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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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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 2078
RELATING TO AQUATIC RESOURCES PENALTIES

House Bill 2078 proposes to authorize the Judiciary to sentence violators of Hawaii's aquatic resource laws to: 1) complete an aquatic resources educational course in lieu of or in addition to paying a monetary fine, or 2) perform community service administered by the Department of Land and Natural Resources (Department) in lieu of paying a monetary fine. **The Department supports this measure.**

Existing penalty statutes prescribe mandatory monetary fines for violations of aquatic resource laws. This measure would also provide courts with greater flexibility in issuing sentences appropriate to the circumstances of each case.

In other jurisdictions, alternative sentencing has proven to be more effective than monetary fines in deterring future resource violations. Many resource violations occur as a result of ignorance of or indifference to Hawaii's aquatic resource laws. In such cases, an educational course would educate the violator about Hawaii's various aquatic resources laws and regulations, as well as the ecological, social, and cultural reasons for those laws. Violators who complete the course can also serve as a vehicle to reach user groups from diverse backgrounds, thereby increasing baseline knowledge about aquatic resources and the negative impacts caused by unlawful fishing activities.

In some cases, violations are committed intentionally due to the significant financial gain that can be realized from illegal extraction of aquatic resources. For these violators, fines may simply be viewed as a cost of doing business. In this respect, community service requirements may provide a more effective deterrent; rather than simply paying a fine and being free to resume

their activities, violators will be required to spend precious time meeting their obligation to the court.

For aquatic resources violations, an educational curriculum already exists and can be easily implemented. Through its Makai Watch program, the Department has already developed an educational curriculum that it uses to train member groups. This curriculum provides a broad overview of aquatic resource statutes and regulations, as well as information about closed seasons, restricted areas and methods of extraction. Additionally, the Department has already successfully developed an online course for boaters, and is engaged in a similar process with respect to hunter education.

Finally, the Department notes that the option to impose alternative sentences does not preclude the judiciary from imposing fines or other penalties authorized by statute. As such, educational courses and community service are simply additional tools in the Judiciary's toolbox as it seeks to craft sentences that will deter future violations while benefiting society and the environment.

Thank you for the opportunity to provide testimony in support of House Bill 2078.



The Judiciary, State of Hawai‘i

**Testimony to the House Committee on Ocean, Marine
Resources, and Hawaiian Affairs**

Representative Kaniela Ing, Chair
Representative Nicole E. Lowen, Vice Chair
Wednesday, February 17, 2016, 9:00 a.m.
State Capitol, Conference Room 325

by

WRITTEN TESTIMONY ONLY

Judge Barbara P. Richardson
Deputy Chief Judge
District Court of the First Circuit

Bill No. and Title: House Bill No. 2078, Relating to Aquatic Resources Penalties

Purpose: Authorizes the court to require a person who violates certain laws pertaining to aquatic resources to complete an aquatic resources educational class administered by DLNR in lieu of or in addition to paying a monetary fine. Authorizes the court to require a person who violates certain laws pertaining to aquatic resources to perform community service administered by DLNR in lieu of paying a monetary fine.

Judiciary's Position:

The Judiciary supports House Bill No. 2078. Development of educational programs and community service opportunities as sentencing alternatives is one of the key recommendations by the Environmental Court Working Group as a part of the implementation of Act 218.¹ While

¹ Following passage of Act 218, establishing the Environmental Court, the judiciary was asked to convene a working group and prepare a report to the legislature. The Chief Justice convened an Environmental Court Working Group (ECWG), consisting of judges and administrators from each of the four circuits. The working group consulted with DLNR administrators and staff at DOCARE, in addition to other stakeholders, including (but not limited to) county prosecutors, public defenders and attorneys general. ECWG Report, p.11-12. The full report by the ECWG,



House Bill No. 2078, Relating to Aquatic Resources Penalties
House Committee on Ocean, Marine Resources, and Hawaiian Affairs
Wednesday, February 17, 2016, 9:00 a.m.
Page 2

prospective fines and/or incarceration serve important roles in inhibiting illegal behavior, alternative sentencing options offer other advantages that may allow courts to more directly address environmental harm caused by resource violations.

