STATE OF HAWAIʻI
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawaiʻi 96813

October 24, 2025

Board of Land and Natural Resources
State of Hawaiʻi
Honolulu, Hawaiʻi

Recommendation that the Board of Land and Natural Resources ("Board") Deny the Written Contested Case Hearing Request Filed by Ron Tubbs et al. Regarding the Board's Acceptance of a Petition to Initiate Rulemaking Filed by Rulemaking Petitioners Kalanihale, Kamaʻāina United to Protect the ʻĀina (KUPA)/Friends of Hoʻokena Beach Park, Moana ʻOhana, Koʻolaupoko Hawaiian Civic Club, and For the Fishes

SUMMARY

At its December 2023 Board Meeting (Originally scheduled for December 7, 2023 and continued to December 8 and 15, 2023)[1] the Board of Land and Natural Resources ("Board") considered and approved a petition to initiate rulemaking ("Rulemaking Petition")[2] filed and listed as Agenda Item F-3.[3] Upon acceptance of the Rulemaking Petition and before the end of the meeting, an oral request was made for a contested case hearing ("CCH")[4] followed by a timely written CCH petition[5] naming Ron Tubbs, Eric Moennich, Jerry Isham, Johnny Isham, Kelly Isham, Randy Fernley, Haijiang Peng, Jim Lovell, Jay Lovell, Todd Shiraki, Lucy Price, Kim Koch, and Eric Koch (collectively, "CCH Petitioners") as official petitioners for a CCH.[6] After review of the written CCH

[1] December 8, 2023, Board Meeting (Continuation from December 7, 2023), *available at:* https://www.youtube.com/watch?v=V4xDtBo3ywU (last visited July 10, 2025), at 4:47:10, (The Board's meeting occurred over the course of two days (December 7 and 8, 2023). Although the cited video recording is labeled "12.07.2023," this portion of the meeting occurred on December 8, 2023.).
[2] *See* **Exhibit 1** (attached) – Kalanihale's, KUPA Friends of Hoʻokena Beach Park's, Moana ʻOhana's, Koʻolaupoko Hawaiian Civic Club's, and For the Fishes' Petition for Rulemaking to Prohibit the Take of Marine Life for Commercial Aquarium Purposes (With Exemptions).
[3] *See* December 7, 2025 Board submittal for Board agenda item F-3, *available at*: https://dlnr.hawaii.gov/wp-content/uploads/2023/12/F-3.pdf, (The Rulemaking Petition was first placed on the Board's November 9, 2023 meeting agenda, but that Board meeting was ultimately cancelled; Rulemaking Petitioners subsequently withdrew their original Rulemaking Petition and resubmitted it on November 9, 2023, and the Board placed the resubmitted Rulemaking Petition on its December 7, 2023, agenda.).
[4] *See* § 13-1-29(a), Hawaii Administrative Rules, ("An oral or written request for a CCH must be made to the board no later than the close of the board meeting at which the subject matter of the request is scheduled for board disposition.").
[5] *See Id*. ("An agency or person so requesting a contested case must also file (or mail a postmarked) written petition with the board for a contested case no later than ten calendar days after the close of the board meeting at which the matter was scheduled for disposition.").
[6] *See* **Exhibit 2** (attached) – Contested Case Hearing Request – Ron Tubbs et al., December 18, 2023

request, the Division of Aquatic Resources ("DAR"), in consultation with the Office of the Attorney General ("AG"), recommends that the Board find that the CCH Petitioners are not entitled to a CCH and subsequently deny the CCH request.

BACKGROUND AND PROCEDURAL HISTORY

On October 19, 2023, Kalanihale, KUPA/Friends of Hoʻokena Beach Park, Moana ʻOhana, Koʻolaupoko Hawaiian Civic Club, and For The Fishes (collectively "Rulemaking Petitioners") submitted the Rulemaking Petition[7] asking the Board "to adopt rules to prohibit commercial aquarium collecting statewide" and provided draft administrative rules and rule amendments that would effectuate the proposed ban.[8]

The Rulemaking Petition was then put onto the Board's December 7, 2023 meeting agenda where DAR recommended in its submittal to the Board that the Board deny the Rulemaking Petition.[9] The Board ultimately unanimously voted to "deny staff recommendations" (i.e. move forward to initiate rulemaking), with the added directive for DAR to take into consideration the Rulemaking Petitioners' request and proceed with rulemaking "consistent with the statutory provisions (§ 188-31, Hawaii Revised Statutes ("HRS"))."[10]

After the Board voted on the Rulemaking Petition, it moved on to the next item on its agenda. After the Board voted on this subsequent agenda item, CCH Petitioners orally requested a CCH.[11] On December 18, 2025, CCH Petitioners submitted a written request for a CCH.[12] In the CCH Petitioners' written request, CCH Petitioners stated that they sought relief via "a) determination that agenda item F3 was, in fact, rejected, and/or, in the alternative, b) re-consideration of agenda item F3 at a future [Board] meeting, at which the [Board] should must [*sic*] formally reject the F3 Petition and, in addition, if the Board so elects, to separately institute rulemaking concerning aquarium collection."[13]

DISCUSSION

A. CCHs Are Not Proper for Rulemaking Actions

CCHs are quasi-judicial proceedings required by statute, rule, or constitutional due process (when a protected liberty or property interest is at stake), in which the legal rights, duties, or privileges of specific parties must be determined after an opportunity for an agency hearing; they give parties a fair chance to be heard and create the record

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[7] *See* Exhibit 1 of December 8, 2025 Board submittal for Board agenda item F-3, *available at*: https://dlnr.hawaii.gov/wp-content/uploads/2023/12/F-3.pdf.
[8] *Id*. at 6, 11-13.
[9] *Id*.
[10] *See* Note 1, *supra,* at 8:04:12.
[11] *Id.* at 8:31:16.
[12] *See* Note 6, *supra* (**Exhibit 2)**
[13] *Id.* at p.3.

for judicial review. A CCH is required if the statute or rule governing the activity in question mandates a hearing prior to the administrative agency's decision-making, or if a hearing is mandated by due process.[14] Thus, a petitioner is entitled to a CCH if stated in a statute or rule or if the petitioner has a property interest entitled to due process protection. To obtain a CCH, a petitioner must also follow the specific procedures for making a CCH request outlined in § 13-1-29, Hawaii Administrative Rules, in order to be entitled to a CCH.[15]

However, because administrative rules are intended to apply broadly to the public, rulemaking pursuant to HRS chapter 91 ("Chapter 91") does not adjudicate the legal rights, duties, or privileges of specific parties; accordingly, a CCH is not the proper forum for an interested person to challenge a rulemaking action. Granting a CCH to a particular group in a rulemaking action would improperly convert a quasi-legislative process into an adjudicative one reserved for determinations involving specific parties. Instead, administrative rulemaking follows HRS § 91-3's notice-and-public-hearing framework, which provides safeguards to ensure interested persons receive proper notice and an opportunity to be heard. If relief is sought from an adopted rule, HRS § 91-7 allows any interested person to seek a declaratory judgment on the rule's validity after adoption; this reflects the law's intentional distinction between rulemaking procedures and other agency actions that may require CCHs.

