

JAN 18 2012

S.B. NO. 2042

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) For the purposes of this
6 section:

7 "Aquarium fish collection" means the collection of any
8 marine or freshwater aquatic life.

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

14 "Aquarium purposes" means to hold salt water fish,
15 freshwater non-game fish, or other aquatic life alive in a state
16 of captivity as pets, for scientific study, for public
17 exhibition or display for public education, or for sale for
18 these purposes.



1 "Aquatic life" means any type or species of mammal, fish,
2 amphibian, reptile, mollusk, crustacean, arthropod,
3 invertebrate, coral, or other animal that inhabits the
4 freshwater or marine environment and includes any part, product,
5 egg, or offspring thereof; or freshwater or marine plants,
6 including seeds, roots, products, and other parts thereof.

7 "Department" means the department of land and natural
8 resources.

9 "Sell" means to transfer, prescribe, give, or deliver to
10 another, to leave, barter, or exchange with another, or to offer
11 or agree to do the same to another for consideration.

12 "Take" or "taken" means to fish, catch, capture, confine,
13 or harvest aquatic life, or attempt to fish, catch, capture,
14 confine, or harvest aquatic life.

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

19 (c) This section shall not apply to a person exercising a
20 customary and traditional right for subsistence, cultural, or
21 religious purposes, subject to the right of the State to
22 regulate that right, including native Hawaiian gathering rights



1 and traditional cultural practices as authorized by law or as
2 permitted by the State pursuant to article XI, section 7 of the
3 Hawaii state constitution.

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

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

12 (f) Any person violating this section or any rule adopted
13 pursuant to this section shall be guilty of a misdemeanor, and
14 shall be punished as follows:

15 (1) For a first offense, by a fine of not more than \$1,000
16 or by imprisonment of not more than thirty days, or
17 both;

18 (2) For a second offense within five years of a previous
19 violation, by a fine of not more than \$2,000 or by
20 imprisonment of not more than sixty days, or both; and

21 (3) For a third or subsequent violation within five years
22 of a previous violation, by a fine of not more than



1 \$3,000 or by imprisonment of not more than ninety
2 days, or both.

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

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

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

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

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

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

18 "**§188-31 Permits to take aquatic life for aquarium**
19 **purposes.** (a) Except as prohibited by law, the department,
20 upon receipt of a written application, may issue an aquarium
21 fish permit, not longer than one year in duration, to take
22 aquatic life and to use fine meshed traps, or fine meshed nets



1 other than throw nets, for the taking of marine or freshwater
2 nongame fish and other aquatic life for aquarium purposes[-];
3 provided that:

4 ~~[(b)]~~ (1) ~~[Except as prohibited by law, the]~~ The permits
5 shall be issued only to persons who can satisfy the
6 department that they possess facilities to and can
7 maintain fish and other aquatic life alive and in
8 reasonable health[-] and who can satisfy the
9 department that the methods of capture, husbandry, and
10 transport are humane and will not result in
11 substantial injury to or death of the taken aquatic
12 life;

13 (2) No person shall take aquatic life for aquarium
14 purposes or use fine meshed traps or fine meshed nets
15 other than throw nets to take marine or freshwater
16 non-game fish and other aquatic life for aquarium
17 purposes without an aquarium fish permit; and

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



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

5 (c) The department may adopt rules pursuant to chapter 91
6 for the purpose of this section.

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

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

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

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

19 "~~{~~§188F-4~~}~~ **West Hawaii regional fishery management**
20 **area plan.** The department shall develop a West Hawaii regional
21 fishery management area plan that identifies and designates
22 appropriate areas of the management area as follows:



- 1 (1) Designates a minimum of [~~thirty~~] one hundred per cent
2 of coastal waters in the West Hawaii regional fishery
3 management area as fish replenishment areas in which
4 aquarium fish collection is prohibited;
- 5 (2) Establishes a day-use mooring buoy system along the
6 coastline of the West Hawaii regional fishery
7 management area and designates some high-use areas
8 where no anchoring is allowed;
- 9 (3) Establishes a portion of the fish replenishment areas
10 as fish reserves where no fishing of reef-dwelling
11 fish is allowed; [~~and~~]
- 12 (4) Designates areas where the use of gill nets as set
13 nets shall be prohibited[~~-~~];
- 14 (5) Identifies the West Hawai'i regional fishery
15 management area as the area from the northernmost
16 point of the west coast to the southernmost point of
17 the west coast of the island of Hawaii, and out from
18 the high water line to fifteen hundred meters depth;
- 19 (6) Prohibits the collection of reef-dwelling aquatic life
20 except for human consumption or for sale for human
21 consumption, including the use of bait; and



1 (7) This section shall not apply to a person exercising a
2 customary and traditional right for subsistence,
3 cultural, or religious purposes, subject to the right
4 of the State to regulate that right, including native
5 Hawaiian gathering rights and traditional cultural
6 practices as authorized by law or as permitted by the
7 State pursuant to article XI, section 7 of the Hawaii
8 state constitution."

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

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

- 15 (1) The date of the issuance;
- 16 (2) The name of the person to whom the receipt is issued;
- 17 (3) The following information with respect to each of the
18 varieties of marine life as the department shall
19 require including:
 - 20 (A) The weight in pounds of each of the varieties
21 received;



1 (B) The numbers of marine life when they average a
2 pound or more; and

3 (C) The price per pound paid; and

4 [~~(D) With regard to aquarium fish, regardless of~~
5 ~~weight, the number and species of the fishes,~~
6 ~~and]~~

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

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

18 SECTION 5. Section 188-31.5, Hawaii Revised Statutes, is
19 repealed.

20 [~~§188-31.5] ~~Aquarium fish for export; monthly count.~~~~

21 ~~The department of land and natural resources shall adopt rules~~
22 ~~in accordance with chapter 91 to monitor the aquarium fish catch~~



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1 ~~report and fish dealer's report for export of aquarium fish~~
2 ~~taken from the waters of the State for aquarium purposes~~
3 ~~pursuant to section 188-31. A monthly count of the quantities~~
4 ~~taken of each individual species of aquarium fish exported shall~~
5 ~~be reported to the board."]~~

6 SECTION 6. This Act does not affect rights and duties that
7 matured, penalties that were incurred, and proceedings that were
8 begun before its effective date.

9 SECTION 7. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 8. This Act shall take effect upon its approval.

12

INTRODUCED BY: 
By Request



S.B. NO. 2042

Report Title:

Aquatic Life; Sale; Prohibition; Kauai County Package

Description:

Prohibits the sale of aquatic life for aquarium purposes. Establishes penalties. Requires the division of aquatic resources to submit an annual report on the effectiveness of enforcement.

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

