

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawaii 96813

October 24, 2014

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

REQUEST FOR FINAL APPROVAL TO ADOPT NEW HAWAII ADMINISTRATIVE
RULES, CHAPTER 13-77, OAHU AQUARIUM LIFE MANAGEMENT, TO
ESTABLISH NEW REGULATIONS ON GEAR, BAG, AND SIZE LIMITS FOR
AQUARIUM COLLECTING ON OAHU

Submitted for your consideration and final approval is a proposed new Hawaii Administrative Rules (HAR) to establish more conservative measures for aquarium collectors on Oahu only. This process has taken over three years starting in August 2011, when a group of experienced commercial aquarium collectors from Oahu presented to the Department a proposal for regulations on their fishery. They recognized the need for better management of the fishery to reduce the potential for waste of limited resources and to implement conservation measures that would ensure the long-term economic viability of the fishery.

The Division has no scientific information that indicates the marine species taken by the aquarium collectors are in a state of overfishing or are overfished. Therefore, the primary purposes of these rules are to prevent a waste of resource and fish overcrowding while being collected. The State has a public trust interest in maximizing the benefits that may be derived from each public resource taken. One of the goals of the commercial aquarium collector is to provide a "perfect" example of Hawaiian marine life to the world-wide market. In order to be perfect, the marine life must be free of any physical damage or anomaly, and be in as pristine a condition as possible. The waste occurs when after the fish is taken, and due to overcrowding or rough handling, becomes injured prior to delivery to the dealer. The dealers will not buy these injured fish and the fish will be eventually returned to the ocean. Inexperienced collectors, especially, tend to overcrowd their small boats with fish in hopes of higher revenues, take species they cannot market, use too much net, or do not take proper care in handling the fish.

The proposed rules have new limits on nets used to collect the marine life, daily commercial bag limits, commercial size limits, and a prohibition on the take of certain fish species. The proposed net limits are intended to reduce the use of too long nets that would tend to increase injury to the fish collected. The proposed daily commercial bag limits may appear large but these numbers are less than the numbers currently being collected or may be collected. The proposed commercial size limits are intended to limit the take of the very small and very large yellow tangs, and the larger kole. The proposed commercial limit on the take of cleaner wrasse recognizes that this species has a very specialized diet. It would be difficult for the average aquarist to provide the proper food to keep this species alive, but there is some take allowed to supply the experienced

aquarists and the public aquariums, which have the expertise to care for this species. The proposed prohibition on the take of the butterflyfishes is in recognition of the strictly coral feeding diets of these species.

All Oahu commercial collectors are not in full agreement with all provisions in this proposed rule. Because there is no overfished condition, some collectors feel that no new regulations are needed. However, they do agree that waste of resources should be avoided and these rules are a step in reducing that waste. The Division has presented, in this draft rule, what we believe to be the best options going forward, with the support of the majority of Oahu commercial collectors. Many of the provisions in this draft rule may reduce individual incomes but the commercial collectors are willing to make these sacrifices for the long-term economic viability of the fishery.

After receiving the commercial collector proposal, the Division held a publicly noticed meeting on November 3, 2011 to discuss the collector proposal with the broader community. Shortly after, during December 2011, the Division held several working group meetings with different groups of commercial aquarium collectors to refine the proposal and develop the basis for the proposed rules. The proposed rules were then brought before the Board at its meeting of January 13, 2012 and approved to hold a public hearing.

The Small Business Regulatory Review Board (SBRRB) reviewed the proposed rules at its meeting of June 20, 2012 and recommended the rules proceed to public hearing. Dr. Gail Grabowski (Chaminade University), presented testimony in opposition to the proposed rules at this meeting. The SBRRB recommended that we meet with Dr. Grabowski to discuss her objections so we met with her on August 14, 2012. While this meeting was very informative, we did not change the proposed rules. Her objections were that the rules were not restrictive enough.

The hearing was held on December 5, 2012 at the Waimalu Elementary School in Pearl City, Oahu. The Division received more than 4,000 testimonies on this proposal. Of those testimonies received, 88% were from out-of-state and 98% were opposed to the proposal in varying degrees. The majority of testimonies received were as pre-printed post cards or form letters either sent by mail or email. Many of the opposing testimonies called for limits on the number of aquarium permits issued or a moratorium on collecting, but both measures are outside the scope of this proposal. The most relevant opposing testimony was that the proposed bag limits were too large but did not provide their thoughts on what would be a more reasonable number. We would point out that there currently are no bag limits on those species where bag limits are being proposed so any new bag limit would be more conservative than the current situation. Also, the management goal is to reduce the risk of overcrowding so any bag limit would need to consider the capacity of the collecting vessel, something the collectors themselves would be most knowledgeable about and they were the ones who suggested the limits. Lastly, the species proposed for bag limits are some of the more abundant species that have been consistently and commonly collected in the trade over the years.

For the Board's consideration, we have attached a) the hearing minutes (Appendix 1), b) a summary of the comments and our responses to those comments (Appendix 2), and c) the final draft rules (Appendix 3).

We have made a number of minor changes to the version the Board approved for public hearing on January 13, 2012. We are changing the date of implementation of the net gear restrictions from December 31, 2012 to July 1, 2015. The purpose of this date is to provide the collectors time to transition to the new gear restrictions and we have already passed the December 2012 date. While it could be argued that the collectors have already had ample time to prepare for this change, the uncertainty of when these rules would become effective makes this allowance reasonable. The other changes are recommended by the deputy Attorney General for purposes of clarity and format. These are not considered significant changes and will not require another public hearing.

RECOMMENDATION:

“That the Board approve the adoption of Chapter 13-77, Oahu Aquarium Life Management.”

Respectfully submitted,



WILLIAM J. AILA, JR.
Chairperson

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR.
Chairperson

Appendix 1

Public Hearing Minutes
Adopting Hawaii Administrative Rules
CHAPTER 13-77
Oahu Aquarium Life Management

Hearing Location: Waimalu Elementary School Cafeteria, Pearl City, HI
Hearing Date: December 5, 2012

I. Introduction

A. Opening

1. It is now 6:02 P.M. and this Public Hearing is called to order.
2. This is a formal Public Hearing on proposed Administrative Rules of the Department of Land and Natural Resources Relating to Oahu Aquarium Life Management. This proposed rule would establish requirements for the collection of certain marine life and its related net collecting gear for Oahu only. The rules include net length and height limits, commercial daily bag limits for seven species, commercial bag limits for certain sizes of three fish species, and no take of three fish species.
3. My name is Alton Miyasaka and I am a staff biologist with the Division of Aquatic Resources; I will conduct this public hearing.

B. Purpose

4. The purpose of this hearing is to provide the public the opportunity to provide comments in the form of oral and written testimony on these proposed Department administrative rules relating to the management of the collection of marine life for aquarium purposes on Oahu.
5. I hope that all of you have signed in. If you have not, please do so. We have to make a complete record of all persons attending this hearing.
6. There is also a separate sheet to sign for those wishing to present testimony on the proposed rule changes.
7. When it is time to testify, I will call the names in the order that they are listed on the sign-in sheet.

C. Present staff and others

1. At this time, I would like to introduce the other members of DAR staff: Jo-Anne Kushima, Mr. Francis Oishi, CREO David Keawe, William Aila, and Melva Aila attending.

2. Public attending & signing in: Angela Huntmer, Greg Gerstenberger, Robert Wintner, Keiko Bonk, Angela DeVargas, Deborah Bassett, Jerry Isham, David Ramos, Ted Kiesel, Derrick Macalino, Wayne Sugiyama, Kevin Rezendes, Dennis Yamaguchi, Bobby Goodwin, Randy Fernley, Kelly Isham, Crystal Paaluhi, Mary Tubbs, Matt Ross, Josh Copus, Wylie Ball, Max Williams, Kelekolio Copp, Jeff Preble, Steven R Rosa, Jennifer Brian, Alina Murray, Andrew Rossiter, Michael M King, Pamela Milligan, Carina Sugiyama, Doug Pinsar, Caroline Ishida, Maxx Phillips, Les Parker, Jeannine Souki, Kimi Apiki, Sarah Courbis, Chris Jury, Richard L Klobuchar, Charles Laidley, Norton Chan, Wayne Tanaka, Roberta Stewart, Dean Sensui, Alan Hong, Leo Pruner

II. Background

- A. These proposed rules are the result of:
 1. A public meeting held November 17, 2011 in the department boardroom;
 2. Discussions with commercial aquarium collectors; and
 3. A meeting with a concerned individual opposed to the proposed rules on August 14, 2012.
- B. Approvals to conduct this public hearing have been obtained by the Board of Land and Natural Resources on January 13, 2012, Small Business Regulatory Review Board on June 20, 2012, and Governor Abercrombie on August 21, 2012.
- C. Copies of the administrative rules are available for inspection at the table near the entrance. During this hearing we want to record your thoughts on this proposal.

