

State of Hawai'i  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Aquatic Resources  
Honolulu, Hawai'i 96813

April 12, 2024

Board of Land and Natural Resources  
State of Hawai'i  
Honolulu, Hawai'i

**Non-Action Item:**

**Request for Clarification and Further Guidance on the Board of Land and Natural Resources' December 8, 2023 Decision to Grant Kalanihale's, KUPA Friends of Ho'okena Beach Park's, Moana 'Ohana's, Ko'olaupoko Hawaiian Civic Club's, and For the Fishes' Petition for Rulemaking to Prohibit the Take of Marine Life for Commercial Aquarium Purposes (With Exemptions)**

This submittal requests clarification and further guidance on the Board of Land and Natural Resources' (Board) December 8, 2023 decision to grant Kalanihale's, KUPA Friends of Ho'okena Beach Park's, Moana 'Ohana's, Ko'olaupoko Hawaiian Civic Club's, and For the Fishes' petition for rulemaking to prohibit the take of marine life for commercial aquarium purposes (with exemptions) ("Petition").

**BACKGROUND**

On November 9, 2023, Kalanihale, KUPA Friends of Ho'okena Beach Park, Moana 'Ohana, Ko'olaupoko Hawaiian Civic Club, and For the Fishes ("Petitioners") submitted a petition to the Board seeking initiation of rulemaking to prohibit the take of marine life for commercial aquarium purposes.<sup>1</sup>

At the December 8, 2023 Board meeting,<sup>2</sup> the Division of Aquatic Resources (DAR) presented a submittal recommending that the Board deny the petition.<sup>3</sup> The Board considered the Petition, the DAR staff submittal, and voluminous public testimony. During the meeting, the Board received guidance from the Department of the Attorney General that the Board could not adopt a rule completely banning commercial aquarium harvest due to a statute, Hawaii Revised Statutes (HRS) §188-31, which authorizes the Board to issue aquarium permits. The Board ultimately decided to approve the Rulemaking Petition and directed DAR to initiate rulemaking consistent with HRS §188-

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<sup>1</sup> A copy of the Petition is attached as Exhibit 1 to the December 7, 2023 DAR submittal (Item F-3), available online at <https://dlnr.hawaii.gov/wp-content/uploads/2023/12/F-3.pdf>.

<sup>2</sup> The Board meeting began, as scheduled, on December 7, 2023, but was continued to December 8, 2023 due to a lengthy agenda.

<sup>3</sup> A copy of the DAR submittal (Item F-3) is available online at <https://dlnr.hawaii.gov/wp-content/uploads/2023/12/F-3.pdf>.

31, taking into consideration the Petition, the sentiment of the Board, and the public testimony provided.<sup>4</sup> In making its decision, the Board expressly stated that DAR could amend the rule language that was proposed in the Petition to carry out the Board's directive.

DAR remains unclear as to how to carry out the Board's directive. For example, one option for incorporating HRS §188-31 into the proposed rules is to propose a ban on the take of marine life for commercial aquarium purposes, except by a permit issued by the Board pursuant to HRS §188-31. Alternatively, DAR could develop detailed rules to implement specific requirements for a West Hawai'i aquarium permit consistent with the preferred alternative identified in the Revised Final Environmental Impact Statement for the issuance of aquarium permits in West Hawai'i. Such rules could include an amended white list of species, annual Total Allowable Catch (TAC) limits, and additional reporting requirements. Before moving forward with drafting amended rule language, DAR requests further guidance regarding its expectations for the content of the proposed rules.

Respectfully submitted,



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BRIAN J. NEILSON, Administrator  
Division of Aquatic Resources

APPROVED FOR SUBMITTAL



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DAWN N. S. CHANG, Chairperson  
Board of Land and Natural Resources

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<sup>4</sup> See YouTube recording of December 8, 2024 BLNR meeting, available online at <https://www.youtube.com/watch?v=V4xDtBo3yWU>, beginning at 8:03:30