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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
SUZANNE D. CASE
Chairperson

Before the House Committee on
OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS

Wednesday, February 17, 2016
9:00 AM
State Capitol, Conference Room 325

In consideration of
HOUSE BILL 1792
RELATING TO AQUATIC RESOURCES

House Bill 1792 proposes to prohibit the sale of any aquatic life taken with a spear. **The Department of Land and Natural Resources (Department) appreciates the intent of this measure but believes it is unnecessary.**

The Department already has the authority pursuant to Section 187A-5, Hawaii Revised Statutes (HRS), to adopt rules and to regulate the sale of aquatic life taken with a spear. The sale of speared marine life is only one of several issues involving spearfishing, such as SCUBA spearfishing, spearguns, and night spearfishing. Broader discussions with spearfishers are needed to know how best to address these issues.

Regarding the penalties, the Department notes the bill proposes higher penalties than what exists for other violations in this chapter. We believe this is unnecessary in light of our existing criminal and civil penalty authorities. In 1999, the Department's Division of Aquatic Resources went through a review of its criminal penalty statutes and revised them after consulting with the Department of the Attorney General and the City and County of Honolulu's Department of the Prosecuting Attorney. This review standardized most criminal penalties as petty misdemeanors to ease prosecution.

Also, in 1998, the Legislature established administrative penalties for aquatic resource violations. Violators face up to \$1,000 per violation and an additional \$1,000 per specimen for a first offense. Repeat violators are subject to even higher fines. In 2004, the Department implemented a civil resource violations system (CRVS), as authorized under Chapter 199D, HRS, to deal with violations through an internal administrative process rather than the criminal court process. This

system, which utilizes a civil penalty schedule carefully developed based on resource value and the nature of the violation, has worked well, and we are looking to expand the scope of CRVS within the Department.

In summary, we believe our administrative rulemaking process and the existing suite of criminal and administrative penalties is more than sufficient to give us the flexibility to regulate these resources appropriately.

Thank you for the opportunity to provide testimony on this measure.



HB1792
RELATING TO AQUATIC RESOURCES.

House Committee on Ocean, Marine Resources, & Hawaiian Affairs

February 17, 2016

9:00 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on HB1792, which seeks to reduce the impact of commercial spearfishing on our nearshore marine resources, including resources that may be critical to Native Hawaiian traditional and customary and subsistence practices, by banning the sale of speared aquatic life.

OHA recognizes that the commercial incentive to exploit fishery resources beyond sustainable levels may have contributed significantly to the observed decline in our nearshore fisheries over the past century.¹ OHA also notes that the Legislature has previously banned the commercial sale of speared aquatic life, primarily due to public health concerns over spoiled fish. In addition, OHA is aware of anecdotal reports regarding the commercial overharvesting of reef fish species known to be particularly vulnerable to spearfishing, such as uhu, outside of rural areas where many Native Hawaiians maintain subsistence lifestyles.

Nevertheless, apart from those high-value species particularly vulnerable to spearfishing, it is unclear whether this measure will significantly help to diminish the commercial incentive to overharvest nearshore resources generally. OHA accordingly urges the Committee to consult with state fishery managers to determine whether any data may be available pertaining to commercial spearfishing harvest levels, for nearshore reef species in particular.²

Should the Committee choose to move this measure forward, the Committee may also wish to consider an exception for the commercial sale of speared invasive species such as roi (peacock grouper, *Cephalopholis argus*). Such species may be most easily and selectively caught by spearfishing, and its control through commercial harvest may be beneficial to native species and ecosystems in some instances.³ Moreover, while the measure does contain an

¹ See, e.g., Wayne Tanaka, *Ho'ohana aku a Ho'ōla aku: First steps to averting the tragedy of the commons in Hawai'i's nearshore fisheries*, 10 ASIAN PACIFIC LAW AND POLICY J. 235 (2008) available at http://blog.hawaii.edu/aplpj/files/2011/11/APLPJ_10.1_tanaka.pdf.

² Online commercial landing reports from the Department of Land and Natural Resources, Division of Aquatic Resources appear to aggregate harvest data from all nearshore fishing methods due to "low level of fishermen reporting and to protect confidentiality." See Division of Aquatic Resources, Commercial Fishing, <http://dlnr.hawaii.gov/dar/fishing/commercial-fishing/> (last accessed February 15, 2016).

