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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 Hawaii State  
2   Constitution establishes clear fiduciary duties with respect to  
3   Hawaii's natural resources, which are held and maintained in  
4   trust on behalf of the people of the State. In order to explore  
5   methods to better fulfill these public trust duties and  
6   responsibilities, the legislature established the West Hawaii  
7   regional fishery management area in 1998. The West Hawaii  
8   regional fishery management area is differentiated from other  
9   nearshore marine managed areas by the statutory ability of the  
10   department of land and natural resources to regulate fisheries  
11   in West Hawaii specifically, with the guidance and advice of the  
12   West Hawaii Fisheries Council.

13           The legislature also finds that the West Hawaii regional  
14   fishery management area has proven to be a moderate and notable  
15   success, particularly in fulfilling its purposes of improving  
16   the sustainability of West Hawaii's nearshore fisheries,  
17   reducing user conflicts, and providing important opportunities  
18   for scientific research and monitoring. However, the



1 legislature further finds that this success continues to be  
2 threatened by the difficulties of resource monitoring, and of  
3 ensuring compliance with West Hawaii regulations. For example,  
4 reported poaching activities in West Hawaii's fish replenishment  
5 areas indicate that ongoing illegal actions and adverse impacts  
6 to fisheries ecosystems and their sustainability pose an  
7 increasing threat of user conflicts, and potentially confound  
8 scientific research and monitoring projects.

9 In addition, the lack of reliable data regarding fishing  
10 pressure and extraction levels in West Hawaii generally further  
11 undermines the State's capacity to monitor and enhance West  
12 Hawaii's nearshore fishery resources. Unfortunately, the  
13 limited capacity of resources enforcement personnel, and their  
14 lack of inspection authority absent evidence establishing  
15 probable cause, prevents the department from effectively  
16 monitoring compliance with resource regulations to ensure the  
17 continued success of the West Hawaii regional fishery management  
18 area.

19 Accordingly, the legislature finds that probable cause  
20 requirements render criminal investigation and enforcement an  
21 inappropriate and insufficient tool for resource compliance  
22 monitoring within the West Hawaii regional fishery management



1 area. The legislature also finds that the State has an  
2 important constitutional interest in conserving and managing the  
3 State's aquatic resources. Given the necessity of adequate  
4 inspection authority to effectively monitor fishery activities,  
5 and the lowered expectation of privacy for permitted or licensed  
6 extraction activities relating to the aquatic resources of the  
7 State, the legislature further finds that an administrative  
8 inspection scheme allowing inspections without probable cause or  
9 criminal liability may be necessary to fulfill the State's  
10 constitutional duties.

11 The purpose of this Act is to provide enhanced tools to  
12 better ensure compliance and monitoring of direct extraction  
13 activities within West Hawaii by establishing administrative  
14 inspection authority for vessels and catch containers of  
15 permitted fishers within the waters of West Hawaii.

16 SECTION 2. Chapter 188F, Hawaii Revised Statutes, is  
17 amended by adding a new section to be appropriately designated  
18 and to read as follows:

19 "§188F-\_\_\_\_\_ Administrative inspection of commercial fishers  
20 and wholesalers within the West Hawaii regional fishery  
21 management area. (a) Subject to subsection (b), any agent of  
22 the department upon whom the board has conferred powers of



1 police officers, or who has otherwise been authorized to conduct  
2 administrative inspections under this section, may conduct  
3 examinations and inspections of:

4 (1) The license, permit, or registration of any individual  
5 the officer reasonably believes is engaged in conduct  
6 authorized by the license, permit, or registration;

7 (2) The contents of any bag or container of any kind that  
8 the agent reasonably believes may be used to carry  
9 aquatic life harvested pursuant to a commercial  
10 license, permit, or registration required under  
11 subtitle 5 of title 12 or any rule adopted thereunder;

12 (3) Any area of a vessel or vehicle that the officer  
13 reasonably believes may be used to transport aquatic  
14 life harvested pursuant to a commercial license,  
15 permit, or registration required under subtitle 5 of  
16 title 12 or any rule adopted thereunder; or

17 (4) The premises, containers, fishing equipment, marine  
18 animals, and records required by the department of any  
19 shipping agent or other person placing or attempting  
20 to place aquatic resources into interstate or  
21 intrastate commerce. Officers may inspect without  
22 warrant or probable cause the records required by the



1 department of any wholesale outlet selling aquatic  
2 resources for compliance with the terms of their  
3 commercial license;  
4 provided that authority granted under this section shall not  
5 extend to quarters in a boat, building, or other property used  
6 exclusively as a private domicile, and shall not extend to  
7 transitory residences in which a person has a reasonable  
8 expectation of privacy.

9 (b) Any item, article, natural resource, or other evidence  
10 obtained through an administrative inspection authorized under  
11 subsection (a), which occurs without probable cause of a  
12 violation of law, shall not be used as evidence in any criminal  
13 proceeding and may only be used to pursue authorized civil  
14 penalties, including any authorized monetary fines, natural  
15 resources-related community service, or asset forfeiture.

16 (c) Prior consent to administrative inspection by a duly  
17 authorized agent of the department while within the West Hawaii  
18 regional fishery management area shall be a condition of any  
19 commercial license, permit, or registration issued pursuant to  
20 subtitle 5 of title 12 or any rule adopted thereunder. While  
21 within the West Hawaii regional fishery management area, and  
22 while engaged in activities authorized pursuant to any such



1 commercial license, permit, or registration, no person shall  
2 refuse to allow any duly authorized agent of the department to  
3 conduct an examination and inspection described in subsection  
4 (a) for purposes of determining compliance with the terms of any  
5 commercial license, permit, or registration relating to aquatic  
6 life.

7 (d) While within the West Hawaii regional fisheries  
8 management area, any individual to whom a commercial license,  
9 permit, or registration has been issued shall physically possess  
10 the license, permit, or registration at all times when engaged  
11 in fishing activities conducted pursuant to the license, permit,  
12 or registration, and shall not permit any other person to carry,  
13 display, or use the license, permit, or registration in any  
14 manner unless otherwise authorized by the department.

15 (e) Any licensed, permitted, or registered individual  
16 engaged in fishing activities within the West Hawaii regional  
17 fishery management area who refuses to:

18 (1) Produce the required license, permit, or registration  
19 upon demand; or

20 (2) Give consent, or who withdraws previously given  
21 consent, to an inspection of a bag or other closed  
22 container that the officer reasonably believes could



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1           be used to take or transport aquatic resources for  
 2           which a license, permit, or registration is required,  
 3 shall have their license, permit, or registration immediately  
 4 suspended and may be subject to board revocation of the license,  
 5 permit, or registration."

6           SECTION 3. This Act does not affect rights and duties that  
 7 matured, penalties that were incurred, and proceedings that were  
 8 begun before its effective date.

9           SECTION 4. New statutory material is underscored.

10          SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: *Nicole E. Loren*  
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*[Signature]*

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**Report Title:**

Aquatic Life; West Hawaii; Inspection

**Description:**

Authorizes administrative inspections within the West Hawaii regional fishery management area. Requires the DLNR to create an administrative search scheme to monitor compliance with aquatic resources management regulation.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

