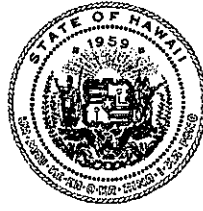


SB2852

Provides for transformative administrative penalty alternatives and an enhanced collection mechanism for outstanding fines and penalties resulting from aquatic resource violations.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the Senate Committees on
WATER, LAND AND HOUSING
and
JUDICIARY AND LABOR**

**Wednesday, February 15, 2012
10:00 AM
State Capitol, Conference Room 16**

**In consideration of
SENATE BILL 2852
RELATING TO AQUATIC RESOURCE VIOLATIONS**

Senate Bill 2852 seeks to provide for transformative administrative penalty alternatives, and for an enhanced collection mechanism for outstanding fines and penalties resulting from aquatic resource violations. The Department of Land and Natural Resources (Department) strongly supports this Administration measure.

For many years, the Department has received numerous criticisms relating to the perceived lack of enforcement capacity for its aquatic resource laws. Accordingly, the Department has recently made substantial efforts to improve the capacity of the Department's Division of Conservation and Resources Enforcement ("DOCARE") to better monitor, educate, and encourage compliance with aquatic resources regulations in the field.

However, it has become apparent that the functions of natural resources law enforcement – including deterrence, rehabilitation, restoration, and providing the assurance of compliance necessary for community engagement in management strategies – cannot be properly fulfilled without addressing issues arising out of a nearly exclusive reliance on the criminal justice system.

This Administration measure therefore provides the tools necessary for the Department to more consistently, efficiently, and appropriately address aquatic resource violations through the expanded use of its civil, non-criminal administrative enforcement process. The express authority to apply transformative penalties through natural-resources related community service will also provide a unique opportunity to turn poachers into stewards and advocates for our nearshore aquatic resources, as demonstrated in a variety of other jurisdictions.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

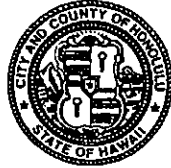
WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

The Department therefore strongly supports this opportunity to take a significant step forward in fulfilling its responsibilities to conserve and manage the nearshore aquatic resources of the State.

DEPARTMENT OF CUSTOMER SERVICES
CITY & COUNTY OF HONOLULU
DIVISION OF MOTOR VEHICLE, LICENSING AND PERMITS
ADMINISTRATION
P.O. BOX 30300
HONOLULU, HAWAII 96820-0300

PETER B. CARLISLE
MAYOR



GAIL Y. HARAGUCHI
DIRECTOR

DENNIS A. KAMIMURA
LICENSING ADMINISTRATOR

February 13, 2012

The Honorable Donovan M. Dela Cruz, Chair
And Committee Members
Committee on Water, Land and Housing
The Honorable Clayton Hee, Chair
and Committee Members
Committee on Judiciary and Labor
The Senate
State of Hawaii
State Capitol
Honolulu, Hawaii 96813

Dear Chair Delz Cruz, Chair Hee and Committee Members:

Subject: S.B. No. 2852, Relating to Aquatic Resource Violations

The City and County of Honolulu recommends that S.B. No. 2852, which will allow the denial or suspension of a driver license for noncompliance of penalties assessed by the Board of Land and Natural Resources, be amended.

We recommend that the bill be amended to require that the Board to provide the county examiner of drivers the Social Security Number or driver license number of the person whose license should be denied or suspended. This will ensure that the correct person's license is flagged.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis A. Kamimura".

Dennis A. Kamimura
Licensing Administrator



The Nature Conservancy of Hawai'i
923 Nu'uuanu Avenue
Honolulu, Hawai'i 96817

Tel (808) 537-4508
Fax (808) 545-2019

nature.org/hawaii

Testimony of The Nature Conservancy of Hawai'i
Supporting S.B. 2852 Relating to Aquatic Resource Violations
Senate Committee on Water, Land and Housing
Senate Committee on Judiciary and Labor
Wednesday, February 15, 2012, 10:00AM, Room 016

The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawaii's native plants, animals, and ecosystems. The Conservancy has helped to protect nearly 200,000 acres of natural lands for native species in Hawai'i. Today, we actively manage more than 32,000 acres in 11 nature preserves on Maui, Hawai'i, Moloka'i, Lāna'i, and Kaua'i. We also work closely with government agencies, private parties and communities on cooperative land and marine management projects.

