

**Report to the Twenty-Fifth Legislature  
Regular Session of 2009**

**Requesting the Department of Land and Natural Resources  
To Report to the Legislature  
on the Progress for the Adoption of Rules to Regulate  
the Ornamental Reef Fishery Industry in South Maui and Kaneohe Bay, Oahu, to Confer  
with Geographical Stakeholders, and to Propose Appropriate Legislation**



**Prepared by**

**Department of Land and Natural Resources  
State of Hawaii**

**In response to House Concurrent Resolution 347, Senate Draft 1  
Regular Session of 2008**

January 2009

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On the Progress for the Adoption of Rules to Regulate  
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**EXECUTIVE SUMMARY**

House Concurrent Resolution (HCR) 347, Senate Draft (SD) 1 requested the Department of Land and Natural Resources (Department) to report its progress on regulating the ornamental reef fishery industry in south Maui and Kaneohe Bay, Oahu to confer with all geographical stakeholders in the process, and to propose any needed legislation. The Department's Division of Aquatic Resources (DAR) was assigned to meet with stakeholders and develop proposals to regulate the industry. Commercial fishery statistical personnel have taken action to improve data quality for the aquarium and other commercial fisheries. DAR has met with several groups of stakeholders both on Maui and Oahu.

**PURPOSE**

This report is submitted in compliance with HCR No. 347 SD1 adopted by the Twenty-Fifth Legislature of the State of Hawaii, Regular Session 2008. The concurrent resolution requested the Department to report its progress on regulating the ornamental reef fishery industry in south Maui and Kaneohe Bay, Oahu, to confer with all geographical stakeholders in the process, and to propose any needed legislation.

**BACKGROUND**

HCR 347 SD1 urged the Department to proceed expeditiously with the adoption of rules to regulate the ornamental reef fishery industry in south Maui and Kaneohe Bay, Oahu. In the process of formulating rules the Department was requested to confer with all geographical area stakeholders. A report of progress, including proposed legislation was requested for the 2009 Regular Session of the Legislature.

The project was assigned to the DAR. The Division Administrator oversees efforts to fulfill the requirements of the resolution; the Program Manager for Commercial Fisheries has been the centralized contact for stakeholder input. The DAR Maui Information and Education Specialist was assigned to coordinate Maui stakeholder issues with the Program Manager for Commercial Fisheries. Two days of stakeholder meetings occurred on Maui. One DAR Oahu biologist, the Program Manager for Commercial Fisheries, and the Division Administrator have attended Oahu stakeholder meetings.

## **RESPONSE TO HCR 347 SD1**

### **Catch Reporting and Compliance**

DAR's commercial fishery statistics staff began focusing on aquarium catch reporting during the 2008 Legislative Session. Cross verification of catch and wholesaler purchase reports has been conducted monthly since January 2008, when wholesale records became more reliable. Under reporting of wholesale catch was identified while reviewing aquarium catch data. To address the wholesale under reporting, reminders about the cash sales report were sent to aquarium species harvesters during August 2008. Cash sales and direct export sales make the collector a dealer by definition, and may account for some under reporting of catch at the wholesale level.

A review of Oahu aquarium collection data through Hawaii Fiscal Year (FY) 2008 was conducted. Recent catch reports include large decreases in hermit crab and feather duster worm harvests as well as reporting problems with commercial marine license (CML) holders that previously reported harvesting these species. Meetings with Oahu stakeholders revealed that there has been a large decrease in sales to the United States for these groups due to the declining economy.

The Department continues the process of developing rules for a civil penalty system that would include fines for monthly reporting failures related to commercial aquarium harvest. When in place, such civil penalties may increase reporting compliance in all commercial fisheries including aquarium harvests. Department personnel continue to revisit CML rules to allow the inspection of catch by enforcement officers; a legislative proposal has been drafted. Problems with officers being able to inspect catch have limited The Department's Division of Conservation and Resources Enforcement's (DOCARE) ability to identify offenders, including commercial aquarium collectors.

