

Small Business Impact Statement
Department of Land & Natural Resources Proposed Amendments to Chapters 13-54 and 13-57, Repeal of Chapter 13-60.3, Adoption of Chapter 13-60.4, and Amendments to Chapter 13-75, Hawai'i Administrative Rules

1. List of affected small businesses (fewer than 100 full- or part-time employees)

Affected businesses may include those small businesses engaged in the collection of aquatic life from West Hawai'i waters (from Ka Lae, Ka'ū to 'Upolu Point, North Kohala) for sale as aquarium pets, or for consumptive or other purposes. These businesses may face certain restrictions on their commercial activity, as described below.

However, the greater assurance of resource sustainability provided by the proposed rules should also foster long-term benefits to these businesses and industries. Additionally, commercial ocean recreation tour operators, dive gear rental operations, and similar businesses that engage in non-extractive activities based upon the aquatic resources of West Hawai'i will also benefit from these resource protection measures.

Currently, there are approximately 70 individual aquarium collectors operating in the West Hawai'i area, and 16 commercial fishermen who engage in SCUBA spearfishing (the primary commercial harvesting activities affected by the proposed rules). There are approximately 70 small businesses engaged in ocean recreation tour operations or similar non-extractive activities in West Hawai'i.

2. Description of affected businesses

The potentially adversely affected businesses listed in section 1 above are engaged in the collection and sale of aquatic life from the marine waters of West Hawai'i, for either aquarium or consumptive purposes.

Businesses engaged in the collection of aquatic life for aquarium purposes may be adversely impacted in the following ways:

- The collection of aquatic life for aquarium purposes will be prohibited in a 1,500 foot section of Ka'ōhe Bay, otherwise known as Pebble Beach. The Big Island Association of Aquarium Fishermen (BIAAF) agreed to support this proposal in order to resolve long-standing user conflicts in the area.

- Aquatic life that may be collected for aquarium purposes would be restricted to a "white list" of 40 species, with additional bag and size limits for three highly targeted species: yellow tang, kole, and Achilles tang. Adverse revenue impacts should be minimal, given that these "white list" species comprised 99% of the total fish catch and monetary value of the West Hawai'i aquarium fishery (FY 2007-2011). The size limits for the highly targeted species have been tailored to prevent the taking of fish that are already considered less suitable for the aquarium trade (due to higher mortality rates or lower retail prices); the bag and size limits will also support the

commercial sustainability of the fishery by ensuring greater breeding opportunities for existing fish stocks. The BIAFF supports the “white list” and bag and size limits.

-Aquarium collecting gear must now be labeled with the commercial marine license of the person owning or possessing such equipment, and the letters “AQ” must now be permanently affixed to both sides of an aquarium-collecting vessel. Any adverse impact from this proposal would be limited to the time and cost of affixing the required markings on any aquarium collecting equipment and vessel.

-Aquarium collectors who wish to possess aquarium collecting gear or aquatic life collected for aquarium purposes after sunset and before sunrise must provide phone notification to the Kona Division of Aquatic Resources Office. The adverse impact from this proposal would be limited to the cost of making a phone call and leaving a message prior to or during multi-day fishing trips or vessel emergencies.

-Individuals engaged in the collection of aquatic life for aquarium purposes must now obtain an additional West Hawai‘i Aquarium Permit, which will include information on the new rules for aquarium collecting in West Hawai‘i. The adverse impact of this proposal would be limited to the filling out of an additional, free application, which can be concurrently applied for when renewing or applying for the presently-required statewide aquarium permit with their commercial marine license. With a West Hawai‘i Aquarium Permit, AQ businesses will also be allowed to use small-mesh lay nets without complying with lay net registration or marking requirements, further mitigating any adverse administrative impact.

-Amendments to chapter 13-54 would clarify the no-netting boundaries of the Puakō Bay and Puakō Reef Fisheries Management Area with an updated map, which previously led to confusion regarding the outer boundaries of this area. Aquarium collectors who have reportedly used nets to collect aquatic life in the currently ambiguous outer boundary area will now have a more clearly delineated no-collection area, reducing their chances of being subject to false or erroneous poaching allegations.

Commercial harvesters of marine life from the West Hawai‘i region may also be adversely affected, depending on their fishing method and location of harvest.