³ For example, fishery managers in Florida and the Caribbean have enlisted the help of spearfishers, chefs, and others to control populations of the highly invasive lionfish, which occupy a similar ecological niche to roi, and are similarly harvested most easily using three-prong spears. See Florida Fish and Wildlife Conservation Commission, *Lionfish: Be the Predator* (brochure), available at http://myfwc.com/media/2397764/lionfish_brochure.pdf (last accessed February 15, 2016).

express exception for Native Hawaiian traditional and customary practices, the Committee may also consider more narrowly defining “sell,” to exclude bartering in exchange for non-monetary goods or services, such as the trading of speared fish for harvested produce or similar consideration.

Mahalo nui loa for the opportunity to testify on this measure.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 16, 2016 10:05 AM
To: omhtestimony
Cc: tony@pop-hawaii.com
Subject: *Submitted testimony for HB1792 on Feb 17, 2016 09:00AM*

HB1792

Submitted on: 2/16/2016

Testimony for OMH on Feb 17, 2016 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Tony Costa	Hawaii Nearshore Fishermen	Oppose	No

Comments:

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Sent: Tuesday, February 16, 2016 9:20 AM
To: omhtestimony
Cc: igibson@hsus.org
Subject: *Submitted testimony for HB1792 on Feb 17, 2016 09:00AM*

HB1792

Submitted on: 2/16/2016

Testimony for OMH on Feb 17, 2016 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Inga Gibson	Humane Society of the US- Hawaii	Support	Yes

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 16, 2016 8:37 AM
To: omhtestimony
Cc: dean@HawaiiGoesFishing.com
Subject: Submitted testimony for HB1792 on Feb 17, 2016 09:00AM

HB1792

Submitted on: 2/16/2016

Testimony for OMH on Feb 17, 2016 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Dean Sensui	Hawaii Goes Fishing	Oppose	No

Comments: I oppose this bill on the grounds that all fishery management policies have to be determined through the administrative rulemaking process. It has to be done through a system that can develop appropriate rules based on good science, along with periodic review to determine effectiveness and need. It's stated that "spearfishing for commercial purposes does not perpetuate the tradition as implemented within Hawaiian history and culture." This is not true. Spearfishing predates the use of throw nets. It is, in fact, a long-standing method of harvesting fish. It is also the only one that has virtually zero bycatch. There are some fish that are best harvested through this method. And there are already rules in place that limit the amount that can be taken. Implementing a law like this places an unnecessary hardship on commercial fishermen, and eventually deprives the public of yet another source of food. Aloha, Dean Sensui, Hawaii Goes Fishing.

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Sent: Tuesday, February 16, 2016 8:07 AM
To: omhtestimony
Cc: wekeis333@gmail.com
Subject: Submitted testimony for HB1792 on Feb 17, 2016 09:00AM

HB1792

Submitted on: 2/16/2016

Testimony for OMH on Feb 17, 2016 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Tony Sylvester	Individual	Oppose	No

Comments: OPPOSING HB1792 DESCRIPTION: Makes it unlawful for a person to sell aquatic life acquired through spearfishing. Fishery management and catch limits should be adjusted through the administrative process of the department involving all stakeholders and not through Legislation. We agree with the Departments stance that “they prefer to establish regulations through the administrative rulemaking process in order to evaluate the available science, give due consideration to all interests, and to carefully craft language to avoid conflicting with existing state and federal laws.”

Mahalo, Tony Sylvester

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 16, 2016 7:17 AM
To: omhtestimony
Cc: jonikamiya@gmail.com
Subject: *Submitted testimony for HB1792 on Feb 17, 2016 09:00AM*

HB1792

Submitted on: 2/16/2016

Testimony for OMH on Feb 17, 2016 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Joni Kamiya	Individual	Oppose	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 16, 2016 7:16 AM
To: omhtestimony
Cc: rnvfishing@gmail.com
Subject: Submitted testimony for HB1792 on Feb 17, 2016 09:00AM

HB1792

Submitted on: 2/16/2016

Testimony for OMH on Feb 17, 2016 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Roy N Morioka	Individual	Oppose	No

Comments: Aloha Honorable Chair Ing, vice Chair Lowen and Members of the House OMH Committee: I strongly oppose HB1792 as it fails to recognize that spearfishing is the MOST SELECTVE fishery. Additionally, the bill fails to address and assess the effect of the non-commercial sector as their numbers are many orders of magnitude greater than the few hundred commercially licensed spear fishermen. I strongly urge members to review the DLNR/DAR assessment of commercial and non-commercial fishermen "take" of marine resources at Kaneohe Bay, that supports my opposition. Mahalo for your consideration. Respectfully, Roy Morioka

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 16, 2016 7:01 AM
To: omhtestimony
Cc: reefour@aol.com
Subject: *Submitted testimony for HB1792 on Feb 17, 2016 09:00AM*

