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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

July 26, 2018

Mr. Scott Glenn
Office of Environmental Quality Control
State of Hawai'i
235 S. Beretania Street, Room 702
Honolulu, Hawaii 96813

Re: HRS Chapter 343, Final Environmental Assessment, Notice of Determination
Project: Issuance of Commercial Aquarium Permits for the Island of Hawai'i
Applicant: Pet Industry Joint Advisory Council (PIJAC)
Applicant Contact: Jim Lynch, KL Gates LLP, 206-370-6587
Approving Agency: Department of Land and Natural Resources
Location: Throughout the near shore region (to depths of 100 fathoms) of the island of Hawai'i except in those areas already designated as no collection areas such as Fish Replenishment Areas.
Proposal: Issuance of Commercial Aquarium Permits ensuring lawful, responsible, and sustainable commercial collection of various aquarium fish species from nearshore habitats pursuant to Aquarium Fishing Permits issued under HRS §188-31

Dear Mr. Glenn,

Attached and incorporated by reference is the Final Environmental Assessment prepared by the Applicant for the Project. Based on the significance criteria outlined in Title 11, Chapter 200, Hawaii Administrative Rules, we have determined that the project may have a significant impact on the environment and therefore the preparation of an Environmental Impact Statement is required. Further analysis is necessary on the following significance criteria under HAR §11-200-12 for the issuance of Hawai'i aquarium permits:

(1) The take of aquarium fish as an irrevocable commitment to loss or destruction of natural or cultural resources. The take of individual fish itself is loss or destruction of natural resources; the sustainability question is whether the annual take of cumulative numbers of fish as a percentage of estimated population results in irrevocable loss or destruction of populations of fish;

(2) The manner in which the take of aquarium fish curtails the uses of the environment, including aquatic invasive algae control, the tourism industry, and the overall integrity of diverse aquatic ecosystems;

(3) The extent to which the take of aquarium fish conflicts with the state's long-term environmental goals;

(4) The impact of the take of aquarium fish on cultural practices in the state; and

(8) The cumulative effect of the commercial take of aquarium fish using fine mesh nets when combined with the effects of:
(a) the commercial take of aquarium fish by other legal methods;
(b) the take of aquarium fish for recreational purposes; and
(c) the commercial and non-commercial take of aquarium fish species for consumption as food, particularly including Achilles Tang and kole.

It is also necessary to analyze the potential impacts under the no action alternative resulting from non-issuance of aquarium permits, including the increased take of larger, reproductively mature aquarium fish in East Hawai'i using legal mesh nets.

The FEA identifies the scope of analysis as one year and states that an EA with updated data and analysis would need to be completed on an annual basis. This improperly segments the analysis which must include the long-term and cumulative impacts over time of aquarium collection.

There is no statistical analysis of population growth compared to the life span of each fish and the number of years to and size of first reproduction against which this annual proposed take can be measured for purposes of estimating sustainable take.

With regard to proposed levels of sustainable catch, using "5% to 25%" annual take of estimated populations as proposed in several research papers, we note that 5% to 25% is a wide range, and the precautionary principle calls for applying the lowest estimated percentage of sustainable take in the absence of scientific certainty.

We also note that there are no bag limits for most species, and that the fishery as currently regulated does not limit the number of permits, so that the annual take as a percentage of estimated population could rise significantly. Alternatives of overall annual take limits, a limited entry aquarium fishery program, and restrictions including full moratoria on the take of herbivores, species of special concern, and species evidencing severe population declines have not been proposed or analyzed.

The FEA asserts that certain types of fish such as Psychedelic Wrasse, Tinker's Butterflyfish, and Fisher's Angelfish inhabit waters deeper than the CREP monitoring studied, resulting in

populations being underestimated and thus the annual take as a percentage of estimated population being overestimated.

In addition, we note the proposed alternatives for reduction in bag limits for Achilles Tang, but do not see a scientific basis for concluding that the proposed reduction would be sufficient to sustain the population.

Cultural impacts of aquarium fishing need significantly more analysis than provided in the FEA. The OEQC guidelines should be followed for assessing cultural impacts, including consulting with traditional cultural practitioners and other knowledgeable informants and sources about cultural resources, cultural practices, and the proposed action's potential impacts. Traditional Hawaiian practices and subsistence uses, local place-based and life-cycle knowledge, and traditional Hawaiian cultural significance of each type of aquarium fish taken should be reviewed. The indirect impact of modern technologies for highly efficient catch methods on traditional harvest capabilities should be included in the analysis.

Enforcement and compliance needs and challenges are key factors in the effectiveness of fisheries management, and should be analyzed as part of the environmental impact statement.

We appreciate that as an applicant action, the applicant can propose but not ensure regulations aimed at protecting and restoring populations of aquarium fish. We are interested in proposals for self-regulation by aquarium permit holders which could be incorporated into permit conditions even in the absence of or prior to establishing other regulations to accomplish the same purposes.

Overall, we appreciate that certain alternatives have been proposed, but believe they are more appropriately proposed as mitigation measures in an environmental impact statement to mitigate potential environmental impacts, rather than as alternatives in an environmental assessment which, if implemented, might result in a finding of no significant impact. The Department of Land and Natural Resources is obligated to ensure full analysis under HRS Chapter 343 of potential environmental impacts of its actions in issuing aquarium permits. We believe this is most appropriate in an environmental impact statement.

Based on the significance criteria outlined in Title 11, Chapter 200, Hawai'i Administrative Rules, we have determined that the preparation of an Environmental Impact Statement is required.

Please publish this FEA-EISPN in the next issue of the Office of Environmental Quality Control (OEQC) "Environmental Notice". We understand that publication in the Environmental Notice will initiate a 30-day public consultation period for parties to comment on the action and to request to become consulted parties in the preparation of the draft environmental impact statement.

We have enclosed one hard copy of the FEA-EISPN, as well as three Adobe Acrobat PDF copies on compact disc. We have also attached a completed OEQC publication form and Project summary, and we will submit the same publication form and Project summary via electronic mail to your office.

Please contact David Sakoda, State of Hawaii, Department of Land and Natural Resources, Division of Aquatic Resources, at (808)587-0104, david.sakoda@hawaii.gov, with any questions.

Sincerely,

Suzanne D. Case
Chair
Department of Land and Natural Resources
State of Hawai'i