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**omhtestimony**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, January 31, 2013 6:18 PM  
**To:** omhtestimony  
**Cc:** wailele808@hotmail.com  
**Subject:** \*Submitted testimony for HB359 on Feb 1, 2013 08:00AM\*

**HB359**

Submitted on: 1/31/2013

Testimony for OMH on Feb 1, 2013 08:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
c cooter	Individual	Support	No

Comments:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, January 31, 2013 10:03 PM  
**To:** omhtestimony  
**Cc:** sweetycCook@aol.com  
**Subject:** Submitted testimony for HB359 on Feb 1, 2013 08:00AM

**HB359**

Submitted on: 1/31/2013

Testimony for OMH on Feb 1, 2013 08:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mei Cook	Individual	Support	No

Comments: I support this Bill 100%, we need to give authority to enforce & inspect the coolers of commercial vessels.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, January 31, 2013 5:51 PM  
**To:** omhtestimony  
**Cc:** scooterwood808@cs.com  
**Subject:** \*Submitted testimony for HB359 on Feb 1, 2013 08:00AM\*

**HB359**

Submitted on: 1/31/2013

Testimony for OMH on Feb 1, 2013 08:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
S Cooter	Individual	Support	No

Comments:

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**Sent:** Thursday, January 31, 2013 9:18 PM  
**To:** omhtestimony  
**Cc:** erwayd001@hawaii.rr.com  
**Subject:** Submitted testimony for HB359 on Feb 1, 2013 08:00AM

**HB359**

Submitted on: 1/31/2013

Testimony for OMH on Feb 1, 2013 08:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Duane Erway	Individual	Support	No

Comments: I am very pleased that this bill has come before you. It is vital for the health of our West Hawaii reef fish sustainability. Enforcement officers must have the right to inspect marine catch, and this would give them that right. There is no way to tell if the commercial fishers are collecting illegally unless the officers have the right to inspect. Respectfully, I request that you seriously consider this bill and strongly suggest that you support it. Mahalo!

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**Sent:** Friday, February 01, 2013 5:06 AM  
**To:** omhtestimony  
**Cc:** stubbydog@aol.com  
**Subject:** \*Submitted testimony for HB359 on Feb 1, 2013 08:00AM\*

**HB359**

Submitted on: 2/1/2013

Testimony for OMH on Feb 1, 2013 08:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
James Donovan	Individual	Support	No

Comments:

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**Sent:** Thursday, January 31, 2013 9:12 PM  
**To:** omhtestimony  
**Cc:** merway@hawaii.rr.com  
**Subject:** Submitted testimony for HB359 on Feb 1, 2013 08:00AM

**HB359**

Submitted on: 1/31/2013

Testimony for OMH on Feb 1, 2013 08:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Marjorie Erway	Individual	Support	No

Comments: I live in West Hawaii and fully support this bill and urge you to do so also. Our enforcement officers must have the right to inspect catch, and especially marine catch. Mahalo for your support -- I am assuming that you will do so and look forward to seeing your vote on this issue.

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**Sent:** Thursday, January 31, 2013 9:17 PM  
**To:** omhtestimony  
**Cc:** dougherkes@gmail.com  
**Subject:** Submitted testimony for HB359 on Feb 1, 2013 08:00AM

**HB359**

Submitted on: 1/31/2013

Testimony for OMH on Feb 1, 2013 08:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Doug Herkes	west hawaii fisheries council	Support	No

Comments: I am in strong support of this rule. All of the efforts at maintaining the sustainability of our marine resources that have been taken are for naught if the enforcement officers cant verify what is in peoples coolers. If the coast guard can, why cant local enforcement as well? Our DOCARE enforcement officers need to have this authority. Mahalo

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**Sent:** Thursday, January 31, 2013 8:21 PM  
**To:** omhtestimony  
**Cc:** arpad@arpad.info  
**Subject:** Submitted testimony for HB359 on Feb 1, 2013 08:00AM

**HB359**

Submitted on: 1/31/2013

Testimony for OMH on Feb 1, 2013 08:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
arpad horvath	Individual	Support	No

Comments: DLNR needs to get serious in protecting our reefs here in West Hawaii. there are several who spearfish with scuba and take hundreds of pounds of fish. many of us have witnessed this. I have worked in many less developed countries as a dive instructor and yet as corrupt or poor the country none of them allow such a destructive practice as spearfishing with scuba. We should be leading the world in marine conservation, the ocean is everything to us. Measures such as the ban on shark fin are not just long overdue and eminently moral, they have brought us well deserved praise from everywhere across that ocean. So many of my friends overseas did not believe me when I told them what goes on here and is legal no less. We can and must do better at protecting our reefs!

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, February 01, 2013 5:34 AM  
**To:** omhtestimony  
**Cc:** jurycp@hawaii.edu  
**Subject:** Submitted testimony for HB359 on Feb 1, 2013 08:00AM

**HB359**

Submitted on: 2/1/2013

Testimony for OMH on Feb 1, 2013 08:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Christopher P. Jury	Individual	Support	Yes

Comments: To whom it may concern, The measures proposed in HB359 will assist DLNR in enforcing regulations already in place in the West Hawai'i marine aquarium fishery. The vast majority of fisherman already follow these regulations. This bill helps to deter anyone who would break the law, and provides appropriate recourse for doing so. I see the measures proposed in this bill as a value to the vast majority of fisherman who already comply with the law, a benefit to scientific research, and a benefit to the general public. Therefore, I strongly support HB359 and urge the legislature to pass the bill. Sincerely, Christopher P. Jury Hawai'i Institute of Marine Biology University of Hawai'i at Manoa P.O. Box 1346 Kaneohe, HI 96744

