

---

---

## A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL PROTECTION.

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

1           SECTION 1. The legislature finds that the commercial  
2 capture of Hawaii's reef wildlife for sale to the aquarium pet  
3 trade diminishes the full and long-term benefits provided by the  
4 State's reef environments and is incompatible with Hawaii's  
5 local values, including living in harmony, maintaining a balance  
6 with nature, having respect and responsibility for the  
7 environment, and observing native Hawaiian traditional and  
8 customary hunting and gathering rights and cultural practices.  
9 Native Hawaiian hunting and gathering rights have been and  
10 continue to be a practice that helps to keep the aquatic life in  
11 Hawaii's reef environments plentiful. The commercial trade is  
12 contrary to pono fishing practices, such as taking only what is  
13 needed for subsistence.

14           The legislature further finds that coral reefs and the  
15 wildlife dependent upon them are public trust resources and, in  
16 1978, the citizens of Hawaii elevated the public trust doctrine  
17 to a constitutional mandate by approving article XI, section 1,



1 of the Hawaii State Constitution, which states, "All public  
2 natural resources are held in trust by the State for the benefit  
3 of the people." In 2000, the state supreme court embraced the  
4 "precautionary principle" by affirming that "where there are  
5 present or potential threats of serious damage [to natural  
6 resources], lack of full scientific certainty should not be a  
7 basis for postponing effective measures to prevent environmental  
8 degradation."

9 The legislature further finds that to protect Hawaii's  
10 environment, in 1988, the State prohibited the taking of sand,  
11 dead coral or coral rubble, rocks, soil, and other marine  
12 deposits. Extending prohibitions to encompass the commercial  
13 collection and sale of reef wildlife for the aquarium pet trade  
14 is important and now needed for the preservation of the  
15 environment and the long-term survival of key reef species, to  
16 the benefit of all state residents and future generations. The  
17 legislature recognizes that these obligations and protections  
18 are enshrined in the state constitution, specifically in article  
19 XI, section 1 and section 9, and article XII, section 7, of the  
20 Hawaii State Constitution.



1           The taking of reef wildlife purely for commercial purposes  
2 cannot be reconciled with the "precautionary principle" nor the  
3 "hierarchy of priorities" policy guidelines of the department of  
4 land and natural resources. Furthermore, this practice is  
5 neither compatible with the local values and lifestyles of  
6 Hawaii's residents, and does not significantly contribute to the  
7 quality of life or economy of Hawaii. On the contrary, by  
8 reducing the abundance of marine life and diminishing the beauty  
9 and health of Hawaii's coral reefs, the aquarium trade degrades  
10 the value and limits the myriad benefits provided by these  
11 critically important ecosystems.

12           The purpose of this Act is to prohibit all commercial  
13 capture of aquatic life for aquarium purposes, regardless of the  
14 method of collection. This Act is intended to allow the  
15 following practices to continue:

- 16           (1) Issuance of special activity permits pursuant to  
17           section 187A-6, Hawaii Revised Statutes;
- 18           (2) Issuance of recreational permits for non-commercial  
19           capture of aquatic life for aquarium purposes, in  
20           accordance with existing laws and rulings regarding  
21           compliance with environmental assessments; and



1 (3) Captive-breeding and aquaculture efforts, as regulated  
2 by section 187A-3.5, Hawaii Revised Statutes.

3 SECTION 2. Chapter 189, Hawaii Revised Statutes, is  
4 amended by adding a new section to be appropriately designated  
5 and to read as follows:

6 "§189- Aquatic life; commercial aquarium; prohibition.

7 (a) No person shall harvest aquatic life in the State for  
8 commercial aquarium purposes.

9 (b) This section shall not apply to the issuance of a  
10 license or permit for activities permitted in sections 187A-3.5  
11 and 187A-6; provided that the requirements of those sections are  
12 met.

13 (c) For the purposes of this section:

14 "Aquarium purposes" means to hold salt water fish,  
15 freshwater nongame fish, or other aquatic life alive in a state  
16 of captivity as pets, for public exhibition or display, or for  
17 the sale of these purposes.

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



1 egg, or offspring thereof; or marine plants, including seeds,  
2 roots, products, and other parts.

3 "Commercial" means to take aquatic life for profit or gain  
4 or where the aquatic life is sold, offered for sale, possessed  
5 with intent to sell, bartered, landed, or transported for sale.

6 "Harvest" means the taking and retaining of aquatic life by  
7 any means whatsoever."

8 SECTION 3. Section 188-31, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 **"§188-31 Permits to take aquatic life for noncommercial**  
11 **aquarium purposes.** (a) Except as prohibited by law, the  
12 department, upon receipt of a written application, may issue an  
13 aquarium fish permit, not longer than one year in duration, to  
14 use fine meshed traps, or fine meshed nets other than throw  
15 nets, for the taking of marine or freshwater nongame fish and  
16 other aquatic life for noncommercial aquarium purposes.

17 (b) Except as prohibited by law, the permits shall be  
18 issued only to persons who can satisfy the department that they  
19 possess facilities to and can maintain fish and other aquatic  
20 life alive and in reasonable health.



1 (c) It shall be illegal to sell or offer for sale any fish  
2 and other aquatic life taken under an aquarium fish permit  
3 unless those fish and other aquatic life are sold alive for  
4 noncommercial aquarium purposes.

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

7 (d) For the purposes of this section:

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

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

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

20 "**§189-11 Receipts in duplicate.** Every commercial marine  
21 dealer shall issue receipts to the person from whom marine life



1 is obtained and shall provide the following information in the  
2 receipt:

- 3 (1) The date of the issuance;
- 4 (2) The name of the person to whom the receipt is issued;
- 5 (3) The following information with respect to each of the  
6 varieties of marine life as the department shall  
7 require including:

- 8 (A) The weight in pounds of each of the varieties  
9 received;
- 10 (B) The numbers of marine life when they average a  
11 pound or more; and
- 12 (C) The price per pound paid; and
- 13 ~~[(D) With regard to aquarium fish, regardless of  
14 weight, the number and species of the fishes,  
15 and]~~

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

17 Any dealer taking the dealer's own marine life or handling any  
18 marine life taken by commercial marine licensees working for or  
19 with the dealer, shall make out the same receipt, giving market  
20 price for the marine life as prevails on the date of receipt. A  
21 duplicate copy of this receipt shall be kept on file at the



1 premise where the marine life was sold by the dealer issuing the  
2 same for a period of twelve months from the date of issuance,  
3 and the duplicate copy shall be available for inspection upon  
4 the demand of any conservation officer authorized to enforce the  
5 laws of the State."

6 SECTION 5. Section 188-31.5, Hawaii Revised Statutes, is  
7 repealed.

8 ~~["~~§188-31.5~~ Aquarium fish for export, monthly count.~~

9 ~~The department of land and natural resources shall adopt rules~~  
10 ~~in accordance with chapter 91 to monitor the aquarium fish catch~~  
11 ~~report and fish dealer's report for export of aquarium fish~~  
12 ~~taken from the waters of the State for aquarium purposes~~  
13 ~~pursuant to section 188-31. A monthly count of the quantities~~  
14 ~~taken of each individual species of aquarium fish exported shall~~  
15 ~~be reported to the board."]~~

16 SECTION 6. If any provision of this Act, or the  
17 application thereof to any person or circumstance, is held  
18 invalid, the invalidity does not affect other provisions or  
19 applications of the Act that can be given effect without the  
20 invalid provision or application, and to this end the provisions  
21 of this Act are severable.





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

4 SECTION 8. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 9. This Act shall take effect on January 1, 2020.

7

INTRODUCED BY:

Tim Wilkerson  
John M. [unclear]  
[unclear]  
Sen. Wil  
Munson  
[unclear]  
Don Todd  
Rory M. [unclear]

JAN 22 2019



# H.B. NO. 857

**Report Title:**

Aquatic Life; Commercial Aquarium Purposes; Prohibition

**Description:**

Prohibits the commercial capture of aquatic life for aquarium purposes.

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