CONCLUSION

Because rules apply broadly to the general public and do not adjudicate the rights of specific parties, contested case procedures do not apply to Chapter 91 rulemaking. In contrast, HRS § 91-3 outlines a robust notice-and-public-hearing process that all rulemaking must follow (with limited exceptions) to ensure all interested persons are heard, and challenges to an adopted rule proceed under HRS § 91-7 by filing a declaratory-judgment action in court, rather than through a CCH.

RECOMMENDATION

DAR recommends that the Board:

1. Find that rulemaking actions pursuant to HRS chapter 91 are not entitled to CCHs as a matter of law and

2. Deny the Petition for Contested Case Hearing by Ron Tubbs et al. Regarding Kalanihale's, KUPA Friends of Ho'okena Beach Park's, Moana 'Ohana's, Ko'olaupoko Hawaiian Civic Club's, and For the Fishes' Petition for Rulemaking to Prohibit the Take of Marine Life for Commercial Aquarium Purposes (With Exemptions).

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[14] *Bush v. Hawaiian Homes Com'n*, 76 Hawai'i 128, 134, 870 P.2d 1272, 1278 (1994).
[15] *Hui Kako'o Aina Ho'opulapula v. Bd of Land & Nat. Res.*, 112 Hawai'i 28, 39–41, 143 P.3d 1230, 1241–43 (2006).

Respectfully submitted,

Brian J. Neilson
Division of Aquatic Resources

APPROVED FOR SUBMITTAL:

Dawn N.S. Chang, Chairperson
Board of Land and Natural Resources

ATTACHMENTS

Exhibit 1 Kalanihale's, KUPA Friends of Ho'okena Beach Park's, Moana 'Ohana's, Ko'olaupoko Hawaiian Civic Club's, and For the Fishes' Petition for Rulemaking to Prohibit the Take of Marine Life for Commercial Aquarium Purposes (With Exemptions)

Exhibit 2 Contested Case Hearing Request – Ron Tubbs et al.

ITEM F-1
EXHIBIT 1 **OCTOBER 24, 2025**

Kalanihale
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Captain Cook, HI 96704

KUPA Friends of Ho‘okena Beach Park
PO Box 141
Honaunau, HI 96726

Moana ‘Ohana
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Kailua Kona, HI 96745

Ko‘olaupoko Hawaiian Civic Club
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Kaneohe, HI 96744

For the Fishes
PO Box 1894
Kihei, HI 96753

Before the Board of Land and Natural Resources

State of Hawai‘i

Kalanihale’s, KUPA Friends of Ho‘okena Beach Park’s, Moana ‘Ohana’s, Ko‘olaupoko Hawaiian Civic Club’s, and For the Fishes’ Petition for Rulemaking to State of Hawai‘i Board of Land and Natural Resources	)	Petition

KALANIHALE’S, KUPA FRIENDS OF HO‘OKENA BEACH PARK’S, MOANA ‘OHANA’S, KO‘OLAUPOKO HAWAIIAN CIVIC CLUB’S, AND FOR THE FISHES’ PETITION FOR RULEMAKING TO PROHIBIT THE TAKE OF MARINE LIFE FOR COMMERCIAL AQUARIUM PURPOSES (WITH EXEMPTIONS)

To ensure protection of public trust resources, Kalanihale, KUPA Friends of Ho‘okena Beach Park, Moana ‘Ohana, Ko‘olaupoko Hawaiian Civic Club, and For the Fishes (hereinafter “Petitioners”) hereby petition the Board of Land and Natural Resources (hereinafter “Board”) to initiate rulemaking to prohibit the take of marine life for commercial aquarium purposes. This petition is filed pursuant to Article IX section 8, Article XI, §§ 1, 6 and 9 and Article XII, § 7 of the Hawai`i State Constitution; HRS §§ 91-6, 190-3, and 190-4; and HAR § 13-1-26.

I. Petitioners’ Interests

Petitioners are comprised of native Hawaiian organizations and cultural practitioners, and non-profit environmental and marine protection organizations. Petitioners are among the 1.4 million Hawai‘i residents whose way of life depends upon Hawai‘i’s coral reefs, which provide economic, structural/protective, educational, social, recreational, cultural, spiritual, physical, biological, and ecological benefits.

Petitioners include those who are descended from the aboriginal people that inhabited the Hawaiian Islands in 1778 and who engage in traditional and customary practices that are inextricably linked to coral reefs and their marine life, which are both a natural and a cultural resource. Commercial aquarium collection activities harm these Petitioners' ability to conduct these traditional and customary practices.

All Petitioners are beneficiaries of public trust resources, which government agencies and officials, including members of the Board, are obligated to protect.

Moreover, Petitioners are among the 83% of Hawai'i residents polled in 2017 who want to see an end to the destructive commercial take of marine life for aquarium purposes due to its negative environmental impacts and conflicts with cultural and local values.[1]

Petitioners thus have significant interests in preserving and increasing the abundance of coral reef marine life for subsistence fishing, food security, native Hawaiian traditional and cultural practices, recreational use, and aesthetic value.

II. Reasons for Rulemaking

Hawai'i's way of life and food security are tied to coral reef health which is severely and imminently threatened by climate change.[2] The immediate need to mitigate against catastrophic climate change impacts on Hawai'i 's coral reef ecosystems by increasing herbivore abundance is well understood and supported by the Board and by the Division of Aquatic Resources (DAR), as evidenced by DAR's December 2022 herbivore management rule proposal and presentation to the Board, and by the Board's vote to send those rules out for public hearings.[3]

Despite massive historical take (millions of herbivores removed to date) and proposed future take of herbivores for commercial aquarium trade purposes, however, the burden to increase reef herbivores in the proposed herbivore management rule proposal falls nearly entirely on Hawai'i's subsistence food fishers who rely upon coral reef fishes to feed their families and communities.

These food fishers are being asked to significantly reduce their take for the greater good of current and future generations who depend upon coral reefs, while under the aquarium pet trade's current proposals in their environmental impact statements (EISs), the trade would be subject to minor take reductions and would still be allowed to take more herbivores from West Hawai'i reefs than are taken by all food fishers, *combined*. *See* Section III, *infra*, for details.

Allowing commercial take of herbivores for the aquarium pet trade, which sends 99 percent of marine life out of the state, contradicts the Board's intent to protect herbivores for Hawai'i's reefs and people. Conversely, prohibiting the commercial take of herbivores and other marine

[1] Anthology Research Hawaii Reef Fish Poll (2017) at pg. 4
[2] DAR Zoom presentation to BLNR (Dec. 8, 2022) at 1:35
[3] BLNR approval to hold public hearings on revised amendments to Chapter 13-95, Hawaii Administrative Rules, "Rules Regulating the Taking and Selling of Certain Marine Resources," May 12, 2023

fishes for aquarium purposes would firmly prioritize our marine life as essential natural and cultural resources, and prevent disposing of them as mere commodities for the profit driven aquarium pet trade, which sells the overwhelming majority of these important fishes outside of Hawai‘i.