III. Notice of public hearing

- A. The Legal Notice of this public hearing was published in the October 28, 2012, Sunday issue of the Honolulu Star Advertiser.

IV. Hearing procedures

- A. This hearing will be conducted as follows:
 1. I will explain the proposed changes to the administrative rules.
 2. Then I will call on those who have signed up to testify as they are listed on the sign in sheet.
 3. Please keep your testimony brief and on the subject in order to allow all those who came today, the opportunity to testify. Each person will be given 3 minutes to provide their testimony.
 4. After those who signed up have presented their testimonies, I will ask if anyone else wishes to testify.

5. After all persons have given their testimonies, and if you wish to add to your testimony, you will be provided an additional 3 minutes.
6. We are recording this hearing to make a written record, so please state your name for the record before giving your testimony.
7. Please remember to respect the opinions of all testifiers and that this hearing is not an opportunity for accusations or rebuttals. There may be differing opinions. Everyone will have an opportunity to voice their opinion for the department to consider.
8. If you have a question, please direct it to me, and I will find the most appropriate person to answer.

V. Rule Explanation

Summary of Draft Administrative Rules Chapter 13-77 Oahu Aquarium Life Management

Section 13-77-1: explains the applicability and scope of this chapter – to manage the collection of aquatic life for aquarium purposes on Oahu only.

Section 13-77-2: Provides definitions for the various terms used throughout this chapter.

Section 13-77-3: Provides the exemptions that would apply for this chapter. We will be changing the date when the gear restrictions will begin to July 1, 2013 as obviously the rules will not be adopted by December 31, 2012. Hearing no comments, I will proceed.

Section 13-77-4: Explains the penalties that would apply for violations of this chapter.

Section 13-77-5: Explains that should any part of this rule be found to be invalid, the rest of the rule shall still be valid.

Section 13-77-6: Explains the prohibitions that would apply for Oahu.

- Net length limit of no more than 30 feet, provided two nets of no more than 30 feet each, may be joined together for a net length of 60 feet if two or more commercial aquarium permittees are using the longer net;
- Net height limit of six feet;
- The net limits will take effect
- Commercial daily bag limits as follows:
 - Yellow tang (100);
 - Kole (75);
 - Potter's angel (50);

- Naso tang (50);
- Moorish idol (25); and
- Achilles tang (10).
- A six daily commercial bag limit for the following sizes of fish:
 - Yellow tangs less than 1-1/2 inches in length;
 - Yellow tangs more than 5 inches;
 - Kole more than 5 inches; and
 - Cleaner wrasse of any size.
- A two daily commercial bag limit for bandit angelfish longer than 5-1/2 inches.
- Unlawful to have on board more than the commercial daily bag limits for the number of commercial aquarium permits on board; or
- To have more than three commercial daily bag limits on board, regardless of the number of commercial aquarium permits on board.
- Unlawful to take or possess any of the following taken under the aquarium permit:
 - Ornate butterflyfish;
 - Oval butterflyfish; and
 - Reticulated butterflyfish.

VI. Testimonies

A. As I call your name, please come to the microphone, state your name, and state clearly whether you support, oppose, or have no position on the proposed rule.

1. Angela Huntemer (submitted testimonies from students): Good evening. I am a teacher and I have some input from my students, who are first graders, and I told them where I was going tonight and we always like to draw pictures and write so I'm very quickly going to read some of these. We studied overfishing, ocean acidification, different habitats, and all that jazz. Don't take any reef fish, no more to see, all gone, no more, take zero fish, don't take nothing. I am assuming my students were opposed. My students were horrified that the collectors are uncontrolled. Even if there were regulations in place, they know it would be super hard to enforce. If you let them take a little bit, they might take more. They recognize that poaching exists, which is kind of amazing. One of the kids came up to me and asked, "What's the name of the people?", and I said, it's the government so he addressed his letter to the state government. So they are very concerned about this. They know that the reef is worth way more intact rather than stuff taken off the reef. They also know it's illegal to take rocks and corals from the reef so they cannot come to terms that people can still take fish and invertebrates.

I am concerned about enforcement because I live up at Turtle Bay and we have some enforcement problems. I have been involved with Makai Watch there and poaching is rampant. I know it's hard to enforce and it's not the guy on the ground's fault. To introduce regulations that would

require enforcement doesn't seem do-able given the resources you have now. If you see someone taking aquarium fish and there's a regulation, you might think it's OK, I don't know what they are doing and you just let it go. If you know that taking for aquariums is illegal and you see someone doing it, you can call enforcement right away. I don't understand why there isn't an environmental impact statement for every single collection zone in the islands. To me, it's got to be done, each habitat, each area. I don't understand why things are going like that. There's way too much stress on the reef. Thank you.

2. Greg Gerstenberger: My name is Greg Gerstenberger and I live on the North Shore for 33 years. I am against the taking of any reef fish. I notice on the North Shore, there's not many fish to see. I don't know how long Pupukeya has been off limits to fishing but I can see fish starting to come back. Other areas that are not protected are not coming back. I don't know how long the fish that are collected can last. Of all the fish collected in 2010, how many are still alive today? I had a roommate that had an aquarium and he put stuff in there all the time but they died. He wasn't the best guy to take care of them but I think there are a lot of people out there that don't know how to take care of them. It's sad to see fish taken from the ocean, being sucked up by a vacuum or net, be put in a tank for people to see, then die a year or two later, or a month, or a week. I think it's wrong. There should be some guidelines. I don't know how much fines. For 2011, has any collector been fined? I am against taking fish off the reef. I'm sure it harms the ecosystem, all the way from the smallest to largest fish. Thank you.

3. Robert Wintner: My name is Robert Wintner. I represent Snorkel Bob's. I am opposed to this process. Trafficking in reef wildlife for the pet trade is not sustainable no matter what an aquarium collector says. DLNR Director William Aila was an aquarium collector. Here's the official position:

"Aquariums introduce people who would not otherwise be able to see marine life and reefs to care for them, and therefore support the reefs without ever having physically being on a reef reef tanks advertise and stimulate visitors to come to Hawaii."

The problem is that aquarium fish die soon, requiring more fish. Hawaii reefs are in decline, yet William Aila's orchestration of aquarium trade entrenchment in Hawaii continues with these "rules packages." Aquarium collectors and wholesalers wrote these rules, and after these so-called "hearings" to ventilate public outrage, aquarium collector Aila will pass these rules with unanimous consent. We all know about Pele's curse on anyone taking a pebble or a bit of sand from Hawaii. What would be left if everyone took some? How does Madame Pele feel about the accursed aquarium trade? While Bill Aila runs kangaroo hearings on reef wildlife,

and a few DLNR staffers soak up public outrage like punching bags, and Neil Abercrombie looks the other way, the world is watching Hawaii. PETA is onboard to ban the aquarium trade in Hawaii. So is Sea Shepherd Conservation Society. Earthjustice represents the Humane Society of the United States, the Center for Biological Diversity, the Conservation Council of Hawaii and a cross-section of Hawaii people in suing the state-suing the State of Hawaii for FAILURE to assess reef impact *prior* to issuing aquarium permits that allow TOTAL EXTRACTION of Hawaii's marine wildlife. These bogus rules have limits per collector but no limit on the number of collectors.

These false rules allow 6 Hawaiian cleaner wrasses per day per collector-but a Hawaiian cleaner wrasse dies very fast in captivity, and Hawaiian cleaner wrasses are slated for protection on the Big Island. How can a species be targeted here and protected there? It's the money. These rules are based on lies and personal need. These rules would allow 25 Moorish Idols per collector per day. So 23 collectors could take 575 idols in a day, reaching the annual average take in 10 days. Why have a rule that has meaning or effect? The Oahu aquarium trade wants to protect 3 butterfly fish species that total 50 fish taken since 1999, but they target 3 other species already under great pressure. Why? It's the money. Here's the kicker: these rules target 260 species. One of those species is the bi-color anthias. This fish brings \$70 each online, but Hawaii collectors get about 5 bucks for them. That's \$8500 for the annual take of this incredible fish. You can't buy a species for \$8,500, but you can sell one. Taking these fish for mainland hobby aquariums is stupid and a crime against the people of Hawaii.

I oppose these rules, and I challenge DLNR to recuse itself on the aquarium trade as long as William Aila is director. This was conflict of interest. Now it's collusion between public officials and private enterprise. And I would like to submit as part of my testimony this picture of a bicolor anthias because unless you need an aquarium collector with you, you won't know where to see one. Thank you.

