

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 Committees on
OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS
and
WATER & LAND**

**Friday, February 01, 2013
8:00am
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 938
RELATING TO THE KAHOO LAWE ISLAND RESERVE**

House Bill 938 proposes to clarify that any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of the rules applicable to the Kahoolawe Island Reserve may be seized and subject to forfeiture pursuant to Section 199-7 and Chapter 712A, Hawaii Revised Statutes (HRS). The Department of Land and Natural Resources strongly supports this Administration measure.

The Hawaii Supreme Court found, in *Carlisle v. One (1) Boat*, 119 Hawaii 245, 195 P.3d 1177 (2008), any associated enforcement of natural resource protection cannot include forfeiture of property used in furtherance of specified offenses unless forfeiture is specifically and clearly allowed in applicable statutes. In 2008, the County of Maui Prosecuting Attorney started forfeiture proceedings for a helicopter that landed illegally on Kahoolawe with passengers. The Supreme Court decision for the *Carlisle v. One (1) Boat* was issued prior to the forfeiture hearing for the illegal landing of the helicopter, thus the helicopter had to be returned. In addition to the helicopter incident, the County of Maui's Department of the Prosecuting Attorney has reported they have been consistently receiving reports of illegal fishing and other activities on and around Kahoolawe.

The adoption of an *in rem* forfeiture provision within Chapter 6K, HRS, for remedial sanctions by administrative or civil proceedings would serve as a deterrent, thus strengthening the Department's enforcement capabilities and allowing for greater protection of the Reserve's resources and members of the public who may be unaware of the dangers of unexploded ordnance on and around the Island.

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

ESTHER KIAAINA
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



HB938
RELATING TO THE KAHOOLAWE ISLAND RESERVE

House Committee on Ocean, Marine Resources, & Hawaiian Affairs
House Committee on Water & Land

February 1, 2013

8:00 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) Committee on Beneficiary Advocacy and Empowerment (BAE) **SUPPORTS** HB938, which proposes to clarify that any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of the rules applicable to the Kaho‘olawe Island Reserve may be seized and subjected to forfeiture pursuant to certain existing state laws.

By subjecting these items to forfeiture in such circumstances, this bill would provide a critical tool in protecting this relatively isolated and extremely degraded part of Hawai‘i.

In light of the above, OHA’s BAE Committee urges this committee to **PASS** HB938. Mahalo for the opportunity to testify on this measure.



MICHELE MCLEAN
Chairperson
AMBER NĀMAKA WHITEHEAD
Vice-Chair
WILLIAM J. AILA, Jr.
N. EMMETT ALULI, M.D.
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KŪKULU KE EA A KANALOA
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Michael K. Nāho`opi'i
Executive Director

**Testimony of
MICHAEL K. NAHO`OPTI
Executive Director**

**Before the House Committees on
Water & Land
and
Ocean, Marine Resources & Hawaiian Affairs**

**Friday, February 1, 2013
8:00 AM
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 938
RELATING TO THE KAHO`OLAWE ISLAND RESERVE**

House Bill 938 clarifies that any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of the rules applicable to the Kaho`olawe Island Reserve (Reserve) may be seized and subject to forfeiture pursuant to section 199-7 and chapter 712A, Hawaii Revised Statutes (HRS). The Kaho`olawe Island Reserve Commission (KIRC) supports this measure for it would strengthen our enforcement ability and provide the KIRC with another tool to manage the Reserve.

The Hawai`i Supreme Court, in *Carlisle v. One (1) Boat and Tran* (Nov 17, 2008), overturned an Intermediate Court of Appeals decision that allowed asset forfeiture in cases of resource destruction – ultimately taking the teeth out of any enforcement rules in place. According to the decision, the penalty sections of DLNR (and, therefore, KIRC) rules must specifically authorize forfeiture.

In 2008, the County of Maui Prosecuting Attorney started forfeiture proceedings for a helicopter that landed illegally on Kaho`olawe with passengers. Unfortunately, the Supreme Court decision for the *Carlisle v. One (1) Boat and Tran* case was issued prior to the hearing for the illegal landing of the helicopter, thus the helicopter had to be returned. In addition to the helicopter incident, the County of Maui Prosecuting Attorney has reported they have been consistently receiving reports of illegal fishing and other activities on and around Kaho`olawe; with House Bill 938, such fishing vessels could become subject to forfeiture.

The KIRC seeks the addition of the forfeiture clause to HRS 6K-8 to increase the penalties for violators, thus strengthening our enforcement capabilities and our protection of the Reserve's resources as well as protecting members of the public who may be ignorant of the dangers of unexploded ordnance on and around the Island.