

## **Frequently Asked Questions – Aquarium Permit (HRS §188-31)**

### **What is the aquarium permit for?**

HRS Section 188-31 authorizes the issuance of permits that allow for the use of fine-meshed nets or fine-meshed traps to collect species for the aquarium pet trade.

### **What is the technical definition of a fine-meshed net? Is there a minimum size mesh?**

A fine-meshed net is a net that has an eye less than two inches stretched.

### **What is the difference between the September 6 Supreme Court opinion, the October 27 Circuit Court ruling, and the April 12, 2018 Circuit Court ruling?**

The Supreme Court said that the Department’s issuance of new aquarium permits (including what some people have termed “renewals”) is an “action” subject to the requirements of Hawai‘i Revised Statutes Chapter 343. To comply, the Department immediately ceased issuing new aquarium permits for commercial and recreational collectors until the review has been completed. On October 27, 2017, the Circuit Court said that all existing aquarium permits issued to commercial collectors are “illegal and invalid.” On April 12, 2018, the Circuit Court decided that the same ruling applied to recreational aquarium collectors.

### **What is the reason the Court decided that use of a fine-mesh net requires compliance with HEPA?**

Hawai‘i Environmental Policy Act (HEPA) review is required when an “action” by a member of the public involves use of state land, and requires a “discretionary approval” from the State. The Supreme Court and Circuit Court found that all of these elements are present as to commercial and recreational permits issued for using a fine-meshed net to capture aquatic life for aquarium purposes. Therefore HEPA review is required

### **What are the steps to comply with HEPA?**

In most cases, HEPA requires a document detailing disclosure of any proposed action in the form of an EA (Environmental Assessment) or an EIS (Environmental Impact Statement). Preparation of these documents is subject to Hawai‘i Revised Statutes Chapter 343 and Hawai‘i Administrative Rules Chapter 11-200 on Environmental Impact Statements. Among other things, the draft EA/EIS needs to be written and published in the Environmental Bulletin that is published by the Office of Environmental Quality Control (OEQC). The draft is available for public comment for 30 days. All comments must be considered. The final EA or EIS is published in the Environmental Bulletin.

There is a limited exception available for minor actions not likely to affect the environment. Such actions may be exempt from the requirement to prepare a statement. The courts ruled that commercial permits cannot be exempt. No determination has yet been made as to recreational permits.

### **What is the difference between an EA and an EIS**

An Environmental Assessment (EA) is a written evaluation to determine whether an action may have a significant environmental effect. An Environmental Impact Statement (EIS) is a more comprehensive document which discloses the environmental impacts of a proposed action, effects of a proposed action on the economic welfare, social welfare, and cultural practices of the community and State, effects of the economic activities arising out of the proposed action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects.

### **Who has the final authority to accept the EA or EIS?**

The Supreme Court has determined that aquarium collection is an applicant action subject to HEPA. As such, the authority to accept a final EA or EIS rests with the agency that issues the permits, namely the Department of Land and Natural Resources (DLNR).

**What is the status of the HEPA requirement?**

The intervenor for the Defendant, Pet Industry Joint Advisory Council (PIJAC) prepared separate Environmental Assessment for the Oahu and Island of Hawai'i Commercial Aquarium fisheries. These documents were prepared prior to the April 12, 2017 Circuit Court ruling that the Recreational Aquarium Permit was declared void as a matter of law. The EAs were received by DLNR and filed with OEQC on April 8, 2018. The EAs can be viewed at

[http://oeqc2.doh.hawaii.gov/ layouts/15/start.aspx - /EA EIS Library/Forms/AllItems.aspx](http://oeqc2.doh.hawaii.gov/layouts/15/start.aspx - /EA EIS Library/Forms/AllItems.aspx).

Both draft EAs proposed a finding of no significant impact to the marine aquarium resources. At this time, there is a procedure to allow for a 30-day period for public comment on the EAs. Comments are due by May 8, 2018. Please send comments to: David Sakoda, Department of Land and Natural Resources, State of Hawai'i, 1151 Punchbowl St., Room 330, Honolulu, HI 96813, or email [david.sakoda@hawaii.gov](mailto:david.sakoda@hawaii.gov).