### **Stakeholder Meetings, Legislation and Rules**

The Department Chairperson heard testimony on Maui from a broad spectrum of stakeholders during the July Governor's summit. DAR staff, including the Division Administrator, the Program Manager for Commercial Fisheries, the DAR Maui Information and Education Specialist, and DAR biologists from Maui and Oahu, have met with numerous stakeholders to discuss ornamental harvesting issues. Two days of meetings occurred on Maui. Maui stakeholders attending the meetings have included representatives of concerned groups such as the dive tour industry, environmental groups, native Hawaiians, fishing and dive equipment stores, aquarium harvesters, Maui Mayor Charmaine Tavares, and Maui DOCARE officers. Communication with the Maui stakeholders is ongoing. Meetings with aquarium harvesters and retailers have also occurred on Oahu. The aquarium industry issue has yet to be discussed during a Kaneohe Bay Council meeting as a quorum was not present at their last quarterly meeting. Input has also been received from non-governmental organizations, political organizations, and

several individuals. DAR personnel continue to meet with stakeholders as this report is being prepared.

No legislation to address issues raised in stakeholder and staff meetings is proposed for the current legislative session. Preliminary discussions and data analysis regarding new rules (based on existing legislative authorities) are continuing with stakeholders. No ornamental reef fishery industry regulation administrative rules are included with this report; legislative authorities that would allow targeted regulation of the industry have not been identified. Administrative rules being proposed by stakeholders are rules that would apply to all resource users (recreational, food and aquarium harvesters).

### **Potential Departmental Procedure Changes**

DAR has also been reviewing what could be done to regulate the ornamental reef fishery industry without the benefit of legislative or rule changes. Commercial licensing and reporting procedure changes would apply to all commercial fishermen and not uniquely regulate the ornamental reef fishery industry. Area, gear and species based procedure changes would apply to all harvesters, and not uniquely regulate the ornamental reef fishery industry. Aquarium permits are required for collectors wishing to use small mesh nets, only. Aquarium permits are not required for all collectors or all industry participants. Many collectors use methods that do not require a small mesh net. An example of this is found on Oahu where collectors simply do their collecting by hand, and thus by statutory requirements, do not require an aquarium permit. Many of the issues raised by stakeholders do not relate to those in the industry who have an aquarium permit. Increased regulation based on the existing aquarium permit may simply cause a shift by the collectors to gear types that fall outside the scope of the permit, thus obviating the permit requirement. Aquarium permits, as they are defined, cannot be used as an industry-wide regulatory tool. Increasing regulation based on the existing aquarium permits will not address many of the problem issues raised by stakeholders.

Given all the above, existing law and rule require aquarium permit applicants or renewals to “satisfy the department that they possess facilities to and can maintain fish and other aquatic life alive and in reasonable health.” The Department could change existing procedure and require a higher standard of information than is presently used to “satisfy the department ...” before an aquarium permit is issued. Increasing the information required during permit application, and limiting permitted aquarium industry take based on the information, would increase regulation in regard to the industry as it currently operates on Maui (most industry participants on Maui operate with small mesh net aquarium permits). Some of the current operators on Oahu would also likely experience greater regulation, however some Oahu collectors can operate legally without the small mesh net aquarium permit.

Increasing industry regulation through changes in the application procedure for the existing small mesh net aquarium permit would require Department staff and resources which are decreasing due to budget restrictions, and are likely to be decreased further given revised State budget projections. Regulation through the current permit application process would also require new inspection authority and dedicated financing for

inspections in order to be effective. A change in the standard of information required to obtain an aquarium permit would also affect the West Hawaii fisheries, which were not included within the mandate of HCR 347.

## **CONCLUSION**

Increasing regulation based on the existing aquarium permits will not address many of the problem issues raised by stakeholders, as described previously. Accordingly, the department will continue to work with stakeholders to identify rules that would apply to all resource users that will protect and preserve sustainable fisheries for today and in the future.