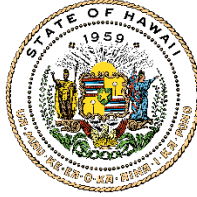


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



**STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA**

P.O. BOX 621
HONOLULU, HAWAII 96809

**Testimony of
DAWN N. S. CHANG
Chairperson**

**Before the Senate Committees on
WATER AND LAND
and
AGRICULTURE AND ENVIRONMENT**

**Monday, January 29, 2024
1:00 PM**

State Capitol, Conference Room 229 & Videoconference

**In consideration of
SENATE BILL 2148
RELATING TO AQUARIUM FISH PERMITS**

Senate Bill 2148 proposes to exempt persons engaging in aquaculture research from the aquarium fish permit requirement. **The Department of Land and Natural Resources (Department) offers the following comments.**

An aquarium fish permit under the Hawaii Revised Statutes (HRS) §188-31 authorizes the use of fine meshed nets and traps to take aquatic life for aquarium purposes. The Hawai'i Supreme Court has ruled that prospective applicants for commercial aquarium fish permits must go through the environmental review process pursuant to HRS chapter 343 – the Hawai'i Environmental Policy Act (HEPA) before aquarium permits can be issued. In a related case, the Hawai'i Environmental Court has ruled that licensed commercial fishers may not use any gear or method to take marine life for commercial aquarium purposes without first complying with HEPA. As a result of these rulings, all taking of marine life for commercial aquarium purposes, including aquaculture research, is currently prohibited. Researchers wanting to obtain marine life for aquaculture research may not purchase specimens from commercial fishers.

Amending the definition of “aquarium purposes” in HRS §188-31(d)(1) will result in two changes. On one hand, if commercial aquarium permits are issued, permitted collectors would not be allowed to use fine mesh nets to provide specimens to aquaculture researchers for the purpose of scientific study. They would only be allowed to use their permits to take aquatic life for use as pets or for public exhibition or display. On the other hand, regardless of whether

DAWN N.S. CHANG

CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

RYAN K.P. KANAKA'OLE
FIRST DEPUTY

DEAN D. UYENO
ACTING 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

aquarium permits are issued, licensed commercial fishers would be allowed to take and sell marine life for scientific study using legal gear or methods.

This bill would support aquaculture research in Hawai'i by making it easier for aquaculture researchers to obtain research specimens. When responsibly and sustainably managed, aquaculture can be an integral part of local food production and security. Aquaculture also has the potential to reduce fishing pressure on stressed fish stocks which can lead to the recovery of native fish and invertebrate species that have been over-exploited in the past.

Mahalo for the opportunity to comment on this measure.

JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



SHARON HURD
Chairperson, Board of Agriculture

DEXTER KISHIDA
Deputy to the Chairperson

State of Hawai'i
DEPARTMENT OF AGRICULTURE
KA 'OIHANA MAHI'AI
1428 South King Street
Honolulu, Hawai'i 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

**TESTIMONY OF SHARON HURD
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE SENATE COMMITTEES ON AGRICULTURE AND ENVIRONMENT
AND WATER AND LAND**

**JANUARY 29, 2024
1:00 PM
CONFERENCE ROOM 229**

**SENATE BILL NO. 2148
RELATING TO AQUARIUM FISH PERMITS**

Chairs Gabbard and Inouye, Vice Chairs Richards and Elefante, and Members of the Committees:

Thank you for the opportunity to testify on Senate Bill 2148. The bill exempts persons engaging in aquaculture research from the aquarium fish permit requirement. The Department supports this bill.

Aquarium species research plays a crucial role in aquaculture development by promoting sustainable breeding, education, and awareness, developing best practices, fostering innovative technologies, selecting suitable species, and minimizing environmental impact. The current permitting structure creates unnecessary hardship on the research community and stymies progress.

As such, the Department supports this measure. Thank you for the opportunity to testify on this measure.





UNIVERSITY OF HAWAII SYSTEM

‘ŌNAEHANA KULANUI O HAWAII

Legislative Testimony

Hō'ike Mana'o I Mua O Ka 'Aha'ōlelo

Testimony Presented Before the
Senate Committee on Water and Land
Senate Committee on Agriculture and Environment
Monday, January 29, 2024 at 1:00 p.m.

