

COUNCIL OF THE COUNTY OF MAUI
PUBLIC SERVICES COMMITTEE

August 6, 2010

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Public Services Committee, having met on July 14, 2010, makes reference to the following:

1. County Communication No. 09-337, from Council Vice-Chair Michael J. Molina, relating to aquatic life animal control.
2. A proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 5, MAUI COUNTY CODE, PERTAINING TO AQUATIC LIFE OPERATIONS". The purpose of the proposed bill is to establish a new Chapter 5.26, the Aquatic Life Operations Code, which would create a licensing system for aquatic life operations.
3. A proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 6.04, MAUI COUNTY CODE, PERTAINING TO ANIMAL CONTROL". The purpose of the proposed bill is to regulate the protection of aquatic life.

Your Committee notes that it previously reported on this matter through Committee Report No. 10-65. In that report, your Committee recommended that the proposed bills be passed on first reading and be ordered to print, and that the county communication be filed. At the Council meeting of July 2, 2010, the Council recommitted the proposed bills and County Communication No. 09-337 to your Public Services Committee meeting in response to public testimony.

Your Committee considered the proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 5, MAUI COUNTY CODE, PERTAINING TO AQUATIC LIFE OPERATIONS".

Your Committee recognized the importance of protecting aquatic life in light of the diminishing reef fish population in Hawaii. Your Committee also recognized the need to consider the impact of the proposed bill on fishermen who use their catch for food

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consumption purposes, or those hotels that have aquariums or koi ponds on their properties. Your Committee noted that the County's largely tourism-based economy, and the thousands of residents that the industry employs, are dependent on the natural beauty of the islands.

In response to public testimony, your Committee recommended that the proposed bill be revised to reduce the impact on persons that were never intended to be affected by the legislation. Therefore, your Committee recommended that Section 5.26.020 be revised to clarify that the proposed bill would not apply to home aquarists, hotels, pet shops, and persons that have koi ponds.

Your Committee recommended that the definition of "Aquatic life" in Section 5.26.020 be revised to delete language that could conflict with current law. Your Committee further recommended that the definition of "Financial interest" in Section 5.26.020 be revised to delete language that would require that the names of dependent children with financial interests in the aquatic life operation be disclosed.

Your Committee recognized that the definition of "Aquatic life operations" should be expanded to require that certain activities must occur in order to be subject to the licensing regulations under the proposed bill. Your Committee recommended that the definition of "Aquatic life operations" in Section 5.26.020 be revised to require that three qualifying activities - harvesting, holding, and selling of aquatic life - must all occur in order to be subject to the proposed bill.

With regard to the penalty provisions under the proposed bill, your Committee felt that deleting the fine ranges, and instead establishing a set fine for violations, would send a clear message that the County is serious about regulating aquatic life operations. Therefore, your Committee revised Subsection 5.26.090(A) to establish a fine of \$2,000 for any person who violates Chapter 5.26, and Subsection 5.26.090(B) to establish a fine of \$250 for any person who violates the proposed bill's requirement that an operator shall at all times keep the permit in a prominent place and convenient for inspection at any location where aquatic life operations are being conducted.

Your Committee voted 5-0 to recommend passage of the revised proposed bill on first reading. Committee Chair Nishiki and members Johnson, Kaho'ohalahala, Medeiros, and Victorino voted "aye". Committee Vice-Chair Pontanilla and member Mateo were excused.

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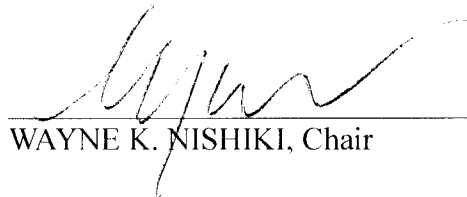
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Your Committee is in receipt of the revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions, as well as nonsubstantive revisions.

Your Public Services Committee RECOMMENDS that Bill No. _____ (2010), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 5, MAUI COUNTY CODE, PERTAINING TO AQUATIC LIFE OPERATIONS", be PASSED ON FIRST READING and be ORDERED TO PRINT.

This report is submitted in accordance with Rule 7 of the Rules of the Council.



