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# A BILL FOR AN ACT

RELATING TO OCEAN RESOURCES.

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

1           SECTION 1. The legislature finds that the department of  
2 land and natural resources conservation and resources  
3 enforcement officers must conduct investigations, field  
4 observations, and inspections as required or assigned, check and  
5 verify all leases, permits, and licenses issued by the  
6 department, and enforce fisheries regulations.

7           Section 187A-15, Hawaii Revised Statutes, allows any  
8 department agent upon whom the board of land and natural  
9 resources has conferred powers of police officers, or any other  
10 enforcement officer of the State, to search any bag or container  
11 used to carry aquatic life, or any vehicle or conveyance used to  
12 transport aquatic life, if the agent or officer has probable  
13 cause, as provided by law, to believe that the bag, container,  
14 vehicle, or conveyance contains evidence of a violation of laws  
15 on aquatic resources and wildlife.

16           The legislature finds that in addition to consent, there is  
17 an exception to the probable cause requirement when searches are



1 conducted as part of a "valid regulatory scheme, done in  
2 furtherance of administrative goals rather than to secure  
3 evidence of a crime". (*U.S. v Bulacan*, 156 F.3d 963, 967 (9<sup>th</sup>  
4 Cir. 1998)). This is the exception under which the U.S.  
5 department of agriculture is authorized to conduct its pre-  
6 departure inspections at Hawaii's airports. "[T]ime element is  
7 a major consideration...the objects of the search...can easily  
8 be transported out of Hawaii to the continental United States.  
9 (*United States v. Schafer*, 461 F.2d 856, 868 (1972)). "[T]he  
10 general administrative determination of the necessity for these  
11 baggage searches at the Honolulu airport satisfies 'probable  
12 cause'." (*Schafer* at 859. See also *Camara v. Municipal Court*,  
13 387 U.S. 523 (1967)).

14 Section 189-14, Hawaii Revised Statutes, authorizes the  
15 department of land and natural resources, without requiring  
16 probable cause, to "board any vessel, whether commercial or non-  
17 commercial, capable of being used in taking marine life...for  
18 purposes of investigation and inspection...."

19 Section 183D-25, Hawaii Revised Statutes, provides as a  
20 condition of receiving a hunting license that "[n]o person, upon  
21 the request of an officer, shall refuse to show the license or  
22 withhold permission to inspect the person's game bag, container,



1 hunting coat or jacket, or carrier, or vehicle of any kind where  
2 game might be concealed." No probable cause is required,  
3 because the consent to a search occurs when a hunting license is  
4 issued.

5 The department of land and natural resources does not yet  
6 have a valid administrative inspection scheme in place for  
7 inspections in furtherance of the goals of enforcing aquatic  
8 regulations such as closed seasons, bag limits, or minimum  
9 size limits, nor does it currently have statutory authority to  
10 monitor the transport of aquatic life out of the state.

11 Although the department of land and natural resources is  
12 authorized to adopt rules to create a scheme for monitoring  
13 the export of aquatic resources, it has not yet done so  
14 because of the probable cause language in section 187A-15,  
15 Hawaii Revised Statutes. Section 188-31.5, Hawaii Revised  
16 Statutes, requires the department to "adopt rules in  
17 accordance with chapter 91 to monitor the aquarium fish catch  
18 report and fish dealer's report for export of aquarium fish  
19 taken from the waters of the State for aquarium purposes  
20 pursuant to section 188-31."

21 Recent reports indicate that more than forty-four per  
22 cent of required monthly aquarium catch reports are not filed



1 and the numbers of fish exported have been grossly  
2 underestimated. In addition, there is an unknown number of  
3 marine mollusks being exported for the shell collection trade,  
4 which currently is not monitored or regulated.

5 The purpose of an administrative inspection scheme is to  
6 provide accurate information on the types and numbers of  
7 species that are being removed from Hawaii's reefs for sale  
8 and export, as well as to monitor compliance with the  
9 conditions of permits and licenses; it is not to gather  
10 evidence for a criminal case. These types of inspections are  
11 considered valid administrative searches. (See State v.  
12 Hanson, 97 Haw. 71, 77 (2001)). The department of land and  
13 natural resources has, in fact, drafted export monitoring  
14 rules, but the attorney general has made a preliminary  
15 determination that section 187A-15, Hawaii Revised Statutes,  
16 is a bar to the implementation of those rules.

17 The purpose of this Act is to amend section 187A-15,  
18 Hawaii Revised Statutes, to standardize its administrative  
19 inspection requirements with those of section 183D-25, Hawaii  
20 Revised Statutes, which governs the enforcement of the State's  
21 hunting laws; and to authorize and direct the department of



1 land and natural resources to create a valid administrative  
2 inspection scheme to enforce its aquatic regulations.

3 SECTION 2. Section 187A-15, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "**§187A-15 Rights of inspection** [~~ef-catch~~]. Any agent of  
6 the department upon whom the board has conferred powers of  
7 police officers or any other enforcement officer of the State  
8 shall have the authority to conduct examinations and [~~searches~~]  
9 inspections of:

10 (1) The contents of any bag or container of any kind used  
11 to carry aquatic life; or

12 (2) Any vehicle or conveyance used to transport aquatic  
13 life;

14 [~~if such agent or officer has probable cause, as provided by~~  
15 ~~law, to believe that such bag, container, vehicle, or conveyance~~  
16 ~~contains~~] for evidence of a violation of the conditions of any  
17 license or permit issued under subtitle 5 of title 12 or any  
18 rule adopted thereunder. Written consent to inspection shall be  
19 a condition of any license or permit issued under subtitle 5 of  
20 title 12 by the department. No person shall refuse any  
21 enforcement officer of the department or any other enforcement  
22 officer of the State [~~such~~] an examination and [~~search-~~]



1 inspection for purposes of determining compliance with the terms  
2 of any license or permit relating to aquatic life. Refusal to  
3 grant an examination or inspection shall result in immediate  
4 revocation of the license or permit.

5 The department shall create a valid administrative  
6 inspection scheme to enforce its aquatic rules."

7 SECTION 3. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 4. This Act shall take effect on July 1, 2050.



**Report Title:**

Aquatic Life; Administrative Inspections

**Description:**

Authorizes administrative inspections of bags and containers used to carry aquatic life, or vehicles or conveyances to transport aquatic life; repeals the probable cause requirement; directs the department of land and natural resources to create an administrative search scheme. (HB1499 HD1)

