

BOARD OF LAND AND NATURAL RESOURCES

JUN 23 2020

STATE OF HAWAI'I

IN THE MATTER OF	)	FINDINGS AND REASONS FOR NON
	)	ACCEPTANCE OF FINAL
DETERMINATION OF WHETHER THE	)	ENVIRONMENTAL IMPACT
FINAL ENVIRONMENTAL IMPACT	)	STATEMENT (FEIS) REGARDING
STATEMENT (FEIS) COMPLIES WITH	)	PROPOSED ISSUANCE OF
APPLICABLE LAW AND ADEQUATELY	)	COMMERCIAL AQUARIUM PERMITS,
DISCLOSES THE ENVIRONMENTAL	)	COMMERCIAL MARINE LICENSES,
IMPACTS OF PROPOSED ISSUANCE OF	)	AND WEST HAWAI'I AQUARIUM
COMMERCIAL AQUARIUM PERMITS,	)	PERMITS FOR THE WEST HAWAI'I
COMMERCIAL MARINE LICENSES, AND	)	REGIONAL FISHERY MANAGEMENT
WEST HAWAI'I AQUARIUM PERMITS	)	AREA
FOR THE WEST HAWAI'I REGIONAL)	
FISHERY MANAGEMENT AREA)	
)	

FINDINGS AND REASONS FOR NON ACCEPTANCE OF FINAL ENVIRONMENTAL IMPACT STATEMENT (FEIS) REGARDING PROPOSED ISSUANCE OF COMMERCIAL AQUARIUM PERMITS, COMMERCIAL MARINE LICENSES, AND WEST HAWAI'I AQUARIUM PERMITS FOR THE WEST HAWAI'I REGIONAL FISHERY MANAGEMENT AREA

By letter dated April 13, 2020, applicant Pet Industry Joint Advisory Council (PIJAC) submitted its Final Environmental Impact Statement (FEIS) to disclose the projected environmental impacts of proposed issuance of commercial aquarium permits, commercial marine licenses, and West Hawai'i Aquarium Permits for the West Hawai'i Regional Fishery Management Area.

The approving agency is the Department of Land and Natural Resources through the Board of Land and Natural Resources. The Board considered the FEIS at its duly agendized sunshine meeting held on May 22, 2020. Applicant submitted testimony and appeared. Numerous other persons submitted testimony for and against acceptance of the FEIS and/or testified at the meeting.

Upon careful consideration the Board did not and does not accept the FEIS based on the following findings and reasons and for any other additional reasons supported by the testimony and exhibits.

1. In order to properly assess the likely impact of the proposed take of the aquarium fish, the FEIS should contain a reasonably reliable estimate of the amount of future take.

2. Except for the pāku'iku'i, or Achilles tang, the FEIS does not contain any daily bag limits on any of the "White List" species which the fishers are allowed to take, and there are no annual limits on the take of any species except that the total take of pāku'iku'i would be limited by the fact that only ten permits with a daily limit of five each would be allowed under the proposed action. In addition, there is no scientific basis provided for reducing daily take of pāku'iku'i from ten to five per permit, nor any analysis of the impact of that level of take on the population of pāku'iku'i.

3. The existing regulations of the WHRFMA do not contain any daily or annual bag limits other than for the pāku'iku'i, a "slot limit" for yellow tang, and a limit on kole over 4" long. To project how many fish are likely to be taken, the FEIS relies completely on the historical catch records of these ten fishers for the forty "White List" species. See Tables 5-2 and 5-11. The FEIS concludes that 160,832 fish would be taken annually, based on the maximum number taken by the ten permittees in any year, during the 2000-2017 period. See §5.4.1.5. The assumption that historical catch records adequately predict the future take has a number of shortcomings.

4. It appears that no more than 8 of the 10 fishers were active in any previous year. See Table 4-2. It seems likely that all ten fishers will be active, given they had sufficient interest in

the permits to fund the EIS, and that they will have a monopoly on the use of fine-mesh nets to collect fish in the WHRFMA.

5. The FEIS has no information about the level of effort of these 10 fishers in prior years, i.e. whether they collected 100, 200, or 300 days a year, for example, and the amount of time spent collecting. It is possible that they could significantly increase their collection efforts and total take.