4. Keiko Bonk: My name is Keiko Bonk and I am here tonight to oppose this proposal from DLNR. I will be sending in my formal testimony but I have a few comments to make tonight. I am opposed because the outright taking of public property for personal profit for a handful of the population of our residents with no long term public good. I have not seen any evidence that the public good is going to be benefitted in years to come, a 100 years or 200 years to come. I can only see an end result of more problems. And therefore the long term public good of species conservation should always outweigh the short-term goal of a few people in Hawaii making some bucks. The State of Hawaii and the DLNR need to reprioritize its goals. It spends way too much time pursuing this project

which benefits so few people and a quasi-business venture that probably benefits more people out of state than it does here. There seems to be no added value to this mission of the proposal to the mission of DLNR. The mission of DLNR is to protect and conserve Hawaii natural resources in perpetuity. I have been working on land use issues for four decades and putting more focus on the ocean because people were saying they have been mismanaged starting about seven years ago. They were being mismanaged so bad that we were losing 90% of all fish that were pelagics and that the only fish left were the nearshore reefs that were needed to be preserved to replenish the larger fish that were being destroyed throughout the world. That alone should make us rethink how we look at the aquarium trade in Hawaii. The fact that we need the nearshore reefs to help us replenish the biomass to rebuild that which we have destroyed in the open ocean. Twenty years ago on the Big Island, the aquarium trade came to the island I grew up on. And I was informed by fishermen in my office, I was an elected official at that time, and asked me to work on banning this trade. Twenty years later we are pretty much in the same place except that we fish and less biodiversity in Hawaii. We have 439 endangered species on a list for Hawaii. We have the notorious reputation of being the extinction capitol of the world. DLNR has been crying for the last year and a half about not having enough money to manage 439 dying species and their habitat. They need to refocus their priorities, those are the priorities. You don't put any money into bringing back the Hawaiian monk seal. You don't put any money into bringing back any of those 439 species. That is your job. Stop wasting your money on a frivolous activity to decorate offices and rich people's homes and lives elsewhere. I will sum up now. We have a bad reputation, DLNR has this bad reputation. This is a proposal that is too little, too late. The industry came here fifty years ago. We have no indicators of what happened fifty years ago, ten years ago. We cannot go backwards and figure all that out. It would be better for us to go forward. We need to focus on recovery of species, restoring habitats for all our ocean creatures that we have destroyed, help them come back to life, develop laws that protect our unique species, clean up marine debris, address all ocean pollution, and educate people who use the ocean, especially tourists and others who are constantly in the water, and create a real enforcement of oceans in Hawaii. I am appalled today that DLNR is supporting this and the PLDC to sell off public goods to pay for this. Hawaii's leaders need to "man up" and really lead and say "no" to this industry. We have to get tough and say no to a handful of people and say yes to do what your mission to protect Hawaii's oceans. Thank you very much.

5. Deborah Bassett: My name is Deborah Bassett. I am a resident of the North shore and director of the Sea Shepard Hawaii Chapter. I will be submitting my testimony as well but I wanted to make a few points. First of all, the oceans are dying and here in Hawaii the reefs are in critical

trouble. Look at Kauai and see what's going on there. The aquarium trade is not sustainable. The biodiversity we are so fortunate to have here in Hawaii is being threatened because of this trade. The Sea Shepard Society is ready to work on a campaign to help ban this trade. PETA and Earthjustice is also working on this so this is something that conservation organizations are paying attention to. Mr. Wintner points out the world is watching Hawaii. I would like to go on record that this is a huge PR nightmare. There are people out there willing to stand up for it and we are prepared to work on this in the public domain. I am very concerned about the penalties and how they are being enforced and what protections lie in place. I don't know how these penalties will actually be enforced. The lack of an environmental impact statement seems criminal. I don't understand why there would be no impact statement. That would be standard in any situation like the current one. I am opposed to the rules. Also, coming to Hawaii, I have seen the decline personally throughout the years, the fish on the reefs. I have seen what's happening on Kauai, ocean acidification, and the biodiversity here that some of these fish keep intact and they need to be plentiful on the reef to do their God given job on the planet. I also see friends of mine in the tourism trade being affected negatively. If this is all about dollars and cents, what's going to happen when there's no more fish for people to come and see on the reefs. I'll quickly some statistics. The proposed bag limits would still allow unlimited take due to numerous factors, such as there is an unlimited number of collectors, there are no limits on the number of permits issued, available to all who have \$50 a year and limiting permits is no even being considered. Two, there's no mechanism to verify the number of animals taken and therefore there's no way to keep these statistics honest. And lastly, there's no enforcement. Officers have no rights of inspection without probable cause. I will be submitting a testimony in written form but those are my main concerns. Thank you.

6. Jerry Isham: My name is Jerry Isham. I come from the Waianae area. I'm a tropical fish collector. I totally support this rules package. This is a positive thing. This is one of the few times where fishermen were actually a part of a good thing. Usually everybody is screaming but you're dealing with a bunch of people that actually care for the industry. People think that we don't give a care and we just want to take every last fish out there and this is totally not true. There's not enough time for me to get into the details of the package but I wanted to bring up a few points, like why there are things like the butterflyfish. There are definitely fish that should not be taken because those three butterflyfish basically have no chance at survival and we do recognize that. The gear restrictions were designed to prevent waste, clean up our industry in a positive way to take only what you need. Unless you have moral issues against keeping aquarium fish, I don't understand how you could not support any kind of regulation. At this time, we are unlimited, we can take, but the reality is that weather,

demand, how much the boat can carry, we know what we are capable of carrying and those are self-restrictions. We felt we needed to tighten things up a little more to help our industry because there's nobody who cares more for this industry than the fishermen who make their living, that feed and shelter their families, with this industry. It's very offensive to me, I live here my whole life, my family born and raised here. For some foreigners to come here and tell me what I can do in my backyard is offensive. This rules package is a good thing. When was the last time fishermen were trying to create rules to better their trade? What precedence would this set if this package didn't go through? To get involved, to be pro-active. People should want to better their industries. I support this package. Please pass it. Thank you.

7. David Ramos: My name is Dave Ramos. I've been aquarium fish collecting for 24 years. Born and raised in Hawaii. This is the first time I've been to this type of pro-active meetings. There's a lot of mis-information, a mixture of good things, bad things, true things, almost true things. I'm in support of these regulations. People are going to say "sure you are, that's what you do." Everything Jerry said is straight up the line. There is a lot of mis-information, people don't know. You can't expect people to know about the ocean if they are not in it every day, or four or five days out of the week. You're not going to know how things work. I hope everybody can work things out. Thank you.

8. Ted Kiesel: My name is Ted Kiesel and I am for the aquarium rules. I'm a Native Hawaiian, born in Kalihi, grew up in Waimanalo. I can understand the people against this. For me, it would be foolish to take all the fish and don't let them grow again, cause then you won't have nothing. You got to let them do their thing. You got the different areas, if one area not looking too good, you let 'em rest. Close it, then after six months or one year, open it. If get too many guys, like you cannot have one million guys going to collect this stuff, because the fish not going to come back. You got to control the amount of permits you issue. We all in this trade together so we all got to have each others back. We cannot be greedy. It's like a pie, not only one guy get half the pie and everybody else get little bit. You got to find the area that's suffering, and let it go. The health of the ocean is directly related to the health on the land. If the land is sick, the ocean going to be sick. I support the business, my wife and four kids. I have a regular job, I do this part-time, but I got laid off of my job, so I do this full-time now. I don't worry, the man upstairs going to take care of me. Thank you.

9. Derrick Macalino: I'm Derrick Macalino. I've been diving for about nine years. I'm against this package. I don't believe there's a need for any bag limits or regulations because it's self-regulating. You can't go out when the weather is bad, you can't catch every fish in the ocean. I'm

against the proposal. I don't believe we need any more restrictions than there already is. That's all.

10. Wayne Sugiyama: My name is Wayne Sugiyama. I fully support this rules package because it allows divers to continue to work and provide for their families. Thank you.

11. Kevin Rezendes: My name is Kevin Rezendes. I'm for this package. I believe in the bag limits and net regulations. Thank you.

12. Dennis Yamaguchi: My name is Dennis Yamaguchi. I'm a full-time collector of aquarium fish. Please pass this rules package. These rules set bag limits, size limits, gear restrictions, and designate no catch species. If passed, it will be an effective management tool to sustain our fisheries into the future. Thank you.

13. Randy Fernley: My name is Randy Fernley. I'm in support of this rules package in regards to tropical fish. Over the past week, I've accumulated between 250-300 petitions that support this rule. We should have about 2,000 by the 19th. These people who filled out these petitions, are warm blooded, no hot-blooded individuals, who actually read and understand the rule. I presume the DLNR has been inundated by ghost petitions from the opposition side. These emails and petitions, I imagine, typically come from mainlanders or Europeans. Very few come from local people. These petitions that I have that support these rules, come from local people. Please pass these rules.