WAYNE K. NISHIKI, Chair

ps:cr:10025ab:skk/scj

ORDINANCE NO. _____

BILL NO. _____ (2010)

A BILL FOR AN ORDINANCE AMENDING TITLE 5,
MAUI COUNTY CODE, PERTAINING TO AQUATIC LIFE OPERATIONS

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Title 5, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

"Chapter 5.26

AQUATIC LIFE OPERATIONS CODE

Sections:

5.26.010	Title and purpose.
5.26.020	Definitions.
5.26.030	Exemptions.
5.26.040	Permits.
5.26.050	Reporting required.
5.26.060	Term of permit.
5.26.070	Renewal of permit.
5.26.080	Inspection of permit.
5.26.090	Violation--penalty.
5.26.100	Citation.
5.26.110	Other requirements.
5.26.120	Appeals.

5.26.010 Title and purpose. This chapter shall be known as the "Aquatic Life Operations Code." The council acknowledges and affirms that the regulation of aquatic life operations is necessary to protect health, life, and property and to preserve the order and security of the county and its inhabitants, and hereby establishes a policy that regulates aquatic life operations within the county.

5.26.020 Definitions. For purposes of this chapter, unless it is plainly evident from the context that a different meaning is intended, the following words and phrases are defined:

"Applicant" means a person applying for a permit.

"Aquatic life" means any type of species of saltwater fish, mollusk, crustacean, arthropod, invertebrate, coral, or other animal that inhabits the

marine environment and includes any part, product, egg, or offspring thereof; and marine plants, including seeds, roots, and other parts thereof.

"Aquatic life operations" means the maintenance of an office, vehicle, boat, equipment, or other business activity conducted by a person in the county for all of the following purposes:

1. To harvest aquatic life;
2. To hold or transport aquatic life in a state of captivity; and
3. To sell aquatic life as pets.

"Director" means the director of finance.

"Effective date" means the date that the permit is issued or renewed.

"Enforcement departments" means the department of parks and recreation, the department of police, and the department of housing and human concerns.

"Financial interest" means an interest held by an individual, or the individual's spouse that is:

1. An ownership interest in a business;
2. A creditor interest in an insolvent business;
3. An employment, or prospective employment for which negotiations have begun;
4. An ownership interest in real or personal property;
5. A loan or other debtor interest; or
6. A directorship or officership in a business.

"Harvest" or "harvesting" means to catch or take aquatic life from the marine environment.

"Operator" means a person engaged in aquatic life operations.

"Permit" means a permit issued pursuant to this chapter.

5.26.030 Exemptions. This chapter shall not apply to:

A. Persons who harvest aquatic life to be used for bait for fishing or for human consumption or for sale for human consumption;

B. Persons exercising those rights customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, as protected by article XII, section 7, of the Hawaii State Constitution; or

C. Persons who specialize in the holding of aquatic life in a state of captivity within the county for education or scientific study and do not sell or distribute aquatic life for compensation.

5.26.040 Permits. A. An operator shall obtain a permit issued by the director in accordance with this chapter. Application forms for permits shall be provided and prescribed by the director.

B. The application for a permit or renewal of an existing permit shall be in writing, properly verified under oath and filed with the director, and shall set forth and include the following:

1. The business name, business physical and mailing address, and business telephone number of the applicant;

2. The names and addresses of all persons with a financial interest in the business;

3. The locations where the applicant's financial and other related transactions will take place;

4. Written verification from the department of planning that the property where the applicant will conduct business is appropriately zoned;

5. A list stating the number, type, description, and gross vehicle weight of all motor vehicles to be used by the applicant to conduct the aquatic life operation;

6. Any other information that may be required by rules adopted by the director to enforce the requirements of this chapter;

7. An application fee as established in the annual county budget;

8. The number of certified copies needed for the business to comply with section 5.26.080;

9. State and federal tax clearance certificates; and

10. Any other information required by applicable rules.

C. Within ten business days upon receipt of a complete application for permit or renewal of an existing permit, the director may submit a copy of the complete application or permit renewal to the enforcement departments. Within twenty business days from receipt thereof, the enforcement departments may submit to the director a written report with any recommendations or special conditions that may be necessary or desirable. An application shall be approved or denied within thirty business days from the date it is received.

D. An applicant or operator shall notify the director in writing of a change of any information required to be included in an application pursuant to subsection B within five calendar days of the change.

