

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
WILLIAM J. AILA, JR.
Chairperson

Before the House Committee on
JUDICIARY

Friday, January 24, 2014
2:00 PM
State Capitol, Conference Room 325

In consideration of
HOUSE BILL 359, HOUSE DRAFT 1
RELATING TO OCEAN RESOURCES

House 359, House Draft 1, proposes to authorize administrative inspections of commercial fishers and wholesalers within the West Hawaii regional fishery management area. The Department of Land and Natural Resources (“Department”) offers the following comments.

The Department currently inspects commercial fishers and wholesalers under Hawaii Revised Statutes (HRS) §187A-15 and §189-14. HRS §187A-15 authorizes officers to examine or search the contents of any bag, container, vehicle or other conveyance used to carry or transport aquatic life, provided that the officer has *probable cause* to believe that such bag, container, vehicle or conveyance contains evidence of a natural resource violation. HRS §189-14 authorizes officers, without probable cause, to inspect the *books and records* of commercial fishers and marine dealers. These statutes apply statewide, not just in West Hawaii.

House Bill 359 House Draft 1 would provide the Department with additional authority to conduct administrative inspections of the bags, containers, vehicles, conveyances of commercial fishers and marine dealers to check compliance without the burden of first establishing probable cause of a violation. We would suggest that the bill language be expanded to apply statewide instead of only in West Hawaii to provide all enforcement officers the same tools to enforce law.

The term “administrative inspections” may need further clarification. It is unclear how these inspections would be different from the current authorities for inspections. We would seek the advice of the Department Attorney General on the many legal ramifications of this bill.

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

ESTER KIA'AINA
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



HB359 HD1
RELATING TO OCEAN RESOURCES
House Committee on Judiciary

January 24, 2014

2:00 p.m.

Room 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB359 HD1, which would authorize administrative inspections of containers, records, and other items to verify commercial fishers' and wholesalers' compliance with aquatic resource laws.

This bill would facilitate the exploration of noncriminal alternatives to meaningful and effective enforcement of aquatic resource laws. Over the last decade, it has become clear that numerous issues continue to inhibit the effective enforcement of aquatic resource laws and regulations under the jurisdiction of the Department of Land and Natural Resources (DLNR). Such enforcement difficulties expose our natural and cultural resources to ongoing abuse and misuse, limit management approaches to those amenable to "practical" enforcement, and foster public distrust and skepticism of state conservation resource enforcement officers and environmental policymakers alike. While funding and overall capacity are clear and obvious challenges to resources enforcement, **it appears that the current, nearly exclusive reliance on the criminal court system has also presented significant barriers to the effective enforcement of our natural and cultural resource laws.** Such barriers include:

1. The reluctance of district court judges and prosecutors to impose criminal liability commensurate with criminal property damage, drug possession, or third degree assault for natural resource violations;
2. The substantive and procedural burdens of proof required to establish a criminal violation, including the "beyond a reasonable doubt" criminal burden of proof, **probable cause requirements for criminal searches and seizures**,¹ and the relatively stringent Hawai'i Rules of Evidence;
3. A lack of substantive institutional knowledge within the criminal district court system of specific natural resource laws, their jurisdictional bases, and how they are or should be interpreted or applied; and
4. The disproportionate cost of enforcing rare and esoteric natural and cultural resource cases in an overburdened criminal court docket, consisting almost entirely of more familiar and readily established crimes.

¹ U.S. CONST. AMEND. IV. The Hawai'i State Constitution contains a similar provision. See HAW. CONST. ART. I, § 7; HRS §§ 187A-15, 199-7. But see infra n. 2.

This bill would both directly and indirectly address the issues noted above. By providing for administrative, non-criminal inspections of commercial fish containers and other items related to commercial fishing, based upon prior consent through license or permit conditions and the lowered expectation of privacy in West Hawai'i's pervasively regulated commercial fishing industry, this bill would allow substantive enforcement of season, bag, size, and gear limits that have been found difficult to enforce by questions regarding constitutional search and seizure protections. **Simply put, a "bag" limit on take cannot be enforced without the ability to look into a bag and count the number of fish taken.** This bill clarifies and guides the constitutional authority of conservation resource enforcement officers to inspect bags, containers, records, and vessels to ensure regulatory compliance within West Hawai'i's commercial fishing industry.²

In addition, the administrative, noncriminal enforcement actions taken as a result of inspections under this bill will allow the exploration of administrative alternatives to the aforementioned criminal justice approach to aquatic resources enforcement. Such administrative enforcement by the DLNR may provide a more fair, consistent, and effective alternative to resources enforcement, by an agency with the expertise and appropriate concern to protect and conserve our natural and cultural resources.³

Therefore, OHA urges the committee to **PASS** HB359 HD1. Thank you for the opportunity to testify.