Aquarium Collecting Conflicts with Native Hawaiian Values

The need for this rulemaking is further demonstrated by decades long and ever-increasing opposition to commercial aquarium collection within the native Hawaiian community. The opposition, in large part, stems from the trade's irreconcilable conflicts with native Hawaiian values, traditions, customs, and practices. For example, the Hawaiian values of mālama ‘āina and the practices involved in pono fishing include asking permission prior to fishing, taking only what is needed for immediate personal and family use without compromising the ability of future generations to meet their needs, being accountable, and having respect for the sacredness of the process.[4]

The aquarium trade violates core principles of mālama ‘āina and pono fishing by taking juvenile fishes purely for economic gain and before they can reproduce. Fishes taken are then starved and shipped in plastic bags to the continent and beyond on a long journey that results in premature mortality and waste.[5]

DAR asserts its understanding of the importance of incorporating Hawaiian values and perspectives into marine management. For example, DARs Herbivore Management Plan also includes a pillar pertaining to native Hawaiian values. Entitled "Pono Practices," the path laid out by DAR is summarized as follows:

> "*Pono Practices encourages responsible behavior guided by Hawaiian values and perspectives through. . . statewide rules. . .to encourage sustainable behaviors and practices in nearshore waters. The Pono Practices pillar is a call to action for resource users to interact with nearshore resources in a pono way.*"[6] .

Additionally, in response to legislation introduced to end the trade earlier this year, DLNR's written testimony, while defending the aquarium trade, closed with the recognition that there may be reasons to "prohibit commercial aquarium collection based on cultural or social values."[7]

Unfortunately, year after year and across numerous rule proposals, DAR has failed to apply the concepts contained within the Pono Practices pillar to its own internal policies by continuing to support commercial aquarium collection, despite decades of direct pleas from the native

[4] Kohala Center, Uncle Mac Poepoe, Spawning Guide/Pono Practices
[5] Tissot (2005). Integral Marine Ecology: Community-Based Fishery Management in Hawai‘i, Washington State University at pdf. pg. 12
[6] DAR Sustainable Herbivore Management Plan (2021)
[7] DLNR testimony on SB505 Relating to Environmental Protection at pdf pg. 15

Hawaiian community and thousands of others to prioritize reefs and culture over the profits of the mainland aquarium pet trade.

In recent years, voices in opposition to the trade have grown even more. For example, in 2023, the Hawai‘i State Aha Moku Advisory Committee, representing all 46 moku statewide, strongly supported a legislative bill ending commercial aquarium collection.[8] The Kāne‘ohe Bay Regional Council (chaired by DAR Administrator Nielson), the Kai Kuleana Network representing 15 communities working to restore coral reefs and fish populations on the west coast of Hawai‘i Island, the West Hawai‘i group Kalanihale, and other cultural practitioners from West Hawai‘i have all sent letters to DLNR urging statewide rulemaking to permanently end commercial aquarium collecting in Hawai‘i.[9, 10] In addition, in 2023 the Association of Native Hawaiian Civic Clubs joined the Ko‘olaupoko Native Hawaiian Civic Club and the Kahalu‘u, Kāne‘ohe, Kailua and Waimānalo Neighborhood Boards (2021) in urging a prohibition on commercial aquarium collection.[11]

Aquarium Trade’s HEPA Review Has Dismissed Public Input

Rulemaking is also necessary because environmental review under the Hawai‘i Environmental Policy Act (“HEPA”), HRS chapter 343, as undertaken by the aquarium pet trade, has grossly failed to disclose and analyze known environmental impacts and has moreover failed to address the vast majority of the thousands of public comments in opposition to virtually every aspect of the trade’s plans for reopening Hawai‘i’s reefs to collection. Significant comments related to the proposals’ scientific unsoundness, poor environmental stewardship, conflicts with Hawaiian traditional and customary practices, major enforcement challenges, unethical and inhumane treatment of marine life, and a cost/benefit analysis showing no benefits to the people of Hawai‘i from the trade, were for the most part ignored or dismissed in each of the *ten* rounds of early consultation and general public comments submitted thus far.

Furthermore, the trade minimized and dismissed important findings in the Cultural Impact Assessments (CIAs) it commissioned and included in the EISs for Hawai‘i Island and O‘ahu, such as the physical, cultural, and socio-economic connections between the unique places found throughout Hawai‘i.

Decades of aquarium collection have directly impacted more than 200 species and indirectly impacted an unknown number of additional vertebrate and invertebrate species found in Hawai‘i’s coral reefs, one of the most complex ecosystems on Earth, where the fate of each species is determined by the existence, abundance and diverse actions of a multitude of other species that inhabit or otherwise rely upon these unique places.

[8] Aha Moku Council testimony on SB505 Relating to Environmental Protection at pdf pg. 1 – 7
[9] Kāne‘ohe Bay Regional Council letter to Chair Chang
[10] Additional examples of letters to Chair Chang
[11] Neighborhood Board examples of resolutions urging aquarium trade ban

The CIA provided an extensive history of native Hawaiians and their symbiotic relationship with the ocean and its animal inhabitants. The CIA also included summaries of interviews conducted with individuals from multiple user groups, all of whom "expressed some degree of ongoing cultural attachment to the ocean." More than 80 percent of the interviewees noted how the trade both directly and indirectly impacts their cultural resources, beliefs, practices and values. Unfortunately, the CIA essentially dismissed those oral testimonies by concluding that commercial aquarium collection would result in a cultural impact *only* if the EISs biological assessments indicated significant depletion of species or habitat disruption.[12] Equating cultural impacts with fish population counts is a false equivalency which, when combined with the fatally flawed biological assessments contained within the EISs, ultimately served to silence the voices of all those who had voiced strong opposition to aquarium trade practices and impacts. *See* Section III, *infra*, for examples.

The public has not benefited from the aquarium trade's HEPA review process, which the trade has twisted to serve and promote its own interests. A new public rulemaking process is required in order to promote and protect the *public's* interests in restoring abundance of critically important fishes and finally addressing the cultural and ethical conflicts that are inherent in this trade.

Authority to Prohibit Commercial Aquarium Collecting

In 1955, the legislature constituted all of Hawai'i's waters as a marine life conservation area where, via rulemaking, DLNR can prohibit activities even *potentially* harming the marine environment. [13, 14] Under HRS 190-3, the legislature empowered DLNR with the authority to prohibit via rulemaking any activity that *may* disturb, degrade, or alter the marine environment.[15] Furthermore, the legislature provided that rules adopted under this statute "supersede any state laws inconsistent therewith."[16]

Petitioners provide in Section IV, *infra*, examples of facts and data contained in peer-reviewed literature, and reports, including DLNR's, describing the extent to which, from decades past to the present, aquarium collection *already has* disturbed, degraded, and/or altered the marine environment.

