not less than five in number, for unlicensed fishing where such activity will be supervised by responsible adults. All adults accompanying the excursions, however, shall themselves be licensed. The application shall state the area to be visited, the dates for the excursion, the name of the organization or group, and shall be signed by an adult advisor of the group. The permits shall expire and become void thirty days after issuance. The department may determine other terms and conditions of the permits.

(d) Where a bag limit is specified for the catching of freshwater fish, each licensee may take only one bag per day. This restriction to one bag applies to each minor participating in unlicensed group excursions for which permits have been issued under this section. The catch of a child below the age of nine years shall be deemed part of the catch of the licensed adult accompanying the child.

(e) The department may revoke any license for any infraction of the terms and conditions of the license. Any person whose license has been revoked shall not be eligible to apply for another license until expiration of one year from the date of revocation.

(f) The department shall suspend, refuse to renew, reinstate, or restore, or deny any license or application if the department has received certification from the child support enforcement agency pursuant to section 576D-13 that the licensee or applicant is not in compliance with an order of support as defined in section 576D-1 or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding. The department shall issue, renew, restore, or reinstate a license only upon receipt of an authorization from the child support enforcement agency, the office of child support hearings, or the family court. [L Sp 1949, c 57, §2; am L 1955, c 29, §2; RL 1955, §21-83; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §188-50; am L 1974, c 224, §1; am L 1981, c 85, §57; gen ch 1985; am L 1988, c 117, §2; am L 1997, c 293, §11; am L 2002, c 86, §5]

Note

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

" **§§188-51, 52 REPEALED.** L 1981, c 85, §§58, 59.

" **§188-52.5 REPEALED.** L 1985, c 94, §8.

" **§188-53 Fishing reserves, refuges, and public fishing areas.** (a) For the purposes of managing, preserving, protecting, conserving, and propagating introduced freshwater fishes, and other freshwater or marine life, the department of land and natural resources may establish, maintain, manage, and operate freshwater or marine fishing reserves, refuges, and public fishing areas in areas under its control as it may deem desirable and may enter into agreements for the taking of control of privately owned waters, lands, or fisheries for such purposes. The department may make, adopt, and amend rules and may issue permits as it deems necessary for managing the fishing reserves, refuges, public fishing areas, and other waters or lands under the jurisdiction or control of the State.

(b) It is unlawful for any person to enter any area established under this section without first obtaining a permit from the department, if permits are required, or to violate any rule adopted by the department governing same.

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. [L 1953, c 58, pt of §1; RL 1955, §21-86; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §188-53; am L 1981, c 85, §60]

Cross References

Rulemaking procedure, see chapter 91.

" **§§188-54, 54.1, 54.2, 55, and 56 REPEALED.** L 1981, c 85, §§61 to 65.

" **§188-57 Licenses for certain crustaceans.** (a) Any commercial marine dealer may sell, or any hotel, restaurant, or other public eating house may serve, during the closed season, Kona crabs or lobsters lawfully caught during the open season by first procuring a license to do so.

(b) The department may adopt rules pursuant to chapter 91 necessary for the purpose of this chapter and to set fees for selling or serving Kona crab and lobster during the closed

season. [L 1925, c 72, §§1, 2, 3; RL 1935, §396; am L 1935, c 107, §1; RL 1955, §21-90; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §188-57; am L 1977, c 55, §1; am L 1981, c 85, §66; am L 1990, c 12, §1; am L 1991, c 184, §3; am L 1992, c 163, §2; am L 1999, c 85, §§3, 17; am L 2002, c 151, §1]

Cross References

Out-of-season lobsters from Northwestern Hawaiian Islands, see §189-6.

Taking or killing of female lobsters and crabs prohibited, see §188-58.5.

" **§188-58 REPEALED.** L 1999, c 85, §§15, 17; L 2002, c 151, §1.

" **[§188-58.5] Female ula (spiny lobsters), Kona crabs, and Samoan crabs; taking or killing prohibited.** (a) Unless otherwise exempted by law, it shall be unlawful for any person to take or kill any female ula (spiny lobster or *Panulirus*), Kona crab (*Ranina ranina*), or Samoan crab (*Scylla serrata*).

(b) This section shall not prohibit the taking or killing of female marine invertebrates identified in subsection (a) if they are the product of commercial aquaculture and not removed from their natural environment. [L 2006, c 77, §1]

" **§§188-59 to 67 REPEALED.** L 1981, c 85, §§68 to 76.

" **§188-68 Permits for coral and rock with marine life attached.** The department may issue permits, as authorized by this section, section 187A-6, chapter 183C, or under rules adopted pursuant to chapter 91 necessary for collecting live stony corals or marine life visibly attached to rocks placed in the water for a commercial purpose. [L 1988, c 374, §1; am L 1990, c 69, §2; am L 1991, c 184, §4; am L 1993, c 256, §3; am L 1995, c 11, §7 and c 69, §5; am L 1999, c 85, §§4, 17; am L 2002, c 151, §1]

" **§188-70 Penalties.** (a) Any person violating any provision of or any rule adopted pursuant to this chapter, except sections 188-23 and 188-39.5, is guilty of a petty misdemeanor and, in addition to any other penalties, shall be fined not less than:

- (1) \$100 for a first offense;
- (2) \$200 for a second offense; and
- (3) \$500 for a third or subsequent offense.

(b) Any person violating section 188-23, is guilty of a class C felony and shall be sentenced pursuant to chapter 706; provided that the environmental court, in addition to any term of imprisonment or any other terms and conditions of probation, shall order the defendant to pay a fine of not less than \$1,000. Notwithstanding section 706-669 and any other law to the contrary, any person in violation of subsection (b), as a first offense, shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole for thirty days. Repeat offenders shall be sentenced pursuant to chapter 706.

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

(d) The court may direct the defendant to perform community service as administered by the department of land and natural resources in lieu of paying any monetary fine authorized by this section. [L 1981, c 85, §77; am L 1988, c 374, §2; am L 1993, c 256, §4; am L 1999, c 195, §6; am L 2009, c 92, §3; am L 2014, c 218, §8; am L 2016, c 67, §2]

Cross References

General administrative penalties, see §187A-12.5.

Case Notes

As sentencing court limited to alternatives expressly enumerated in this section and probation not an enumerated alternative, offense of fishing with gill nets under §188-30.2 nonprobationable; thus, under §853-4(5), deferred acceptance of no contest plea not allowed for that offense. 87 H. 102, 952 P.2d 390.

" **[§188-71] Harassment of fishermen; prohibition.** (a) No person shall intentionally prevent or attempt to prevent the lawful taking of fish by a person licensed pursuant to section 188-50 by:

- (1) Placing the person's self in a location in which human presence may affect the behavior of fish to be taken or the feasibility of taking such fish;
- (2) Creating a visual, aural, olfactory, or physical stimulus to affect the behavior of fish to be taken;
- (3) Affecting the condition or placement of personal property intended for use in the taking; or

(4) Obstructing the person's access to areas in which the person intends to lawfully take fish.

(b) No person shall enter or remain upon public lands or waters, or upon private lands or waters, without permission of the owner or the owner's agent, with intent to violate this section.

(c) The maximum penalty for violation of subsection (a) or (b) is a fine of \$500, thirty days imprisonment, or both. [L 1995, c 186, §2]

Cross References

General administrative penalties, see §187A-12.5.