The ability of a court to require an offender to take a comprehensive educational class instead of, or in addition to, imposing a fine for a single proscribed act, can accomplish one of the goals underlying the creation of the Environmental Courts. Education about the broader principles of resource management and regulation allows offenders to better understand Hawaii's resource laws to foster a change of behavior.

Alternative sentencing options allow Environmental Court judges to impose sentences that specifically address resource offenses and violators, and will give them the ability to more effectively deter future violations, enhance public knowledge about Hawaii's resource laws and ensure that the punishment for such violations is appropriate.

Thank you for the opportunity to testify on House Bill No. 2078.

including a list of participants and stakeholders consulted, is available at:
http://www.courts.state.hi.us/docs/news_and_reports_docs/environmental_courts.pdf.



**Conservation Council
for Hawai'i**

Hawai'i's voice for wildlife

Kō Hawai'i leo no nā holoholona lōhiu



Testimony Submitted to the House Committee on Ocean, Marine Resources, and Hawaiian Affairs

Hearing: Wednesday, February 17, 2016 9 am
Conference Room 325

In Support of HB 2078 Relating to Aquatic Resources Penalties

Chair Ing, Vice Chair Lowen, and Members of the Committee,

Aloha. Conservation Council for Hawai'i supports SB 2453, which authorizes the court to require a person who violates certain laws pertaining to aquatic resources to complete an aquatic resources educational class administered by DLNR in lieu of or in addition to paying a monetary fine. Authorizes the court to require a person who violates certain laws pertaining to aquatic resources to perform community service administered by DLNR in lieu of paying a monetary fine.

We support HB 2708 because circumstances surrounding natural resources violations vary. We also agree with bill proponents that flexibility is needed in these situations. Clearly, some violators should pay fines in addition to attending aquatic resources educational classes and performing community service. The fines need to be hefty. If the fines are too small, certain violators will knowingly break the law and consider the fines to be part of the cost of doing business. Such violators should be fined, required to attend the class, and perform community service. Other violators cannot afford to pay fines, and should qualify for community service in lieu of fines. Community service may be more effective for young, first-time offenders.

Alternative sentencing authority gives the judiciary discretion in adjudicating resource crimes. When violations are simply a result of someone "not knowing better," fines are not always the best tool to change user behavior. Fines teach that behavior in a single instance was proscribed, whereas education about resource laws in general can have a lasting impact on future behavior.

The ultimate goal of resource laws is to encourage sustainable use of resources by user groups. Educational courses and community service opportunities educate and engage violators in a way that fines cannot. The dispersive effect of educational courses can lead to a better communal understanding of natural resource laws, thereby strengthening connections to the resources and encouraging sustainable use.

Alternative sentencing in other jurisdictions and areas of law has led to decreased recidivism and positive changes in behavior. Education can be especially useful in diverting first-time offenders from behavioral patterns that can lead to future violations. We defer to the court and its discretion in sentencing violators.

In the future, we encourage you to review the fines to determine whether they are high enough to deter illegal actions.

Please support HB 2078. Mahalo nui loa for the opportunity to testify. Marjorie Ziegler

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The Nature Conservancy, Hawai'i Program
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Testimony of The Nature Conservancy of Hawai'i
Supporting H.B. 2078 Relating to Aquatic Resources Penalties
House Committee on Ocean, Marine Resources, and Hawaiian Affairs
Wednesday, February 17, 2016, 9:00AM, Room 325

The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of the lands and waters upon which life depends. The Conservancy has helped to protect nearly 200,000 acres of natural lands in Hawai'i. We manage 40,000 acres in 14 preserves and work in 19 coastal communities to help protect the near-shore reefs and waters of the main Hawaiian Islands. We forge partnerships with government, private parties and communities to protect Hawai'i's important watershed forests and coral reefs.

The Nature Conservancy supports H.B. 2078 which would provide additional options for the courts to tailor penalties for aquatic resource violations to best achieve long term compliance with natural resource laws.

There is widespread agreement amongst a variety of stakeholders that Hawaii's fragile environment is in need of improved compliance, enforcement and prosecution of violations of our State natural resource laws. A 2006 State Auditor's report concludes that the DLNR's Division of Conservation and Resources Enforcement (DOCARE) officers are spread too thin and lack the equipment they need to do their jobs. This situation has not substantially improved in the ensuing ten years.

