

HARVARD LAW SCHOOL
ANIMAL LAW & POLICY CLINIC

RACHEL MATHEWS
Acting Director

KATHERINE A. MEYER
Of Counsel



REBECCA GARVERMAN
Staff Attorney

KELLEY MCGILL
Clinical Fellow

October 13, 2023

David Sakoda
Division of Aquatic Resources
Hawaii Department of Land and Natural Resources

Via email: DAR.Testimony@hawaii.gov; DLNR.Aquatics@Hawaii.gov

Re: Testimony on Proposed Amendments to Chapter 13-74, Hawaii Administrative Rules, “License and Permit Provisions and Fees for Fishing, Fish, and Fish Products”

Dear Mr. Sakoda:

We are writing on behalf of the Harvard Law School Animal Law & Policy Clinic to provide testimony on the Proposed Amendments to Chapter 13-74, Hawaii Administrative Rules, “License and Permit Provisions and Fees for Fishing, Fish, and Fish Products” (“Proposed Amendments”). We are grateful for the opportunity to provide testimony on the Proposed Amendments and appreciate your time and consideration of our suggestions.

Our testimony here is confined to Hawaii Administrative Rules § 13-74-43 and proposes additional language related to qualified aquaculturist and aquaculture facility licensing. We offer these suggested additions as ways in which to strengthen the ability of the Division of Aquatic Resources (DAR) to uphold its existing regulations. If adopted, these additions would better enable DAR to enforce its established requirement that prospective licensees “must satisfy the department that the qualified aquaculturist is able to maintain aquatic life or live rock alive and in good health in an aquaculture facility at all times in accordance with industry-wide standards.”¹ These additions would provide notice to potential licensees and prospectively empower DAR to enforce its regulations in situations in which licensees (or license applicants) are failing to keep the aquatic life in their facilities alive and healthy.²

¹ Haw. Admin. R. § 13-74-43(a).

² In a notable recent example, the Kanaloa Octopus Farm, which applied to DAR for an aquaculture facility license in January 2023, Application no. 36385, failed repeatedly in its attempts to breed and raise day octopuses in Hawaii, resulting in total paralarvae fatalities. See Harvard Law School Animal Law & Policy Clinic, et al., *Letter to Brian Neilson, Division of Aquatic Resources, Hawaii Department of Land and Natural Resources, Re: Request for Denial of Aquaculture Facility License to Kanaloa Octopus Farm* 5–8 (July 11, 2023), <https://animal.law.harvard.edu/wp-content/uploads/DAR-KOF-Complaint.pdf>; Catherine Cruz, *Octopus Eco-tours and Conservation are the Focus of this Big Island Facility*, Haw. Pub. Radio (Jan. 13, 2023), <https://www.hawaiipublicradio.org/the-conversation/2023-01-13/octopus-eco-tours-and-conservation-big-island-facility> (Kanaloa Octopus Farm stating that it did not know how to raise octopuses or what to feed octopus paralarvae); Susanne Rust, *Hawaii Orders Facility to Stop Capturing and Keeping Octopuses*, L.A. Times (Feb. 15, 2023), <https://www.latimes.com/california/story/2023-02-15/hawaii-says-octopus-farm-operated-without-proper-permits> (“[N]o one has been able to close the life cycle of potentially commercially productive captive octopuses. While Kanaloa

The additions we suggest are included in the attached Appendix. In summary, these three suggested additions to Hawaii Administrative Rules § 13-74-43 would:

1. Amend § 13-74-43(h)(4) as proposed to empower DAR to specifically require licensees to submit reports on the health and fatalities of aquatic life at their aquaculture facilities.

Comment: The proposed regulations would enable DAR to require monthly and other reports from licensees. The addition of this suggested language, however, will provide additional notice to licensees and structure to the type of information DAR may require. Health and fatality reports should include information related to aquatic life injuries or accidents, disease or pest outbreaks, numbers of premature aquatic life fatalities at aquaculture facilities, and other information relevant to the health and survival of aquatic life held by licensees. To facilitate efficient reporting, DAR should develop a standardized form that it may use to collect this information from licensed qualified aquaculturists and aquaculture facilities.

2. Add § 13-74-43(h)(5) to require licensees to demonstrate their ongoing ability to keep aquatic life alive and healthy, in alignment with DAR’s existing license requirement in § 13-74-43(a).

