

Honolulu, Hawaii

FEB 15 2018

RE: S.B. No. 2003
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawaii

Sir:

Your Committee on Water and Land, to which was referred S.B. No. 2003 entitled:

"A BILL FOR AN ACT RELATING TO AQUATIC LIFE,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Restrict the taking of any aquatic life for commercial purposes by any method of catch to persons who hold a valid, non-lapsed aquarium fish permit and commercial marine license;
- (2) Allow the taking of any aquatic life for non-commercial purposes subject to a limit of five fish or aquatic life specimens per person, per day, provided that fine meshed traps or nets, throw nets, or other prohibited catch methods are not used;
- (3) Beginning on July 1, 2018, prohibit the Department of Land and Natural Resources from issuing any new aquarium fish permits for aquarium purposes;
- (4) Require the Department of Land and Natural Resources to renew an existing aquarium fish permit, provided that the permit has not lapsed at the time of the renewal;



- (5) Prior to July 1, 2023, require the Department of Land and Natural Resources to transfer an existing aquarium fish permit, provided that the permit has not lapsed at the time of the transfer;
- (6) Require that non-lapsed permits be renewed or transferred to another person holding a commercial marine license if the person renewing the permit or the transferee can satisfy the Department of Land and Natural Resources that the permittee or transferee has facilities to and can maintain aquatic life alive and in reasonable health and does not engage in practices that constitute the offense of cruelty to animals in the second degree;
- (7) Allow a commercial marine licensee to assist another commercial marine licensee with a valid, non-lapsed aquarium fish permit, provided that the assistance does not involve the use of any gear, equipment, tools, or other means to take aquatic life; and
- (8) Add definitions for "commercial purpose", "fine mesh" or "fine meshed", and "lapsed".

Your Committee received testimony in support of this measure from the Oahu County Committee on Legislative Priorities of the Democratic Party of Hawaii and one individual. Your Committee received testimony in opposition to this measure from the Hawaii Fishermen's Alliance for Conservation and Tradition, Inc.; Hawaii Hunting Association; Coral Fish Hawaii; Hawaii Goes Fishing; Snorkel Bob's; Conservation for Hawai'i; Earth Justice; and eighteen individuals. Your Committee received comments on this measure from the Department of Land and Natural Resources, The Humane Society of the United States, For the Fishes, and Animal Rights Hawaii.

Your Committee finds that hundreds of thousands of saltwater fish and other aquatic life, such as invertebrates, are annually removed from their natural ocean habitat in Hawaii to be kept in aquariums in homes throughout the State and country. These fish and other aquatic life are caught and sold as part of the aquarium trade industry for ornamentation and amusement, not for food purposes. The State's aquarium fish permit authorizes the taking



of an unlimited number of fish and other aquatic life for commercial aquarium purposes, and up to two thousand fish and other aquatic life annually for recreational aquarium purposes, using nets and traps containing stretched netting of less than two-inch mesh.

Your Committee believes that under the precautionary principle and since saltwater fish and other aquatic life caught for aquarium purposes are not used for food purposes, it is in the best interest of the fish and other aquatic life, as well as of the reefs they inhabit, that fish and other aquatic life remain in their natural environment, not confined in aquarium tanks. Therefore, this measure phases out aquarium fish collecting for commercial purposes in Hawaii while allowing the taking of aquatic life for non-commercial aquarium purposes using certain nets or traps to continue, provided that the aquarium collector holds an aquarium fish permit and is subject to a limit of five fish or aquatic life specimens per person, per day.

Your Committee notes the recent litigation in *Umberger v. Department of Land and Natural Resources*, 140 Hawaii 500, 403 P.3d 277 (2017) and subsequent order after remand by the Circuit Court issued on October 27, 2017, that resulted in the invalidation of all existing aquarium fish permits used for commercial aquarium collection purposes. The Circuit Court also found that the Department of Land and Natural Resources' practice of issuing commercial aquarium collection permits without an environmental review as required by the Hawaii Environmental Policy Act was a violation of that Act, and thus enjoined the Department from issuing or renewing aquarium fish permits to commercial collectors until further order of the circuit court. Collecting for recreational purposes was not affected by the Circuit Court's order.

Accordingly, your Committee has amended this measure by:

- (1) Adding language to section 1:
 - (A) Regarding the recent decision pursuant to *Umberger v. Department of Land and Natural Resources* that invalidates then-existing aquarium fish permits used for commercial aquarium collection purposes; and



- (B) That clarifies that this measure is not intended to overrule the decision in *Umberger v. Department of Land and Natural Resources* nor negate the State's constitutional and statutory obligations to conserve fishery resources in the State;
- (2) Clarifying throughout that this measure concerns only the taking of aquatic life for aquarium purposes;
- (3) Clarifying that non-commercial aquarium collectors are limited to a maximum of five aquatic life specimens per person, per day regardless of whether the taking is done pursuant to an aquarium fish permit or by other means of take;
- (4) Allowing the Department of Land and Natural Resources to issue new aquarium fish permits for commercial or non-commercial aquarium purposes for a four-month period beginning on the date the injunction order as a result of *Umberger v. Department of Land and Natural Resources* is lifted or the final disposition of *Umberger*, whichever occurs earlier;
- (5) Establishing that subsequent to the four-month period during which the Department of Land and Natural Resources may issue new aquarium fish permits, the Department is prohibited from issuing new aquarium fish permits, whether for commercial or non-commercial aquarium purposes;
- (6) Allowing, rather than requiring, the Department of Land and Natural Resources to renew on an annual basis an existing aquarium fish permit, provided that the permit has not lapsed at the time of the renewal;
- (7) Allowing, rather than requiring, the Department of Land and Natural Resources to transfer an existing aquarium fish permit, provided that the permit has not lapsed at the time of the transfer for a period of five years beginning on the date the injunction order as a result of *Umberger v. Department of Land and Natural Resources*



is lifted or the final disposition of *Umberger*, whichever occurs earlier;

- (8) Requiring a permittee seeking to renew a permit or a transferee to satisfy the Department of Land and Natural Resources that the permittee or transferee has not been convicted of the offense of animal cruelty in the second degree within a five-year period prior to the issuing, renewing, or transferring of the aquarium fish permit, rather than satisfying to the Department that the permittee or transferee does not engage in practices that constitute the offense of cruelty to animals in the second degree;
- (9) Clarifying that the aquarium fish permit requirements proposed in this measure shall not be construed to alter the State's constitutional and statutory obligations to conserve the fishery resources of the State pursuant to the state constitution;
- (10) Removing the definition of "commercial purpose" and adding the definitions of "commercial aquarium purposes" and "non-commercial aquarium purposes"; and
- (11) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Water and Land that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2003, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2003, S.D. 1, and be referred to your Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Water and Land,



KARL RHOADS, Chair



