

ACT 94

H.B. NO. 192

A Bill for an Act Relating to Aquatic Resources.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Title 12, Subtitle 5, Hawaii Revised Statutes, is amended by adding a new chapter to be designated as chapter 187A and to read:

**“CHAPTER 187A
AQUATIC RESOURCES
PART I. GENERAL PROVISIONS**

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

“Aquaculture” means the farming or ranching of aquatic life in a controlled salt, brackish, or fresh water environment; provided that the farm or ranch is on or directly adjacent to land.

“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 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.

“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.

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

"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.

"Take" means to fish, trap, hook, net, spear, harvest, pick, or withdraw aquatic life from the water.

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

- (1) Manage and administer the aquatic life, aquatic resources, and aquaculture programs 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;
- (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.

§187A-3 Aquaculture program. (a) There is established, within the department, an aquaculture program which shall:

- (1) Maintain cognizance of actions taken by industry and by federal, state, county, and private agencies in activities relating to aquaculture, and promote and support worthwhile aquaculture activities;
- (2) Serve as an information clearinghouse for aquaculture activities in Hawaii;
- (3) Coordinate development projects to investigate and solve biological and technical problems involved in raising selected species with commercial potential;
- (4) Actively seek federal funding for aquaculture activities in Hawaii;
- (5) Undertake activities required to develop and expand the aquaculture industry in Hawaii; and

- (6) Perform such other functions and activities as may be assigned by law.

(b) The chairperson of the board may employ temporary staff exempt from chapters 76 and 77.

§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.

§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.

§187A-6 Permits for taking aquatic life for scientific, educational, or propagation purposes. (a) Notwithstanding the provisions of any other law, the department may take aquatic life for scientific, educational, or propagation purposes, except as prohibited by chapter 195D.

(b) Notwithstanding the provisions of any other law, the department may issue permits to any person to take aquatic life in any part of the State, for scientific, educational, or propagation purposes, except as prohibited by 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) Any aquatic life taken under the authority of the permit shall be accompanied by the permit while being taken or transported and shall be exempt from seizure while being transported or while in possession, in accordance with the permit.

§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.

(c) All expenditures by the department shall be approved and certified by the board.

§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.

§187A-9 Federal aid in fish restoration. The State hereby assents to the provisions of the Dingell-Johnson Federal Aid in Fish Restoration 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 and management projects, as defined in the Act of Congress and in compliance with the Act and rules 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 shall be diverted for any purpose other than as provided for in the Act and rules and regulations adopted pursuant thereto.

§187A-10 Agents to sell licenses. (a) The department may designate agents to sell fishing licenses in accordance with this section. Each agent shall be bonded by the department in a sum which shall cover the value of the licenses delivered to the agent. The bond shall secure the faithful accounting and payment to the department of the funds collected from the sale of the licenses. 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.

(b) Agents shall receive five per cent of the value of licenses sold and the sum shall be deducted from the total value of fees collected before remittance is made. 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.

§187A-11 Disposition of revenues. All moneys collected each month as fees for fishing permits or licenses, and all fees for commercial marine activities, including commercial marine licenses, marine product licenses, and all other moneys collected under the provisions of any law relating to the importation, taking, catching, or killing of aquatic life, and products thereof shall be deposited with the director of finance to the credit of the general fund. The moneys collected shall be available for expenditure only for the department in accordance with appropriations authorized by the legislature and shall be expended by the department for the importation, management, preservation, propagation, and protection of aquatic life into or in the State, and for the payment of expenses incurred in the prosecution of offenders against the aquatic resource laws of the State, and for the conservation of commercial fisheries and all phases of the work pertaining thereto and all expenses connected therewith, which the department deems expedient.

§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.

§187A-13 General penalty. (a) Any person violating any of the provisions of this chapter or any rule of the department adopted thereunder for which a penalty is not otherwise provided, shall be guilty of a petty misdemeanor and upon conviction thereof shall be punished as provided by section 188-70.

§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 any of the provisions of this chapter 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.

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.

§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.

§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."

SECTION 2. Section 187-1, Hawaii Revised Statutes, is repealed.

SECTION 3. Section 187-1.1, Hawaii Revised Statutes, is repealed.

SECTION 4. Section 187-2, Hawaii Revised Statutes, is repealed.

SECTION 5. Section 187-17.5, Hawaii Revised Statutes, is repealed.

SECTION 6. Section 187-19, Hawaii Revised Statutes, is repealed.

SECTION 7. Part I, Chapter 188, Hawaii Revised Statutes, is repealed.

SECTION 8. Section 188-52.5, Hawaii Revised Statutes, is repealed.

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 10. This Act shall take effect upon its approval.

(Approved May 10, 1985.)

Note

1. No underscored material. Edited pursuant to HRS §23G-16.5.