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# A BILL FOR AN ACT

RELATING TO THE DEPARTMENT OF LAND AND NATURAL RESOURCES.

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

1           SECTION 1. The legislature finds that state law provides  
2 that aquarium fishing by aquarium fish collectors is permitted  
3 when a valid permit is obtained, subject to restrictions.  
4 Non-commercial aquarium fish collectors are limited to catches  
5 of a combined total of five fish or aquatic life specimens per  
6 person, per day.

7           In November 2020, the environmental court of the first  
8 circuit of Hawaii ruled, in part, that the issuance of aquarium  
9 fishing permits is subject to the Hawaii Environmental Policy  
10 Act, and therefore an environmental impact statement must be  
11 completed before the department of land and natural resources  
12 approves or renews additional aquarium fishing licenses and  
13 permits. At the time of the ruling, the department of land and  
14 natural resources confirmed that it would no longer approve or  
15 renew commercial marine licenses for aquarium fishing without a  
16 complete environmental review process. In January 2021, the  
17 department of land and natural resources clarified that those



1 with existing commercial marine licenses could no longer collect  
2 aquarium fish.

3 Accordingly, the purpose of this Act is to recognize the  
4 court's ruling and the position taken by the department of land  
5 and natural resources to protect the aquarium fish and other  
6 aquatic life in the State's nearshore waters by:

7 (1) Clarifying that rules adopted by the department of  
8 land and natural resources pursuant to section 190-3,  
9 Hawaii Revised Statutes, may regulate aquarium fish  
10 permits; and

11 (2) Increasing fines for violations relating to aquarium  
12 fishing.

13 SECTION 2. Section 188-31, Hawaii Revised Statutes, is  
14 amended by amending subsections (a) and (b) to read as follows:

15 "(a) Except as prohibited by law, including but not  
16 limited to rules prohibiting aquarium collection promulgated  
17 pursuant to section 190-3, the department, upon receipt of a  
18 written application, may issue an aquarium fish permit, not  
19 longer than one year in duration, to use fine meshed traps, or  
20 fine meshed nets other than throw nets, for the taking of marine



1 or freshwater nongame fish and other aquatic life for aquarium  
2 purposes.

3 (b) Except as prohibited by law, including but not limited  
4 to rules prohibiting aquarium collection promulgated pursuant to  
5 section 190-3, the permits shall be issued only to persons who  
6 can satisfy the department that they possess facilities to and  
7 can maintain fish and other aquatic life alive and in reasonable  
8 health."

9 SECTION 3. Section 188-70, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "**§188-70 Penalties.** (a) Any person violating any  
12 provision of or any rule adopted pursuant to this chapter,  
13 except sections 188-23, 188-39.5, and 188-40.8, is guilty of a  
14 petty misdemeanor and, in addition to any other penalties, shall  
15 be fined [~~no~~] not less than:

- 16 (1) \$100 for a first offense;  
17 (2) \$200 for a second offense; and  
18 (3) \$500 for a third or subsequent offense.

19 (b) A fine in addition to the fine under subsection (a)  
20 may be levied for each specimen of aquatic life taken, killed,



1 or injured in violation of this chapter or any rule adopted  
2 thereunder as follows:

3 (1) For a first offense, up to \$100 or the retail market  
4 value of the specimen, whichever is higher;

5 (2) For a second offense, up to \$200 or the retail market  
6 value of the specimen, whichever is higher; and

7 (3) For a third or subsequent offense, up to \$500 or the  
8 retail market value of the specimen, whichever is  
9 higher.

10 (c) Any person violating section 188-23, is guilty of a  
11 class C felony and shall be sentenced pursuant to chapter 706;  
12 provided that the environmental court, in addition to any term  
13 of imprisonment or any other terms and conditions of probation,  
14 shall order the defendant to pay a fine of not less than \$1,000.  
15 Notwithstanding section 706-669 and any other law to the  
16 contrary, any person in violation of section 188-23(b), as a  
17 first offense, shall be sentenced to a mandatory minimum period  
18 of imprisonment without possibility of parole of thirty days.  
19 Repeat offenders shall be sentenced pursuant to chapter 706.



1           (d) Any person violating section 188-31 is guilty of a  
2 misdemeanor and, in addition to any other penalties, shall be  
3 fined not less than:

4           (1) \$200 for a first offense;

5           (2) \$400 for a second offense; and

6           (3) \$1,000 for a third or subsequent offense.

7           ~~(d)~~ (e) The environmental court may require the  
8 defendant to complete an aquatic resources educational class  
9 administered by the department of land and natural resources in  
10 addition to or in lieu of paying all or any part of any monetary  
11 fine authorized by this section.

12           ~~(e)~~ (f) The environmental court may direct the defendant  
13 to perform community service as administered by the department  
14 of land and natural resources in lieu of paying any monetary  
15 fine authorized by this section; provided that if community  
16 service is ordered pursuant to this subsection, the department  
17 of land and natural resources may recommend to the environmental  
18 court an order of community service that benefits the resource  
19 that was damaged.



1        (g) For the purposes of this section, each fish or aquatic  
2 life specimen taken in violation of sections 188-23 and 188-31  
3 shall constitute a separate offense.

4        [~~f~~] (h) The department of land and natural resources may  
5 recommend to the environmental court that the defendant be  
6 sentenced to probation with probationary terms and conditions  
7 consistent with sections 706-623 and 706-624, including but not  
8 limited to restrictions on:

- 9        (1) Entering specific geographical areas within waters of  
10            the State where aquatic resources may be found,  
11            including ocean waters, estuaries, rivers, and  
12            streams;
- 13        (2) Engaging in certain fishing activities;
- 14        (3) Handling, operating, or possessing certain fishing  
15            gear or boating equipment; and
- 16        (4) Taking or possessing certain species of aquatic life."

17        SECTION 4. This Act does not affect rights and duties that  
18 matured, penalties that were incurred, and proceedings that were  
19 begun before its effective date.

20        SECTION 5. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.



1 SECTION 6. This Act shall take effect upon its approval.



**Report Title:**

DLNR; Aquarium Fishing; Fine Increase; Rules

**Description:**

Clarifies that rules adopted by the Department of Land and Natural Resources pursuant to section 190-3, HRS, may regulate aquarium fish permits. Establishes a criminal penalty and monetary fines for aquarium fishing violations. Clarifies that each fish or aquatic life specimen taken in violation of certain fishing laws regarding aquarium fish and the possession and use of prohibited explosives, electrofishing devices, and poisonous substances constitutes a separate offense. (SD1)

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