Petitioners note that this formal petition to the Board comes after years of good faith efforts to work directly with DAR to address aquarium trade impacts since at least 2008.[17] Most recently, beginning in February of 2022, petitioner, For the Fishes, was asked by DAR to engage in

[12] PIJAC (2021). Revised FEIS Hawaii Island Commercial Aquarium Permits at pdf pg. 362
[13] HRS §190-1
[14] HRS §190-3
[15] Ibid.
[16] Ibid.
[17] DAR (2009). Report to the Legislature on the Progress for the Adoption of Rules to Regulate the Ornamental Reef Fish Fishery Industry in South Maui and Kaneohe Bay, Oahu, to Confer with Geographical Stakeholders, and to Propose Appropriate Legislation

"informal communication directly with DAR" instead of via a formal petition to the Board to initiate rulemaking to prohibit commercial aquarium collection. Despite petitioners' months long, good faith efforts at informal engagement, DAR inexplicably stopped responding, despite multiple requests to continue moving forward.

DAR's often-used claim in the face of growing public opposition to commercial aquarium collection has been that the trade is "sustainable." Yet, DAR biologists have described the activity as "a major cause of coral reef degradation," as "having a major impact on yellow tang and Achilles tang," and have reported depletion rates in excess of 80% in many collected areas, over many years.[18, 19, 20]

Conclusion

Petitioners urge the Board to exercise its policy and rulemaking authority to adopt rules to prohibit commercial aquarium collecting statewide.

Petitioners have presented a sampling of existing evidence substantiating that commercial aquarium collection meets the threshold for an activity that may be prohibited by the Board under HRS 190-3 because it "may disturb, degrade, or alter the marine environment."

The rulemaking sought in this petition is the *only* process that will provide the opportunity for the public's long and strongly held thoughts and desires to be truly heard and ultimately integrated into marine management policy.

It's time to right the imbalance in prior management decisions that put commercial interests before the public's, and apply DLNR's Hierarchy of Priorities adopted by the Board in 1998. That policy clearly states that when DLNR considers management actions, the highest priority goes to natural and cultural resources, and that commercial activities should be considered last, and only if they do not impinge on those resources.[21]

Petitioners have demonstrated the broad community support for prohibiting aquarium collecting statewide, and that rulemaking to prohibit commercial aquarium collecting benefits all of Hawai'i. Petitioners further note that no one has *legally* taken fish for commercial aquarium purposes for nearly 6 years.

III. Supplemental Facts and Data Regarding Dismissal of Public Input in HEPA Review

- One community member interviewed on Hawai'i Island for the West Hawai'i CIA in 2019 identified himself as a former long-time aquarium collector.[22] When asked whether aquarium

[18] DLNR (1998). Hawai`i's State of the Reefs, 1998, pg. 15
[19] DAR (2010). Long-Term Monitoring of Coral Reefs of the Main Hawaiian Islands Final Report at pg. 112-113
[20] DAR (2013) Long-Term Monitoring of Coral Reefs of the Main Hawaiian Islands Final Report at pg. 64-65
[21] DLNR Hierarchy of Use Policy (1998). The policy clearly states that when the Department considers management actions, the highest priority goes to natural and cultural resources, and that commercial activities should be considered only if they do not impinge on those resources.
[22] PIJAC (2021). Revised FEIS Hawaii Island Commercial Aquarium Permits at pdf pg. 335, 336

collecting could result in cultural impacts, he responded that "aquarium collecting methods can have a damaging effect on the reef, which in itself, is considered a valued cultural resource."[23] He then described the method used to capture and take certain fish species and eels, explaining that "these species often conceal themselves deep within the coral reefs and . . . removing them requires significant damage to the reefs."[24]

- Although this CIA was included in the trade's draft, final and revised final EISs for West Hawai'i, each of which included the proposed take of at least one of the species whose capture involves significant coral damage, in no version of the EISs did the aquarium trade include a discussion of these often used and destructive practices, nor propose any measures to mitigate the damage such practices cause.
- The trade's EISs dismissed all cultural concerns, stating "[aquarium collecting] may impact cultural practices, but the extent of the impact is unknown,"[25] and in doing so, effectively dismissed the findings and purpose section of Chapter 343 which makes clear that environmental review necessitates integrating citizen concerns into the planning process.[26]
- Despite the above, for each of three aquarium trade EISs brought to the Board for determination of adequacy and acceptability in 2020 and 2021, DAR made the recommendation that the Board accept them. In doing so, DAR continued its own decades-long dismissal of the strongly held and frequently voiced public concerns surrounding the take of Hawai'i's marine life for the mainland aquarium pet trade.

IV. Supplemental Facts and Data Regarding Degradation of the Marine Environment

- In a 1998 DLNR report, commercial aquarium collecting was shown to be among the main causes of Hawaiian coral reef degradation, with major impacts on O'ahu and Hawai'i Island.[27]
- In the decade leading up to that report, the volume of marine fishes annually taken by the trade (i.e. the main cause of that coral reef degradation) closely resembled the volume proposed in the trade's most recent EIS Preferred Alternatives for both O'ahu and Hawai'i Island.[28, 29]
- From 1998 until aquarium collecting was shut down by court order in 2017, data shows continuing and, in some years, increasing degradation of reef fish assemblages in West Hawai'i for many aquarium-targeted species, most of which are herbivores.[30] As recognized by scientists, DAR, and the Board, because herbivorous fishes are the primary factor

[23] Ibid.
[24] Ibid.
[25] PIJAC (2021). Revised FEIS Hawaii Island Commercial Aquarium Permits at pdf pg. 17, 202, 204,
[26] Hawaii Office of Environmental Quality Control (2012). Guide to the Implementation and Practice of the Hawaii Environmental Policy Act, pdf pg. 10
[27] DLNR (1998). Hawai`i's State of the Reefs, 1998, pg. 15
[28] PIJAC (2021). FEIS Issuance of Commercial Aquarium Permits and Commercial Marine Licenses for the Island of O'ahu at pdf pg. 131-133
[29] PIJAC (2021). Revised FEIS Hawaii Island Commercial Aquarium Permits at pdf pg. 164-166
[30] DLNR (2019). Findings and Recommendations of Effectiveness of the West Hawai'i Regional Fishery Management Area (WHRFMA) at pdf pg. 34, 36, 45, 56

determining algae cover on our slow-grown coral reefs, the abundance and diversity of the herbivore fish community is a critical factor determining the ability of Hawai‘i’s coral reefs to persist in our changing climate.[31, 32]

- In most years from 2003 to 2017, the areas open to aquarium collecting, encompassing the majority of West Hawai‘i reefs, had the lowest herbivore biomass, the lowest coral cover, and the highest level of algal overgrowth.[33]
- In 2000, on the West Hawai‘i reefs open to aquarium collecting, the most heavily collected herbivore, the lau‘īpala (yellow tang), was depleted by approximately 30%. By 2008, the level of depletion had increased to more than 120%.[34]
- The level of depletion fluctuated from year to year, and in many years the depletion rate was upwards of 80%, including 2017, the last year legal aquarium collecting occurred in West Hawai‘i.[35]
- Notably, 2017 was also the year in which the trade most recently reported taking a number of lau‘īpala (237,000) similar to the total catch proposed in their 2021 EIS (200,000) which was approved and supported by DAR and accepted-by-default by the Board in 2021.[36, 37] **This alone reveals the inadequacy of HEPA analysis, as undertaken by the aquarium trade, in preventing degradation to Hawai‘i’s coral reefs, and underscores the urgent need for rulemaking.**
- Paku‘iku‘i (Achilles tang), another heavily targeted aquarium species, is also a favorite food fish. According to DAR, the aquarium trade had a major impact on the species, taking upwards of 80% of their populations on the majority of West Hawai’i reefs (i.e. the areas open to aquarium collecting).[38, 39]
- Since at least 2006, DAR documented paku‘iku‘i population declines due to aquarium impact but took no action to protect paku‘iku‘i for food fishers. It wasn’t until December 2022 that DAR finally took action to mitigate the severe paku‘iku‘i population decline. Unfortunately for local fishers, DAR waited until populations were so critically low that a complete prohibition that included food fishing was required. The mainland aquarium pet trade profited for decades, and now Hawai‘i reefs and residents, especially local fishers, pay the price.[40]

