

JAN 19 2007

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 (9th
4 Cir. 1998)). This is the exception under which the department
5 of agriculture is authorized to conduct its inspections at
6 airports. "[T]ime element is a major consideration...the
7 objects of the search...can easily be transported out of Hawaii
8 to the continental United States. (*United States v. Schafer*, 461
9 F.2d 856, 868 (1972)). "[T]he general administrative
10 determination of the necessity for these baggage searches at the
11 Honolulu airport satisfies 'probable cause'." (*Schafer* at 859.
12 See also *Camara v. Municipal Court*, 387 U.S. 523 (1967)).

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

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



1 game might be concealed." No probable cause is required,
2 because the consent to a search occurs when a hunting license is
3 issued.

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

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

20 Recent reports indicate that more than forty-four per
21 cent of required monthly aquarium catch reports are not filed
22 and the numbers of fish exported have been grossly



1 underestimated. In addition, there is an unknown amount of
2 marine mollusks being exported for the shell collection trade,
3 which currently is not monitored or regulated.

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

16 The purpose of this Act is to amend section 187A-15,
17 Hawaii Revised Statutes, to standardize its administrative
18 inspection requirements with those of section 183D-25, Hawaii
19 Revised Statutes, which governs the enforcement of the State's
20 hunting laws; and to authorize and direct the department of
21 land and natural resources to create a valid administrative
22 search scheme to enforce its aquatic regulations.



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

3 **"§187A-15 Rights of inspection [~~ef-catch~~].** Any agent of
4 the department upon whom the board has conferred powers of
5 police officers or any other enforcement officer of the State
6 shall have the authority to conduct examinations and [~~searches~~]
7 inspections of:

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

10 (2) Any vehicle or conveyance used to transport aquatic
11 life;

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



1 grant an examination or inspection shall result in immediate
2 revocation of the license or permit.

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

5 SECTION 3. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 4. This Act shall take effect upon its approval.

8 INTRODUCED BY: Bruner. Kohl ^{B/R}

9



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.