² See, e.g., *State v. Boyer*, 42 P.3d 771, 776 (Mont. 2002) ("Thus, no objectively reasonable expectation of privacy exists when a wildlife enforcement officer checks for hunting and fishing licenses in open season near game habitat, inquires about game taken, and requests to inspect game in the field"); *Balelo v. Baldrige*, 724 F.2d 753, 765-66 (9th Cir. 1984) ("[C]ommercial fishing has a long history of being a closely regulated industry"); *United States v. Kaiyo Maru No. 53*, 699 F.2d 989 (9th Cir. 1983) (warrantless searches and seizures of foreign fishing vessels allowable under the Fishery Conservation and Management Act); *United States v. Raub*, 637 F.2d 1205 (9th Cir. 1980) (allowing warrantless stopping and searching of salmon fishing vessel due to pervasive regulation of commercial salmon fishing, limitations on opportunities for abuse, and important federal interests at stake); see also *New York v. Hill*, 528 U.S. 110, 114 (2000) ("[T]he most basic rights of criminal defendants are . . . subject to waiver"); *United States v. Mezzanatto*, 513 U.S. 196, 201 (1995) ("absent some affirmative indication of Congress' intent to preclude waiver, we have presumed that statutory provisions are subject to waiver by voluntary agreement of the parties").

³ See Fish and Coral Think Tank, The Authorizing the Board to Use Transformative, Fair, and Consistent Enforcement (ABOUT FACE) Act, <http://factt.weebly.com/about-face-act.html> (last accessed Jan. 30, 2013).

HB359

Submitted on: 1/23/2014

Testimony for JUD on Jan 24, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Lee Fausak	Individual	Support	No

Comments: As a marine scientist with nearly 40 years of SCUBA diving experience in West Hawaii, there is no doubt that the health and vitality of our coral reef fish populations have greatly been diminished in recent decades. Aquarium collectors are not likely the sole cause of the decline, but they certainly contribute to the severity of the problem. For the state government to establish take limitations, but not allow enforcement through inspections is an unsupportable position. Bill HB359 should be enacted in order to allow inspection and verification of catch.

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HB359

Submitted on: 1/21/2014

Testimony for JUD on Jan 24, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Susan Kellam	Individual	Support	No

Comments: Aloha! It is extremely important that this bill is passed into law. Without it, the DLNR has no power or authority to do their job with respect to commercial tropical fish collectors on the island of Hawai'i. Please show your support of our DLNR. Let them do their job! Mahalo, Susan Kellam

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HB359

Submitted on: 1/23/2014

Testimony for JUD on Jan 24, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Tina Owens	Individual	Support	No

Comments: I strongly support this measure for West Hawaii. We have worked long and hard to implement meaningful marine management on our coastline. I think it's time we gave DOCARE the tools it needs to do its job. Personally I would like to see this measure applied to ALL commercial fishermen, not just aquarium collectors. Please pass this bill. Mahalo.

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HB359

Submitted on: 1/21/2014

Testimony for JUD on Jan 24, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Dennis Yamaguchi	Individual	Support	No

Comments: Chair and Committee Members, I am a commercial fisherman and support HB 359 HD1.

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HB359

Submitted on: 1/23/2014

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Submitted By	Organization	Testifier Position	Present at Hearing
Jamie Pardau	Individual	Support	No

Comments: Hawaii allows inspection of the bags of land hunters. Our ocean environment is just as important. To allow inspection of coolers, Hawaii would be joining every other maritime state in providing an important tool for enforcement of the laws that protect our marine resources.

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HB359

Submitted on: 1/23/2014

Testimony for JUD on Jan 24, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Diaz	Individual	Support	No

Comments: I strongly support of HB359: which will allow law enforcement to open the coolers of commercial tropical fish collectors to make sure that they are complying with the West Hawaii rules package. Rationale for support of HB359: - ALL other U.S. coastal states allow game wardens/enforcement officers to inspect catch. - Hawaii already allows inspection of bags and containers for land hunters; it's only Hawaii's fishermen that are exempt. - This bill only involves West Hawaii. - The state DLNR needs to step up its enforcement and the legislature needs to give them the tools they need to do their jobs so our essential marine resources are properly protected for tourism and future generations. Mahalo, Lisa Diaz Science Educator Kona, Hawaii

