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Dkt. 65 ORD

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

KALANIHALE, KO 'OLAUPOKO	)	Civil No. 1CCV-25-0001709 (SMK)
HAWAIIAN CIVIC CLUB, FOR THE	)	(Agency Appeal) (Environmental Court)
FISHES, CHARLES K.H. YOUNG AND	)	
MICHAEL NAKACHI,	)	OPINION ON APPEAL
	)	
Petitioners-Appellants,	)	
	)	
vs.	)	
	)	
BOARD OF LAND AND NATURAL	)	
RESOURCES, STATE OF HAWAI'I	)	<u>Oral Argument</u>
AND DEPARTMENT OF LAND AND	)	Date: April 2, 2026
NATURAL RESOURCES, STATE OF	)	Time: 10:00 a.m.
HAWAI'I,	)	Judge: Hon. Shirley M. Kawamura
	)	
Respondents-Appellees.	)	
	)	
	)	

OPINION ON APPEAL

On October 16, 2025, Petitioners-Appellants Kalanihale, Ko'olaupoko Hawaiian Civic Club, For the Fishes, Charles K. H. Young, and Michael Nakachi (collectively, "**Appellants**") appealed from the Board of Land and Natural Resources' ("**BLNR**") Order Denying Petition for Declaratory Ruling ("**Order**"), entered on September 26, 2025, pursuant to Hawai'i Revised Statutes ("**HRS**") § 91-14.

In its Order, BLNR denied Appellants' Petition for Declaratory Ruling, filed on October 10, 2024, which had requested that BLNR issue the following declaratory rulings:

- (1) HRS § 190-3 authorizes rulemaking to prohibit commercial aquarium collection statewide; and
- (2) HRS § 188-31 and HAR § 13-74-2(4) provide for discretion to deny aquarium collection permits and related commercial marine licenses and also present no conflict with the Board's power to adopt rules under HRS § 190-3.

Dkt. 34, Certified Record on Appeal ("**CROA**") at 0797. At the conclusion of the Declaratory Ruling Petition, Appellants restated this as a "request [for] a declaratory ruling affirming the Board's authority to (1) prohibit commercial aquarium collection through rulemaking, and (2) deny commercial aquarium collection permits and licenses in its discretion." Dkt. 34, CROA at 0820.

On December 29, 2025, Appellants filed their Opening Brief (Dkt. 52). On February 6, 2026, Respondents-Appellees BLNR and Department of Land and Natural Resources, State of Hawai'i ("**DLNR**") (collectively, "**Appellees**") filed their Answering Brief (Dkt. 54). On February 20, 2026, Appellants filed their Reply Brief (Dkt. 60).

Oral argument was held before the above-entitled Court on April 2, 2026, at 10:00 a.m. Dru Hara, Mahesh Cleveland, and Kylie Wager Cruz appeared on behalf of Appellants. John Dubiel appeared on behalf of Appellees.

The Court, having reviewed the briefing of the parties and the CROA, and having heard and considered the arguments of counsel presented at the hearing, and good cause appearing therefor, rules as follows:

A. Agency Appeals, HRS § 91-14

1. Agency “orders disposing of petitions for declaratory rulings under HRS § 91–8 are appealable to the circuit court pursuant to HRS § 91–14.” *Lingle v. Haw. Gov’t Emps. Ass’n, AFSCME, Loc. 152, AFL-CIO*, 107 Hawai‘i 178, 186, 111 P.3d 587, 595 (2005).

2. An agency’s conclusions of law are reviewable under HRS § 91-14(g), for whether they have been made in violation of constitutional or statutory provisions, in excess of statutory authority or jurisdiction of the agency, and/or affected by other errors of law. Haw. Rev. Stat. § 91-14(g); *In re Application of Hawaiian Elec. Co., Inc.*, 81 Hawai‘i 459, 465, 918 P.2d 561, 567 (1996), *as amended* (July 11, 1996).

3. Issues of law are reviewed de novo. *Keep the N. Shore Country v. Bd. of Land & Nat. Res.*, 150 Hawai‘i 486, 503, 506 P.3d 150, 167 (2022).

4. “Upon review of the record, the court may affirm the decision of the agency or remand the case with instructions for further proceedings; or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced[.]” Haw. Rev. Stat. § 91-14(g).