-Commercial SCUBA spearfishers will no longer be able to concurrently use SCUBA gear and spears to take aquatic life from WHRFMA. The value of the SCUBA-spear fishery in West Hawai‘i averages approximately \$35,000 annually (FY 2007-2011). However, commercial spearfishers may continue to take aquatic life using spears and snorkeling gear (among other lawful fishing methods, including traps and certain nets). Any adverse commercial impact will also be mitigated by the potential long-term benefit to all small businesses that generate revenue from healthy fishery stocks in West Hawai‘i including the 70 ocean recreation businesses which generate an estimated \$35 million dollars yearly in gross revenue (Teri Leicher, Ocean Tourism Coalition). The protection of targeted and vulnerable species, particularly in depths

accessible only to SCUBA spearfishers, will ensure greater breeding opportunities for existing fish stocks.

-The take of certain aquatic life is prohibited under a “no-take” list of 11 species, comprised of sharks, rays, and two species of marine mollusks. Many of these species are of limited commercial value and/or are already protected from commercial harvesting practices under state law. In addition, any marginal impact on commercial harvesting businesses will be offset by benefits to other small businesses that may generate revenue from healthy populations of these iconic marine species.

3. Dollar value of direct and indirect costs for affected small businesses

No direct costs to small businesses in the form of additional fees or fines are contemplated in this rule proposal. Indirect costs to aquarium collectors should be marginal and limited to the costs of permanently affixing the already-required “AQ” insignia to aquarium-collecting vessels, of marking aquarium-collecting equipment with the CML number of the owner or possessor of such equipment, and of making phone calls prior to remaining on the water after sunset and before sunrise. The additional administrative burden of obtaining and maintaining an annual West Hawai‘i Aquarium Permit should also be marginal to nonexistent, as statewide aquarium collecting permits and commercial marine licenses are already required for the collection of aquatic life for aquarium purposes, and the new permit may be obtained or renewed at the same time as the currently required permits. Any lost revenue to aquarium collectors should also be minimized due to the inclusion in the “white list” of species that comprise 99% of the catch value according to five years of recent data.

As discussed above, the current economic value of the SCUBA-spear fishery has been estimated at approximately \$35,000. However, the dollar value of lost fishing opportunities to these commercial harvesters would be offset by the utilization of other fishing methods, as well as the indeterminate long-term benefit to targeted fisheries by the SCUBA-spear prohibition’s inherent protection of important breeding stocks in deeper waters.

4. Monetary costs and benefits to the directly affected agency

The Department of Land & Natural Resources, Division of Aquatic Resources (DAR) - Kona branch office, is the primary agency directly affected by these proposed rules. Costs to the agency associated with these rules will primarily consist of developing and issuing the West Hawai‘i Aquarium Permit, for which no fee will be collected. This includes the initial investment of staff time in drafting the permit terms and conditions, and the administrative costs of administering these permits to the approximate 70 aquarium collectors operating in West Hawai‘i. The monetary benefits would include cost savings for outreach, education, and compliance enforcement related to the new provisions affecting aquarium collectors, as permit terms and conditions will provide accessible, West Hawai‘i-specific information on aquarium collecting regulations.

5. Methods considered or used to reduce the impact on small businesses

In the development of the proposed rule recommendations the Division of Aquatic Resources worked closely with the community-based West Hawai'i Fisheries Council (WHFC). The WHFC was formed via legislative mandate in 1998, and empowered by DLNR to serve as an advisory body for the management of the WHRFMA. The WHFC consists of stakeholders, community groups, business and community representatives, as well as non-voting, ex-officio members from such programs as the Division of Aquatic Resources, the Division of Conservation and Resources Enforcement, UH Sea Grant, and others. The WHFC has met monthly since July 1998 and has had over 50 different members contributing more than 3000 volunteer hours. At least 1800 community members have attended one or more WHFC meetings.

Beginning in 2002, the WHFC has engaged in community discussions regarding SCUBA spearfishing and has hosted research presentations, held committee and subcommittee meetings, and gathered public input, including that of commercial spearfishers, regarding the practice. Various management options were extensively discussed and a consensus on a proposed rule was reached by the WHFC and its Scuba Spearfishing Management Subcommittee in 2004. A draft rule was developed and submitted to DAR in 2007.