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[31] DAR Sustainable Herbivore Management Plan (2021)
[32] Asner et al. (2020). Analysis of the Draft Environmental Impact Statement Regarding Issuance of Commercial Aquarium Permits and Commercial Marine Licenses for the Island of O‘ahu Submitted by the Pet Industry Joint Advisory Council in PIJAC (2021) FEIS Issuance of Commercial Aquarium Permits and Commercial Marine Licenses for the Island of O’ahu at pdf pg. 996
[33] Gove et. al (2019) West Hawai‘i integrated ecosystem assessment ecosystem status report at pg. 745, 750 in PIJAC (2021) Revised FEIS Hawaii Island Commercial Aquarium Permits
[34] DLNR (2019). Findings and Recommendations of Effectiveness of the West Hawai'i Regional Fishery Management Area (WHRFMA) at pdf pg. 36
[35] Ibid.
[36] DLNR catch reports
[37] PIJAC (2021). Revised FEIS Hawaii Island Commercial Aquarium Permits at pdf pg. 52
[38] DAR (2010). Long-Term Monitoring of Coral Reefs of the Main Hawaiian Islands Final Report at pg. 112-113
[39] DAR (2013) Long-Term Monitoring of Coral Reefs of the Main Hawaiian Islands Final Report at pg. 64-65
[40] DAR (2022). Board submittal requesting a 2-year moratorium of taking paku‘iku‘i across West Hawai‘i

- The trade's West Hawai'i revised EIS, which is currently under review on appeal, proposed the take of nearly a quarter million fish annually from West Hawai'i reefs, which would exceed the amount of reef fishes taken by all food fishers, *combined*, and would total 1.23 million fish over the five-year period covered under the revised EIS:[41, 42]

Average Reef Fish Catch Numbers 2008 - 2011					**2021 AQ EIS**
	Non-commercial	Commercial	Total Non AQ	Aquarium	Proposed Total Annual
West Hawai'i	146,176	48,498	**194,674**	**343,729**	**246,560**

- For seven of the eight proposed catch quotas in that West Hawai'i EIS, take levels are higher than in most of the last 20 years; and for Potter's angelfish and Thompson's surgeonfish, in particular, the proposed catch quotas represent three and ten times the average reported historical catch, respectively.[43]
- Data from DAR and elsewhere show significant ongoing impacts on O'ahu, as well. A white paper by DAR and UH researchers documents the devastating impacts of commercial aquarium collecting on vulnerable lau'īpala populations between Honolulu Airport and Ka'ena Point, and their subsequent collapse after Hurricane Iwa, which to this day, have not recovered.[44] The paper documents that "In the weeks following the storm, . . . many fish had migrated to areas that escaped major damage . . . With the loss of collecting habitat, collectors concentrated their efforts in those sites still economically utilizable . . ." "The net result was that storm effects combined with overfishing resulted in the collapse of the aquarium fishery along [the leeward] portion of the O'ahu coastline."[45]
- As a result, collectors shifted their focus to invertebrates or to collecting in places such as to Kāne'ohe Bay, which became the most heavily collected area, while others moved to Hawai'i Island.[46]
- Prior to 1983, aquarium collectors reported taking upwards of 23,000 lau'īpala a year from O'ahu's leeward reefs. Within three years of Hurricane Iwa, reported catch had dropped by more than 90%. Since 1986 reported lau'īpala catch from those areas has ranged from 2,000 – 6,000 per year.[47]
- The lack of oversight by DAR, combined with constant collection pressure, has prevented any former abundance from returning to O'ahu's leeward coast, because aquarium collecting takes juvenile fish that are years from maturity. A sufficient number left on the reefs would have contributed to the repopulation of the lau'īpala that were at least four times more

[41] DLNR (2019). Findings and Recommendations of Effectiveness of the West Hawai'i Regional Fishery Management Area (WHRFMA) at pdf pg. 73
[42] PIJAC (2021). Revised FEIS Hawaii Island Commercial Aquarium Permits at pdf pg. 52
[43] PIJAC (2021). Revised FEIS Hawaii Island Commercial Aquarium Permits at pdf pg. 164-166
[44] Walsh et al. (2004) The commercial marine aquarium fishery in Hawaii 1976-2003 at pdf pg. 11-14; DLNR catch reports
[45] Ibid. at pdf pg. 12
[46] Ibid. at pdf pg. 12-14
[47] Ibid. at pdf pg. 14; DLNR catch reports

abundant four decades ago, before commercial aquarium collecting nearly wiped them out completely.

- In areas long-protected from aquarium collecting, lauʻīpala are one of the most abundant herbivores on the reef. However, on Oʻahu reefs where collecting has occurred, research shows they are depleted by 93%.[48] Other heavily targeted aquarium species are harmed, as well: kole and umaumalei (orangespine unicornfish) are each depleted by 90%.[49]
- Kāneʻohe Bay has been particularly impacted. In 2008, 8,604 of the top four herbivorous surgeonfishes were taken by the trade.[50] In 2019, it had jumped to 25,745 of those same species.[51] From 2000 - 2020, for the entire island of Oʻahu, the annual average reported aquarium catch was 71,983 fish, 29% - 60% of which was taken from Kāneʻohe Bay, which had become the most heavily collected area in recent years.[52]
- The Oʻahu EIS, which is currently being revised by the trade after having been rejected by the Board in October of 2021, proposed the take of more than 92,000 fish annually from Oʻahu's reefs (totaling more than 460,000 fish over the five-year period covered under the EIS), an amount that is more than 20% greater than the average reported historical take of less than 72,000 fish annually.
- For 28 of the 31 proposed catch quotas, take levels are higher than the average reported historical levels, including for lauʻīpala (35% higher) and kole (18% higher).
- The EIS also proposed take of more than 200,000 invertebrates, e.g., hermit crabs, annually (totaling more than 1 million invertebrates over the five-year period covered under the EIS), substantially exceeds the average reported historical take of around 165,000 invertebrates annually.
- As discussed above, the take of several species involved the intentional destruction of coral in order to reach species known to seek shelter deep within the reef structure. One such species, the endemic Potter's Angelfish, was taken by the trade in very high numbers with over 139,000 reported by Oʻahu aquarium collectors from 2000 – 2017.
- DAR has only recently begun taking seriously the coral damage done by the aquarium trade when collecting this species. In a Special Activity Permit to collect Potters angelfishes as broodstock for aquaculture, which was reviewed by the Board in June 2023, DAR included a permit condition requiring the videotaping of the collection of each and every fish to prove that no coral was damaged or broken when attempting to capture the animals.