14. Angela DeVargas: My name is Angela DeVargas. I'm in the water every day. I am against taking of fish, period. I'm against this supposed mongoose guarding the henhouse, because to me, per collector, 100 yellow tangs? 100 each a day, come on. Seventy-five... all these numbers. There shouldn't be any fish taken. There's nothing to see. There used to be all kinds of yellow fish over in Waialua. There's nothing to see anymore. There's no yellow fish, even snorkeling at Waimea Bay. You don't even see the State fish. It's a disgrace. I have a written letter from someone who used to have an aquarium store. The guy has gone completely against it and I'm going to submit it. I don't want to read it, you can read it later. The other information I want to present is from the Hawaii Tourism Authority 2011 Visitor Satisfaction and Activity Report (submitted as part of the testimony). It is a big deal, not just for the residents. It is a big deal that mainland people like to go snorkel and look at a fish. They're not putting on a snorkel to look at sand. They want to see a fish. It's everybody's fish to look at. Here's the numbers from 2011. US Western States, visitors swimming and sunbathing 95.1 %. 55.9% from the West go snorkeling. From the US East, 52.7% go snorkeling. From Canada, 57.9% go snorkeling. From Europe, 48.9% go snorkeling. Tourism is a big

deal. Those are the tiniest ambassadors to Hawaii. It's a total conflict of interest. Why do they get to make their own rules? That's not right. Of course, they want this limit, 100 fish per day per person. That's outrageous. Why should 200 of them that have permits, determine what all the other residents and tourists get to see? It's not right. Thank you.

15. Dean Sensui: My name is Dean Sensui from Hawaii Goes Fishing. I wasn't going to testify but I want to say that I'm in favor of this package. There's little difference between pulling up a bunch of fish out of the ocean and eating them and keeping them as pets. It's the same impact. The only difference is what the user does with it. For the aquarium collectors determining their own regulations, in Hawaii, a konohiki would determine how a fishery would be managed. That person is a fisherman. In my experience from working on the show, I get to meet a lot of fishermen. There's very few who really understand the nature of that environment better than the people who are in there every day and depend on that resource to make their living. They know better than anybody else that if they wreck it, they lose. They want to make sure it's maintained and managed properly to ensure they will have a future to take care of their families. Sure, there's money to be made, and that's the way any business works. I don't think these guys have homes in Kahala or Hawaii Loa ridge, they're just ordinary, middle-class people making in a way that they know how. They're responsible to develop this rules package, it's well thought out. And there's nobody better qualified to regulate them than the people who know the resource best. I'm in favor of this rules package. Thank you very much.

16. Matt Ross: My name is Matthew Ross, I'm a commercial aquarium fisherman. This is how I make my living. I know just as well as everybody else, that if we don't take care of the resource, then we are gone. We are more vulnerable to that than the tourism people because if no more fish, we're out. I'm very supportive of these rules package. This was a consensus between the State, fishermen, and other users. I don't feel that I was the one who drafted this. Had I done so, it would look a little different. But the way it is, is the way it is. I'm happy that its going forward. This package will hurt my income somewhat. Some might say the bag limits are too high but it's less than what I can catch on a good day. They are less than comparable bag limits in other parts of the world that have limits on aquarium fish. My catch records show that there are days when I catch more and days when I catch less. This means that on those days when I could catch more, I will have to limit myself. But I think it's worth it because the limits are in place so our fish stay healthy. It's not actually possible to regulate a commercial fishery with daily limits as we don't catch the same things every day, we don't go diving every day. You would need an annual catch limit like the bottomfish guys. If that is something the department wants to look into, I hope we can work

on that. If the department wants to limit the number of permits it issues, that's something you will consult us on. Passing these rules should not preclude any additional management so I hope the department takes into consideration that just because these rules might not be everything you want, it doesn't mean they shouldn't go. It's better to have some limits on some things, than nothing at all. The most important, in my view, are the net limits and the fish size limits. By making it not possible for someone to take large amounts of the breeding stocks of these fish, that's the best way to preserve them or by making the gears so restrictive that they will have to be selective and can't surround an entire area and take too much. This proposal will go a long way. Thank you.

17. Josh Copus: I'm Josh Copus and I'm a population biologist with the Hawaii Institute of Marine Biology. Every fishery needs regulations and the aquarium fishery is no different so I am in support of this package. Thank you.

18. Wylie Ball: My name is Wylie Ball and I'm a part-time commercial fisherman here in Hawaii. I've been in the business for about a year and a half and I make about a \$100 a week from aquarium fish. We go to the same areas on a regular basis to catch aquarium fish and I haven't noticed any kind of decline. You go to an area, you catch a certain amount of fish in a day, of course there appears to be less fish at the time. We might go back to that spot in about a month or so, and there's a ton of fish there again. I think the ocean does regulate itself. These fish have this reef to go inside, into these tiny holes, and a lot of them are inaccessible. A lot of areas are inaccessible. The oceans are very rough here in Hawaii, particularly the North shore. I hear a lot of people say there's no fish on the North shore. There's huge 20-30 foot waves on the North shore and you can't catch fish there. I don't think the North shore is an area targeted by aquarium fishermen. I think there's some other kind of answer why those reefs are degraded. Ever since I can remember, my grandpa has had a fish tank in the house, and my dad's had fish tanks, and now, I have a fish tank. It's a family tradition. My fish make me happy, like my zen garden. I love my fish. If one of my fish gets sick, I get sad. If one of my fish dies, I get sad. I've had iquanas, hamsters, snakes, dogs, and accidents happen, pets die. When I was five, I was playing outside with my dog Pepper, my dad threw the ball, the dog ran out into the street and the neighbor ran over the dog. It was sad. I buried the dog in the back yard. We loved that dog. Fish are pets, too. I think most people eat fish as a staple of the human diet. I don't think there's much difference between catching a fish and selling it for \$5 and eating it for a meal. I can catch a bandit angelfish and sell it for \$100 to a wholesaler and feed myself for a week. He's going to sell the fish to a pet store for, I don't know \$200-250, and he's going to be able to feed himself and his family for a few days, just from the sale of one fish. Somebody's going to have a nice pet to take

care of. I don't think that banning aquarium fish is the answer. Why don't we ban the ownership of all types of pets? It's accepted in society to have and keep pets. I think the opposition has a lot of mis-information. They quote all these numbers and they don't have the proper research to back up all these numbers. I'm definitely in support of these regulations so we can have a sustainable fishery. That's all I have to say. Thank you.

Steven R Rosa (58:50): Aloha, my name is Steve Rosa. I almost have to laugh when I listen to some of these stories. I'm born and raised in Hawaii. I don't collect aquarium fish. This is the first time I've come to a public hearing and the people actually asking for regulations. They normally are opposing it. I almost have to support the other side cause I think they're right. We should keep all the tourist off the beach. They scaring away all the fish. There's millions and millions of people invading our waters. I feed my family out of these waters. I don't commercial fish. To ban something, to regulate, I can understand. If I have to take a stand one way or the other, I gonna have to stand with DLNR. I heard poachers come up. In certain parts of the world, they're shot. I have to support the regulations. That's all I get to say.

19. Alan Hong: Good evening, my name is Alan Hong. I was a manager of Haunama Bay for 21 years up until about a year and a half ago when I retired. I am speaking as a concerned citizen and do not represent Haunama Bay or the City & County of Honolulu. The latter part of my career was spent protecting our marine resources and our shoreline. 41 years ago I spent a short stint trying to make a living and almost starved to death as a commercial fish collector. I wasn't very good at it. But having spent so many years in the marine preservation field, I look at this as a good first step in tightening up an industry and should not be put out of business. I love to eat fish. This being the holiday season, I've eaten tuna, crab, pipipi, and aweoweo. I take stuff out of the ocean because I enjoy eating it. But all of us, in one way or another, have some impact on the ocean. Just living on this island has an impact. Businesses that depend on the ocean have some impact, including some businesses that let tourists get ahold of snorkeling gear without assessing their watermanship and our rangers have to now call these guys off the reef because they did not possess the skills to efficiently snorkel without standing up on coral. I spent almost 35 years as a SCUBA instructor and the last 25 years teaching at the Marine Options Program at the University of Hawaii. I was also the water safety director for the Waikiki Roughwater Swim for 33 years. I understand you cannot assess a person's waterman skills just by asking them "Can you swim?" On the other hand, I'm totally in favor of renting snorkeling gear to people because it enhances the enjoyment in their lives. We accept the impact that it has on the ocean. It supports business. It's part of our society that we all have some type of impact. What level are we willing to accept as impact? I am in favor of these regulations but as a first step to tighten up and make more regulations, like

those that govern my behavior when I go out and spear fish. I am in favor of this being passed.