B. Statutory Interpretation

5. When construing a statute, the Court’s “foremost obligation is to ascertain and give effect to the intention of the legislature which is to be obtained primarily from the language contained in the statute itself.” *Kauai Springs, Inc. v. Planning Comm’n of the Cty. of Kaua‘i*, 133 Hawai‘i 141, 163, 324 P.3d 951, 973 (2014) (citation omitted).

The Court “must read statutory language in the context of the entire statute and construe it in a manner consistent with its purpose.” *Id.*

6. Further, “[l]aws in pari materia, or upon the same subject matter, shall be construed with reference to each other[,]” and “where the statutes simply overlap in their application, effect will be given to both if possible, as repeal by implication is disfavored.” *Richardson v. City & Cnty. of Honolulu*, 76 Hawai‘i 46, 55, 868 P.2d 1193, 1202 (1993).

C. Statutory Authority of DLNR Generally, HRS Chapter 171

7. “Administrative agencies are created by the legislature, and the legislature determines the bounds of the agency’s authority.” *Paul’s Elec. Serv., Inc. v. Befitel*, 104 Hawai‘i 412, 417, 91 P.3d 494, 499 (2004), *as corrected* (July 14, 2004).

8. HRS Chapter 171, relating to Public Lands, is the chapter that created DLNR and prescribes its “broad powers and authority over public lands and the resources thereon, including water.” *Kia‘i Wai O Wai‘ale‘ale v. Bd. of Land & Nat. Res.*, 157 Hawai‘i 303, 320, 576 P.3d 816, 833 (2025).

9. HRS § 171-3(a) establishes that DLNR’s jurisdiction includes the State’s “public lands, the water resources, ocean waters, navigable streams, coastal areas (excluding commercial harbor areas), and minerals and all other interests therein.” Haw. Rev. Stat. § 171-3(a).

10. That same section provides DLNR with management and administrative authority over “aquatic life, aquatic life sanctuaries, public fishing areas, boating, ocean recreation, [and] coastal programs,” among other things. Haw. Rev. Stat. § 171-3(a).

11. HRS § 171-6 further enumerates the specific powers of DLNR as the executive head of DLNR, including the power to “[a]dopt rules which, upon compliance with chapter 91, shall have the force and effect of law,” before stating that DLNR may

“[d]o any and all things necessary to carry out its purposes and exercise the powers granted in this chapter.” Haw. Rev. Stat. §§ 171-6(4), (20).

D. DLNR’s Role as Trustee of Public Trust Resources

12. Beyond the broad powers over matters in its jurisdiction granted to the agency by statute, DLNR’s management of public trust resources also “implicates the Board’s duties as trustee of Hawai’i’s public trust water resources.” *Kia’i Wai*, 157 Hawai’i at 317, 576 P.3d at 830.

13. The Hawai’i Supreme Court has confirmed that the State’s “marine waters and submerged lands” are “subject to the State’s constitutional and common-law public trust duties.” *Umberger v. Dep’t of Land and Nat. Res.*, 140 Hawai’i 500, 521, 403 P.3d 277, 298 (2017).

14. The Hawai’i Supreme Court has also recognized that, per article XI, section 1 of the Hawai’i Constitution Article XI § 1, “resource protection” is a recognized public trust purpose. *In re Water Use Permit Applications (Waiāhole)*, 94 Hawai’i 97, 139–40, 9 P.3d 409, 451–52 (2000).

15. The public trust creates an “affirmative *duty*” of the State and its political subdivisions “to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible.” *Waiāhole*, 94 Hawai’i at 141, 9 P.3d at 453 (emphasis in original).

16. “As the public trust arises out of a constitutional mandate, the duty and authority of the state and its subdivisions to weigh competing public and private uses on a case-by-case basis is independent of statutory duties and authorities created by the legislature.” *Kaua’i Springs*, 133 Hawai’i 141, 172, 324 P.3d 951, 982.

17. “[T]he public trust doctrine at all times forms the outer boundaries of permissible government action[.]” *Id.* (quoting *Waiāhole* at 132, 9 P.3d at 444).