In order to equitably resolve the conflict between recreational user groups and commercial aquarium fish collectors in Ka'ōhe Bay the WHFC established the User Conflict Subcommittee in 2004 which held public meetings with groups of stakeholders over the next 20 months. An "FRA exchange" of 2000' feet of reef habitat was subsequently agreed upon as the most equitable means of reducing the conflict, and the WHFC, in conjunction with DAR, adopted and drafted a rule proposal effectuating this agreement. Considerable effort was made to find a suitable presently closed reef area to open which would have community support. However, after further deliberation and consultation Big Island aquarium collectors recommended and resolved that no closed areas be opened and the closure area at Pebble Beach be reduced to 1500'. Division of Aquatic Resources staff agree with this proposal, finding that a standalone closure of the 1,500 foot section of Ka'ōhe Bay would substantially mitigate user conflicts between aquarium collectors and other nearshore resource users. This agreement was subsequently approved by the Friends of Pebble Beach, the WHFC and the BIAAF.

The third major substantive rule proposal would establish a list of protected species and a list of species permitted for aquarium take purposes (i.e. a "white list") within the WHRFMA. The WHFC Species of Special Concern Subcommittee was established in 2005 to study the issue, and after several years of consultation with DAR biologists, aquarium fishers, wholesalers, and other community and ocean user groups, a West Hawai'i-specific list of species to be protected and a list of permitted species for aquarium take were compiled. There was considerable negotiation between involved parties on the final species listing in the "white list" and the specifics of the size and bag limits. The number of species on the "white list" was ultimately increased from 25 to 40 in response to input from Big Island aquarium collectors.

6. How the agency involved small business in the development of the rules

As noted above the WHFC played a substantial role in the deliberation, development and content of these rules, and has continued to serve its role in providing community involvement in the management of West Hawai'i's coral reefs. The WHFC strives to fairly represent the stake holder community and membership is open to all interested community members with knowledge and experience in the marine environment or issues concerning fishery management. Small business interests have been strongly represented over the years by commercial food fishers, aquarium fishers, ocean recreation operators, hoteliers and other business members. Over the years a substantial effort was continually made to let people know what issues the WHFC was dealing with and encouraging their participation and input.

WHFC meetings are also advertised in West Hawaii Today and oftentimes on the radio. There has been very substantial press coverage, 18 separate West Hawai'i newspaper articles since 2004, specific to issues that the WHFC was deliberating – again providing more than ample opportunity for businesses and the general public to know what was going on in terms of nearshore resource management in West Hawai'i.

7. Provisions more stringent than federal, state, or county mandates, with cost comparisons and justification

The only statutory mandate relating to these rule changes that imposes a lesser minimum standard is HRS § 188F-4(1), which requires the Department to designate “a minimum of thirty per cent of coastal waters in the WHRFMA as fish replenishment areas in which aquarium collection is prohibited.” This mandate appears related to several purposes of the West Hawai'i regional fishery management area, such as ensuring “the sustainability of the State's nearshore ocean resources; . . . minimizing user conflicts and resource depletion[] through designation of sections of coastal waters . . . as fish replenishment areas where certain specified fish harvesting activities are prohibited[;] . . . identify[ing] areas and resources of statewide significance for protection; . . . and [p]rovid[ing] for substantive involvement of the community in resource management decisions for this area through facilitated dialogues with community residents and resource users.” HRS § 188F-3.

Currently, approximately 35.2% of the West Hawai'i coastline has been established as fish replenishment areas where aquarium collecting is prohibited. The proposed inclusion of the 1,500 foot section of coastline in Ka'ohē Bay would only marginally increase this percentage to 35.4%. The protection of the fisheries in the difficult-to-access Ka'ohē Bay area should help to ensure even greater breeding opportunities for targeted reef fish and their prey, thereby benefiting aquarium collectors, other marine resource-related businesses, and the general public. These benefits would directly further the aforementioned purposes behind the statutory mandate of a minimum 30% closure of the West Hawai'i coastline.

Compared to the status quo costs of administering the already-closed fish replenishment areas in West Hawai‘i, the additional cost of administering the proposed closed area in Ka‘ohe Bay should be marginal and related only to the indirect costs of compliance monitoring and enforcement. Although the subject area is relatively isolated and accessible only by sea or a very steep road, monitoring and enforcement costs should be mitigated by the high amount of user activity and concern for the area, as evidenced by the efforts of community groups such as the Friends of Pebble Beach that originally pushed for the closure. There are no fees or revenue generating measures attached to the proposed closed area.