

DAVID Y. IGE
GOVERNOR



LATE

REVISED TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
ROSS M. HIGASHI
EDUARDO P. MANGLALLAN
PATRICK H. MCCAIN
EDWIN H. SNIFFEN

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 8, 2022
3:00 P.M.
State Capitol, Teleconference

**S.B. 3275
RELATING TO TRANSPORTATION**

Senate Committee(s) Agriculture & Environment and on Transportation

The Department of Transportation (DOT) submits **comments** on S.B. 3275, which seeks to include prohibition of the transport of marine life for commercial purposes on public roads in the Statewide Traffic Code.

The intent of S.B. 3275 to protect endangered marine species by making it unlawful to transport such species for commercial uses is in alignment with the United States Code Annotated, Title 16, Conservation, Chapter 53, Control of Illegally Taken Fish and Wildlife ("The Lacey Act"). The DOT defers to the Department of Land and Natural Resources and State and County law enforcement agencies as to whether S.B. 3275 is enforceable and will have the desired effect.

Thank you for the opportunity to provide testimony.

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
SUZANNE D. CASE
Chairperson

Before the Senate Committees on
AGRICULTURE AND ENVIRONMENT
and
TRANSPORTATION

Tuesday, February 8, 2022
3:00 PM
State Capitol, Via Videoconference

In consideration of
SENATE BILL 3275, PROPOSED SENATE DRAFT 1
RELATING TO TRANSPORTATION

Senate Bill 3275, Proposed Senate Draft 1, proposes to prohibit any person from using a public road, street, highway, or similar thoroughfare to transport endangered marine species harvested from state waters for commercial purposes and marine species harvested from state waters for commercial aquarium purposes. **The Department of Land and Natural Resources (Department) appreciates the intent of this measure and offers the following comments and proposed amendments.**

The transportation of endangered marine species is already prohibited by existing state¹ and federal² laws. Therefore, this measure is unnecessary to the extent that it proposes to prohibit the

¹ Section 195D-4, Hawaii Revised Statutes (HRS), provides in relevant part:

(e) With respect to any threatened or endangered species of aquatic life, wildlife, or land plant, it is unlawful, except as provided in subsections (f), (g), and (j) for any person to:

(3) Possess, process, sell, offer for sale, deliver, carry, transport, or ship, by any means whatsoever, any such species;

² The federal Endangered Species Act (16 U.S. Code § 1538) provides in relevant part:

(a) (1) ... with respect to any endangered species of fish or wildlife listed pursuant to section 1533 of this title it is unlawful for any person subject to the jurisdiction of the United States to—

(B) take any such species within the United States or the territorial sea of the United States;

(C) take any such species upon the high seas; [or]

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

transportation of endangered marine species on a public road, street, or highway. Moreover, this measure would likely be preempted by the federal Marine Mammal Protection Act to the extent that it purports to prohibit the transportation of endangered marine mammals.³

Pursuant to recent Court decisions, all collection of marine life for commercial aquarium purposes is prohibited until an environmental review is completed pursuant to the Hawaii Environmental Policy Act (HEPA) and Chapter 343, Hawaii Revised Statutes, and the Court issues an order allowing the Department to issue aquarium permits. If these things happen, the Board of Land and Natural Resources could issue aquarium permits to allow legal commercial aquarium collection to resume. Currently, the Department allows the legal take of marine life for "aquarium purposes" for scientific research, education, and aquaculture broodstock⁴ pursuant to Special Activity Permits and Aquaculture Licenses.

As written, the bill would prohibit the transportation of any marine species harvested from the waters of the State for commercial aquarium purposes, whether the harvest is done legally (pursuant to valid permits or licenses) or illegally. To bring the language of the proposed law into alignment with the stated intent of the measure (i.e., to stop illegal extraction and to make enforcement of laws more efficient), the Department recommends amending the bill to clarify that the prohibition on transportation applies only to *illegally* harvested marine species. Specifically, the Department suggests the following amendments to SECTION 2 of the bill (highlighted in yellow):

SECTION 2. Chapter 291, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

(D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C);

³ The MMPA (16 U.S.C. 1379 Sec. 109) provides in relevant part:

(a) No State may enforce, or attempt to enforce, any State law or regulation relating to the taking of any species (which term for purposes of this section includes any population stock) of marine mammal within the State unless the Secretary has transferred authority for the conservation and management of that species (hereinafter referred to in this section as "management authority") to the State under subsection (b) (1).

⁴ Section 188-31(d)(1), HRS, provides:

"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

"§291- Transport of marine life harvested for commercial purposes; prohibition. (a) No person shall use a public road, street, highway, or similar thoroughfare to transport [÷

(1) Endangered marine species harvested from the waters of the State for commercial purposes; or

(2) Marine] marine species illegally harvested from the waters of the State for commercial aquarium purposes.