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HB359

Submitted on: 1/23/2014

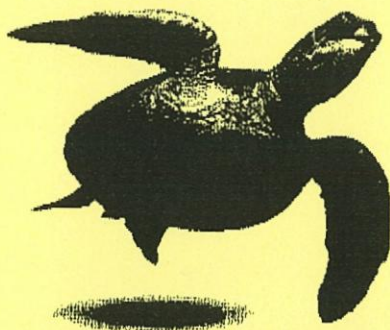
Testimony for JUD on Jan 24, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
David Tarnas	Individual	Support	No

Comments: Fifteen years ago, I was the State Representative who wrote the bill that the legislature approved and the Governor signed to create the West Hawaii Regional Fishery Management Area (FMA). Within the West Hawaii Regional FMA, the legislature granted DLNR additional management authority to achieve the purposes of sustaining the fishery, protecting the habitat and reducing conflicts of use. DLNR has carried out ongoing monitoring and reporting on the coral reef habitat and populations within the Regional FMA, and close consultation with stakeholders in developing management regulations. HB 359 will help DLNR achieve the purposes for which the legislature created the West Hawaii Regional FMA by authorizing it to inspect the coolers and holding tanks of the commercial aquarium fish collectors in the West Hawaii Regional FMA. This additional enforcement authority is a very effective fishery management tool for DLNR to prevent illegal catches in this important regional fishery. Please support HB 359. Aloha, David David Tarnas Kamuela, Hawaii

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RE: HB359

Hearing JUD Friday, January 24, 2014

TIME:

2:00 p.m.

PLACE:

Conference Room 325

Dear Sirs & Madams:

As no regulations are effective without the power to enforce them, I strongly support HB359 and urge you to pass this commonsense measure which will allow effective enforcement of the very important laws and rules governing the taking of marine resources in West Hawaii waters. This bill is essential for the conservation and management of the coral reef resources upon which our economy and lifestyle are largely dependent in West Hawaii. Thank you.

Sincerely,

Douglas Perrine

HB359

Submitted on: 1/21/2014

Testimony for JUD on Jan 24, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Marjorie &/or Duane Erway	Individual	Support	No

Comments: Please completely support this Bill. It is imperative that inspections of coolers for the collection of reef fish be allowed. If there is no enforcement, there is no reason for fish collectors to follow the law. Mahalo for your consideration.

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HAWAII COUNTY COUNCIL

*Office of the County Clerk
County of Hawai'i
25 Aupuni Street
Hilo, Hawaii 96720*

LATE TESTIMONY

**TESTIMONY OF J YOSHIMOTO, CHAIR
HAWAII COUNTY COUNCIL
REGARDING
HB 359, HD1, RELATING TO OCEAN RESOURCES**

**House Judiciary Committee
Friday, January 24, 2014 at 2:00 p.m.
Conference Room 325**

Chair Rhoads, Vice-Chair Har, and Committee Members:

Thank you for the opportunity to provide testimony IN SUPPORT of House Bill 359, HD1, which seeks to provide enhanced authority for inspection of commercial fishers and wholesalers within the West Hawai'i Regional Fishery Management Area to personnel in the Department of Land and Natural Resources.

Currently, the limited capacity of enforcement personnel, and their lack of inspection authority prevents the Department of Land and Natural Resources from effectively monitoring compliance with departmental regulations. This measure will provide enhanced tools to better ensure compliance and monitoring of direct resource extraction activities within the West Hawai'i Regional Fishery Management Area.

Once again, thank you for the opportunity to submit testimony IN SUPPORT on HB 359, HD1..

LATE TESTIMONY

HB359

Submitted on: 1/24/2014

Testimony for JUD on Jan 24, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Chris Perritt	Individual	Support	No

Comments: This measure is needed to enforce fisheries rules in Hawaii.

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LATE TESTIMONY

HB359

Submitted on: 1/24/2014

Testimony for JUD on Jan 24, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
makani	Individual	Oppose	No

Comments:

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LATE TESTIMONY

HB359

Submitted on: 1/23/2014

Testimony for JUD on Jan 24, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Steve Monahan	Individual	Support	No

Comments:

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LATE TESTIMONY

HB359

Submitted on: 1/23/2014

Testimony for JUD on Jan 24, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Kara	Individual	Support	No

Comments: This change to our rules is long over due to enable enforcement officers to enforce current rules. I fully support this rule to allow officers to search coolers and other property of fisherman without probable cause.

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