April 13, 2026

Environmental Advisory Council
Office of Planning and Sustainable Development
Department of Business, Economic Development & Tourism
State of Hawai‘i

Re: Proposed Exemption List for the Department of Land and Natural Resources, dated February 3, 2026

Dear Chair Hegger-Nordblom, Vice chair Stone, and members of the Council,

For the Fishes respectfully submits this testimony in strong opposition to the Department of Land and Natural Resources' (DLNR) proposed addition of **General Exemption Type 4, Part 1, No. 21**, as currently written, to its exemption list.

This exemption creates a loophole big enough to drive decades of documented reef damage through. Activities like commercial aquarium collection have already reduced fish populations by up to 80%—they are the opposite of "minimal impact." Calling them exempt doesn't make them harmless; it just removes accountability.

This Proposed Exemption Is Overbroad and Legally Deficient

As written, this exemption would apply to permits, licenses, registrations, and rights-of-entry for "ongoing activities." This language is overly broad on its face and fails to meet the requirements of the Hawai‘i Environmental Policy Act (HEPA), which allows exemptions only for actions that will "*probably have minimal or no significant effects on the environment*," both individually and cumulatively (HRS § 343-6(a)(2)).

This proposal lacks the limiting criteria necessary to ensure that only truly minimal-impact activities qualify. As such, it creates a dangerous loophole.

Risk of Misuse: Exempting Harmful Extractive Activities

Without clear limitations, this exemption could be used to bypass environmental review for **ongoing extractive activities**, including commercial aquarium fish collection—an industry with a long, well-documented history of ecological harm and regulatory evasion.

DLNR has already signaled its intent to rely on HEPA exemptions in future aquarium trade permitting. The agency's draft aquarium rule—whose public comment period closed yesterday—explicitly defines "HEPA exemption" as a pathway for approving such activities without environmental review. This raises

serious concerns that the proposed exemption could be used to shield commercial aquarium collection from scrutiny.

Decades of Evidence Show Significant Environmental Harm

The aquarium trade does not meet the legal standard for exemption.

DLNR's own 1998 *State of the Reefs* report identified aquarium collection as a major cause of coral reef degradation in Hawai'i, particularly on O'ahu and Hawai'i Island. A DLNR/DAR-funded study found population declines of **45% to 63%** for targeted species in collection areas, with clear shifts in reef fish community structure (Appendix 1).

Long-term monitoring data further demonstrate severe depletion:

- Yellow tang populations in collection areas were reduced by **over 60% in most years**, and by **80% or more in multiple years**, compared to protected areas.
- These impacts were sustained over decades and repeatedly documented in reports to NOAA and the Legislature.