6. The fishers could also or alternatively change what species they target for collection and increase the impact on some species.

7. The data in the FEIS show that these ten fishers take some species at a very different rate than the fishery as a whole. For example, although the percentage taken of all species by the ten in the WHRFMA varies from a low of 7.0% in FY2000 (when only two were active) to 46.4% in FY2017 (Table 5-2), their percentage of take of individual species, at least in certain years, has been much higher. Table 5-11 gives the maximum catch in any one year for each of the “White List” species, and the maximum catch in any one year by the ten. The ten fishers took 83.7% of the lei triggerfish (252/301), 95.5% of the milletseed butterfly fish (402/421), and 89.2% of the Fisher’s angelfish (257/288), and 54.6% of the kole (23,014/42,122.) On the other hand, they took only 9.1% of the ornate wrasse (1130/12,445). This demonstrates that collectors can, and do, selectively target some species more than others. (It is not clear whether the maximum year given for all collectors is the same year as that given for the maximum by the ten fishers. The basic point made here is valid in either case, however.)

8. In order to assess the likely impact of the take, the FEIS should adequately analyze the sustainable level of take. The FEIS relies on Ochavillo and Hodgson (2006) for the proposition that 5-25% of a population is a sustainable level for annual take. The FEIS has an

inadequate justification for the reliance on this publication as the best available science. The FEIS does not provide data for nor statistically analyze the sustainability of that level of take for each type of fish, given each fish species' life span, population size, reproductivity rates and age at first reproduction.

9. In §5.4.1.5, the FEIS uses Table 5-11 to compare the take of various species to the CREP population estimates, to show that they are well below the claimed 5-25% sustainable level. In Table 4-5, however, the harvest/population ratios of four or five species (depending on the year) in the West Hawai'i open areas at 30'-60' depth exceeded 5% for several species, and are as high as 39.67% for the paku'iku'i in 2017-2018. The West Hawai'i open area population estimates may be more relevant than the island-wide CREP data.

10. The FEIS has an inadequate discussion of the role of herbivores. Many of the "White List" species are herbivores.

11. The FEIS does not adequately discuss relevant negative findings, for example, the reduced numbers of aquarium fish at collection sites found by Tissot and Hallacher (2003). The FEIS need not agree or disprove the negative findings, but it should discuss them.

12. The extreme threat of climate change on our reefs warrants extreme caution in reviewing activities that may affect them. The FEIS should further discuss potential effects of present and future levels of climate change including ocean warming, ocean acidification, coral bleaching, extreme storms, and resulting reef destruction and algae growth, and the potential for mitigating harm (i.e. further regulation) if the proposed fishery has unanticipated or greater negative effects with climate change.

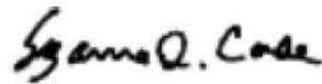
13. The FEIS failed to sufficiently consider cultural impacts. The FEIS improperly concluded that the impacts to cultural resources under any of the proposed alternatives would be

less than significant based on the flawed premise that cultural impacts would only occur if the proposed action would cause a significant decline in the population of a White List Species considered to be a cultural resource. A number of testimonies expressed misgivings from a cultural standpoint with the proposed activity itself, regardless of impact on resources, and this was not adequately considered in concluding no significant impact.

14. The FEIS does not adequately discuss the effect of illegal aquarium fishing on the numbers of projected sustainable take of fish species.

The FEIS is not accepted. The non-acceptance may be appealed to the Environmental Council in accordance with H.R.S. §343-5 and H.A.R. 11-200.1-29.

DATED: Honolulu, Hawai'i, May 30, 2020.



