

RESOLUTION NO. 130 11

A RESOLUTION REQUESTING THE LEGISLATURE OF THE STATE OF HAWAI'I TO AMEND CHAPTER 188, HAWAI'I REVISED STATUTES BY ADDING A NEW SECTION TO BE APPROPRIATELY DESIGNATED PROHIBITING THE SALE OF AQUATIC LIFE FOR AQUARIUM PURPOSES AND AMEND EXISTING SECTION 188F-4 REGARDING THE WEST HAWAI'I REGIONAL FISHERY MANAGEMENT AREA PLAN AND SECTION 189-11 REGARDING RECEIPTS IN DUPLICATE.

WHEREAS, the aquatic life of the reefs within the State of Hawai'i are being devastated by the collection of reef fish and other aquatic life, especially native fish species; and

WHEREAS, the County of Maui has already passed legislation to prevent further degradation of their reefs and aquatic life, and

WHEREAS, despite the provisions set forth in Section 188F-4, Hawai'i Revised Statutes, West Hawai'i Regional Fishery Management Area Plan, scientific research proves that collection of reef fish diminishes the number of fish reaching reproductive age, thereby reducing the number of adult fish contributing to the genetic pool, and that while some of our reef fish are increasing, specific species have not increased in numbers; and

WHEREAS, in an economy based on tourism, the continued protection of our reefs and its inhabitants increases the enhancement of the tourist experience bringing millions of dollars into the State coffers; and

WHEREAS, the aquatic life of the reef protects the reef from being overgrown by algae and also provides food for larger pelagic fish which in turn sustain humans with food supplies; and

WHEREAS, the Council of the County of Hawai'i urges the State Legislature to protect our reefs and its aquatic life, and promote increasing reef fish population that will continue to attract and sustain the tourist industry of our State by prohibiting the sale of aquatic life to the aquarium trade in the State of Hawai'i; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF HAWAI'I that in order to protect the reefs and aquatic life within the State of Hawai'i, the Hawai'i State Legislature is urged to enact the bill attached hereto as Exhibit A with the Justification Sheet attached as Exhibit B.

BE IT FINALLY RESOLVED that copies of this Resolution be transmitted to the Honorable Neil Abercrombie, Governor of the State of Hawai'i, the President of the State Senate, the Speaker of the State House of Representatives, the House Finance Committee Chairperson, and the respective Mayors of the counties of Hawai'i, Kaua'i, Maui, and the City and County of Honolulu.

Dated at _____, Hawai'i, this _____ day of _____, 2011.

INTRODUCED BY:



COUNCIL MEMBER, COUNTY OF HAWAI'I

COUNTY COUNCIL
County of Hawai'i
Hilo, Hawai'i

I hereby certify that the foregoing RESOLUTION was by the vote indicated to the right hereof adopted by the COUNCIL of the County of Hawai'i on _____.

ATTEST:

COUNTY CLERK CHAIRPERSON & PRESIDING OFFICER

ROLL CALL VOTE

| | AYES | NOES | ABS | EX |
|-----------|------|------|-----|----|
| BLAS | | | | |
| FORD | | | | |
| HOFFMANN | | | | |
| IKEDA | | | | |
| ONISHI | | | | |
| PILAGO | | | | |
| SMART | | | | |
| YAGONG | | | | |
| YOSHIMOTO | | | | |
| | | | | |

Reference: _____ C-333/GRC

RESOLUTION NO. **130 11**

EXHIBIT A

THE _____ .B. NO. _____

TWENTY-_____ LEGISLATURE, 2011

STATE OF HAWAII

A BILL FOR AN ACT

**RELATING TO PROHIBITION ON SALE OF AQUATIC LIFE FOR
AQUARIUM PURPOSES**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 188, Hawai‘i Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§188- _____ Selling of aquatic life for aquarium purposes prohibited; penalties; fines.

(a) For the purposes of this section, the following definitions apply:

“Aquarium fish collection” means the collection of any marine or freshwater aquatic life.

“Aquarium fish permit” means a permit issued by the board of land and natural resources for the taking of aquatic life and for the use of fine mesh nets and traps to take salt water fish, freshwater non-game fish, or other aquatic life for aquarium purposes.

“Aquarium purposes” means to hold salt water fish, freshwater non-game fish, or other aquatic life alive in a state of captivity as pets, for scientific study, for public exhibition or display, or for sale for these purposes.

"Aquatic life" means any type or species of mammal, fish, amphibian, reptile, mollusk, crustacean, arthropod, invertebrate, coral, or other animal that inhabits the freshwater or marine environment and includes any part, product, egg, or

offspring thereof; or freshwater or marine plants, including seeds, roots, products, and other parts thereof.