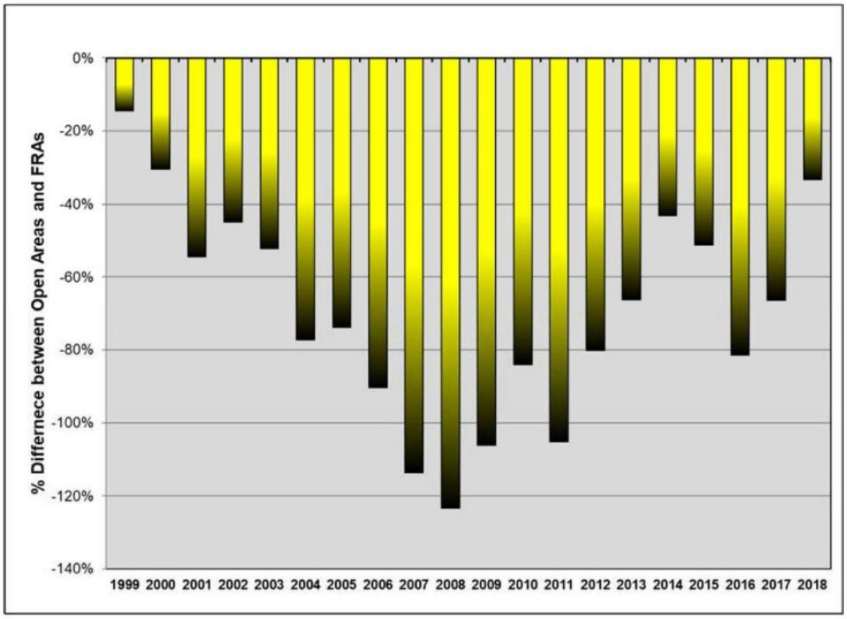


Figure 1. Long-term depletion of yellow tang in West Hawai`i aquarium collection areas compared to protected areas. Bars represent the % difference in abundance for each year from 1999 to 2018. Bars below the x axis indicate lower abundance in the collected areas than the protected areas.[1]

Across most years, populations in collected areas were reduced by more than 60%, and by 80% or more in multiple years—demonstrating sustained, significant impacts inconsistent with "minimal impact" activities under HEPA.

[1] DLNR/DAR (2019). Report to the Thirtieth Legislature, 2020 Regular Session Findings and Recommendations of Effectiveness of the West Hawai'i Regional Fishery Management Area (WHRFMA)

Case Study: Paku‘iku‘i (Achilles Tang)

The impacts on paku‘iku‘i provide a clear warning of what happens when extractive activities are allowed to proceed without timely intervention:

- Aquarium collectors removed up to 80% of the population along the majority of the West Hawai‘i coastline.
- DAR documented these declines as early as 2006 and repeatedly characterized the impact as “major.”

Catch is the average aquarium catch over FY `06 –`10

Scientific Name		Catch	30’-60’ Population	Catch as % of Population
Acanthurus achilles		8,477	10,655	79.56%

Catch is the average aquarium catch over FY `10 –`12

Scientific Name	Common Name		Catch	30’-60’ Population	Catch as % of Population
Acanthurus achilles	Achilles Tang		9,801	13,666	77.38%

Figure 2. Severe depletion of paku‘iku‘i (Achilles tang) associated with aquarium collection pressure. Population estimates and % of population taken by aquarium collectors. Catch is the average aquarium catch over FY `06 –`10; and FY `10 - `12.[2] [3]

Aquarium collectors removed up to 80% of the population across much of West Hawai‘i’s coastline, a level of extraction DAR itself identified as having a “major impact,” ultimately contributing to population collapse and emergency closure.Despite this, no protective action was taken for over a decade.

By 2022, populations had collapsed to the point that an emergency rule banning all take and possession—including for food fishing—was required.

This outcome illustrates the real-world consequences of allowing ongoing extractive activities to proceed without adequate environmental safeguards.

Exemptions Must Not Apply to Extractive Activities

Given this record, it is clear that extractive activities—especially those with a demonstrated history of population depletion—cannot reasonably be considered to have “minimal or no significant effects.”

[2] DLNR/DAR, Walsh et. al (2010) Long-Term Monitoring of Coral Reefs of the Main Hawaiian Islands Final Report 2009 NOAA Coral Reef Conservation Program State of Hawai’i Monitoring Report NA06NOS4260113 10/01/2006 - 09/30/2010

[3] DLNR/DAR Walsh et. al (2012) Long-Term Monitoring of Coral Reefs of the Main Hawaiian Islands Final Report 2009 NOAA Coral Reef Conservation Program Hawai’i Island Monitoring Report NA09NOS4260100 10/01/2009 – 12/31/2012

To ensure compliance with HEPA and prevent misuse, we strongly urge the Council to amend the proposed exemption as follows:

“Issue permits, licenses, registrations, and rights-of-entry that are routine in nature, involving non-extractive activities with negligible impacts beyond those previously existing and resulting in only minor alterations to land, water, or vegetation.”

This clarification is essential to prevent the exemption from being used to bypass environmental review for activities that have already caused substantial ecological harm.

Conclusion

The proposed exemption, as currently written, is inconsistent with HEPA, unsupported by the scientific record, and vulnerable to misuse. Hawai‘i’s reefs—and the communities that depend on them—cannot afford further erosion of environmental safeguards.