By

Darren T. Lerner, PhD
Director, University of Hawai'i Sea Grant College Program
School of Ocean and Earth Science and Technology

And

Michael Bruno, PhD
Provost
University of Hawai'i at Mānoa

SB 2148 – RELATING TO AQUARIUM FISH PERMITS

Chairs Inouye and Gabbard, Vice Chairs Elefante and Richards, and members of the committees:

The University of Hawai'i Sea Grant College Program (Hawai'i Sea Grant) supports SB 2148 provided that its passage does not replace or adversely impact priorities as indicated in the University's Board of Regents Approved Executive Supplemental Budget.

Since its inception in 1968 Hawai'i Sea Grant has a longstanding history of supporting aquaculture research through its biennial request for research proposals competition. Hawai'i Sea Grant and its partners have also been conducting aquaculture research through collaboration with academia, government agencies, and nonprofits on extramural funding awards that address contemporary and indigenous aquaculture needs.

Hawai'i Sea Grant strongly supports SB 2148 which “exempts persons engaging in aquaculture research from the aquarium fish permit requirement.” The aquarium fish permit requirement is a lengthy process and approving this measure will help to streamline aquaculture research activities by eliminating an unnecessary requirement which more often than not results in a delay of initiating any research project/activity and where these funds supporting these activities are tied to externally determined timeframes.

Thank you for the opportunity to testify on this measure.

SB-2148

Submitted on: 1/28/2024 11:46:54 AM

Testimony for WTL on 1/29/2024 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Ronald Weidenbach	Testifying for Hawaii Aquaculture and Aquaponics Association	Support	Written Testimony Only

Comments:

The Hawaii Aquaculture and Aquaponics Association (HAAA) supports the intent of SB2148 to exempt aquaculture researchers from needing an aquarium permit for aquarium purposes. Recent court decisions have seemingly modified the definition of aquarium purposes from focusing on wild collection of aquarium species for resale to include aquaculture researchers who want to collect brood stock to work on propagation of economically important species ,e.g., moi, mullet. The aquarium permit application may now require and environmental assessment per Chapter 343 HRS. Clearly exempting aquaculture research from this permit would facilitate important research that supports industry expansion and wild stock enhancement.



KAUHAKO OHANA ASSOCIATION



**FRIENDS of
HANAUMA BAY**
CONSERVE • PROTECT • RESTORE



January 29, 2024

WTL/AEN Hearing 1pm

RE: OPPOSITION TO SB2148; Relating to Aquarium Fish Permits

Dear Chairs Inouye and Gabbard and Members of the Water & Land and Agriculture & Environment Committees,

For the Fishes, Moana Ohana, Kalanihale, Kauhako Ohana Association, Pa'a Pono and Friends of Hanauma Bay, **strongly oppose SB2148**, which would remove the term “scientific study” from the definition of aquarium purposes in HRS 188-31.

First, the preamble of the bill is completely inaccurate in stating that “... *the aquaculture industry in Hawaii may be limited by the definition of "aquarium purposes" because it unnecessarily requires individuals and organizations engaged in aquaculture research to acquire an aquarium fish permit. The legislature also finds that the ruling of Umberger v. Department of Land and Natural Resources further complicated the definition of "aquarium purposes", hampering Hawaii's aquaculture industry.*”

1. It is NOT nor has it ever been required that a person acquire an aquarium collection permit to engage in aquaculture. Instead, if they want to use fine mesh nets, they must acquire either a Special Activity Permit under HRS 187 A or written authorization from DLNR via HAR 13-74-42 (f)(4).
2. The Hawaii Supreme Court ruling in Umberger v DLNR did NOT impact nor complicate the continued issuance of the above-referenced permits for aquaculture nor does it in any way hamper Hawaii's aquaculture industry.
3. HRS 188-31 relates to the use of fine mesh nets **for aquarium purposes**. Fine mesh nets are used for the collection of small/young species most commonly taken by the aquarium pet trade. Fine mesh nets are not generally used for the collection of broodstock for food/consumptive aquaculture because broodstock involved in food production are larger

and reproductively mature. In addition, HRS 188-31 prohibits the sale of “any fish and other aquatic life taken under an aquarium fish permit **unless those fish and other aquatic life are sold alive for aquarium purposes.**”