“Department” means the department of land and natural resources of the State of Hawai‘i.

“Sell” means to transfer, prescribe, give, or deliver to another, to leave, barter, or exchange with another, or to offer or agree to do the same to another for consideration.

“Take” or “taken” means definitely to or attempting to fish, catch, capture, confine, or harvest aquatic life.

(b) It shall be unlawful for any person at any time to knowingly or intentionally sell or offer to sell, for aquarium purposes, aquatic life taken from any of the waters within the jurisdiction of the State.

(c) This section shall not apply to a person exercising a customary and traditional right for subsistence, cultural, or religious purposes, subject to the right of the State to regulate that right, including native Hawaiian gathering rights and traditional cultural practices as authorized by law or as permitted by the State pursuant to article XI, section 7 of the Hawai‘i State Constitution.

(d) This section shall not apply to the taking of aquatic life for human consumption or for sale for human consumption, including the use of bait.

(e) This section shall not prohibit special activity permits allowed under section 187A-6; provided that the permit issued is for the bona fide purpose of scientific research or in an aquarium operated for benefit of public education;

(f) Any person violating this section or any rule adopted pursuant to this section shall be guilty of a misdemeanor, and:

(1) For a first offense, shall be fined not more than \$1,000 or thirty days imprisonment, or both;

(2) For a second offense within five years of a previous violation, shall be fined not more than \$2,000 or sixty days imprisonment, or both; and

(3) For a third or subsequent violation within five years of a previous violation, shall be fined not more than \$3,000 or ninety days imprisonment, or both.

(g) In addition to any other penalty imposed under this section, a person violating this section shall be subject to:

(1) An administrative fine of not more than \$1,000 for each aquatic life specimen sold;

(2) Seizure and forfeiture of any taken aquatic life specimens, commercial marine license, vessel, and equipment; and

(3) Assessment of administrative fees and costs, and attorney's fees and costs.

(h) The division of aquatic resources of the department shall submit an annual report on the effectiveness and enforcement of this section to the legislature no later than twenty days prior to the convening of each regular session."

SECTION 2. Section 188-31 Hawai'i Revised Statutes, is amended to read as follows:

"§188-31 Permits to take aquatic life for aquarium purposes. (a) Except as prohibited by law, the department, upon receipt of a written application, may issue an aquarium fish permit, not longer than one year in duration, to take aquatic life and to use fine meshed traps, or fine meshed nets other than throw nets, for the taking of marine or freshwater nongame fish and other aquatic life for aquarium purposes.

(b) No person shall take aquatic life for aquarium purposes or use fine meshed traps or fine meshed nets other than throw nets to take marine or

freshwater non-game fish and other aquatic life for aquarium purposes without an aquarium fish permit.

~~[b](c) [Except as prohibited by law, the]~~ The permits shall be issued only to persons who can satisfy the department that they possess facilities to and can maintain fish and other aquatic life alive and in reasonable health and who can satisfy the department that the methods of capture, husbandry, and transport are humane and will not result in substantial injury to or death of the taken aquatic life.

(d) No person shall puncture the swim bladder or clip the fins of marine or freshwater fish taken for aquarium purposes. Any aquatic life collected for aquarium purposes shall be handled in a humane manner.

~~[(e)](e)~~ It shall be illegal to sell or offer for sale any fish and other aquatic life taken under an aquarium fish permit [unless those fish and other aquatic life are sold alive for aquarium purposes].

(f) The department may adopt rules pursuant to chapter 91 for the purposes of this section.

~~[(d) For the purposes of this section:~~

~~(1) “Aquarium purposes” means to hold salt water fish, freshwater nongame fish, or other aquatic life alive in a state of captivity as pets, for scientific study, or for public exhibition or display, or for sale for these purposes; and~~

~~(2) “Aquarium fish permit” means a permit issued by the board for the use of fine mesh nets and traps to take salt water fish, freshwater nongame fish, or other aquatic life for aquarium purposes.]”~~

SECTION 3. Section 188F-4, Hawai‘i Revised Statutes, is amended to read as follows:

“§188F-4 West Hawai‘i regional fishery management area plan. The department shall develop a West Hawai‘i regional fishery management area plan that identifies and designates appropriate areas of the management area as follows:

- (1) Identifies the West Hawai'i regional fishery management area as the area from the northernmost point of the west coast to the southernmost point of the west coast of the Island of Hawai'i, and out from the high water line to 1500 meters depth.
- ~~[(+)]~~(2) Designates a minimum of ~~[thirty]~~ one hundred per cent of coastal waters in the West Hawai'i regional fishery management area as fish replenishment areas in which aquarium fish collection is prohibited;
- ~~[(2)]~~(3) Establishes a day-use mooring buoy system along the coastline of the West Hawai'i regional fishery management area and designates some high-use areas where no anchoring is allowed;
- ~~[(3)]~~ ~~Establishes a portion of the fish replenishment areas as fish reserves where no fishing of reef dwelling fish is allowed; and]~~
- (4) ~~[Designates areas where the use of gill nets as set nets shall be prohibited.]~~ Prohibits gill nets at all times in the West Hawai'i regional fishery management area.
- (5) Prohibits the collection of reef-dwelling aquatic life except for human consumption or for sale for human consumption, including the use of bait.
- (6) This section shall not apply to a person exercising customary and traditional rights for subsistence, cultural, or religious purposes, subject to the right of the State to regulate these rights, including native Hawaiian gathering rights and traditional cultural practices as authorized by law or as permitted by the State pursuant to article XI, section 7 of the Hawai'i State Constitution."

SECTION 4. Section 189-11, Hawai'i Revised Statutes, is amended to read as follows:

“§189-11 Receipts in duplicate. Every commercial marine dealer shall issue receipts to the person from whom marine life is obtained and shall provide the following information in the receipt:

- (1) The date of the issuance;
- (2) The name of the person to whom the receipt is issued;
- (3) The following information with respect to each of the varieties of marine life as the department shall require including:
 - (A) The weight in pounds of each of the varieties received;
 - (B) The numbers of marine life when they average a pound or more; and
 - (C) The price per pound paid; and
 - ~~[(D) With regard to aquarium fish, regardless of weight, the number and species of the fishes; and]~~
- (4) The signature of the dealer who issues the receipt. Any dealer taking the dealer’s own marine life or handling any marine life taken by commercial marine licensees working for or with the dealer, shall make out the same receipt, giving market price for the marine life as prevails on the date of receipt. A duplicate copy of this receipt shall be kept on file at the premise where the marine life was sold by the dealer issuing the same for a period of twelve months from the date of issuance, and the duplicate copy shall be available for inspection upon the demand of any conservation officer authorized to enforce the laws of the State.”

SECTION 5. Section 188-31.5, Hawai‘i Revised Statutes, is repealed.

~~[§188-31.5 Aquarium fish for export, monthly count. The department of land and natural resources shall adopt rules in accordance with chapter 91 to monitor the aquarium fish catch report and fish dealer’s report for export of aquarium fish taken from the waters of the State for aquarium purposes pursuant to section 188-31. A monthly count of the quantities taken of each individual species of aquarium fish exported shall be reported to the board.]~~

SECTION 6. Statutory material to be repealed is bracketed and stricken.
New statutory material is underscored.

SECTION 7. This Act shall take effect upon approval by the Legislature.

EXHIBIT B

JUSTIFICATION SHEET

PROPOSER: Hawai'i State Association of Counties

TITLE: RELATING TO PROHIBITION TO SALE AQUATIC LIFE FOR
AQUARIUM PURPOSES

PURPOSE: To preserve our fishery resources in our coastal marine water, it shall be unlawful for any person at any time to knowingly or intentionally sell or offer to sell for aquarium purposes, aquatic life taken from any of the waters within the jurisdiction of the State. This section does not apply to gathering rights, traditional, cultural, or religious practices, or for taking of aquatic life for the purpose of human consumption, including bait. Special permits for bona fide purposes of scientific research or in an aquarium operated for the benefit of public education may be provided by the department of land and natural resources.

MEANS: Amendment of chapter 188, Hawai'i Revised Statutes to preclude aquarium fish collection for the sale of aquatic life to be held in captivity as pets or for exhibition, except as defined above, eliminate the inhumane capture of aquatic life, protecting our reefs and its aquatic life for the benefit of residents and tourists. Designates the West Hawai'i regional fishery management area as the area from northernmost point of the west coast to the southernmost point of the west coast of the Island of Hawai'i, and out from the high water line to 1500 meters depth.

JUSTIFICATION: Collection of our reef fish, even endangered species, has devastated our marine resources. Aquatic life lives in balance with the reef finding sustenance, keeping the reef healthy, providing a living laboratory for scientists and marine water enthusiasts, and providing sustenance for humans and aquatic life. Scientific studies have shown that many species of fish are not recovering from the heavy collection of aquatic life even though 30% of the reef in West Hawai'i is in Fish Replenishment Areas. The inhumane method of capture and bringing such aquatic to the surface needs to be stopped.