Against this backdrop, a number of communities across the state have been organizing themselves to become more directly involved in the care and management of their natural resources, particularly in coastal and near shore areas. Some communities have partnered with DOCARE to raise awareness of natural resource laws and to improve compliance with those laws.

This bill could help support that relationship through the court system by allowing judges the option of imposing educational classes and community service in lieu of, or in combination with, monetary penalties. Fines can be very useful in instances of willful or repeated violations. However, there is indication that many resource violations are the result of ignorance of the law. While ignorance of the law is not a valid excuse or defense, educational and community service programs can have the effect of creating greater understanding of the laws and resources, appreciation of community ethics and responsibility, and greater compliance in the long term.

Thank you for the opportunity to testify in support of this measure.

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Testimony in Support of HB2078 Aquatic Resource Penalties

House Committee on Ocean, Marine Resources & Hawaiian Affairs
Weds. February 17, 2016, 9:00 am, Room 235

Dear Chair Ing, Vice Chair Lowen, and Committee Members:

We write in **strong support** of HB2078 to strengthen the range of judicial remedies available to our state judges in aquatic resource violation cases.

Our organization's mission is to "replenish and sustain the natural and cultural resources of the Pūpūkea and Waimea ahupua'a for present and future generations through active community stewardship, education, and partnerships." Mālama Pūpūkea-Waimea is one of the state-designated Makai Watch programs on O'ahu, through which we partner with the State Department of Land & Natural Resources, Division of Conservation and Resource Enforcement (DOCARE) to prevent and report violations in the Pūpūkea Marine Life Conservation District. We care deeply about what happens to those who violate our marine resources law. Unfortunately, illegal activities and poaching in the MLCD continue to occur far too often. Stronger and wiser enforcement is needed.

MPW strongly supports the new judicial focus on natural resource violations through the Environmental Court. **HB2078 will add essential alternative tools to the judiciary's toolkit – an education course and community service – both effective ways to change behavior.** These alternative sentencing options are well suited for first-time offenders and defendants who are simply ignorant of the law. Stiff criminal fines should still be levied on those offenders who are serious, repeat, or intentional offenders.

Our precious marine resources need broader protection than just criminal fines. In the long run, education and community service can turn violators into potential stewards of our precious marine resources, creating a stronger more sustainable community and a more abundant ocean for all of us.

Please pass SB2078. Mahalo nui!

Sincerely,

Denise Antolini, President

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 16, 2016 5:53 AM
To: omhtestimony
Cc: rnvfishing@gmail.com
Subject: Submitted testimony for HB2078 on Feb 17, 2016 09:00AM

HB2078

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	Support	No

Comments: Aloha Honorable Chair Ing, vice Chair Lowen and Members of the House OMH Committee: I can finally support this version of this measure as it properly addresses the need to educate those who fail to comply or do not understand our regulations and/or rules. This version provides a practical solution to those unable to pay the associated fine and those who chose to ignore them. Mahalo for supporting a practical legislation addressing this concern. Respectfully Yours, Roy Morioka

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 15, 2016 11:05 PM
To: omhtestimony
Cc: hawaiiifishingfanatic@gmail.com
Subject: Submitted testimony for HB2078 on Feb 17, 2016 09:00AM

HB2078

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: In full support of legislation. Badly needed enforcement measures and penalties to deter violators from further exploitation of aquatic resources. Mahalo.

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 15, 2016 10:05 AM
To: omhtestimony
Cc: viviansuet@hotmail.com
Subject: Submitted testimony for HB2078 on Feb 17, 2016 09:00AM

HB2078

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
Vivian S. Toellner	Individual	Oppose	No

Comments: Aloha, I wish to point out this proposed weakening of existing law: removing mandatory fines. "in lieu of paying any monetary fine" So I Oppose the way it is written now, with the retention of monetary fines for repeat offenders I would Support. By the time a person has reached 3rd violation or more, education and community service are obviously not strong enough deterrents and you need to hurt the pocket book, to get their attention. Please do not weaken animal protection laws !!! Crossed out of pdf of existing Law !: (b) [The fines specified in this section shall not be suspended or waived.] Please Change this to "in lieu of paying monetary fines for 1st & 2nd offenses"

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Sent: Sunday, February 14, 2016 8:46 PM
To: omhtestimony
Cc: yamaguchd009@hawaii.rr.com
Subject: *Submitted testimony for HB2078 on Feb 17, 2016 09:00AM*

HB2078

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	Support	No

Comments:

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To: omhtestimony
Cc: rkailianu57@gmail.com
Subject: *Submitted testimony for HB2078 on Feb 17, 2016 09:00AM*

HB2078

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	Support	Yes

Comments:

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HB2078

RELATING TO AQUATIC RESOURCES PENALTIES.