(b) For the purposes of this section:

"Commercial" means for selling, offering for sale, possessing with intent to sell, bartering, landing, or taking any other actions for the purpose of profit or gain.

["Endangered marine species harvested from the waters of the State" excludes species bred in captivity and species legally purchased in a retail store.]"

Thank you for the opportunity to comment on this measure.

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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(b) For the purposes of this section:

"Commercial" means for selling, offering for sale, possessing with intent to sell, bartering, landing, or taking any other actions for the purpose of profit or gain.

["Endangered marine species harvested from the waters of the State" excludes species bred in captivity and species legally purchased in a retail store.]"

Thank you for the opportunity to comment on this measure.



February 8, 2022, 3pm

RE: SUPPORT SB3275 SD1; RELATING TO TRANSPORTATION (with amendments)

Dear Chairs Lee and Gabbard and Members of the Senate Transportation and Agriculture & Environment Committees:

The listed organizations ask for your support of SB3275, Proposed SD1, Relating to Transportation, that would prohibit the transport of endangered marine life and marine life transported for commercial aquarium purposes.

This bill would provide for the following, most needed provisions, without prohibiting the continued lawful transportation of any other marine life taken, sold or transported for commercial purposes.

Notably this measure:

- Provides an additional enforcement mechanism for endangered marine life or marine life illegally captured for the aquarium trade, which is then transported on state roads for commercial purposes
- DOCARE states one of their greatest enforcement challenges remains the illegal take of marine wildlife, due to their lack of staff, resources and vessels to intercept illegal activity on and under water
- Thousands of Hawaii's marine animals have been transported and subsequently sold on the mainland since the aquarium trade was closed in 2018, showing enforcement was evaded.
- Increases collaboration across law enforcement agencies

Below are a number of examples of marine life illegally captured and then transported out of state despite existing prohibitions on the harvest of these animals. The high retail value, especially of our rare and endemic marine animals, provides an incentive for poachers to continue with their violations. In addition to evading enforcement and investigation by DOCARE, the Division of Aquatic Resources lacks the staff and resources to adequately monitor the required record-keeping of marine life collectors and dealers, which is necessary to prevent such poaching and hold offenders accountable. Further, documentation has shown that even those charged with poaching continued to commercially sell and transport marine life, both inside and out of the state even after they were charged, and subsequently convicted.

We suggest the bill be amended to clarify that 1) **endangered or threatened** species shall have the same meaning as defined in HRS 195D-4 and 2) **aquarium purposes** will have the same meaning as defined in HRS 188-31, to read as stated:

"§291- Transport of marine life harvested for commercial purposes; prohibition. (a) No person shall use a public road, street, highway, or similar thoroughfare to transport:

~~(1) **Endangered or threatened species pursuant to section 195D-4** (3) **Endangered marine species harvested from the waters of the State for commercial purposes;** or~~

~~(2) **Marine species harvested from the waters of the State for commercial aquarium purposes, as defined in section 188-31**~~

~~(b) For the purposes of this section:~~

~~"Commercial" means for selling, offering for sale, possessing with intent to sell, bartering, landing, or taking any other actions for the purpose of profit or gain.~~

~~"Endangered marine species harvested from the waters of the State" excludes species bred in captivity and species legally purchased in a retail store."~~

Thank you for the opportunity to provide testimony in strong support of this bill.

Inga Gibson, Pono Advocacy

On behalf of For the Fishes, Moana Ohana, Kai Palaoa, Center for Biological Diversity, Conservation Council for Hawaii, Sierra Club-Hawaii Island Group, Kalanihale, Ocean Defenders-Hawaii, Haereticus Environmental Laboratory, Friends of Hanauma Bay, Legacy Reef Foundation, Fair Wind Charters, Environmental Caucus of the Hawaii Democratic Party, Hawaii Reef & Ocean Coalition

Hawaii-captured endemic Mask Angelfish taken from Kona, Hawaii, November 2018, and sold at TSM Corals in New Jersey for **\$15000.00** (the aquarium trade closed in West Hawaii in Jan 2018).

<https://reefbuilders.com/2018/11/13/first-wild-bandit-angelfish-collected-in-five-years-comes-to-u-s/>

"...We definitely relish the aquacultured supply making these fish accessible to more affluent reefers but there's something inherently exciting about a **freshly collected WILD fish, like this specimen just received by TSM Corals from Kona Hawaii...**"

TSM Corals, LLC
November 15, 2018

Be sure to check out the recent article on our Masked Angelfish!
<https://reefbuilders.com/.../first-wild-bandit-angelfish-col.../>

REEFBUILDERS.COM
First Wild Masked Angelfish Collected in Five Years Comes to U.S. News Reef...