The Nature Conservancy supports S.B. 2852 that would allow the DLNR to impose natural resource related community service as well as driver's license suspension as alternative penalties for aquatic resources violations.

There is widespread agreement amongst a variety of stakeholders that Hawaii's fragile environment is in need of improved compliance, enforcement and prosecution of violations of our State natural resource laws. A 2006 State Auditor's report concludes that DLNR Division of Conservation and Resources Enforcement (DOCARE) officers are spread too thin and lack the equipment they need to do their jobs. In a better economy, the Legislature had been able to support an increase in the number of trained officers and equipment. Not to be deterred by the current tough fiscal climate, DOCARE undertook its own review and strategic planning effort to improve its operational processes. Seeking national law enforcement accreditation from the Commission on Accreditation for Law Enforcement Agencies (CALEA www.calea.org) is an important outcome of that process.

Against this backdrop, a number of communities across the state have been organizing themselves to become more directly involved in the care and management of their natural resources, particularly in coastal and near shore areas. Some communities have partnered with DOCARE to raise awareness of natural resource laws and to improve compliance with those laws. With increased community involvement in marine resource management and enforcement, it will help DLNR, DOCARE, and community-based managers to have additionally flexibility in applying effective civil penalties to justly punish current infractions, effectively deter future violations, and foster greater compliance in the future.

This bill offers two enforcement strategies with community service and license suspension that can be employed when criminal or financial penalties are ineffective, particularly in an overburdened state court system.

Thank you for this opportunity to offer our support for this measure.

BOARD OF TRUSTEES

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Emailed Feb. 13, 8:30 pm, 2012 to WLHtestimony@capitol.hawaii.gov

Testimony for the Senate Committee on Water Land & Housing
and Senate Committee on Judiciary & Labor
Hearing on SB2852
Feb. 15, 2012
10:00 am Conference Room 16

Dear Chair DeLa Cruz, Chair Hee, Vice Chair Solomon, Vice Chair Shimabukuro, and Members of the Committees:

**Mālama Pūpūkea-
Waimea**

Post Office Box 188
Hale'iwa, HI 96712

Board of Directors

Denise Antolini

John Cutting

Bob Leinau

Staff Members

Drew Wheeler

Jenny Yagodich

Mālama Pūpūkea-Waimea **SUPPORTS SB2852** the ABOUTFACE bill ("Authorizing the Board to Use Transformative, Fair, and Consistent Enforcement").

Mālama Pūpūkea-Waimea (MPW) is a North Shore community group whose mission is to "to replenish and sustain the natural and cultural resources of the Pūpūkea and Waimea Ahupua'a for present and future generations through active community stewardship, education, and partnerships."

For the past seven years, MPW has focused its successful volunteer outreach and community education programs on protecting the Marine Life Conservation District (MLCD) at Pūpūkea-Waimea, including Shark's Cove, Three Tables, and Waimea Bay.

DLNR is a vital partner with MPW in our community stewardship efforts under the statewide Makai Watch Program. Strengthening DLNR's enforcement programs through the innovative and common sense approaches in SB2852 is critically important to protecting our precious ocean resources.

Please support DLNR and SB2852.