V. Text of the Proposed Rule

Petitioners urge the Board to initiate rulemaking for a new section of the Department's administrative rules to read:

[48] Grabowsky & Thornhill (2020). Abundance of AQ-Targeted Fish on Oahu at pdf pg. 20
[49] Ibid.
[50] DLNR catch reports
[51] DLNR catch reports
[52] DLNR catch reports

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART IV FISHERIES RESOURCE MANAGEMENT

CHAPTER 78

COLLECTION OF MARINE LIFE FOR AQUARIUM PURPOSES

General Provisions

§13-78-1 Applicability and scope
§13-78-2 Definitions
§13-78-3 Exemptions
§13-78-4 Penalties
§13-78-5 Severability
§13-78-6 Prohibited activities

General Provisions

§13-78-1 Applicability and scope. This chapter shall apply to the collection of marine life for aquarium purposes. While governing the taking of marine life intended for live aquarium displays, this chapter shall not apply to the take of marine life for food, bait, or other consumptive purposes. (Auth: HRS §§187A-5, 188-31)

§13-78-2 Definitions. As used in this chapter unless otherwise provided:

"Aquarium purposes" means to hold marine fish, fresh water nongame fish, or other marine life alive in a state of captivity, whether as pets, for scientific study, for public exhibition, for public display, or for sale for these purposes.

"Commercial purpose" means the taking of marine life for profit, gain, sale, purchase, barter, exchange, to offer for sale, or upon any offer to purchase.

§13-78-3 Exemptions. (a) Notwithstanding the provisions of this chapter, the department may issue the licenses or permits which exempt persons from the provisions of this chapter.

(b) Section 13-75-14(7) exempts the use of small mesh hand nets or scoop nets to take fish or other marine life for non-commercial purposes. (Auth: HRS §§187A-3.5, 187A-6, 190-4)

§13-78-4 Penalties. A person violating any provision of this chapter shall be guilty of a petty misdemeanor and penalized as provided by section 187A-13, HRS. In addition to any criminal penalty, any violation of these rules shall also be subject to civil and administrative penalties, as provided by section 187A-12.5, HRS. (Auth: HRS §§187A-5) (Imp: HRS §§187A-12.5, 187A-13)

§13-78-5 Severability. The provisions of these rules are declared to be severable, and if any portion, or the application thereof, to any person or property is held invalid for any reason, the validity of the remainder of these rules or the application of the remainder to other persons or property shall not be affected. (Auth: HRS §§187A-5, 188-31)

13-78-6 Prohibited activities. (a) It is unlawful for any person to take marine life for commercial aquarium purposes.

VI. Proposed Amendments and Repeal

AMEND: §13-60.4 to read as follows:

§13-60.4-4 Activities prohibited within the West Hawai‘i regional fishery management area. While within the West Hawai‘i regional fishery management area, no person shall:

~~**(4) Possess or use any net or container employed underwater to capture or hold aquatic life alive for aquarium purposes, that is not labeled with the commercial marine license number or numbers of the person or persons owning, possessing or using the equipment;**~~

§13-60.4-6 Lay net registration and use requirements.

~~**(g) This section shall not apply to panel mesh nets with a stretched mesh size of less than two and three-fourths inches that are marked with commercial marine license numbers as required under section 13-60.4-4(4), and permitted for use and possession under an aquarium permit and a West Hawai‘i aquarium permit issued under section 13-60.4-7(a).**~~

§13-60.4-7 Aquarium collecting permit and vessel registration requirements.

~~**(d) Control date. A control date was established in August 1, 2005 to possibly limit participation in the West Hawai'i regional fishery management area commercial aquarium fishery. Persons who begin fishing in the West Hawai'i regional fishery management area commercial aquarium fishery on or after the control date will not be assured continued participation if the department establishes an aquarium limited entry program in the future.**~~
~~**(e) Nothing in this chapter shall prevent the department from establishing another control date.**~~

AMEND: §13-75 to read as follows:

§13-75-14 Nets, generally. It is unlawful for any person to use nets made of or using netting with a stretched mesh of less than two inches, except that:
(1) Pond owners or operators who hold a valid license issued under section 13-74-40, may use nets of smaller mesh to take young mullet or pua for stocking their fish ponds;
(2) Commercial marine licensees who hold a valid bait license issued under section 13-74-22, may use nets of smaller mesh to take nehu, `iao, marquesan sardine, gold-spot herring, or any other species for which an open season may be declared by the department for use as bait;
(3) All persons may use nets of smaller mesh to take shrimp or `opae, `opelu, makiawa, or mikiawa;
~~**(4) Aquarium fish collectors with a valid aquarium fish permit issued pursuant to section 188-31, HRS, may use traps and nets for aquarium fish and other aquatic life in conformance with the conditions of the permit, provided that non-commercial aquarium fish collectors shall be limited to a combined total of five fish or aquatic life specimens per person per day;**~~

REPEAL IN ENTIRETY: §13-77 OAHU AQUARIUM LIFE MANAGEMENT

Respectfully submitted with a request for a public Board hearing to respond to this petition.

Dated: October 19, 2023

U‘ilani Naipo
Kalanihale

Charles Young
KUPA Friends of Ho‘okena Beach Park

Mike Nakachi
Moana ‘Ohana

Elena Bryant
Ko‘olaupoko Hawaiian Civic Club

Rene Umberger
For the Fishes

ITEM F-1
EXHIBIT 2 **OCTOBER 24, 2025**

STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

OFFICIAL USE ONLY	
Case No.	**Date Received**
Board Action Date / Item No.	**Division/Office**

RECEIVED
2023 DEC 19 AM 9:32
DEPT. OF LAND & NATURAL RESOURCES STATE OF HAWAII

INSTRUCTIONS:

1. File (deliver, mail or fax) this form within ten (10) days of the Board Action Date to:

   Department of Land and Natural Resources
   Administrative Proceedings Office
   1151 Punchbowl Street, Room 130
   Honolulu, Hawaii 96813
   Phone: (808) 587-1496, Fax: (808) 587-0390

2. DLNR's contested case hearing rules are listed under Chapter 13-1, HAR, and can be obtained from the DLNR Administrative Proceedings Office or at its website (http://dlnr.hawaii.gov/forms/contested-case-form/). Please review these rules before filing a petition.

3. If you use the electronic version of this form, note that the boxes are expandable to fit in your statements. If you use the hardcopy form and need more space, you may attach additional sheets.

4. Pursuant to §13-1-30, HAR, a petition that involves a Conservation District Use Permit must be accompanied with a $100.00 non-refundable filing fee (payable to "DLNR") or a request for waiver of this fee. A waiver may be granted by the Chairperson based on a petitioner's financial hardship.