Comment: § 13-74-43(a) does not provide any detail concerning the requirement that licensees be “able to maintain aquatic life or live rock alive and in good health in an aquaculture facility at all times in accordance with industry-wide standards.”³ Without additional specificity, this language is difficult for licensees to interpret and challenging to enforce because it points to no specific standard, leaving it to licensees to determine applicable “industry-wide standards.” In order to facilitate its determination of whether licensees are able to keep aquatic life in their facilities alive and healthy, DAR should develop or specify applicable aquatic animal welfare standards. Such standards would provide both an assessment framework to DAR that would assist with its enforcement of its regulations as well as guidelines for licensees that would assist them to comply with DAR’s requirements. Any aquatic animal welfare standards developed or specified by DAR should include considerations such as water quality standards, stocking densities, enclosure enrichment requirements, disease prevention and control measures, and humane handling and slaughter methods. Model aquatic animal welfare considerations and standards are available for reference or incorporation.⁴

3. Add § 13-74-43(h)(6) to require licensees to provide access for inspection of licensed aquaculture facilities.

Comment: Under DAR’s current aquaculture facility license “Specific Terms and Conditions,” licensees must “allow inspections upon the demand of any officer authorized to enforce the laws of the State.”⁵ It is unclear how far the scope of such

and some commercial octopus farms have been able to produce viable larvae from eggs fertilized in captivity, they have not been able to keep those small octopuses living beyond 13 days.”)

³ Haw. Admin. R. § 13-74-43(a).

⁴ See, e.g., Aquatic Life Institute, *Aquaculture Welfare Guide* (Mar. 2022), <https://ali.fish/aquaculture-welfare-guide>.

⁵ DAR, Aquaculture Facility License, Specific Terms and Conditions (Jan. 10, 2022), https://dlnr.hawaii.gov/dar/files/2021/01/aquaculture_facility_spec_tc_rev.pdf.

inspections may extend, beyond the “[i]nitial site inspection.”⁶ For instance, under the existing regulations, licensees are required to make available for inspection their receipts⁷ and copies of their aquaculture facility licenses,⁸ as well as “any bag or container of any kind that could reasonably be used to carry any aquatic life or any vehicle or conveyance used to transport any aquatic life.”⁹ The current regulations do not explicitly provide for the inspection of aquaculture facilities to verify compliance with DAR’s provisions. Specifically, the regulations do not explicitly empower inspection of the facilities themselves in order to enforce DAR’s requirement that licensees be able to keep aquatic life in their aquaculture facilities healthy and alive. Given the differences between the aquaculture facility license terms and conditions and the current regulations, there may be ambiguity around the extent of inspection authority. Adding this suggested language to the regulations would strengthen the authority to inspect facilities in order to improve regulatory enforcement and compliance.

DAR has the authority to adopt these three proposed additions under Hawaii Revised Statute § 187A-3.5.

We thank you for your consideration of the additions and actions suggested in this testimony. We stand at your disposal should you have any questions or if we can be of assistance.

Sincerely,



Kelley McGill
Clinical Fellow
Animal Law & Policy Clinic



Rachel Mathews
Acting Director, Animal Law & Policy Clinic
Lecturer on Law, Harvard Law School

⁶ DAR, Aquaculture Facility License, <https://dlnr.hawaii.gov/dar/licenses-and-permits/aquaculture-facility-license/>.

⁷ Haw. Admin. R. § 13-74-43(c).

⁸ Haw. Admin. R. § 13-74-43(i).

⁹ Haw. Admin. R. § 13-74-2(2); *see also* Haw. Rev. Stat. § 187A-15.

Appendix

Suggested Additions to § 13-74-43, Hawaii Administrative Rules:

[Additions are indicated in **bold, underlined** text]

Hawaii Administrative Rules

§13-74-43 Aquaculture license

* * *

(h) The department may require licensees:

* * *

(3) To provide a list of names of [~~commercial marine dealers~~] any person that will buy or obtain any regulated aquatic life that were reared in the licensee's aquaculture facility. Any changes to the list shall be in writing[-];

(4) To submit additional monthly reports, trip reports, **aquatic life health and fatality reports**, or other reports as required by the department;

(5) To demonstrate the ability to maintain aquatic life or live rock alive and in good health at all times in accordance with standards as may be required by the department; and

(6) To provide access for the inspection of any aquaculture facilities licensed under this section to any officers or agents authorized to enforce the laws of the State as may be required by the department to ensure compliance with the provisions of this section.