HB1792

Submitted on: 2/16/2016

Testimony for OMH on Feb 17, 2016 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Kathy Takahashi	Individual	Oppose	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 16, 2016 3:47 AM
To: omhtestimony
Cc: shyla.moon@ymail.com
Subject: Submitted testimony for HB1792 on Feb 17, 2016 09:00AM

HB1792

Submitted on: 2/16/2016

Testimony for OMH on Feb 17, 2016 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Shyla Moon	Hunting Farming Fishing Association	Oppose	No

Comments: The first sentence is not true for all Hawaiians. This bill sounds racist and I oppose it. Banning one type of fishing isn't helping any resource; there's no enforcement for these bans. Creating regulations with no financial allocations either is bad planning. So many of these fishing regulations and fishin bans are created before any management is really done and proven effective. Therefore we should not allow the legislature to pass this bill. May I suggest an independent study and a State study of the categories of fish the introducers would like to protect and then work from there on exactly what is the reasons why these fishes are declining. The result may not be fishermen or fisherwomen. It may be urban. Thank you for your time.

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 15, 2016 11:09 PM
To: omhtestimony
Cc: hawaiifishingfanatic@gmail.com
Subject: *Submitted testimony for HB1792 on Feb 17, 2016 09:00AM*

HB1792

Submitted on: 2/15/2016

Testimony for OMH on Feb 17, 2016 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Don Aweau	Individual	Support	No

Comments:

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To: Chair Kaneala Ing
House Committee Ocean Marine Resources and Hawaiian Affairs
From: Frank Farm
Subject: Testimony HB 1792 Relating to Aquatic Resources

Chair Kaneala Ing, Vice chair Nicole Lowen, Members of House Committee Ocean Marine Resources and Hawaiian Affairs, I am Frank Farm and for the purpose of this hearing have been a recreational and/or commercial fisherman for more than 80 years. My presence before you is to testify re: HB 1792 whose purpose is to prohibit the sale of marine life that has been secured by the use of a spear.

<u>Commercial</u>	<u>Non Commercial</u>
2014 – DAR Fishing Licenses: 3,787	None
Spear catch: only 145 fishers report spearing.	
Therefore only a small fraction of fishers using this gear statewide. (Oahu 68, Maui 25, Hawaii 38, Kauai 8, Lanai 7, Molokai 7)	Unknown 5 figures
Pay License \$50. DAR / State Hi	None \$
Pay Taxes Fed/State \$\$ income	None \$\$
Submit required data reports- detail quantity, Species, Location, etc info to manage	None ??
Amount sold: 139,731 lbs general public benefitted.	Unknown estimated 7 figures

Several species are difficult to harvest with gear types, other than with a spear. Spearing is the most efficient gear to harvest fish. The spearer sees and knows what he intends to catch, not so with other gear types.

The population of the State of Hawaii is approximately 1,361,000. Taking a very conservative figure of 1% that spearfish is 13,610. With only 1 outing per month = 12 trips per year, and they only averaged approximately 8 lbs X 12 = 96 lbs X 13,610 = 1,306,560 lbs by the non commercial (recreational, subsistence, cultural religious, native Hawaiian gathering rights and traditional cultural practices, etc.)

Recap – Commercial 139,731 lbs sold to general public with income to State and Federal, plus valuable data.

Non Commercial 1,306,560 lbs, no income to the State or Federal governments, no data to DAR for management.

This is based on my decades of experience in this area. The increased number of dive shops selling this sort of equipment. My years as both a commercial and non commercial fisherman. My involvement in dive clubs over the years.

Licensing: License fee \$50 resident, non resident \$200. However fee rate challenged and possible lawsuit and State licensed all @\$50. For 1,000 @ \$150. loss for non resident licenses, State HI loss \$150,000.

Some spear fishers may also use mixed gear, akule surround, bottomfish, fence net and bag, trap. etc. or have another occupation.

DAR needs more funding and increase of appropriate personnel to incorporate good management plans to include, but not limited to, if closures, other restrictions, obtain base line data relative to selected areas in order to evaluate results, size limits, bag limits, seasonal closure, etc. Coordinate with the serious fishers who are the farmers of the resource, and update accordingly.

To summarize: Commercial fishers are only a small fraction to the many, many non commercial fisher extractors of the resource. Commercial fishers pay fees to the state for licenses and income tax to State and Feds, provide important catch data used to manage the resource.

In conclusion, I am for spearfishing, however I am strongly against HB 1792.
Get wet!