18. “[T]he State's constitutional public trust obligations exist independent of any statutory mandate and must be fulfilled regardless of whether they coincide with any other legal duty.” *Ching v. Case*, 145 Hawai‘i 148, 178, 449 P.3d 1146, 1176 (2019).

E. BLNR Erred in Concluding that HRS § 190-3 Does Not Authorize Rulemaking to Prohibit Commercial Aquarium Collection Statewide

19. HRS § 190-1 expressly designates “[a]ll marine waters of the State” as a “marine life conservation area to be administered by [DLNR] subject to this chapter and any other applicable laws not inconsistent herewith or with any rules adopted pursuant hereto.” Haw. Rev. Stat. § 190-1.

20. That same section states that “[n]o person shall fish for or take any fish, . . . or other marine life, . . . within any conservation district established pursuant to this chapter except in accordance with section 190-4 and rules adopted by [DLNR] pursuant hereto.”<sup>1</sup> *Id.*

21. HRS § 190-4 states that DLNR “*may*, in any conservation district, prohibit the taking of marine life or the engaging in activities prohibited by this chapter and rules adopted thereunder, except by permit issued by it for *scientific, education, or other public purposes* on such terms and conditions deemed necessary to minimize any

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<sup>1</sup> The Hawai‘i Supreme Court has confirmed that all State marine waters are within conservation districts pursuant to this section; per DLNR administrative rules, the conservation districts are further divided into subzones, such that “lands and State marine waters seaward of the shoreline . . . in which . . . aquarium collection practices . . . are conducted, are within conservation districts.” *Umberger*, 140 Hawai‘i at 522, 403 P.3d at 299.

adverse effect within the conservation district.” Haw. Rev. Stat. § 190-4 (emphasis added).

22. HRS § 190-3 provides that DLNR “*shall* adopt rules governing the taking or conservation of fish, . . . or other marine life as it determines will further the state policy of conserving, supplementing and increasing the State’s marine resources” and that the rules “*may* prohibit activities that may disturb, degrade, or alter the marine environment . . . and otherwise regulate the fishing and taking of marine life . . . generally throughout the State[.]” Haw. Rev. Stat. § 190-3 (emphasis added).

23. HRS § 190-3 further provides that “[t]he rules *shall* upon taking effect *supersede* any state laws inconsistent therewith.” Haw. Rev. Stat. § 190-3 (emphasis added).

24. Here, the plain language of HRS § 190-4 grants DLNR the discretionary authority to prohibit the taking of marine life, and HRS § 190-4 prohibits the taking of marine life except for “scientific, education, or other public purposes.”

25. Additionally, the plain language of HRS § 190-3 expressly allows DLNR to prohibit activities that may degrade the marine environment, to prohibit the taking of all marine life in designated areas, and to do so statewide.

26. Moreover, the provision allowing DLNR rules properly promulgated under HRS Chapter 190 to have the effect of superseding all inconsistent state laws evidences a legislative intent to strengthen DLNR’s authority to use this section to accomplish the Chapter’s purpose—to further the “state policy of conserving, supplementing and increasing the State’s marine resources.” Haw. Rev. Stat. § 190-3.

27. The plain language of HRS Chapter 190 aligns with the directive of article XI, section 1 of the Hawai'i Constitution: the State "shall conserve and protect" all of Hawai'i's natural resources and promote their development and utilization "in a manner consistent with their conservation," prescribing regulation methods while granting DLNR prohibition power in furtherance of the purpose of protecting aquatic life resources. Haw. Const. art. XI § 1.

28. Thus, the Court finds that HRS § 190-3 by its plain language does authorize rulemaking to prohibit commercial aquarium collection statewide, and BLNR erred in concluding it does not.

F. BLNR Erred in Concluding that a Rule Prohibiting Commercial Aquarium Collection Would Impermissibly Nullify or Conflict With its Discretionary Permitting Power Under HRS § 188-31

29. Next, HRS § 188-31 provides that DLNR "*may* issue an aquarium fish permit . . . for the taking of marine or freshwater nongame fish and other aquatic life for aquarium purposes[,] including "for sale." Haw. Rev. Stat. § 188-31 (emphasis added).

30. The Hawaii Supreme Court in *Umberger* has stated that DLNR's authority under this section is discretionary and that "DLNR has the statutory discretion not to issue an aquarium collection permit." 140 Hawai'i at 527, 403 P.3d at 304.