20. Caroline Ishida: I am here to submit these comments on behalf of Earthjustice. My name is Caroline Ishida. We oppose these rules. Earthjustice has serious concerns that these rules, if approved, will merely formalize the status quo of aquarium collecting on Oahu without addressing community concerns about the health of fish populations on the reefs. Earthjustice has been following this issue for some time and we are concerned about the lack of DLNR oversight of the industry. These proposed rules do not do much to improve regulation of the industry or promote the conservation of Hawaii's reef ecosystems. The rules set meaningless bag limits that allow collectors to collect fish at the current collection rates. DLNR needs to conduct a HEPA review of its aquarium collecting rule-making and at the very least should develop rules on aquarium collection that are based on sound science after a careful examination of collecting effects on Oahu's reef ecosystems and the species that inhabit them. To provide some examples, the rules put no limits on the collection of invertebrates on Oahu despite the fact that at least 2 million hermit crabs and 400,000 feather duster worms have been removed from Oahu's reefs over the past decade. The rules also fail to place any collection limits on any of the species that DLNR has stated are particularly vulnerable to depletion because they may be naturally uncommon or rare but command high prices in the aquarium trade and are thus highly sought after by collectors. Neither species like dragon moray, Tinker's butterflyfish, Hawaiian turkeyfish and Zebra moray, all of which were collected from Oahu's reefs last year. In addition, species like the psychedelic wrasse, fisher's angelfish, oval chromis, and yellow-stripe chromis are all on DLNR's list of species of greatest conservation need but were collected from Oahu last year. The agency doesn't propose any bag limits on these species. We haven't seen any scientific studies that support the limits set forth in the proposed rule to show that taking at the upper limits of the rules are sustainable, largely because the terms of the rules were established by the Oahu aquarium industry. The daily bag limits in the rules are too high to accomplish any true curtailment of collection. There is no limit on the number of aquarium permits that the agency can issue. Setting the bag limit for yellow tangs at 100 per day per collector is meaningless. Additionally, setting the bag and size limits that would limit the take of bandit angelfish that are over 5 inches are rendered meaningless in light of DLNR's own statements in the small business regulatory review board presentation that the commercial data does not capture fish sizes so we are unable to determine the impact of a size limit in this fishery. DLNR also proposes to limit the take of reticulated and oval butterflyfish but according to the agency's catch data, collectors have not removed any of these species from Oahu's reefs over the past decade. Records show that some collectors have harvested some ornate

butterflyfish but it is unclear to us why DLNR is proposing to prohibit the take of these particular species but not the take of other frequently collected species, like the multi-banded, raccoon, threadfin, or four-spot butterflyfish, or any other species. Instead of adopting these proposed rules, DLNR should conduct in-depth scientific studies of reefs and fish populations around Oahu that focus on the goal of long-term sustainability of our reef fish and limit the exportation of these unique public resources for private gain. HEPA requires that DLNR take a hard look at the cumulative impacts of aquarium collecting on Oahu and Statewide. This is especially important in light of threats on our reefs from global warming, pollution, and ocean acidification that are already upsetting the delicate balance of reef ecosystems. In September of this year, the Center for Biological Diversity petitioned the National Marine Fisheries Service to list the Hawaiian damselfish also known as the Hawaiian domino and Hawaiian Dascyllus as endangered under the federal Endangered Species Act because of threats to its habitat caused by mass bleaching and ocean acidification. That fish is currently collected by the aquarium trade with 262 of taken off of Oahu's reefs last year according to DLNR's catch data. There's no bag limits for this species in these proposed rules, which is irresponsible in light of the precarious position this species is in. On Friday, NMFS announced it is proposing to list several Hawaiian coral species on the endangered species list as well. It is most important that DLNR consider information like this when it makes rules like this that affects the health of Hawaii's reef ecosystems because we are at the point where reef resilience and biodiversity will determine whether or not our reefs survive the next decades. Thank you.

21. Maxx Philips: Aloha, kakou, I'm Maxx Philips from the Big Island. The reality is we have to share our home and resources with people who are not from here. I am opposed to these rules. We need to make sure that DLNR is aware of their kuleana. To make sure to that our keiki have the same opportunity that we had to either practice the trade of aquarium collection or to see the fish I was brought up seeing and sometimes to eat. You cannot make regulations based on opinions but has to come from science. We need to make sure we are not just protecting these valuable resources so the trade can continue but that we can protect our home. The reefs and the resources are a part of our public trust and we are the beneficiaries. It's hard for DLNR to bring the spectrum together and that is why meetings like this are good. We also need to bring in the science community. We need to make sure the effects we are having today are not going to limit that in the future. It's going to take all of us pitching in, to kokua, to listen to our kupuna, to find common ground and ultimately decide what's best for the fish. Mahalo.

22. Chris Jury : Hi everyone, my name is Chris Jury. I'm a PhD student at the University of Hawaii at Manoa, the Hawaii Institute of Marine Biology

doing research in Kaneohe Bay. I originally grew up in Michigan where it's really cold this time of year. When I was younger, my family took a trip to Florida where I saw a coral reef for the first time. Later, when my family came to Hawaii to Hanauma Bay, I saw my first Pacific coral reef for the first time. That was when I became interested in coral reefs. I kept a marine aquarium and later focused by attention on reef ecosystems. Those marine life in my marine aquarium, thriving, really pushed me over the edge to go into marine science. I'm here looking at climate change and ocean acidification to look at these stressors in the Hawaiian archipelago. I am in favor of the motion here. It is an effective first step in managing aquarium fishing more effectively. Additional regulations in the future could certainly be attractive. I became aware of this discussion on aquarium collecting about a year and a half ago. I saw some reports and newspaper articles by advocates of banning the aquarium trade and saw some really scary numbers quoted. For one of the aquarium fish species, a 97% decline in fished areas. As someone who keeps aquariums, dives, eats fish, and concerned about ocean resources, that scared me. I went to the scientific paper that number was pulled from and found that that number was complete bunk. The paper showed no such decline, it was a complete misquote of what the research showed. For a number of other species, I went to the primary literature, the studies that were quoted as well as the DLNR's numbers, in every single case, the reported declines were completely without support in the data. This comes down to a conflict between resource users. The dive tour interests want all the fish left out on the reef so their customers can see them. People who catch fish to eat them want all the fish left out on the reef so they can eat them. Aquarium collectors also want the fish on the reef so they can collect them. I encourage the DLNR to use the best scientific information available to set sensible and effective guidelines to protect our natural resources, which will include allowing the continued collecting for the aquarium trade. Thank you.

Miyasaka: That completes the list of those who signed up to present testimonies. For those who have not signed up but wish to present testimonies, please come up, say your name and whether you support, oppose, or have no position on the proposed rules. Also, for those who have written testimonies, please leave them with me before you leave.

23. Corina Sugiyama: My name is Carina Sugiyama and I approve this rules package. I am very surprised that the opposition is so against any rules package because from the very beginning of these hearings, over 4 years ago, it has been said by all these groups that the biggest problem in our industry is that there are no rules and no regulations in the aquarium industry. It was suggested by these groups that rules be made, and we in the industry agreed that it would be beneficial for preserving our resources. We tried working with them, but this is how it goes. There are

rules in place for commercial food fishing and we feel the aquarium industry should also have rules. There are many long time divers who are very respectful of our ocean and our resources and do not over fish or damage the reef. But we do need to protect our resources from future collectors that may not be as conscientious as these long time divers, so that our children and future generations can enjoy what we have here in Hawaii. We have been trying to work with DLNR to put together a rules package but now the opposition has changed course and thinks there should be no rules. The opposition would like you to believe that every licensed fisherman goes out fishing 365 days a year and therefore they come up with these outlandish quantities of fish being caught and shipped out of the State. But this is just not true and they have no data to confirm that. There is not one diver in this room that could physically dive every day of the year. It would be great if the facts were given to the people of Hawaii, as it is a real shame that the public is being misinformed and led to believe otherwise. I am asking that you pass this rules package for the aquarium fishing industry and for the people of Hawaii. Thank you

24. Melva Aila: My name is Melva Aila, the wife of the chair, but these are my own words. I strongly support this rules package. I've lived in Waianae all my life. I've gathered fish from the reefs all my life and I will always gather fish from these reefs. These rules are reasonable, it has involved many people working together, to figure out. The aquarium fish fishery is sustainable and these aquarium fishermen here tonight want the fishery to continue to be sustainable. They truly care about the fishery. I strongly support this rules package and I hope you do the pono thing by supporting this rules package. Mahalo.