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 15, 2016 11:43 AM
To: omhtestimony
Cc: aandrea99@aol.com
Subject: Submitted testimony for HB1792 on Feb 17, 2016 09:00AM

HB1792

Submitted on: 2/15/2016

Testimony for OMH on Feb 17, 2016 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Quinn	Individual	Support	No

Comments: Please do not pass this bill. Spearfishing for sale to aquariums not only commits those fish that end up alive to a life of misery due to injury, but our reefs are already dangerously depopulated of fish compared to 10 years ago.

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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 14, 2016 8:47 PM
To: omhtestimony
Cc: yamaguchd009@hawaii.rr.com
Subject: *Submitted testimony for HB1792 on Feb 17, 2016 09:00AM*

HB1792

Submitted on: 2/14/2016

Testimony for OMH on Feb 17, 2016 09:00AM in Conference Room 325

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

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 13, 2016 8:33 PM
To: omhtestimony
Cc: mjellings@hawaii.rr.com
Subject: Submitted testimony for HB1792 on Feb 17, 2016 09:00AM

HB1792

Submitted on: 2/13/2016

Testimony for OMH on Feb 17, 2016 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Carl M Jellings Sr	Individual	Oppose	No

Comments: A Large portion of highly delectable reef fish species will be taken off the market place. restaurant's Markets, fish wholesalers, and fisherman will directly be impacted with economic loss. Indirectly GE taxes from retailers and wholesalers who all contribute to this states economy will no longer do so for this particular fishery. fuel ice supplies, repairs etc. Can this State afford to lose more of its diverse economy more lost revenues We've lost Huge chunks of Ag Sugar and Pineapple massive lay offs? Local Farmers and Fishers are threatened with loss of livelihood every Year, every Year Farmers and Fishers have to fight to feed the thousands of people who depend on their work. I pray the ships keep coming. We help keep Hawaii Food Secure and food independent. . OPPOSED

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Sent: Tuesday, February 16, 2016 1:56 PM
To: omhtestimony
Cc: matt.htfa@gmail.com
Subject: Submitted testimony for HB1792 on Feb 17, 2016 09:00AM

HB1792

Submitted on: 2/16/2016

Testimony for OMH on Feb 17, 2016 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Matthew Ross	Individual	Oppose	Yes

Comments: Spear fishing is a highly selective method of fishing that should be easy to manage. Commercial fishing is a valuable part of our local lifestyle and provides fish for those who can't go fishing themselves. Better regulations are the answer, not a complete ban. Please do not pass this bill.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 16, 2016 12:41 PM
To: omhtestimony
Cc: rkailianu57@gmail.com
Subject: *Submitted testimony for HB1792 on Feb 17, 2016 09:00AM*

HB1792

Submitted on: 2/16/2016

Testimony for OMH on Feb 17, 2016 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Ho`omana Pono, LLC	Oppose	Yes

Comments:

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LATE

February 16, 2016

TO: The Honorable Kaniela Ing, Chair
House Committee on Ocean, Marine Resources, & Hawaiian Affairs

FROM: Councilmember Robert Carroll *Robert Carroll*
Maui County Council

SUBJECT: **HEARING OF FEBRUARY 17, 2016; TESTIMONY IN SUPPORT OF
HB 1792, RELATING TO AQUATIC RESOURCES**

Thank you for the opportunity to testify in **support** of this important measure. The purpose of this measure is to prohibit the sale of aquatic life acquired through spearfishing.

This measure is included in the 2016 Maui County Council Legislative Package.

I support this measure for the following reasons:

1. Ocean species throughout Hawaii are declining because of the excessive taking of fish and other aquatic life through commercial spearfishing. Protection, such as that provided by this measure, is needed for Hawaii's threatened marine resources.
2. Hawaiian communities in Maui County are revitalizing aquatic life and implementing traditional marine stewardship, including at Koieie Fishpond on Maui and One Alii Fishpond and Kalokoaleli Fishpond on Molokai. Their important work, currently undermined by excessive commercial spearfishing, will be respected and protected by this measure.

For the foregoing reasons, I **support** this measure.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 16, 2016 7:05 PM
To: omhstestimony
Cc: makani.christensen@gmail.com
Subject: Submitted testimony for HB1792 on Feb 17, 2016 09:00AM



HB1792

Submitted on: 2/16/2016

Testimony for OMH on Feb 17, 2016 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
makani	Individual	Oppose	Yes

Comments: The sale of Speared fish should not be a crime. Many individuals live off the resources throughout the state. Our commercial fishermen rely on this type of fishing to make ends at the end of the month to pay bills. This is also a very selective type of fishing. Individuals that do spear fish know exactly what they are catching before bringing fish to the market. This is the most sustainable type of fishing. If we allow this bill, we will be effecting those who provide food for Hawaii. Hence we strongly oppose this bill.

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