5. All materials, including this form, shall be submitted in **three (3)** photocopies.

A. PETITIONER (If there are multiple petitioners, use one form for each.)		
1. Name Ron Tubbs (and all others listed on attachment A)	**2. Contact Person**	
3. Address [redacted]	**4. City** [redacted]	**5. State and ZIP** [redacted]
6. Email [redacted]	**7. Phone** [redacted]	**8. Fax**

B. ATTORNEY (if represented)		
9. Attorney Name Geoffrey M. Davis	**10. Firm Name** Law Office of Geoff Davis	
11. Address 1130 E. Green Street	**12. City** Pasadena	**13. State and ZIP** CA 91106
14. Email gdavis@gdavislegal.com	**15. Phone** 818-935-5003	**16. Fax** NA

C. SUBJECT MATTER

17. Board Action Being Contested
Board action taken on agenda item F3 on Friday, December 8, 2023.

18. Board Action Date	**19. Item No.**
December 8, 2023	F3

20. Any Specific Statute or Rule That Entitles Petitioner to a Contested Case
Hawai'i Constitution: Art I, sections 2, 5, 8; Art XI, section 6
HRS 188-31; 189-2; HRS 91-2.6; 91-3; 91-4; 91-5; 91-6; 91-7; 91-8
HAR 13-1-28;13-1-29; 13-1-31; 13-1-27

21. Any Specific Property Interest of Petitioner That Is Entitled to Due Process Protection
Petitioners are persons who engage in, have engaged in, and wish to engage in commercial aquarium collection pursuant to HRS 188-31 and/or 189-2. Most of the petitioners are CML holders and former holders of HRS 188-31 permits, who have been attempting to regain the HRS 188-31 permits since they were invalidated following the Supreme Court's *Umberger* decision in 2017. Many of the petitioners are members of the Pet Industry Joint Advisory Council and directly sponsored the Environmental Impact Statements that have been prepared for the islands of Oah'u and Hawai'i. The EIS in relation to the island of Hawai'i has been accepted, and that acceptance was affirmed by the Circuit Court in litigation in which the Board of Land and Natural Resources is a party. The petition that was before the Board on agenda item F3 asked for a rule to be drafted and adopted to ban commercial aquarium collection, which would prevent these Petitioners from ever renewing or re-obtaining their HRS 188-31 permits and/or from using their CMLs for aquarium purposes, despite the fact that the legislature has clearly defined commercial aquarium collection as a legal activity. Petitioners have in the past made all or part of their income from commercial aquarium collection, either with the use of fine mesh net permits under HRS 188-31, or under HRS 189-2, without the use of fine mesh nets. The adoption of the rules requested in agenda item F3 would deprive the Petitioners of the freedom to engage in legal activity and the opportunity to earn their income from that activity. Pet Industry Joint Advisory Council is a non-profit trade organization that advocates for the pet industry. Among other things, PIJAC represents members involved in the collection, production, and trade of various aquarium species in Hawai'i. PIJAC has worked for years with aquarium fishers on the Islands of Oah'u and Hawai'i to develop Draft and Final Environmental Impact Statements ("EISs") under the Hawaii Environmental Protection Act (HEPA) analyzing the effects of aquarium fishing on the environment. During this time, both the individual aquarium fishers and PIJAC have spent hundreds of thousands of dollars to develop HEPA documents that comply with the law. The EISs for the aquarium fishery are unprecedented, and have required substantial time and resources to complete. The fishery and PIJAC have borne the entire expense for preparing these HEPA documents, which has resulted in additional hardships on fishers that are unable to work while they attempt to obtain aquarium fishing permits. Through this process, PIJAC has also worked closely with the State of Hawaii, including the Department of Land and Natural Resources ("DLNR"), to develop documents that fully analyze the effects of the fishery on the environment. Many Hawai'i based aquarium fishers are members of PIJAC, including fishers who hold current Commercial Marine Licenses ("CMLs"), and who previously held HRS 188-31 permits, pursuant to which they have, in the past, engaged in commercial aquarium fishing, and wish to do so in the future.

22. Any Disagreement Petitioner May Have with an Application before the Board

Petitioners have multiple disagreements with the Petition that was addressed as agenda item F3 on December 8, 2023, and the Board's action taken in relation to that agenda item.

First, the Petition that was addressed as agenda item F3 seeks a rule-making that is contrary to state law, and that flies in the face of the scientific data concerning the fishery. HRS 188-31 establishes the legality of commercial aquarium collection with fine mesh nets, so long as a permit is obtained, and commercial aquarium collection without a fine mesh net is governed by HRS 189-2 (the Commercial Marine License statute). The Board of Land and Natural Resources does not have legal authority to override the legislature's decision that commercial aquarium collection is legal, as evidenced by the passage of HRS 188-31 and HRS 189-2. HRS 187A sets forth the DLNR's authority to manage the state's resources, but does not include the authority to override the legislature, which has made commercial aquarium collection a legal activity. If adopted, the rules proposed in agenda Item F3 would deprive all Petitioners of their pursuit of a legal activity that has made up part or all of Petitioners' economic livelihood. The rule that item F3 proposed is not only illegal, it has not been through the rule-making process under HRS Chapter 91, and is therefore procedurally improper. The Board failed to focus on the science concerning the status of the affected species and environment and improperly responded to emotion and the passionate voices of a small minority of the population.

In addition, the action taken by the Board appears to be procedurally improper to effectuate the Board's intent. There is not yet a draft or approved minutes of the December 8, 2023 Board meeting available to assess the Board's position on the action taken during that meeting concerning agenda item F3. However, the action taken during the meeting appears to be inconsistent, unclear, and procedurally improper. The initial motion before the Board on agenda item F3 was to approve the Petition (F3) and reject the DAR recommendation (which was to reject the F3 Petition). After an executive session, the Chair and other members of the Board expressed their intent to initiate rule-making concerning commercial aquarium collection, but NOT to require DAR to present for approval the particular rule that the F3 Petitioners proposed. Rather, the Chair and other board members expressed the clear intent that DAR be instructed to start a rule-making process in compliance with HRS Chapter 91, and taking into account the F3 Petition, testimony taken taken on both sides of the F3 issue, and the comments of the Board members themselves, and without a pre-determined result as to the content of the rules that may be drafted, presented or eventually considered for adoption by the Board. However, rather than reject the F3 Petition and initiate a rule-making concerning aquarium collection (as was the Board's right pursuant to HAR 13-1-26(c), the Board both approved the F3 Petition and directed the DAR to take action different than that demanded in the F3 Petition that was approved. This, despite the fact that the DAR representative who testified before the Board had already informed the Board that the DAR's role when a petition for rule-making was approved, was to closely follow the rule proposed in the petition.

23. Any Relief Petitioner Seeks or Deems Itself Entitled to

Petitioners seek a) a determination that agenda item F3 was, in fact, rejected, and/or, in the alternative, b) re-consideration of agenda item F3 at a future BLNR meeting, at which the BLNR should must formally reject the F3 Petition and, in addition, if the Board so elects, to separately institute rulemaking concerning aquarium collection.

24. How Petitioner's Participation in the Proceeding Would Serve the Public Interest

The public interest is served when the Board follows the science and has logical science-based reasons for acting, not when it gives in to the loud and passionate pleas of a small minority who wish to impose their views on the entire population. Given the unclear and procedurally vague and defective nature of the Board's action, it would serve the public interest for their to be clarity as to the legal effect of the Board's action on agenda item F3. Further, it would serve the public interest to ensure that the Board is not pursuing the drafting or enactment of rules that are contrary to law. It serves the public interest to know that government Boards like the BLNR follow the required law and procedure, and are willing to correct mistakes when they are made. Confidence in the government is diminished when government agencies fail to follow the law or required procedures, or to correct obvious mistakes when made and called to their attention.

25. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR

As former HRS 188-31 permit holders, current or former HRS 189-2 CML holders, practitioners of commercial aquarium collection and persons who have earned and seek to earn all or part of their income from commercial aquarium collection, Petitioners will be directly and immediately affected by the action requested in the Petition that was agenda item F3. Further, their interest in the proceeding is clearly distinguishable from that of the general public, as the general public hasds never and does not engage in commercial aquarium collection, does not and have never held an HRS 188-31 permit or an HRS 189-2 CML, and does not and has never earned all or part of their income from commercial aquarium collection.

☒ Check this box if Petitioner is submitting supporting documents with this form.

☒ Check this box if Petitioner will submit additional supporting documents after filing this form.

Geoffrey M. Davis, attorney		December 18, 2023
Petitioner or Representative (Print Name)	Signature	Date

ATTACHMENT A

List of additional petitioners joining the attached Petition for a Contested Case Hearing concerning Board of Land and Natural Resources action taken on agenda item F3 on Friday, December 8, 2023.

Eric Moennich [redacted]	Jerry Isham [redacted]
Johnny Isham [redacted]	Kelly Isham [redacted]
Randy Fernley [redacted]	Haijiang Peng [redacted]
Jim Lovell [redacted]	Jay Lovell [redacted]
Todd Shiraki [redacted]	Lucy Price [redacted]
Industry Joint Advisory Council Contact: Robert Likins Executive Vice President 1615 Duke Street, Ste. 100, Alexandria, VA 22314 info@petadvocacy.org 202.452.1525	Kim Koch Eric Koch [redacted]

ATTACHMENT B

Concerning Petition for Contested Case Hearing relating to Board of Land and Natural Resources action taken on agenda item F3 on Friday, December 8, 2023

TROPICALTRUTH

HAWAIIANS SUPPORT SUSTAINABLE FISH COLLECTION

Executive Summary

Animal rights and environmental extremists are lobbying and litigating to try to ban the collection of fish for home aquariums from the waters of Hawaii. However, Hawaiians overwhelmingly reject a ban on fish collection, instead preferring regulators permit sustainable collection of fish.

POLLING: NOVEMBER 2023

Question 1: Are you aware of the debate about collection of tropical fish offshore of Hawaii for home aquariums?

	Total Pct
1. Yes	47%
2. No	53%
TOTAL	**100.00%**

Question 2: Hawaii generally practices 'sustainable use' of natural resources. This means the government regulates harvesting of natural resources so that not too much is taken and the resource has time to recover. This allows for continued harvesting over time and saves the jobs and income it provides to Hawaii residents. Do you generally agree or disagree with the idea of sustainable use?

	Total Pct
1. Agree	96%
2. Disagree	4%
TOTAL	**100.00%**

Poll of 500 Hawaiian adults conducted by CARAVAN on behalf of Tropical Truth between Nov. 16-29, 2023. Margin of error +- 4%.

Question 3: Some animal rights activists want Hawaii to completely ban the collection of fish for home aquariums. They claim this practice is harmful to the environment. However, marine scientists with the University of Hawaii and National Oceanic and Atmospheric Administration point to data showing that the fish populations have been growing for many years while collection has occurred. They conclude that fish collection is sustainable in Hawaii. Who do you think has more credibility in this debate?

	Total Pct
1. Marine scientists	72%
2. Animal rights activists	13%
3. Don't know	15%
TOTAL	**100.00%**

Question 4: Which best describes your point of view?

	Total Pct
1. Hawaii should allow sustainable collection of fish	73%
2. Hawaii should prohibit all collection of fish	17%
3. Don't know	10%
TOTAL	**100.00%**

Question 5: Do you believe regulators such as the Board of Land and Natural Resources should be managing resources based on science, or prohibiting sustainable resource usage based on the opinions of special interest groups?

	Total Pct
1. Manage resources in a science-based way	78%
2. Prohibiting resource usage because of special interest groups	7%
3. Don't know	15%
TOTAL	**100.00%**

Poll of 500 Hawaiian adults conducted by CARAVAN on behalf of Tropical Truth between Nov. 16-29, 2023. Margin of error +- 4%.

POLLING: JULY 2023

Question 1: Hawaii generally practices "sustainable use" of natural resources. This means the government adopts regulations to ensure that whatever is taken can be replenished, to allow for continued use over time. Do you agree or disagree with sustainable use?

	Total Pct
1. Agree	93.86%
2. Disagree	6.14%
TOTAL	**100.00%**

Question 2: Some activists want Hawaii to ban the collection of fish for home aquariums. They claim this practice is harmful to the environment. However, marine scientists point to data showing that the fish populations have been growing for many years while collection has occurred. Existing regulations also establish many protected areas where fish can breed and cannot be collected. Based on this information, what best describes your point of view?

	Total Pct
1. Fish collection should be allowed if it is done sustainably	79.42%
2. Fish collection should be banned	20.58%
TOTAL	**100.00%**

Online poll of 650 Hawaiians adults conducted July 25-31, 2023. Margin of error +- 4%.

POLLING: FEBRUARY 2023

Question 1: Hawaii generally practices "sustainable use" of natural resources. This means the government adopts regulations to ensure that whatever is taken can be replenished, to allow for continued use over time. Do you agree or disagree with sustainable use?

	Total Pct
1. Agree	92.57%
2. Disagree	7.43%
TOTAL	**100.00%**

Question 2: There is a debate in Hawaii over the collection of fish for home aquariums. Have you seen anything about this? Select all that apply.

	Total Pct
1. Yes, on social media like Facebook and Twitter	28.00%
2. Yes, on TV news	28.86%
3. Yes, in the newspaper	14.29%
4. No	48.29%
TOTAL	**100.00%**

Online poll of 350 Hawaiians adults conducted in February, 2023. Margin of error +- 4%.

Question 3: Some activists want Hawaii to ban the collection of fish for home aquariums. They claim this practice is harmful to the environment. However, marine scientists point to data showing that the fish populations have been growing for many years while collection has occurred. Existing regulations also establish many protected areas where fish can breed and cannot be collected. Based on this information, what best describes your point of view?

	Total Pct
1. Fish collection should be allowed if it is done sustainably	85.14%
2. Fish collection should be banned	14.86%
TOTAL	**100.00%**

Question 4: Hawaii has banned the collection of live fish for home aquariums in some areas. However, in those same areas, fishermen can still catch and kill the same species of food. Which describes your point of view?

	Total Pct
1. Both should be allowed, if practiced sustainably	69.71%
2. Live catching should be allowed, but not catching for food	5.43%
3. Catching for food should be allowed, but not catching live fish	18.86%
4. Both should be banned	6.00%
TOTAL	**100.00%**

Online poll of 350 Hawaiians adults conducted in February, 2023. Margin of error +- 4%.