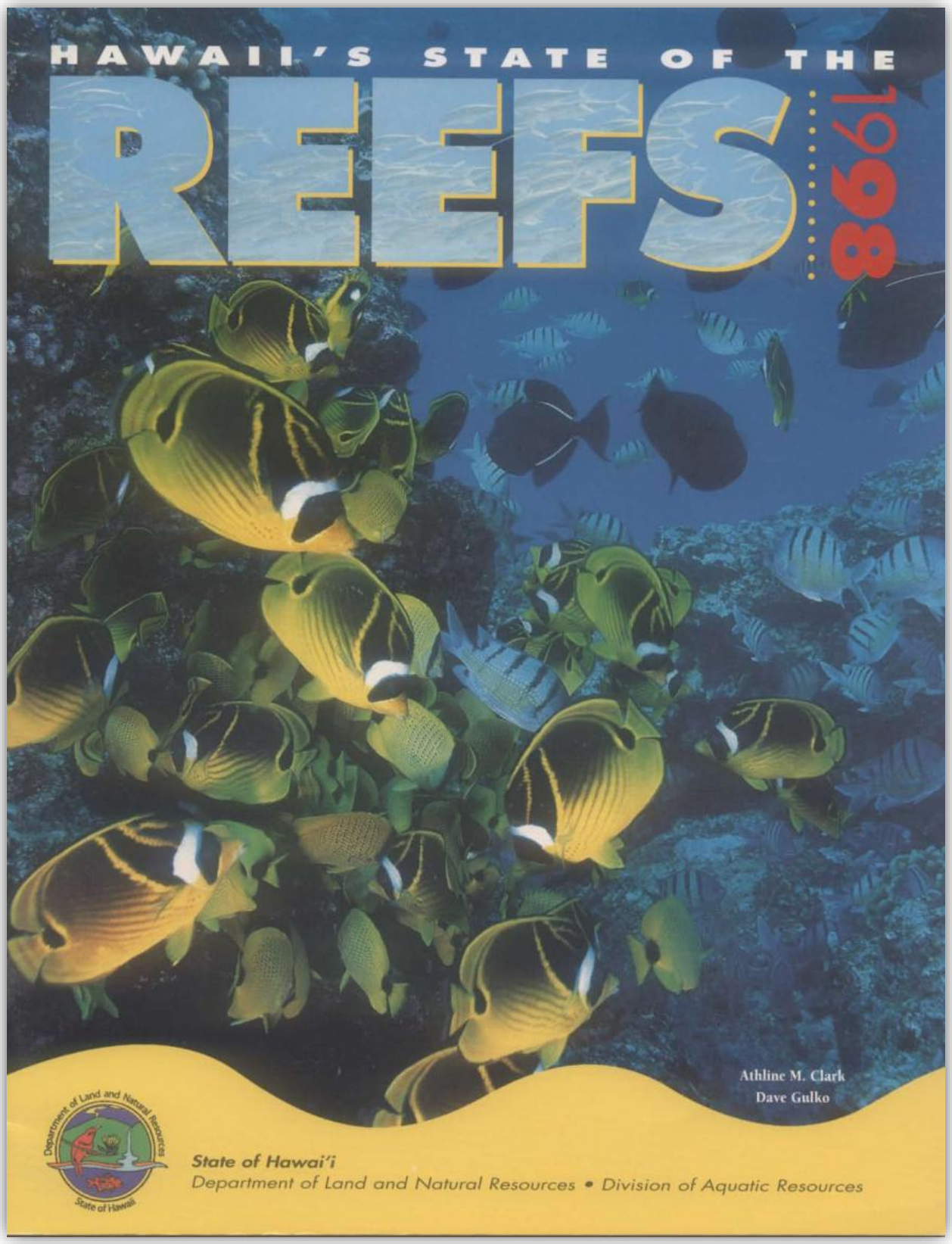
We respectfully urge the Council to amend this section.

Mahalo for the opportunity to testify.

Sincerely,

Rene Umberger
Executive Director
For the Fishes

APPENDIX 1. DLNR STATE OF THE REEFS REPORT



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