**Can I get a new aquarium permit, or renew my existing permit?**

In accordance with the Supreme Court opinion on September 6, 2017, DLNR ceased issuing new aquarium permits and "renewals". You may apply for the aquarium permit by complying with HEPA.

**Are all aquarium permits invalid?**

Commercial Aquarium Permits are invalid as of October 27, 2017. Recreational Aquarium Permits are invalid as of April 12, 2018.

**Will DLNR refund the Aquarium Permit?**

There is no cost for the Aquarium Permit; therefore, a refund does not apply.

**Can I still collect aquatic life for aquarium purposes?**

It depends. You cannot use fine-meshed nets or fine-meshed traps for commercial purposes anywhere in the State of Hawai'i. Any taking of aquarium fish or other aquatic life for the commercial pet trade in West Hawai'i is prohibited until the HEPA requirement is met.

**Can I use other gear to collect aquatic life, and what are they? (Note: inquiries include scoop or hand net, slurp gun, & legal mesh nets including multi-panel nets)**

Any taking of aquarium fish or other aquatic life for the commercial pet trade in West Hawai'i is prohibited until the HEPA requirement is met. Outside of West Hawai'i, fine-meshed nets (including fine-meshed hand nets) are no longer allowed for commercial take. Other gear types that were previously allowed are still legal.

**Can I still sell aquatic life?**

Yes. With a valid Commercial Marine License you may sell aquatic life you caught.

**Does the Hawai'i Administrative Rule for O'ahu Aquarium Management still apply?**

Yes. The ruling does not affect the validity of the O'ahu Management Rules, which restrict net size and catch limit (HAR Chapter 77).

**Can I take aquatic life for aquarium purposes within the West Hawai'i Regional FMA?**

Aquatic life may not be taken for commercial aquarium purposes within the West Hawai'i Regional Fishery Management Area until an environmental review is completed.

**Can I transport aquatic life for aquarium purposes from East Hawai'i to West Hawai'i by road or by vessel?**

Possession or transportation of aquatic life for aquarium purposes by road is legal, as the roads are not within the FMA. Possession or transportation of white list species for aquarium purposes by vessel within the West Hawai'i Regional FMA is legal only with a valid West Hawai'i Aquarium Permit and in compliance with other provisions of HAR Chapter 13-60.4. It is illegal to possess or transport non-white list species for aquarium purposes anywhere within the WHRFMA.

**If we collect aquatic life for commercial aquarium purposes using legal mesh nets, how do we report this catch?**

Persons collecting aquatic life for commercial aquarium purposes using legal mesh nets should continue to report their aquarium catch using the aquarium form under the “% Time Barrier net” column.

**Can I double up larger mesh nets instead of using fine mesh nets?**

No. Any use of nets that effectively creates a mesh size of less than 2” is a violation of HAR 13-75-14. For example, if a 2”+ mesh net is doubled over and secured together, creating a fixed mesh smaller than 2”, that is a violation.

**Do I still report my aquarium catch?**

Yes. The aquarium report is a requirement for the Commercial Marine License until it expires. If you do not fish during a month, you are required to submit the Did Not Fish report by the 10<sup>th</sup> day of the following month.

**What number do I report under?**

Your Commercial Marine License and Aquarium Permit share the same permanent license number. Write this license number on the Aquarium Fish report.

**Do I still report my aquarium purchases?**

Yes.

**How or what do I report my aquarium catch on now?**

Use the current Aquarium Fish Catch report forms.

**I received a letter about not being able to export aquarium fish caught with fine-meshed nets. Does this apply to me?**

That letter was issued by the federal U.S. Fish & Wildlife Service, Office of Law Enforcement. You may contact USFWS at (808) 861-8525 or [fwsole\\_honolulu@fws.gov](mailto:fwsole_honolulu@fws.gov) for further clarification.

**Who can I contact in DAR if I have questions regarding the aquarium fishery?**

For the West Hawai'i aquarium fishery, contact the DAR Kona office at (808) 327-6226 or [darofc@hawaiiantel.net](mailto:darofc@hawaiiantel.net), and for all other aquarium fisheries, contact the DAR O'ahu main office at (808) 587-0595 or [aquarium@hawaii.gov](mailto:aquarium@hawaii.gov).