31 reactions, 1 Comment, 1 Share

Collette Amber Did Reef Builders get it right – this beauty came from Kona? I thought they were only found in cold, deep water.
Like · Reply · 7w

TSM Corals, LLC it came from a company in Kona, collection in North Shore we believe
Like · Reply · 7w

1000 Delsea Dr, Unit G-2 (4.87134 mi)
Westville, New Jersey 08093
 (856) 845-3500
 Typically replies within a day
 www.tsmcorals.com
 Aquatic Pet Store · Pet Service
 Price Range \$\$
 Opens tomorrow
 Closed Now

Related Pages

- Hog Wild Hedgehogs Pet Breeder
- Kingpin corals Pet Store
- TSM Corals West LLC. Aquatic Pet Store

<https://tropical-fish-keeping.com/masked-angelfish-genicanthus-personatus.html>

Masked Angelfish (*Genicanthus personatus*)

Posted on 15 February 2021. Tags: [Masked Angelfish \(*Genicanthus personatus*\)](#)

“At least one dedicated web site we found **now sells them online for \$16,000.00** on a pre-order basis, but for most tropical fish keeping enthusiasts, we can only dream about acquiring one.”

SB-3275

Submitted on: 2/6/2022 8:34:41 PM

Testimony for TRS on 2/8/2022 3:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Robert Culbertson	Testifying for Big Island 'Reef Keepers' Alliance	Support	No

Comments:

Dear Chairs Lee and Gabbard and Members of the Senate Transportation and Agriculture & Environment Committees,

Thank you for introducing this important legislation Senator Lee!

This bill would fill a legal gap that allows poachers to evade regular 'DOCARE' enforcement procedures currently.

Notably this measure:

- Provides an additional enforcement mechanism for endangered marine life or marine life illegally captured for the aquarium trade, which is then transported on state roads for commercial purposes.
- DOCARE states one of their greatest enforcement challenges remains the illegal take of marine wildlife, due to limitations of jurisdiction on land, their lack of staff generally, other resources and the necessary vessels.
- It also increases collaboration across other law enforcement agencies which is helpful.

Unfortunately, the high retail value, especially of our rare and endemic marine animals, provides an overweening incentive for poachers to continue with their violations.

Now you can close another critical loophole!

Mahalo nui loa,

R A Culbertson,

Big Island Reef Keepers Alliance

SB-3275

Submitted on: 2/4/2022 9:57:27 PM

Testimony for TRS on 2/8/2022 3:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Douglas Perrine	Individual	Support	No

Comments:

Support, but should add a definition for "non-subsistence commercial purposes".

SB-3275

Submitted on: 2/5/2022 5:06:55 AM

Testimony for TRS on 2/8/2022 3:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Angela Huntmer	Individual	Support	No

Comments:

Dear Chair and Committee Members,

Protection of all marine species from illegal take and commercial exploitation must be enhanced. Poaching is rampant in Hawaii and must be stopped by using a variety of legal tools to enhance enforcement.

Mahalo for supporting this measure.

SB-3275

Submitted on: 2/6/2022 11:02:24 AM

Testimony for TRS on 2/8/2022 3:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Keith Neal	Individual	Support	No

Comments:

I support SB3275.

I support the prohibition the transport of endangered marine wildlife and wildlife transported for commercial aquarium purposes.

SB-3275

Submitted on: 2/7/2022 1:47:22 PM

Testimony for TRS on 2/8/2022 3:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Lois Crozer	Individual	Comments	No

Comments:

I get that concrete is hot and holds heat but better we stop monster houses and people paving every inch of their properties. Also, the cost to do this would be \$\$ plus MAINTENANCE with the leaves falling on the street.

SB-3275

Submitted on: 2/7/2022 3:39:28 PM

Testimony for TRS on 2/8/2022 3:00:00 PM



Submitted By	Organization	Testifier Position	Remote Testimony Requested
Diane Ware	Individual	Support	No

Comments:

Dear Senator Lee and your Committee Members,

I strongly support hearing and passing this bill to stop the extraction and transportation of our precious and limited marine resources, some of them endangered and some being extracted in large numbers for profiting of the Exotic Pet Trade. This practice is a continuing colonial government mind set that minimizes the indigenous cultural practices of these islands.

Let the people, all of the people decide the fate of our aquatic life so important to future generations and climate resilience.

Mahalo nui loa,

Diane Ware

99-7815 Kapoha Pl.

Volcano HI, 96785