House Committee on Ocean, Marine Resources, & Hawaiian Affairs

February 17, 2016

9:00 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS WITH AMENDMENTS** HB2078, which provides judges with the discretion to require potentially transformative educational- and service-based penalties in lieu of or in addition to monetary fines, for convictions of certain aquatic resources laws.

Over the last decade, it has become clear that numerous issues may be inhibiting compliance with aquatic resources laws and regulations under the jurisdiction of the Department of Land and Natural Resources (DLNR). One issue may include the sufficiency of existing criminal penalties to deter or otherwise foster lawful compliance by violators, even after a criminal judgement is rendered. Judges may also be reluctant to impose the mandatory minimum fines for criminal violations of aquatic resources laws, for indigent defendants with little economic means; as a result, judges may be more willing to allow plea deals with little punitive impact, or otherwise decline to impose the sanctions called for in statute.

This measure may help to address such issues through the authorization of alternative, educational- and service-based penalties for aquatic resources violations. Such penalties would allow and encourage judges to meaningfully sanction violators who may not be able to pay the monetary penalties called for in statute. Imposing educational- and community service-type penalties, particularly as they relate to natural or cultural resources, has the added potential benefit of transforming or rehabilitating alleged violators' perspectives regarding the importance of our resource laws, increasing the chances that they will comply with the law in the future. Moreover, service-based penalties may more directly benefit or restore aquatic resources impacted by a violator's actions.

OHA notes that the DLNR and Board of Land and Natural Resources (BLNR) have been recently exploring the use of its civil administrative enforcement authorities to address natural resource violations, including aquatic resources violations. Civil penalties for violations of aquatic resources laws may be substantial, with per-specimen fines of up to \$1,000 or more; for indigent defendants, however, the BLNR may face the same challenges as criminal judges in levying such substantial fines. Accordingly, OHA urges the Committee to similarly grant express alternative-penalty authority to the BLNR, to impose educational- or community service-based penalties in lieu of or in addition to civil

fines. In order to ensure that violators do in fact follow through with such penalties, without requiring the substantial commitment of resources by the DLNR, OHA further recommends that the Committee consider a car registration stopper, or similar mechanism, as proposed in SB1170 of the 2014 Legislature.

Accordingly, OHA urges the Committee to add two new sections to this measure, to read as follows:

SECTION __. Section 187A-12.5, Hawai'i Revised Statutes, is amended by adding a new subsection (g) to read as follows:

"(g) The board is authorized to require the completion of an aquatic resources educational class administered by the department, or the performance of natural or cultural resource-related community service administered by the department, in lieu of or in addition to any administrative fines imposed under this section; provided that the person who performs any such community service shall not be considered to be an employee of the board, and the community service shall not constitute employment. The board may direct the appropriate county authorities of motor vehicles to deny any application for the registration of a motor vehicle if the board finds that the applicant failed to comply with any requirement, or failed to pay any administrative fine, fee, or cost imposed by the board under this section, until satisfactory compliance is certified by the board or its agent."

SECTION __. Chapter 286, Hawai'i Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

"§286- Denial of application for failure to discharge a requirement or pay a fine imposed by the board of land and natural resources. In addition to any other acts or conditions provided by law, the director of finance of the appropriate county may deny any application for registration if the director of finance has received notification from the board of land and natural resources pursuant to section 187A-12.5(g) that the applicant has failed to comply with a requirement or pay any administrative fine, fee, or cost imposed by the board of land and natural resources for any violation of subtitle 5 of title 12 or any rule adopted thereunder. Unless otherwise provided by law, the director of finance shall not approve an application for registration denied under this section until receipt of certification of satisfactory compliance from the board of land and natural resources pursuant to section 187A-12.5(g)."

Therefore, OHA urges the Committee to **PASS WITH AMENDMENTS** HB2078. Mahalo nui loa for the opportunity to testify on this measure.