We believe the measure is well intended, however, in removing this language from the current statute, the legislature would be causing the following:

1. Completely usurp the current process of DLNR issuing Special Activity Permits (under HRS 187A) and providing written permission (under HAR 13-74) to persons seeking to take aquatic life using fine mesh nets for bona fide research, education or scientific purposes.
2. In usurping the issuance of SAPS, this would remove the current role and authority of both the DLNR Division of Aquatic Resources and the Board of Land and Natural Resources from providing any terms, conditions, regulation or oversight of any person taking any aquatic life under the guise of “scientific study.”
3. Entirely remove the required Ka’pa’a Kai analysis of potential cultural impacts of the activity and remove public notice and the public from providing comments on the take of aquatic life.
4. Create a “free for all” for any person to collect and subsequently SELL any and all aquatic life for aquarium purposes using fine mesh nets, in unlimited numbers, in any area, using any gear, if the person simply claims, without any verification, that they are taking the aquatic life for “scientific study.”

Here are two examples of cases involving persons or businesses who violated these existing regulations and who would not face any charge nor accountability should this measure pass.

Case 1: In June of 2022, EcoHarvest, a new ornamental (aquarium fish) venture, was issued a Special Activity Permit (SAP) by DAR to collect a limited number of species from specific areas, working with specific persons, on specific days, using specific gear. However, when EcoHarvest initiated their collection efforts, they failed to comply with the explicit terms and conditions of the SAP which prompted a state and federal law enforcement response, when community members recognized well known aquarium collectors with currently unlawful collection gear at Honokohau harbor and reported the violations to DOCARE and NOAA. EcoHarvest could have prevented this had they not failed to identify their vessels, vehicles and gear as required under the SAP, failing to notify DAR and DOCARE in advance of collection and most notably, employing at least one well-known aquarium collector who was not approved, as is required, on their permit. All of these are clear violations subject to revocation of the SAP and the issuance of any future SAPS and prosecution under state law. While DAR failed to prosecute EcoHarvest for these violations, they issued the below Notice of Violations of Terms and Conditions of the Special Activity Permit.

DAR STATEMENT TO BLNR ON JUNE 9, 2023: Notice of Violation of Terms and Conditions of Special Activity Permit. In June of 2022, the project was issued a notice of violation of select terms and conditions of their permit (SAP 2023-05). During the review of the violations that transpired in March of 2022, the Division determined that they were

procedural concerns that were fixable. The project was notified that in order to proceed with any similar collection activities in the future, they would need to address and rectify these activities which resulted in the violations and that the inability to address these violations directly or show earnest efforts to addressing future violations may result in the revocation or non-renewal of the permit and confiscation of the resources collected under the permit. The violations consisted of 1) adding an assistant without written approval from the Department, and 2) not marking boats, vehicles and nets or traps (regardless of mesh size - except for hand nets) used for collecting or hired for collecting under this permit, clearly with an inscription or sign bearing the permittee's affiliation ("Eco Harvest") and/or the number of the permit ("SAP 2023-05"). Since the initial incident, the project has made earnest efforts to confirm they are in compliance with all terms and conditions of the permit and no further violations have occurred. As an additional measure of compliance and as part of the regular notification to DAR and DOCARE 24 hours prior to initial commencement of any series of authorized activities (e.g. field collection/sampling) taken place under this permit, the permittee will (on collection days) coordinate an in-person check-in with DOCARE-Kona and DARKona at the boat ramp before leaving to go out to conduct the collections and to coordinate an in-person check in again with DOCARE-Kona and DAR-Kona, immediately after returning to shore with organisms collected under this permit, in order to confirm that the conditions of the permit are being adhered to (e.g. gear types, collections, identification of vessel and vehicles, authorized assistants etc.). More <https://dlnr.hawaii.gov/wp-content/uploads/2023/06/F-1.pdf>

On June 9, 2023 the Board of Land and Natural Resources rejected EcoHarvest's renewal of an SAP given these violations and public opposition. Should SB2148 pass, any person or business would have no oversight and no longer need to have ANY permit or permission of DLNR.