Mahalo,

Denise Antolini, President
MPW Board of Directors

Federal 501(c)(3) FEIN27-0855937
State of Hawaii Non-Profit
GET W90711385-01



CONSERVATION COUNCIL FOR HAWAI'I

Testimony Submitted to the Senate Committee on Water, Land, and Housing
And Senate Committee on Judiciary and Labor
Hearing: Wednesday, February 15, 2012 10 a.m.
Conference Room 016

In support of SB 2852 Relating to Aquatic Resource Violations

Aloha. The Conservation Council for Hawai'i supports SB 2852. This bill will greatly enhance the State's capacity to enforce its aquatic resources laws by providing the Board of Land and Natural Resources with the authority to use its civil administrative enforcement process in a more efficient, transformative, and consistent manner. This bill allows the BLNR to impose natural-resources related community service as a civil penalty in lieu of, or in addition to, monetary administrative fines, and further provides for a process by which the BLNR may place a stopper on a poacher's driver's license if he or she refuses to perform such community service or pay such administrative fines within the timeline set by the BLNR.

SB 2852 provides is a creative and effective process to address aquatic resource violations. The process is fair, consistent, and efficient. We attach a one-page sheet on why SB 2852 is important and worthy of your consideration and support.

Mahalo nui loa for the opportunity to testify. Please support SB 2852.

Sincerely,

Marjorie Ziegler



Hawai'i's Voice for Wildlife – Ko Leo Hawai'i no na holoholona lohiu

Telephone/Fax 808.593.0255 • email: info@conservehi.org • web: www@conservehi.org

P.O. Box 2923 • Honolulu, HI 96802 • Office: 250 Ward Ave., Suite 220 • Honolulu, HI 96814

President: Hannah Springer * Vice-President: Julie Leialoha * Treasurer: Rick Barboza * Secretary: Maka'ala Ka'aumoana

Directors: Lida Pigott Burney * Koalani Kaulukukui * Robin Kaye

Executive Director: Marjorie Ziegler

Why SB 2852 Is Important

1. **SB 2852 will greatly enhance the state's capacity to enforce its aquatic resources laws.** Resource managers, scientists, conservationists, fishers, and policy experts all agree that the state's enforcement capacity presents a significant barrier to more effective management efforts. By resolving legitimate concerns with the civil administrative enforcement process, SB 2852 will pave the way for the Department of Land and Natural Resources to effectively apply non-criminal monetary penalties through civil enforcement – a more efficient, effective, and appropriate process to address resource violations.
2. **The criminal justice system does not address resource violations consistently or with the appropriate level of concern.** Currently, the DLNR's exclusive reliance on the criminal justice system and the county prosecutors means that the relatively few aquatic resource cases are lumped in with hundreds of daily, more commonly encountered and easily understood violations, i.e. assaults, driving violations, drug possession, etc. As a result, penalties are inconsistent and often inappropriate, frustrating both managers and community stakeholders. Civil administrative enforcement before the Board of Land and Natural Resources will ensure that resource violations are dealt with consistently and with appropriate seriousness, without resorting to the criminal justice system.
3. **Transformative penalties provide an effective alternative to criminal liability.** In many cases, former poachers have become some of the most outspoken and effective stewards of the natural environment, if given the chance to understand their potential value in the rehabilitation of resources impacted by human activity. SB 2852 provides the BLNR the ability to apply natural-resources community service in lieu of criminal penalties, providing a unique opportunity to transform former poachers into stewards of our aquatic resources.
4. **SB 2852 will save the state money.** Division of Conservation and Resources Enforcement officers dedicate their careers to protecting our natural resources, through compliance and enforcement actions in the field. However, officers are often frustrated with the minimal fines that result from aquatic resource cases that may take hours or even days of their time to properly investigate and document; cases that also consume considerable resources in the county prosecutors' offices, the state public defender's office, and the criminal court system. The meaningful civil fines provided for in administrative enforcement by the BLNR will not only provide a much more effective deterrence to resource violations, but may further mitigate the costs of resources enforcement currently lost in the criminal justice process.
5. **Driver's licensing revocation will give teeth to resources enforcement, without resorting to civil litigation or the criminal process.** A major obstacle to administrative civil enforcement has been the lack of effective remedies for violators who ignore levied fines, as the only current remedy is the initiation of costly civil litigation. SB 2852 will grant DLNR the ability to revoke a poacher's driver's license if they refuse to cooperate with levied fines or natural resources-related community service, providing a relatively efficient yet strong incentive for violators to take these fines seriously.
6. **This bill will provide a huge step forward in fostering community-based fisheries management.** Without a more effective law enforcement process to assure compliance by all stakeholders, community-based fisheries management efforts face considerable difficulties in fostering constructive engagement by users of our nearshore aquatic resources. By providing a more consistent and effective process to address resource violations and foster greater compliance with the law, this bill may greatly encourage the formation of community-based management strategies, as individuals will be much more likely to participate in management efforts when assured that others will comply.
7. **This bill may provide a model for an environmental court.** Many other jurisdictions have established a variety of "environmental courts," or tribunals specifically tasked with adjudicating environmental cases. The success of these institutions has prompted numerous attempts to establish an environmental court in Hawai'i; however, the magnitude and uncertainties of these previous proposals have effectively deterred their adoption. Giving the BLNR the tools it needs to explore administrative enforcement in the aquatic resources context may be a first, much more modest step towards exploring how an environmental tribunal may greatly enhance Hawai'i's capacity to defend and protect our natural and cultural resources.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 14, 2012 9:14 AM
To: WLH Testimony
Cc: tony@pop-hawaii.com
Subject: Testimony for SB2852 on 2/15/2012 10:00:00 AM

