

JAN 21 2011

---

---

# A BILL FOR AN ACT

RELATING TO AQUATIC LIFE.

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

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

4           "§188-     Selling of aquatic life for aquarium purposes  
5 prohibited; penalties; fines. (a) It shall be unlawful for any  
6 person at any time to knowingly or intentionally sell or offer  
7 to sell, for aquarium purposes, aquatic life taken from any of  
8 the waters within the jurisdiction of the State.

9           (b) This section shall not apply to a person exercising a  
10 customary and traditional right for subsistence, cultural, or  
11 religious purposes, subject to the right of the State to  
12 regulate that right, including native Hawaiian gathering rights  
13 and traditional cultural practices as authorized by law or as  
14 permitted by the State pursuant to article XI, section 7 of the  
15 Hawaii state constitution.

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



1        (d) This section shall not prohibit special activity  
2 permits allowed under section 187A-6; provided that the permit  
3 issued is for bona fide scientific or public display purposes.

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

6        (1) For a first offense, shall be fined not more than  
7 \$1,000 or thirty days imprisonment, or both;

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

11       (3) For a third or subsequent violation within five years  
12 of a previous violation, shall be fined not more than  
13 \$3,000 or ninety days imprisonment, or both.

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

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

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

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



1       (g) The division of aquatic resources of the department of  
2 land and natural resources shall submit an annual report on the  
3 effectiveness and enforcement of this section to the legislature  
4 no later than twenty days prior to the convening of each regular  
5 session.

6       (h) For the purposes of this section:

7       "Aquarium purposes" means to hold salt water fish,  
8 freshwater nongame fish, or other aquatic life alive in a state  
9 of captivity as pets, for scientific study, for public  
10 exhibition or display, or for sale for these purposes.

11       "Aquatic life" means any type or species of mammal, fish,  
12 amphibian, reptile, mollusk, crustacean, arthropod,  
13 invertebrate, coral, or other animal that inhabits the  
14 freshwater or marine environment and includes any part, product,  
15 egg, or offspring thereof; or freshwater or marine plants,  
16 including seeds, roots, products, and other parts thereof.

17       "Sell" means to transfer, prescribe, give, or deliver to  
18 another; to leave, barter, or exchange with another; or to offer  
19 or agree to do the same to another for consideration.

20       "Take" means to fish for, catch, capture, confine, or  
21 harvest, or to attempt to fish for, catch, capture, confine, or  
22 harvest aquatic life."



1 SECTION 2. Section 188-31, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§188-31 Permits to take aquatic life for aquarium  
4 purposes. (a) Except as prohibited by law, the department,  
5 upon receipt of a written application, may issue an aquarium  
6 fish permit, not longer than one year in duration, to take  
7 aquatic life and to use fine meshed traps, or fine meshed nets  
8 other than throw nets, for the taking of marine or freshwater  
9 nongame fish and other aquatic life for aquarium purposes. No  
10 person shall take aquatic life for aquarium purposes or use fine  
11 meshed traps or fine meshed nets other than throw nets to take  
12 marine or freshwater nongame fish and other aquatic life for  
13 aquarium purposes without an aquarium fish permit.

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

21 (c) It shall be illegal to sell or offer for sale any fish  
22 and other aquatic life taken under an aquarium fish permit



1 ~~[unless those fish and other aquatic life are sold alive for~~  
2 ~~aquarium purposes].~~

3 The department may adopt rules pursuant to chapter 91 for  
4 the purpose of this section.

5 (d) For the purposes of this section:

6 (1) "Aquarium purposes" means to hold salt water fish,  
7 freshwater nongame fish, or other aquatic life alive  
8 in a state of captivity as pets, for scientific study,  
9 ~~[or]~~ for public exhibition or display, or for sale for  
10 any of these purposes; ~~[and]~~

11 (2) "Aquarium fish permit" means a permit issued by the  
12 board for the taking of aquatic life and for the use  
13 of fine mesh nets and traps to take salt water fish,  
14 freshwater nongame fish, or other aquatic life for  
15 aquarium purposes ~~[-]~~;

16 (3) "Aquatic life" means any type or species of mammal,  
17 fish, amphibian, reptile, mollusk, crustacean,  
18 arthropod, invertebrate, coral, or other animal that  
19 inhabits the freshwater or marine environment and  
20 includes any part, product, egg, or offspring thereof;  
21 or freshwater or marine plants, including seeds,  
22 roots, products, and other parts thereof; and



1           (4) "Sell" means to transfer, prescribe, give, or deliver  
2           to another; to leave, barter, or exchange with  
3           another; or to offer or agree to do the same to  
4           another for consideration."