Case 2: On August 27, 2020, Jason Beevers was charged with 336 counts of unlawful collection of aquatic life for aquarium purposes. In court Beevers claimed he was engaged in lawful aquaculture/scientific collection by stating to the Judge that he was working with UH Hilo and DAR. However, he was not collecting under any SAP nor in affiliation with any permitted academic or scientific institution. DAR recommended Beevers be fined \$69,800 and the case is still pending before the BLNR and AG. More <https://dlnr.hawaii.gov/wp-content/uploads/2021/02/F-2.pdf>

Should SB2148 pass, any person could unlawfully take unlimited numbers of species and animals for aquarium purposes and simply claim they were taking them for "scientific study" and be free of any charge.

If the goal is to expedite the Special Activity Permit process then we urge the Committees to instead support SB2149 which would require that DAR approve or reject SAP applications within 90 days (and although DAR states the average response time is currently 1.5 to 4 months) and appropriate funds to DAR to bring on additional staff to prepare the SAPS for presentation and approval of the Board of Land and Natural Resources.

Thank you,

Rene Umberger

For the Fishes

Ka'imi Kaupiko

Kalanihale

Charles Young

Mike Nakachi

Moana Ohana

Damien Kennison

Kauhako Ohana Association

Lisa Bishop

Friends of Hanauma Bay

Lei Kaupu

Pa'a Pono Milolii

SB-2148

Submitted on: 1/28/2024 2:33:54 PM

Testimony for WTL on 1/29/2024 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
R A Culbertson	Testifying for Big Island Reef Keepers hui	Oppose	Written Testimony Only

Comments:

RE: OPPOSITION TO SB2148; Relating to Aquarium Fish Permits

Dear Chairs Inouye and Gabbard and Members of the Water & Land and Agriculture and Environment Committees,

Speaking as member of the Big Island Reef Keepers hui, I (we) concur with the findings and testimony of 'For the Fishes', 'Moana Ohana', 'Kalanihale', 'Kauhako Ohana Association', 'Pa'a Pono' and 'Friends of Hanauma Bay'.

We strongly oppose SB2148, for the very reasons already soundly stated by our affinity allies!

Please table this underhanded manuever to give undeserved credit and license to this highly unpopular "industry"

Mahalo!

R A Culbertson

Honokaa

SB-2148

Submitted on: 1/26/2024 6:38:32 AM

Testimony for WTL on 1/29/2024 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
glenn fukuda	Individual	Support	Written Testimony Only

Comments:

When DLNR rule against our fishing they denigrate their own policies and single out conscientious fishermen who represent them. This state allowed a 50 impacted year fishery to cease because nobody questioned its existence under management control where a stay or exemption was necessary because unclear circumstances not mandatory court closure. Why is DLNR judge and jury of their own performances including this environmental assessment failing check and balance criteria? State allowed us to fish now each of us must prove to the state under their own criteria! This state is responsible for any assessment since executors of this fishery. In good faith fishermen financed this assessment and currently a petition for a total ban was approved rendering the assessment useless. There is a lack of interest in government to protect this fishery. Aquarium fishing doesn't nourish the body but opens new entrepreneurship, ecological and useful psychological strategies that are acceptable worldwide! Approve an exemption for this 50 year fishery it is obvious not to.

SB-2148

Submitted on: 1/26/2024 12:58:09 PM

Testimony for WTL on 1/29/2024 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Uilani Naipo	Individual	Oppose	Written Testimony Only

Comments:

The enthusiastic momentum to support Hawaii’s aquaculture in achieving food sustainability goals is exciting!

There are bills to support DLNR Division of Aquatic Resources by adding 2.0 FTE and requiring DAR to process aquaculture SAPs.

This bill is introducing mis-matched language and bypassing current compliance processes for aquaculture meant for aquarium purposes that currently exists.

Although aquarium fish production for the purpose of non-research, non-restorative of environmental conditions, and non-food production may choose to use the same aquaculture type systems, they should not be fast tracked into the same privileges that research and proven aquaculture systems are making to restock fishponds, stock enhancements, and coral nurseries. These aquaculture systems are prioritized to restore our coral reefs, replenish the reefs with natural coral gardeners, restock our fishponds that will restore our people relationship to these (fishpond) places, the practice, and feeding our people!