25. Les Parker: Hi, my name is Les and I support this aquarium rules package. It doesn't take rocket science to see that there are only enough aquarium fishers to fill up half of this cafeteria. I've been in the industry for about four years. I've pretty much everybody whose associated with the industry. There's only about 40-50 people, enough to fill up half of this, and it doesn't take rocket science to say that we're not going to collect enough fish. Even if we fished every day and hit the maximum limits, we are not going to devastate the reefs. It's as silly as saying let's ban cars on the freeway because if everybody went above the speed limit, we would have a devastating effect on our highways. Nobody can collect 100 fish a day every day and spend time with their family. There's a lot of work that's associated with this industry. You're not just out there collecting fish. You're taking care of your systems at home, your customers, packing fish, you're doing a lot of work. It's not physically possible for everybody in this room to hit their maximum limits. But it is a first step towards bettering the industry. I hope this industry will continue to regulate ourselves and come up with more solutions like limited entry and raising the fee to become a commercial fisherman so we can pay for

new fishermen to go through classes on sustainable collecting. I am in support of this rules package.

26. Dr. Andrew Rossiter: Good evening, I'm Andy Rossiter, the Director of the Waikiki Aquarium and a professor of biology at the University of Hawaii. I would like to comment on some of the things I've heard here tonight. I'm strongly in favor of this bill. We've heard a lot of comments about science and how there's no science to base these rules on but I would put it to the opposition to show that there is no science that indicates the aquarium industry has any effect whatsoever on reef fish populations. I think a far more serious cause is pollution, people trampling on corals. If those two factors are regulated, there would be infinitely more coral reef fishes. The amount of fish taken by tropical fish collectors, even if unabated, would have no significant effect on coral reef populations. The regulations that they have self-imposed should be lauded for that because I've dealt with fisheries in other countries and I've never seen it where the fishing community have self-imposed regulations and worked closely with government to achieve those aims. I think that's excellent. We've also heard tonight several statements where there's reported facts from the opposition that are frankly nonsense. My favorite one has been brought up many times before at similar hearings where the Hawaiian cleaner wrasse dies after a week. We have had Hawaiian cleaner wrasse at the Waikiki Aquarium for 4-5 years. Now maybe it's because the person didn't understand my accent, but I've also submitted that testimony in writing so maybe they can't read as well. I find it really distressing that blatant mis-truths are being presented to back up the case and it's quite frankly fraudulent. I understand there are sentimental reasons for this but there are no facts. If we stick to science, stick to facts, applaud these guys for introducing self-regulation, I think the Hawaiian reef fish population and the sustainable harvesting of Hawaiian reef fish can go on for centuries. Thank you very much.

27. Carlos Santana: My name is Carlos Santana and yes, that is my real name before you ask. I'm here to support the legislation. I'm an aquarium hobbyist and see aquariums as a great way to educate our children about topics like ecology, biology, oceanography, and even chemistry. If you can teach a young child about the nitrogen cycle and teach them how to do water quality testing you may spark in that child scientific curiosity then that child may one day grow up and solve some serious problem. Without aquariums, you lose that bit of education. I support the legislation strongly.

28. Angela Huntmer 2nd oral testimony: I'm Angela Huntmer again and I'm a teacher. In our classroom, we do have an aquarium. In the aquarium is a bunch of collected sea urchins. My class is working in conjunction with DLNR to propagate and make sea urchins big enough to release out

onto the reef in Kaneohe so they can go eat the invasive algae. As far as education goes, we have it all in my classroom, except our little critters, we got them from DLNR, and we're going to release them onto the reef so they can help eat the algae and enhance the corals. One of the previous testifiers mentioned that some of these opposing comments are coming from mainlanders and Europeans, so what. We are the endangered species capitol of the world and you can be sure people around the world also have a say on what's going on here. We cannot just do whatever we want here and wipe out species and not have other people comment on it. Another commenter said the daily catch limit should be a yearly catch limit. There seems to be a lot of flaws in the rules and I am particularly concerned about enforcement. Poaching is rampant on the island, resources on the ground are stretched thin. I just wanted to let you know about the urchins.

29. Ted Kiesel 2nd oral testimony: It's me again, Ted Kiesel. I'm an invertebrate collector, not fish, but I think you got to find the balance for the ocean. If get too much pressure on the fish, they cannot propagate. I can understand the opposition's point because as a fisherman, I don't want to see the reef dead, but there's other factors like run-off, pollution, tourism, a lot of stuff. What you got to do is find the balance and talk to the fishermen because the fishermen going to know. If not too much fish, the fishermen going to know and maybe let this area rest. When they come back then you can fish again. All the guys with permits now, you got to see how much they catching, and if get 1,000 guys fishing, then too much pressure. Thank you.

30. Ocean Akaka: My name is Ocean Akaka. I'm in favor of this. I'm always around the water, I'm a paddler and a snorkeler but I don't like snorkeling and not seeing any fish. I want to see fish but all the fish are gone. I just want to keep the fish over here. Thank you.

31. Alina Murray: Hi, my name is Alina Murray and I am for the rule.

32. Jennifer Brian: Hi, my name is Jennifer Brian and I am also for the rules package. Someone said earlier that they hope the world would be watching Hawaii. I hope they are because they would see the State and a group of people supporting each other and self-regulating themselves which hardly anybody or country is doing. I think Hawaii could serve as a model for the whole industry because I do think the industry could use some improvement. I am in support of the rules package but I also think it should be a first step. Thank you.

33. Charles Laidley: Good evening, my name is Charles Laidley and I am the curator of the Waikiki Aquarium. I've dedicated about 30 years of my life trying to protect the environment. I care about it deeply. I can't

imagine a world without aquariums. There are so many positive things that come out of having aquariums, the effects on our kids and our lives and what that's brought to our understanding of the natural environment. I think that the people that have these aquariums and fish make more of a positive effect on earth than all the other users of the oceans so I'm clearly for the legislation but I do believe that sometimes people misuse privileges so it is important to have rules. I give credit to this group that is starting to bring rules in to show they do take care of the environment. I am also strongly supportive of science based regulations and we need to support DLNR/DAR to provide the information we need to sustainably regulate the industry, not just the aquarium industry but all the possible impacts which include effluents and all the takes. There are so many impacts that we need to assess fully. I think if you do, you wouldn't find that the aquarium trade is a significant impact. Thank you.

- B. Are there others who wish to testify? None so indicted.
- C. Late testimonies: Persons unable to attend today or wishing to present additional comments, may mail written testimony to us by December 19, 2012.
Please mail testimonies to:
Department of Land and Natural Resources
1151 Punchbowl Street, Rm 330
Honolulu, HI 96813
- D. The Division received over 4,000 written testimonies on the propose rules. About 98% of them were opposed with the majority being received through email in different form letters. About 88% were from out of State and 12% in-State. A summary of the testimonies received and our responses to those testimonies are provided as an attachment to these minutes.

VII. Decision-making on the proposals:

- A. Based on the testimonies presented, the Department will submit its findings and recommendations to the Board of L&NR.
- B. Depending on the comments received tonight, our goal will be to present these proposed rules, the hearing minutes, findings and recommendations to the Board at its meeting on January 24, 2013. If approved by the Board, the Department of the Attorney General will conduct a final legal review. If approved, the proposed rules will be given to the Governor for his final approval.
- C. Should the Governor grant approval, certified copies will be filed with the Lt. Governor's office, and after 10 days, it becomes effective as law.
- D. Are there any questions regarding this process?

VIII. Adjournment

- A. On behalf of the Board of Land and Natural Resources and DAR, thank you for attending this public hearing. This public hearing is now adjourned.
Time: 7:40 P.M.
- B. Thank you for taking time out from your day to attend this hearing.

Appendix 2

Oahu Aquarium Rules Public Comment Summary & Response

1/18/13

Public Comments

1. Moratorium on aquarium collecting
2. Moratorium on issuing aquarium permits
3. Limit aquarium permits issued
4. Proposed bag limits would be ineffective because the number of permits is not limited
5. Reduce bag limits
6. Should include more species than is currently being proposed
7. Should conduct an environmental impact review
8. Rules would only apply to Oahu & Hawaii island, with no statewide rules
9. Support rules as proposed

OHA Comments

10. Rules do not include traps
11. Lack of standards for issuing aquarium permits
12. The continued sale of cleaner wrasse is inappropriate, except for the experienced aquarists
13. Lack of scientific information to properly evaluate rules

Detailed Responses

1. Moratorium on aquarium collecting

The proposed rule does not include a provision to establish a moratorium on aquarium collecting. We do not believe that such a measure is needed at this time. Because there is no such provision in this proposed rule, we are not considering adding this provision, as this would be outside of the scope of the proposed rule.