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**Sent:** Thursday, January 31, 2013 5:08 PM  
**To:** omhtestimony  
**Cc:** rach\_koch@yahoo.com  
**Subject:** \*Submitted testimony for HB359 on Feb 1, 2013 08:00AM\*

**HB359**

Submitted on: 1/31/2013

Testimony for OMH on Feb 1, 2013 08:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel Kochubievsky	Individual	Support	No

Comments:

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**To:** omhtestimony  
**Cc:** Indiananova@hotmail.com  
**Subject:** Submitted testimony for HB359 on Feb 1, 2013 08:00AM

**HB359**

Submitted on: 2/1/2013

Testimony for OMH on Feb 1, 2013 08:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Nova lee	Individual	Support	No

Comments: Yet another example of a toothless law that should have been corrected a long time ago! The decline of fish diversity is so bad that i have stopped coming to hawaii for a snorkeling opting instead for place with better care of the wildlife resources, Australia sets a good example.

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**Sent:** Thursday, January 31, 2013 4:59 PM  
**To:** omhtestimony  
**Cc:** tmcvay@hawaii.rr.com  
**Subject:** Submitted testimony for HB359 on Feb 1, 2013 08:00AM

**HB359**

Submitted on: 1/31/2013

Testimony for OMH on Feb 1, 2013 08:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Terry McVay	Individual	Support	No

Comments: Having read this bill, I am moved not only to offer my strong support for its passage, I have to admit that should such a common sense motion as this not seem compelling to you, how you can ever claim to support justice in this State. Seriously, what could you be thinking, respectfully, for now.

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**Sent:** Thursday, January 31, 2013 9:00 PM  
**To:** omhtestimony  
**Cc:** goodtimesman@hawaii.rr.com  
**Subject:** Submitted testimony for HB359 on Feb 1, 2013 08:00AM

**HB359**

Submitted on: 1/31/2013

Testimony for OMH on Feb 1, 2013 08:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
steve meyer	Individual	Support	No

Comments: I've watched the reefs being raped for 30 years. The volunteer honesty method does not work. Most of the collectors I have met should be in prison or have been in prison. Save the reefs, whatever it takes.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, January 31, 2013 8:33 PM  
**To:** omhtestimony  
**Cc:** morrigan@hawaii.edu  
**Subject:** Submitted testimony for HB359 on Feb 1, 2013 08:00AM

**HB359**

Submitted on: 1/31/2013

Testimony for OMH on Feb 1, 2013 08:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Betsy Morrigan	Individual	Support	No

Comments: I support this bill. The DLNR needs the right to inspect the catch of commercial fishermen in order to enforce their rules and regulations. Without inspection, there is no teeth in the rules.

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**HB359**  
RELATING TO OCEAN RESOURCES  
House Committee on Ocean, Marine Resources, and Hawaiian Affairs

February 1, 2013

8:00 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) Committee on Beneficiary Advocacy and Empowerment **SUPPORTS** HB359, 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**,<sup>1</sup> 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.

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<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

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

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<sup>2</sup> 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").

<sup>3</sup> 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).



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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, January 31, 2013 6:38 PM  
**To:** omhtestimony  
**Cc:** Lucyfolsen@yahoo.com  
**Subject:** \*Submitted testimony for HB359 on Feb 1, 2013 08:00AM\*

**HB359**

Submitted on: 1/31/2013

Testimony for OMH on Feb 1, 2013 08:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lucy Olsen	Individual	Support	No

Comments:

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**To:** omhtestimony  
**Cc:** leilani@uoregon.edu  
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**HB359**

Submitted on: 1/31/2013  
Testimony for OMH on Feb 1, 2013 08:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Leilani Rapaport	Individual	Support	No

Comments:

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**Sent:** Thursday, January 31, 2013 6:25 PM  
**To:** omhtestimony  
**Cc:** sonorasykes@yahoo.com  
**Subject:** \*Submitted testimony for HB359 on Feb 1, 2013 08:00AM\*

**HB359**

Submitted on: 1/31/2013

Testimony for OMH on Feb 1, 2013 08:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
sonora sykes	Individual	Support	No

Comments:

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**HB359**

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Testimony for OMH on Feb 1, 2013 08:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Thomas Carey	Individual	Support	No

Comments:

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<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Alice Thigpen	Individual	Support	No

Comments:

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**To:** omhtestimony  
**Cc:** cwurry@yahoo.com  
**Subject:** Submitted testimony for HB359 on Feb 1, 2013 08:00AM

**HB359**

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Testimony for OMH on Feb 1, 2013 08:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Cynthia Urry	Individual	Support	No

Comments: Please pass the Bill HB359 as we need some sort of regulation for this industry. Every industry in the US has to answer to someone and this one especially has been getting away with so much. People that work at the airports tell me about it. It is going on right under our eyes. Please please do this for our kids.

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**Sent:** Thursday, January 31, 2013 5:10 PM  
**To:** omhtestimony  
**Cc:** znzorn@hawaiiantel.net  
**Subject:** \*Submitted testimony for HB359 on Feb 1, 2013 08:00AM\*

**HB359**

Submitted on: 1/31/2013

Testimony for OMH on Feb 1, 2013 08:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Nancy Zorn	Individual	Support	No

Comments:

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**Sent:** Thursday, January 31, 2013 5:11 PM  
**To:** omhtestimony  
**Cc:** zznorn@hawaiiantel.net  
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<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Zachary Zorn	Individual	Support	No

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