SUZANNE D. CASE, Member and
Chairperson
Board of Land and Natural Resources

AGENCY PUBLICATION FORM

Project Name:	Issuance of Commercial Aquarium Permits, Commercial Marine Licenses, and West Hawai'i Permits for the West Hawai'i Regional Fishery Management Area
Project Short Name:	FEIS WHRFMA Commercial Aquarium Permits
HRS §343-5 Trigger(s):	Trigger 1 (use of state lands) and Trigger 2 (use of conservation districts)
Island(s):	Hawai'i
Judicial District(s):	Puna, South Hilo, North Hilo, Kau, Hamakua, South Kona, North Kona, South Kohala, North Kohala
TMK(s):	N/A
Permit(s)/Approval(s):	Commercial Aquarium Fishing Permits issued pursuant to HRS §188-31, Commercial Marine License issued pursuant to HRS 189-2,3, West Hawai'i Aquarium Permit issued pursuant to HAR 13-60.4
Approving Agency:	Department of Land and Natural Resources
<i>Contact Name, Email, Telephone, Address</i>	David Sakoda; david.sakoda@hawaii.gov, 808-587-0104, 1151 Punchbowl Street, Room 330, Honolulu, HI 96813
Applicant:	Pet Industry Joint Advisory Council (PIJAC)
<i>Contact Name, Email, Telephone, Address</i>	Jim Lynch; jim.lynch@klgates.com; 206.370-6587; 925 Fourth Ave., Suite 2900 Seattle, WA 98104
Consultant:	Stantec Consulting Services Inc
<i>Contact Name, Email, Telephone, Address</i>	Terry VanDeWalle; terry.vandewalle@stantec.com; (319) 334-3755; 2300 Swan Lake Blvd., Suite 202 Independence, IA 50644

Status (select one) DEA-AFNSI**Submittal Requirements**

Submit 1) the approving agency notice of determination/transmittal letter on agency letterhead, 2) this completed OEQC publication form as a Word file, 3) a hard copy of the DEA, and 4) a searchable PDF of the DEA; a 30-day comment period follows from the date of publication in the Notice.

 FEA-FONSI

Submit 1) the approving agency notice of determination/transmittal letter on agency letterhead, 2) this completed OEQC publication form as a Word file, 3) a hard copy of the FEA, and 4) a searchable PDF of the FEA; no comment period follows from publication in the Notice.

 FEA-EISPN

Submit 1) the approving agency notice of determination/transmittal letter on agency letterhead, 2) this completed OEQC publication form as a Word file, 3) a hard copy of the FEA, and 4) a searchable PDF of the FEA; a 30-day comment period follows from the date of publication in the Notice.

 Act 172-12 EISPN
("Direct to EIS")

Submit 1) the approving agency notice of determination letter on agency letterhead and 2) this completed OEQC publication form as a Word file; no EA is required and a 30-day comment period follows from the date of publication in the Notice.

 DEIS

Submit 1) a transmittal letter to the OEQC and to the approving agency, 2) this completed OEQC publication form as a Word file, 3) a hard copy of the DEIS, 4) a searchable PDF of the DEIS, and 5) a searchable PDF of the distribution list; a 45-day comment period follows from the date of publication in the Notice.

 FEIS

Submit 1) a transmittal letter to the OEQC and to the approving agency, 2) this completed OEQC publication form as a Word file, 3) a hard copy of the FEIS, 4) a searchable PDF of the FEIS, and 5) a searchable PDF of the distribution list; no comment period follows from publication in the Notice.

 FEIS Acceptance
Determination

The approving agency simultaneously transmits to both the OEQC and the applicant a letter of its determination of acceptance or nonacceptance (pursuant to Section 11-200-23, HAR) of the FEIS; no comment period ensues upon publication in the Notice.

 FEIS Statutory
Acceptance

The approving agency simultaneously transmits to both the OEQC and the applicant a notice that it did not make a timely determination on the acceptance or nonacceptance of the applicant's FEIS under Section 343-5(c), HRS, and therefore the applicant's FEIS is deemed accepted as a matter of law.

 Supplemental EIS
Determination

The approving agency simultaneously transmits its notice to both the applicant and the OEQC that it has reviewed (pursuant to Section 11-200-27, HAR) the previously accepted FEIS and determines that

a supplemental EIS is or is not required; no EA is required and no comment period ensues upon publication in the Notice.

- Withdrawal Identify the specific document(s) to withdraw and explain in the project summary section.
- Other Contact the OEQC if your action is not one of the above items.

Project Summary

Applicant wishes to engage in commercial aquarium fish collection of various fish species from nearshore habitats of the West Hawai'i Regional Fishery Management Area (WHRFMA). They seek necessary permits from the Department of Land and Natural Resources (DLNR) for 10 fishers.