2. Moratorium on issuing aquarium permits

The proposed rule does not include a provision to establish a moratorium on the issuance of aquarium permits. Because there is no such provision in this proposed rule, we are not considering adding this provision at this time, as this would be outside of the scope of the proposed rule.

3. Limit the number of aquarium permits issued

The proposed rule does not include a provision to limit the number of aquarium permits issued. Because there is no such provision in this proposed rule, we are not considering adding this provision as this would be outside of the scope of the proposed rule.

4. Proposed bag limits would be ineffective because the number of permits is not limited

This comment implies that the bag limits would not reduce catch because the bag limit is dependent on the number of commercial permits (one bag limit per permit) and there is no limit on the number of permits that could be issued. We would argue that any bag limit would be better than no bag limit, which is the current situation, if the number of permits remains stable. The concern is that the number of permits could increase. The number of commercial aquarium permits issued throughout the years has remained fairly stable. We do not expect a substantial increase in the number of permits when the bag limits are established.

5. Reduce bag limits

The comments received did not provide any suggested alternative commercial bag limits other than they felt the limits were too high and did not provide any effective limit because there is no concurrent limit on the number of permits to be issued. The information we have indicates that commercial bag limits are not necessary for this fishery at this time. Even if catch restrictions were needed, we would not be suggesting commercial daily bag limits by species as a means to reduce catch. The Oahu commercial collectors proposed commercial bag limits as a conservation measure they could support as a way to prevent waste of resources. If too many fish are collected at one time, the overcrowding damages the fish while in the boat, making them unsuitable for the trade. The limits are intended to prevent overcrowding and subsequent damage to fish, not because there is a need to reduce catch.

6. Should include more species than is currently being proposed

The proposed species in this rule amendment is seen as part of an on-going effort to better manage the marine resources and is not intended to be a complete or final list. Most collectors could immediately support these particular species as an initial effort. Additional discussions will be needed for other species.

7. Should conduct an environmental impact review

The Hawaii Environmental Policy Act (HEPA) is contained in Chapter 343, Hawaii Revised Statutes. HEPA governs the need for environmental reviews and when the law would apply. The Department believes that these proposed rules are not subject to HEPA and a review is not required.

8. Rules would only apply to Oahu & Hawaii island, with no statewide rules

These proposed rules would only apply to Oahu & Hawaii island, respectively. There exists other regulations that apply statewide, that complement, but are not included in, this proposal. These are not the only provisions that would apply to aquarium collecting.

9. Support rules as proposed

The Division thanks those individuals and businesses that supported the proposed rules.

Discussion on the Comments from the Office of Hawaiian Affairs

10. Rules do not include traps

The main gear for the commercial aquarium fishery is a barrier net that is included in this proposal. The trap, while a gear that is in use, is not a gear that most commercial collectors use, therefore, we do not feel the need to include traps in the proposal at this time.

11. Lack of standards for issuing aquarium permits

The issuance of permits is not being considered in this proposal. While we agree that standards might be useful, we are not prepared to include them at this time.

12. The continued sale of cleaner wrasse is inappropriate, except for the experienced aquarists

We recognize that the cleaner wrasse is difficult to maintain in captivity given its restricted diet on ectoparasites. Some commercial collectors argued that there should be some low level of take allowed to supply those few individuals and institutions that have

the necessary skills and equipment to properly care for these animals. A total ban would eliminate the supply of these animals that may be important in some captive systems.

13. Lack of scientific information to properly evaluate rules

The current proposal includes net gear and commercial bag limits, both of which are difficult to scientifically justify. A scientific study would not necessarily indicate whether the net should be 25-feet or 100-feet long. The length would better be determined by use in the field, the species being sought, the depth, and other factors. Similarly, bag limits are not usually used in commercial fisheries. An annual rather than daily bag limit would more effectively manage an overfished fishery. As explained in #3 previously, the bag limits are to correct an overcrowding problem and to prevent waste of the resources, not to correct an overfishing problem.

Summary of Comments Received for Chapter 13-77 Oahu Aquarium Management Rules

Comments	Response
1 Moratorium on aquarium collecting	A moratorium is not being considered as part of this proposed rule
2 Moratorium on issuing aquarium permits	A moratorium is not being considered as part of this proposed rule
3 Limit aquarium permits issued	A permit limit is not being considered as part of this proposed rule
4 Proposed bag limits would be ineffective because the number of permits is not limited	Comments do not provide a suggested alternative bag limit; proposed limits are considered reasonable for these species
5 Reduce bag limits	Including more species is not being considered as part of this proposed rule
6 Should include more species not currently being proposed	No environmental review is required at this time
7 Should conduct an environmental impact review	These proposed rules are specific for their respective islands; existing statewide requirements would continue to be in effect
8 Rules would only apply to Oahu & Hawaii islands, with no statewide rules	
9 Support rules as proposed	
10 Rules do not include traps	Traps are not a major commercial gear in this fishery and do not need to be included at this time
11 Lack of standards for issuing aquarium permits	Permit issuance is not being considered as part of this proposed rule
12 The continued sale of cleaner wrasse is inappropriate except for the experienced aquarists	The State recognizes that the cleaner wrasse is a difficult fish to maintain in captivity and has included this species in the proposal; the small bag limit allows the sale to public aquariums and professional aquarists; we consider this option as a compromise between the current status of no restrictions on take and a total ban on the species
13 Lack of scientific information to properly evaluate rules	The current proposal has net gear limits and commercial bag limits that would be difficult to scientifically justify; the commercial collectors agreed to these limits despite the lack of scientific justification to provide limits where there currently are none

Appendix 3.

Final Draft Rule Chapter 77

Oahu Aquarium Life Management

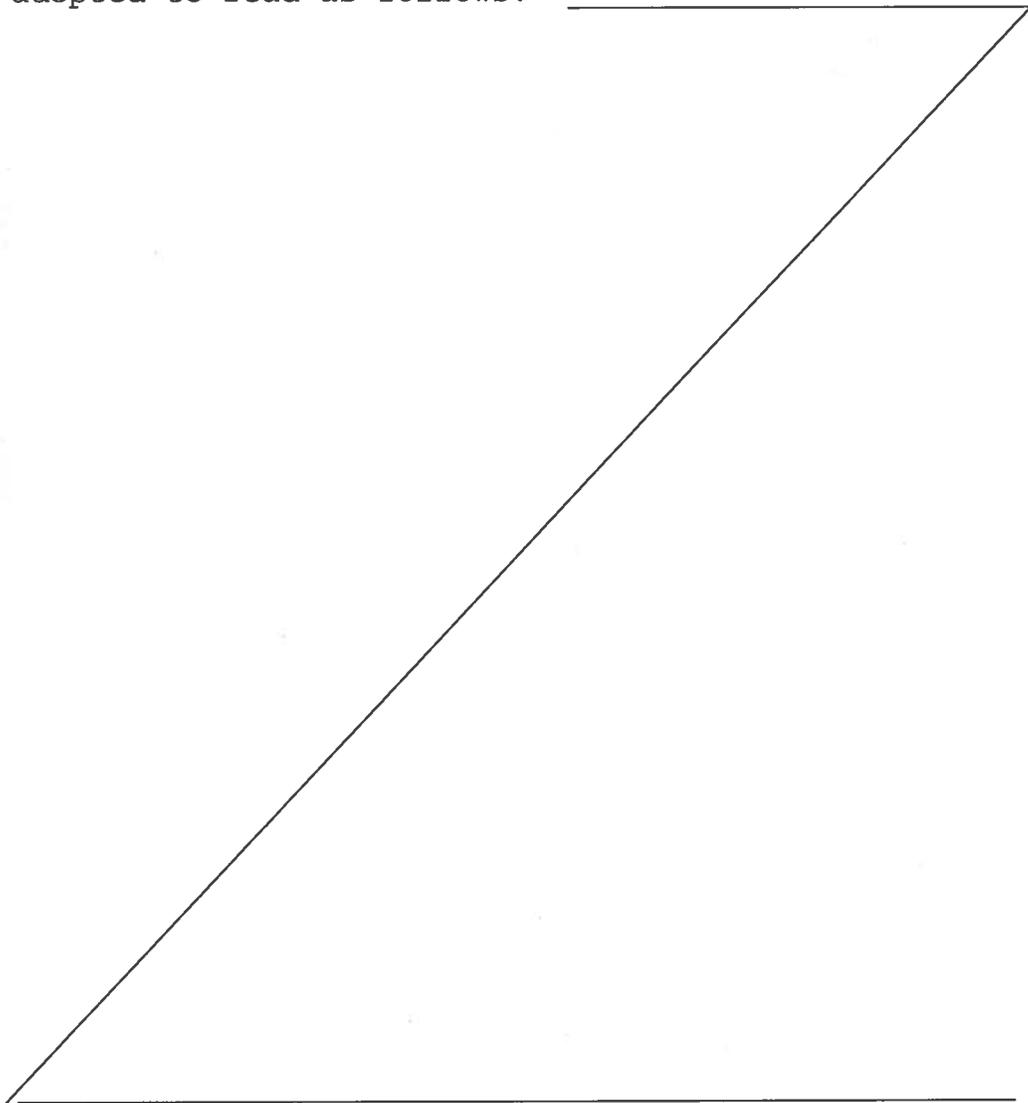
Ramseyer Draft
(10/24/2014)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-77
Hawaii Administrative Rules