31. Thus, HRS § 188-31 vests DLNR with the discretionary power to issue aquarium collection permits, available for DLNR to use in its independent judgment.

32. Additionally, while HRS § 190-3 vests DLNR with the power to prohibit the take of marine life, this does not affect a repeal of HRS § 188-31, because that statute

would remain effective as the basis for DLNR to issue some permits as exemptions to general prohibitions enacted under HRS § 190-3.<sup>2</sup>

33. Furthermore, any possible conflict between HRS § 188-31 and HRS § 190-3 would be resolved by the plain language of HRS § 190-3, which provides that “[t]he rules shall upon taking effect supersede any state laws inconsistent therewith.” Haw. Rev. Stat. § 190-3.

34. Thus, the Court finds that BLNR erred in concluding that a rule prohibiting commercial aquarium collection would impermissibly nullify or conflict with its discretionary power under HRS § 188-31.

G. BLNR Exceeded the Scope of the Requested Declaratory Ruling

35. Finally, HRS § 91-14(g) “precludes judicial reversal or modification of an administrative decision even where affected by error of law . . . unless substantial rights of the petitioner may have been prejudiced.” *Honoipu Hideaway, LLC v. Land Use Comm’n*, 156 Hawai‘i 367, 377, 575 P.3d 24, 34 (2025).

36. Here, Appellants requested that BLNR issue a declaratory ruling that (1) HRS § 190-3 authorizes rulemaking to prohibit commercial aquarium collection statewide, and (2) HRS §188-31 and HAR § 13-74-2(4) provide for discretion to deny aquarium collection permits and related commercial marine licenses and also present no conflict with the BLNR’s power to adopt rules under HRS § 190-3. Dkt. 34, CROA at 0797.

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<sup>2</sup> The Court notes that when Appellants previously requested that BLNR start the rulemaking process for enacting a general ban on commercial aquarium collection, their original Rulemaking Petition included proposed language that would allow DLNR to retain its discretion to issue licenses or permits as exemptions from a general ban. Dkt. 23, CROA at 0068.

37. However, in its Order Denying the Petition, BLNR went further than the requested declaratory ruling, concluding in paragraphs 17 and 18 that:

- a. “Assuming, *arguendo*, that DLNR does have authority to completely ban commercial aquarium fishing through rulemaking and that HRS § 190-3 does not conflict with HRS § 188-31, DLNR, through [DAR], has nevertheless determined that the commercial aquarium fishery, if properly regulated through rules, would be sustainable[;]” and
- b. “The Board therefore determines that a complete ban on commercial aquarium fishing would not “further the state policy of conserving, supplementing and increasing the State’s marine resources” and therefore not be an appropriate application of HRS § 190-3, regardless of whether HRS § 190-3 and HRS § 188-31 conflict.”

Order, Dkt. 50, CROA at 1118.

38. The Court notes that it is ultimately DLNR’s kuleana to determine, after appropriate process and consideration, whether a complete ban on commercial aquarium collection would or would not further state policy.

39. The Court further notes and respectfully reminds DLNR that it must make such a determination with due consideration to “the State’s constitutional public trust obligations[, which] exist independent of any statutory mandate and must be fulfilled regardless of whether they coincide with any other legal duty.” *Ching*, 145 Hawai’i at 178, 449 P.3d at 1176.


40. Nevertheless, in this case, where Appellants’ declaratory relief sought was specifically limited to two legal issues based on statutory interpretation, DLNR’s findings (#17 and 18) that a complete ban on commercial aquarium fishing would not further state conservation policy goes beyond the scope of the requested declaratory ruling and may pre-judge issues not ripe for adjudication.

41. The Court finds that by exceeding the scope of the request for declaratory ruling, the substantial rights of Appellants may have been prejudiced.

ORDER

Based on the foregoing, the Court **REVERSES** the Order Denying Petition for Declaratory Ruling pursuant to HRS § 91-14(g)(4), as it was made based on erroneous application of HRS § 188-31 and exceeded the scope of the requested relief.

DATED: Honolulu, Hawai'i, April 6, 2026.

*/s/ Shirley M. Kawamura*   
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Judge of the Above-Entitled Court