Testimony for WLH/JDL 2/15/2012 10:00:00 AM SB2852

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Tony Costa
Organization: Hawaii Nearshore Fishermen
E-mail: tony@pop-hawaii.com
Submitted on: 2/14/2012

Comments:
COMMITTEE ON WATER, LAND, AND HOUSING

Senator Donovan M. Dela Cruz, Chair
Senator Malama Solomon, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR

Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

SB 2852 RELATING TO AQUATIC RESOURCE VIOLATIONS.

TESTIMONY: Reservations

Hawaii Nearshore Fishermen are opposed to denying or suspending drivers licenses as a component of natural resource violation penalties.

Thank you for allowing me to testify on this measure.

Respectfully submitted,

Tony Costa
Hawaii Nearshore Fishermen


From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 14, 2012 9:27 AM
To: WLH Testimony
Cc: mjellings@hawaii.rr.com
Subject: Testimony for SB2852 on 2/15/2012 10:00:00 AM

Testimony for WLH/JDL 2/15/2012 10:00:00 AM SB2852

Conference room: 016
Testifier position: Oppose
Testifier will be present: Yes
Submitted by: Carl Pao Jellings Sr
Organization: Individual
E-mail: mjellings@hawaii.rr.com
Submitted on: 2/14/2012

Comments:

Senator Hee and Members WLH A DLNR officer can already confiscate an operation/livelihood for a single violation. Dlnr can already confiscate your fishing license. DLNR can place you out of work indefinitely ref Henry Rosa case and more.DLNR can confiscate Your fishing license for failure to report violator fishes on another boat DLNR can confiscate your entire catch (could be worth in the ten's of thousands)but if one person aboard does not have a valid current fishing license the check or catch can be confiscated, DLNR has set fines per specimen 250.00 per spec that could add in the thousand's per out of season eggs etc. , is this bill help compliance By now the violator would have complied. A responsible fisher/Lawaia no matter how PONO is working in an unforgiving environment where some of the world's most treacherous seas can switch in minutes and swallow you up like a toothpick. where as even with his best effort he cannot change what becomes. Carl Pao Jellings SR



From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 14, 2012 8:44 AM
To: WLH Testimony
Cc: brycegroff@gmail.com
Subject: Testimony for SB2852 on 2/15/2012 10:00:00 AM

Testimony for WLH/JDL 2/15/2012 10:00:00 AM SB2852

Conference room: 016
Testifier position: Support
Testifier will be present: No
Submitted by: Bryce Groff
Organization: Individual
E-mail: brycegroff@gmail.com
Submitted on: 2/14/2012

Comments: