

JAN 26 2009

A BILL FOR AN ACT

RELATING TO ADMINISTRATIVE PENALTIES FOR THE DAMAGING OR
BREAKING OF STONY CORAL AND LIVE ROCK.

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

1 SECTION 1. Section 187A-12.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~+~~§187A-12.5~~+~~ **General administrative penalties.** (a)

4 Except as otherwise provided by law, the board is authorized to
5 set, charge, and collect administrative fines and to recover
6 administrative fees and costs, including attorney's fees and
7 costs, or bring legal action to recover administrative fines,
8 fees, and costs, including attorney's fees and costs, or payment
9 for damages or for the cost to correct damages resulting from a
10 violation of subtitle 5 of title 12 or any rule adopted
11 thereunder.

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

14 (1) For a first violation, a fine of not more than \$5,000;

15 (2) For a second violation within five years of a previous
16 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) 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.

(d) For violations involving stony coral or live rock, a fine may be levied as follows:

(1) For the damaging of three or more square meters of stony coral or live rock, a fine of up to \$2,500 per square meter of area impacted;

(2) For the breaking of three or more square meters of stony coral or live rock, a fine of up to \$2,500 per square meter of area impacted;

(3) For the damaging of less than three square meters of stony coral or live rock, a fine of up to \$1,000 per square meter of area impacted; and

(4) For the breaking of less than three square meters of stony coral or live rock, a fine of up to \$1,000 per square meter of area impacted.

1 Further, this subsection shall not apply if the damage or
2 breakage is caused by an act committed in an emergency and to
3 avoid loss of life or serious bodily injury.

4 For the purposes of this subsection:

5 "Breaking" means hitting or applying sufficient force to
6 reduce to smaller pieces or to crack without actually separating
7 into pieces.

8 "Damaging" means causing extensive injury resulting in
9 irreparable harm or death.

10 "Live rock" means any rock or coral to which marine life is
11 visibly attached.

12 "Stony coral" means any of a variety of invertebrate
13 species belonging to the order scleractinia characterized by
14 having a hard, calcareous skeleton that are native to the
15 Hawaiian islands.

16 [~~e~~] (e) For all other violations, the administrative
17 fines shall be as follows:

18 (1) For a first violation, a fine of not more than \$1,000;

19 (2) For a second violation within five years of a previous
20 violation, a fine of not more than \$2,000; and

21 (3) For a third or subsequent violation within five years
22 of the last violation, a fine of not more than \$3,000.

~~1 [(d) In addition to subsection (b), a fine of up to \$5,000~~
~~2 may be levied for each specimen of threatened or endangered~~
~~3 aquatic life taken, killed, or injured in violation of subtitle~~
~~4 5 of title 12 or any rule adopted thereunder.]~~

5 ~~[(e)]~~ (f) In addition to subsection ~~[(e)],~~ (e), a fine of
6 up to \$1,000 may be levied for each specimen of all other
7 aquatic life taken, killed, or injured in violation of subtitle
8 5 of title 12 or any rule adopted thereunder.

9 [~~(f)~~] (g) Any criminal penalty for any violation of
10 subtitle 5 of title 12 or any rule adopted thereunder shall not
11 be deemed to preclude the State from recovering additional
12 administrative fines, fees, and costs, including attorney's fees
13 and costs."

14 SECTION 2. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY:

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BY REQUEST

Report Title:

Stony Coral and Live Rock; Administrative Penalties

Description:

Increases the maximum penalty for violations concerning damages or breakage to stony corals and live rock.

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO ADMINISTRATIVE PENALTIES FOR THE DAMAGING OR BREAKING OF STONY CORAL AND LIVE ROCK.

PURPOSE: To increase the maximum fine for violations concerning damages or breakage of stony coral and live rock.

MEANS: Amend section 187A-12.5, Hawaii Revised Statutes (HRS).

JUSTIFICATION: The living substrate (coral, live rock and calcareous algae) constitutes the framework of the State's coral reefs and provides the food and shelter for the myriad of native and endemic reef organisms that populate the State's coastal waters. These reef substrates also serve as the backbone to a large part of the State's vibrant marine tourism industry, create many of our world-famous wave breaks, provide subsistence, recreational and commercial fishing for residents, and maintain a marine species endemism rate that ranks amongst the highest in the world.

As presently written, section 187A-12.5, HRS, allows the Board of Land and Natural Resources (Board) to impose administrative fines for the taking, killing, or injuring of aquatic life on a "per specimen" basis. This method, while appropriate for situations involving fish or other quantifiable aquatic life, does not translate well to damage or breakage to living coral colonies and live rock; especially in circumstances involving vessel groundings and other large scale incidents.

This bill would allow the Board to assess administrative penalties for either damage to or the breakage of stony coral and live

rock on a per square meter basis. This proposed law would not apply in an emergency and to avoid loss of life or serious bodily injury.

Impact on the public: Would provide effective and substantial financial redress for damage to the State's coral reef ecosystems.

Impact on the department and other agencies: Would allow the Department to vigorously protect its coral reef resources and deter potentially harmful future impacts.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LNR 401.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.