5           SECTION 3. Section 188F-4, Hawaii Revised Statutes, is  
6 amended to read as follows:

7           "~~+~~§188F-4~~+~~ **West Hawaii regional fishery management**  
8 **area plan.** The department shall develop a West Hawaii regional  
9 fishery management area plan that identifies and designates  
10 appropriate areas of the management area as follows:

11           (1) Designates a minimum of thirty per cent of coastal  
12 waters in the West Hawaii regional fishery management  
13 area as fish replenishment areas [~~in which aquarium~~  
14 ~~fish collection is prohibited~~];

15           (2) Establishes a day-use mooring buoy system along the  
16 coastline of the West Hawaii regional fishery  
17 management area and designates some high-use areas  
18 where no anchoring is allowed;

19           (3) Establishes a portion of the fish replenishment areas  
20 as fish reserves where no fishing of reef-dwelling  
21 fish is allowed; and



1 (4) Designates areas where the use of gill nets as set  
2 nets shall be prohibited."

3 SECTION 4. Section 189-11, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§189-11 Receipts in duplicate. Every commercial marine  
6 dealer shall issue receipts to the person from whom marine life  
7 is obtained and shall provide the following information in the  
8 receipt:

- 9 (1) The date of the issuance;
- 10 (2) The name of the person to whom the receipt is issued;
- 11 (3) The following information with respect to each of the  
12 varieties of marine life as the department shall  
13 require including:

- 14 (A) The weight in pounds of each of the varieties  
15 received;

- 16 (B) The numbers of marine life when they average a  
17 pound or more; and

- 18 (C) The price per pound paid; and

- 19 ~~[(D) With regard to aquarium fish, regardless of~~  
20 ~~weight, the number and species of the fishes;~~  
21 ~~and]~~

22 (4) The signature of the dealer who issues the receipt.



1 Any dealer taking the dealer's own marine life or handling any  
2 marine life taken by commercial marine licensees working for or  
3 with the dealer, shall make out the same receipt, giving market  
4 price for the marine life as prevails on the date of receipt. A  
5 duplicate copy of this receipt shall be kept on file at the  
6 premise where the marine life was sold by the dealer issuing the  
7 same for a period of twelve months from the date of issuance,  
8 and the duplicate copy shall be available for inspection upon  
9 the demand of any conservation officer authorized to enforce the  
10 laws of the State."

11 SECTION 5. Section 188-31.5, Hawaii Revised Statutes, is  
12 repealed.

13 ~~["§188-31.5 Aquarium fish for export, monthly count.~~  
14 ~~The department of land and natural resources shall adopt rules~~  
15 ~~in accordance with chapter 91 to monitor the aquarium fish catch~~  
16 ~~report and fish dealer's report for export of aquarium fish~~  
17 ~~taken from the waters of the State for aquarium purposes~~  
18 ~~pursuant to section 188-31. A monthly count of the quantities~~  
19 ~~taken of each individual species of aquarium fish exported shall~~  
20 ~~be reported to the board."]~~

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





1 SECTION 7. This Act shall take effect on January 1, 2012.

2

INTRODUCED BY:

S.S.I.

Ronald A. Bell

J. Kelvin Gish



**Report Title:**

Aquatic Life; Taking or Selling; Aquarium Permit

**Description:**

Establishes prohibitions, penalties, and fines for knowingly selling aquatic life for aquarium purposes taken from waters within the jurisdiction of the State. Requires an aquarium permit to take marine or freshwater nongame fish and other aquatic life for aquarium purposes. Imposes new standards for aquarium permit issuance determinations.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