E. The director shall issue the permit or renew the permit, upon payment of any required fee, with or without special conditions or requirements as may be

appropriate. Violations of this chapter or unfavorable recommendations from the enforcement departments, including violations of section 711-1109, Hawaii Revised Statutes, or the failure to comply with the reporting requirements of section 5.26.050, shall be grounds for denial of a permit or the renewal of an existing permit. If the director denies the permit or renewal application, the director shall notify the applicant in writing setting forth the reasons for denial.

F. The director shall, upon the issuance of a permit, notify the enforcement departments of the newly granted or renewed permit and its expiration date, for the purpose of providing an updated inventory of active permits to those with citation authority as described in section 5.26.100.

5.26.050 Reporting required. A. Each operator shall submit to the director two reports within the permit term, the first report within one hundred eighty days of the effective date and the second report within one hundred eighty days of the first report. Each report shall include two parts:

1. Collection summary for the reporting period.

a. Total quantity of aquatic life collected, by species;

b. Total quantity of aquatic life sold, by species;

c. Total quantity of aquatic life that expired while in possession, by species;

d. Number of collection trips; and

e. Immediate destination of aquatic life collected.

2. Individual collection trip details.

a. Date of collection;

b. Species and quantity of aquatic life collected;

c. General geographic area and island where collection occurred; and

d. Collection method, including barrier net, scoop net, slurp device, and traps.

B. The director shall keep on file the submitted reports of a licensed operator and shall make the reports available to the council upon request.

C. On at least an annual basis, the director shall submit to the council a summarized report of all the collection activity of permitted aquatic life operations for that calendar year.

5.26.060 Term of permit. A. Any permit issued pursuant to this chapter shall expire, unless otherwise

revoked or canceled, without notice to the operator one year after the effective date of the permit.

B. The director may suspend, revoke, or deny renewal of any permit issued pursuant to this chapter for failure to comply with the reporting requirements of section 5.26.050 or of any rule, ordinance, or statute related to the conduct permitted under the permit.

5.26.070 Renewal of permit. A. A permit may be renewed on or before its expiration date.

B. Applications for renewal shall be processed in accordance with section 5.26.040.

5.26.080 Inspection of permit. An operator shall at all times keep the permit in a prominent place, convenient for inspection at any location where aquatic life operations are being conducted.

5.26.090 Violation--penalty. A. Any person who violates this chapter, except for sections 5.26.050 and 5.26.080, shall be guilty of a misdemeanor and, upon conviction, shall be fined \$2,000, or imprisoned not more than one year, or both.

B. Any person who violates section 5.26.080 shall be fined \$250.

C. The failure of a permittee to file a report in accordance with section 5.26.050 may result in suspension or revocation of the permit by the director.

5.26.100 Citation. A. Police officers, park security officers, animal control officers, authorized law enforcement personnel, and other authorized enforcement department personnel may issue citations for violations of this chapter.

B. There shall be provided for use by the individuals authorized to issue citations under subsection A, a form of summons or citation for use in citing violators. The form and content of such summons or citation shall be as adopted or prescribed by the administrative judge of the district courts of the second circuit, and shall be so designed to include all necessary information to make the same valid within the laws of the State. In every case when a citation is issued, the original of the citation shall be given to the violator.

C. Every citation shall be consecutively numbered, and each copy shall bear the number of its respective original.

5.26.110 Other requirements. Any and all other governmental approvals and licenses necessary to conduct

aquatic life operations shall be secured by an operator. A granting of a permit under this chapter shall not relieve the operator of the responsibility of complying with all applicable laws.

5.26.120 Appeals. A. Any person aggrieved by a decision or order of the director may file an appeal with the board of variances and appeals pursuant to chapter 19.520 of this code and the rules of practice and procedure as adopted by the board of variances and appeals.


B. Pursuant to the rules of the board of variances and appeals, a contested case hearing shall be held on the appeal. The department of finance, through the director, shall be a party to the proceedings.

C. In accordance with its rules and applicable law, the board of variances and appeals may affirm the decision or order of the director; or it may reverse or modify the decision or order, in whole or in part, provided the board of variances and appeals finds the decision or order is:

1. Based on a clearly erroneous finding of material fact or erroneous application of the law; or
2. Arbitrary and capricious in its application; or
3. A clearly unwarranted abuse of discretion; and
4. A reversal or modification of the decision or order will not jeopardize life, limb, or property."

SECTION 2. This ordinance shall take effect on January 1, 2011.

APPROVED AS TO FORM
AND LEGALITY:



JEFFREY UEOKA
Deputy Corporation Counsel
County of Maui

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