(date)

1. Chapter 77 of Title 13, Hawaii Administrative Rules, entitled "Oahu Aquarium Life Management" is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART IV FISHERIES RESOURCE MANAGEMENT

CHAPTER 77

OAHU AQUARIUM LIFE MANAGEMENT

General Provisions

- §13-77-1 Intents and purposes
- §13-77-2 Definitions
- §13-77-3 Penalties
- §13-77-4 Exemptions
- §13-77-5 Severability
- §13-77-6 Oahu prohibited activities

General Provisions

§13-77-1 Applicability and scope. This chapter shall apply to the collection of aquatic life for an aquarium purpose from the waters of Oahu while using fine or small mesh traps or fine or small mesh nets, but not throw nets. While governing the taking of aquatic life intended for live aquarium displays, this chapter shall not apply to the use of nets to take aquatic life for food, bait, or other consumptive purposes. This chapter is also intended to supplement regulations restricting the use of net fishing gears in chapter 13-75. [Eff] (Auth: HRS §§187A-5, 188-31) (Imp: HRS §§187A-5, 188-31)

§13-77-2 Definitions. As used in this chapter unless otherwise provided:

"Achilles tang" means any marine fish species known as *Acanthurus achilles* or any recognized synonym.

"Aquarium purposes" means to hold marine fish, fresh water nongame fish, or other aquatic life alive in a state of captivity, whether as pets, for scientific study, for public exhibition, for public display, or for sale for these purposes.

"Aquarium fish permit" means a permit issued by the department pursuant to section 188-31, HRS, for the use of fine mesh nets and traps to take marine fish, fresh water nongame fish, or other aquatic life for aquarium purposes.

"Bandit angelfish" means any marine fish species known as *Apolemichthys arcuatus* or any recognized synonym. This species is also known as banded angel, *Holacanthus arcuatus*, and *Desmoholacanthus arcuatus*.

"Cleaner wrasse" means any marine fish species known as *Labroides phthirophagus* or any recognized synonym.

"Commercial aquarium fish permit" means a valid aquarium fish permit issued to a person who also has been issued a valid commercial marine license.

"Commercial marine license" means a license issued by the department for the taking of marine life for commercial purposes, issued pursuant to section 189-2, HRS.

"Day" means the twenty-four hours following midnight of one day until midnight of the following day. It is a measure of time for the purposes of setting a bag limit only.

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

"Kole" means any marine fish species known as *Ctenochaetus strigosus* or any recognized synonym.

"Length" means the straight-line external measurement from the leading edge of the snout or jaw to the middle of the trailing edge of the tail.

"Moorish idol" means any marine fish species

known as *Zanclus cornutus* or any recognized synonym.

"Naso tang" means any marine fish species known as *Naso lituratus* or any recognized synonym. This species is also known as the orangespine unicornfish.

"Ornate butterflyfish" means any marine fish species known as *Chaetodon ornatissimus* or any recognized synonym.

"Oval butterflyfish" means any marine fish species known as *Chaetodon lunulatus* or any recognized synonym.

"Permittee" means a person who has a valid commercial or recreational aquarium fish permit.

"Person" means any individual, corporation, partnership, association or other business entity.

"Potter's angel" means any marine fish species known as *Centropyge potteri* or any recognized synonym.

"Recreational aquarium fish permit" means a valid aquarium fish permit issued to a person for non-commercial use.

"Reticulated butterflyfish" means any marine fish species known as *Chaetodon reticulatus* or any recognized synonym.

"Small mesh" or "fine mesh" means a net, trap, or other fishing gear with mesh, which stretched mesh size is smaller than the legal limit as provided in section 13-75-14.

"State" means the state of Hawaii.

"State marine waters" means those waters 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.

"Waters of Oahu" means, for enforcement purposes, marine waters from the shoreline around the island of Oahu seaward for three nautical miles.

"Yellow tang" means any marine fish species known as *Zebrasoma flavescens* or any recognized synonym.

[Eff] (Auth: HRS §§187A-5, 188-31)
(Imp: HRS §§187A-5, 188-31)

§13-77-3 Exemptions. Notwithstanding the provisions of this chapter, the department may issue the licenses or permits which exempt persons from the provisions of this chapter. Section 13-75-14(7) exempts the use of small mesh hand nets or scoop nets to take fish or other marine life for non-commercial purposes. [Eff _____] (Auth: HRS §§187A-3.5, 187A-6, 189-6) (Imp: HRS §§187A-3.5, 187A-6, 189-6)

§13-77-4 Penalties. A person violating any provision of this chapter shall be guilty of a petty misdemeanor and penalized as provided by section 187A-13, HRS. In addition to any criminal penalty, any violation of these rules shall also be subject to civil and administrative penalties, as provided by section 187A-12.5, HRS. [Eff _____] (Auth: HRS §§187A-12.5, 187A-13, 187A-32) (Imp: HRS §§187A-12.5, 187A-13)

§13-77-5 Severability. The provisions of these rules are declared to be severable, and if any portion, or the application thereof, to any person or property is held invalid for any reason, the validity of the remainder of these rules or the application of the remainder to other persons or property shall not be affected. [Eff _____] (Auth: HRS §§187A-5, 188-31) (Imp: HRS §§1-23, 187A-5)

§13-77-6 Oahu prohibited activities. (a) Notwithstanding the provisions of chapter 13-75, it is unlawful for any person in or on the waters of Oahu, possessing a small mesh net authorized under a commercial aquarium fish permit or recreational aquarium fish permit, to possess a small mesh net that is:

- (1) More than thirty (30) feet long; provided that two or more permittees may join two

nets, each no more than thirty (30) feet long, for a total net length of no more than sixty (60) feet long; or

- (2) More than six (6) feet in height.
- (3) These restrictions regarding net length and height in subsection (a) shall take effect after July 1, 2015.

(b) It is unlawful for any person, while possessing, using, or having used a small mesh net authorized under a commercial aquarium fish permit and in or on the waters of Oahu, to possess a small mesh net and take or possess a daily bag limit of more than:

- (1) One hundred (100) yellow tang;
- (2) Seventy-five (75) kole;
- (3) Fifty (50) Potter's angel;
- (4) Fifty (50) naso tang;
- (5) Twenty-five (25) moorish idol; or
- (6) Ten (10) achilles tang.

A daily bag limit includes the cumulative number of regulated aquatic life taken or possessed by a person on any day.

(c) It is unlawful for any person while possessing, using, or having used a small mesh net authorized under a commercial aquarium fish permit and in or on the waters of Oahu, to possess a small mesh net and to take or possess more than six (6) of any of the following per day:

- (1) Yellow tang less than one and one-half (1.5) inches in length;
- (2) Yellow tang more than five (5) inches in length;
- (3) Kole more than five (5) inches in length; or
- (4) Cleaner wrasse of any size.

(d) It is unlawful for any person while possessing, using, or having used a small mesh net authorized under a commercial aquarium fish permit and in or on the waters of Oahu, to take or possess more than two (2) bandit angelfish that are longer than five and a half (5.5) inches in length, per day.

- (e) It is unlawful for any person while

possessing, using, or having used a small mesh net authorized under a commercial aquarium fish permit, to operate a vessel on the waters of Oahu with:

- (1) More than the daily bag limits as provided in subsections (b), (c), and (d) for the number of permittees on board the vessel; or
- (2) More than three times the number of any daily bag limit, regardless of the number of permittees on board.

(f) It is unlawful for any person, while possessing a small mesh net authorized under a commercial aquarium fish permit or recreational aquarium fish permit while in or on the waters of Oahu, to take or possess any of the following species:

- (1) Ornate butterflyfish;
- (2) Oval butterflyfish; and
- (3) Reticulated butterflyfish." (Auth: HRS §§187A-5, 188-31) (Imp: HRS §§187A-5, 188-31)

2. The adoption of chapter 13-77, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

William J. Aila, Jr.,
Chairperson, Board of Land
and Natural Resources

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General