There are existing DAR processes for aquarium fish production using a aquaculture system to include harvest on a Special Access Permit. This includes a license for aquaculture facility and (in the case of regulated species to be harvested from our state waters,) an SAP. The SAP is the process to request all regulated activity and regulated gear, thanks to DAR and the Board of Land and Natural Resources. What happens beyond these resources being secured requires respectful compliance. Perhaps the reasoning for this bill is to allow the failures of a business venture to by-pass processes in place to protect and preserve our cultural and natural resources.

I firmly **oppose** this measure.

Respectfully,

U'ilani Naipo

Moku O Keawe

SB-2148

Submitted on: 1/27/2024 3:28:35 PM

Testimony for WTL on 1/29/2024 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Maria Haws	Individual	Support	Written Testimony Only

Comments:

I am providing this testimony in my capacity as a private citizen, but also as a member of the Hawaii Aquaculture and Aquaponics Association (HAAA). I have forty years of experience with aquaculture research, teaching and commercial production. During this time I have worked for the Pacific Aquaculture and Coastal Resources Center (PACRC) at the University of Hawaii for twenty four years.

As the Principal Investigator for the PACRC/UH Hilo Fish Research Program, I have encountered extreme difficulty in obtaining permits to collect specimens of marine ornamental fish for research, as well as for food fish. Some of the species are both for aquaria and for food, e.g. Achilles Tang, pāku‘iku‘i, *Acanthurus achilles*. While a fisher can simply go out and spear this species with no license, we have encountered extreme difficulty in obtaining permits to collect a few specimens to study their biology and attempt to breed them in captivity.

Our work with food fish and ornamental fish has been funded by two private donations of \$1.7 million (2016) and \$2.7 million (2022). We have come very close to losing this funding several times simply because we were denied collection permits for a limited number of fish to serve as broodstock. We ran out of most species of fish! We have 15 employees and students assistants dependent on this funding. I cannot even attempt to apply for further funding to support this legitimate research given the permitting obstacles.

Here are the examples of how long it took to obtain Special Activities Permits (SAP) from DAR for fish collection:

1. **9 months to authorize.** SAP-2764 (collect marine ornamental fish for research), applied: 2/23/21, received: 11/14/22.
2. **17 months to authorize.** SAP-2800 (renewal request to collect aholehole, mullet, moi and other food fish), applied: 3/29/21, received: 11/14/22.

It is clear that this is due simply to the politics surrounding the fishery for marine ornamental fish and scrutiny from certain groups. There is no environmental impacts from using limited numbers of specimens for valid research, teaching and training, particularly when the users are well-qualified specialists.

This research is very important given the impaired status of many of Hawaii’s marine fish species, the need to better understand their life cycles for management purposes and the

possibility of supplying captive bred specimens for aquaria. Use of these species is also very important for teaching purposes.

I strongly support SB 2148 so that research and education can proceed without being influenced by political issues.

SB-2148

Submitted on: 1/27/2024 11:19:04 AM

Testimony for WTL on 1/29/2024 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Randy Fernley	Individual	Comments	Written Testimony Only

Comments:

Aloha Committee Members,

As a long time fisherman of over 45 years, I appreciate the intent of the bill. However, I feel the bill **should be modified to exempt all fisheries** within the state of Hawaii from HEPA.

HEPA has already shut down one of Hawaii's fisheries, and is now vulnerable to shut down other sustainable fisheries if and when litigation is initiated.

Past litigation has cost the state tens of thousands of dollars and may spent tens of thousands more because Hawaii's fisheries are susceptible and vulnerable to HEPA laws.

I am in total support of the development aquaculture within our state. However, it also seems discriminatory if they are give aquaculture a pass while other fisheries are not included.

Plse consider modifying the Bill.

Mahalo,

John "Randy" Fernley Aiea, HI

LATE

SB-2148

Submitted on: 1/27/2024 6:32:16 PM

Testimony for WTL on 1/29/2024 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kim Koch	Individual	Oppose	Remotely Via Zoom

Comments:

Oppose