

DAVID Y. IGE  
GOVERNOR OF HAWAII



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INTERIM CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

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INTERIM FIRST DEPUTY

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ACTING DEPUTY DIRECTOR - WATER

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LAND  
STATE PARKS



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

Testimony of  
CARTY S. CHANG  
Interim Chairperson

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

Wednesday, February 11, 2015  
8:30 AM  
State Capitol, Conference Room 325

In consideration of  
HOUSE BILL 483  
RELATING TO OCEAN RESOURCES

House Bill 483 proposes to authorize administrative inspections of commercial fishers and wholesalers within the West Hawaii Regional Fishery Management Area (FMA). **The Department of Land and Natural Resources (“Department”) appreciates the intent of this bill and offers the following comments.**

The Department currently inspects commercial fishers and wholesalers under Sections 187A-15 and 189-14, Hawaii Revised Statutes (HRS). Section 187A-15, HRS, 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. Section 189-14, HRS, 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 483 proposes to provide the Department with additional authority (limited to within the West Hawaii FMA) to conduct administrative inspections of the bags, containers, vehicles, or conveyances of commercial fishers and marine dealers to check compliance without the burden of first establishing probable cause of a violation. The Department would suggest that the measure be expanded to apply statewide instead of only in West Hawaii to provide all enforcement officers the same tools to enforce law. More specifically, we suggest that the proposed language be inserted as an amendment to Section 189-14, HRS, rather than as a new section to Chapter 188F, HRS. This way, the Department’s inspection authority will be codified in one place, and it will apply statewide.

Because this bill raises potential Fourth Amendment issues, the Department would seek the advice of the Department of the Attorney General regarding its legal implications. Specifically, we would like clarification of subsection (b) that would preclude the use of evidence obtained through an administrative inspection for the purposes of criminal prosecution. This provision raises potential concerns, for instance, in cases where an administrative inspection uncovers evidence of more serious criminal misconduct such as the possession of drugs or weapons.

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Ross Kagawa, Vice Chair  
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**Council Services Division**  
4396 Rice Street, Suite 209  
Lihue, Kauai, Hawaii 96766

February 9, 2015

**TESTIMONY OF KIPUKAI KUALII  
COUNCILMEMBER, KAUAI COUNTY COUNCIL  
ON**

**HB 483, RELATING TO OCEAN RESOURCES**  
House Committee on Ocean, Marine Resources & Hawaiian Affairs  
Wednesday, February 11, 2015  
8:30 a.m.  
Conference Room 325

Dear Chair Ing and Members of the Committee:

Thank you for this opportunity to submit testimony in strong support of HB 483, Relating to Ocean Resources. My testimony is submitted in my capacity as the Economic Development & Intergovernmental Relations Committee Chair and as an individual Councilmember on the Kauai County Council.

HB 483 authorizes administrative inspections within the West Hawaii regional fishery management area. In 1998, the legislature established the West Hawaii regional fisheries management area which has proven to be successful in improving the sustainability of West Hawaii's nearshore fisheries, reducing user conflicts, and providing important opportunities for scientific research and monitoring. The lack of administrative inspections hampers the ability to successfully monitor this management area, hurts in efforts to minimize the threat of user conflicts, and causes ineffective monitoring compliance with resource regulations, all of which are needed to ensure the success of this management area. HB 483 would provide administrative inspection authority for vessels and catch containers of permitted fisheries within the waters of West Hawaii and the premises of any wholesale outlet selling aquatic resources, which I wholeheartedly support.

For the reasons stated above, I strongly encourage the House Committee on Ocean, Marine Resources & Hawaiian Affairs to support this measure. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188.

Sincerely,

KIPUKAI KUALII  
Councilmember, Kauai County Council



## HB483

### RELATING TO OCEAN RESOURCES

House Committee on Ocean, Marine Resources, and Hawaiian Affairs

February 11, 2015

8:30 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) Committee on Beneficiary Advocacy and Empowerment will recommend to the Board of Trustees a position of **SUPPORT** for HB483, which would facilitate the verification of commercial fishers' and wholesalers' compliance with aquatic resource laws, through administrative inspections of containers, records, and other relevant items.

**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, SEC. 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 urges the committee to **PASS** HB483. 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 February 9, 2015).



Testimony Submitted to the  
House Committee on Ocean, Marine Resources, and Hawaiian Affairs  
Hearing: Wednesday, February 11, 2015 8:30 am, Room 325  
In Support of HB 483 Relating to Ocean Resources

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

The Conservation Council for Hawai'i supports HB 483, which authorizes administrative inspections within the West Hawai'i regional fishery management area.

We defer to you, as well as legal experts, enforcement staff, and members of the West Hawai'i Fishery Council on the details of this bill.

Authority to inspect vessels and catch containers of permitted fishers in the West Hawai'i Regional Fishery Management Area is appropriate and necessary to enforce laws passed by state legislators and regulations adopted by the Board of Land and Natural Resources for this special area.

Here are photos of some of the ocean species that could benefit from HB 483. Although there is no legal take of sea turtles or sharks in the state, for example, such species would benefit because the bill authorizes inspections where there is an attempt to place aquatic resources into interstate or intrastate commerce.

Please kokua. Mahalo nui loa for the opportunity to testify.

Sincerely,

*Marjorie Ziegler*

Marjorie Ziegler



*Conservation Council for Hawai'i is a nonprofit, environmental membership organization dedicated to protecting native Hawaiian plants, animals, and ecosystems for future generations. Established in 1950 and based in Honolulu, CCH is one of the largest and most effective wildlife organizations in Hawai'i with more than 5,000 members and supporters, including concerned citizens, educators, scientists, government agencies, and elected officials.*

*Through research, education, service, organizing, and legal advocacy, CCH works to stop the destruction of native wildlife and wild places in Hawai'i.*

*Since 1973, CCH has served as the Hawai'i state affiliate of the National Wildlife Federation.*

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P.O. Box 2923 | Honolulu, HI 96802 | Office: 250 Ward Ave., Suite 220 | Honolulu, HI 96814

President: Hannah Kihalani Springer | Vice-President: Julie Leialoha | Treasurer: Bianca Isaki | Secretary: Wayne Tanaka  
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## ing2-Mary

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, February 07, 2015 12:09 PM  
**To:** omhtestimony  
**Cc:** mjellings@hawaii.rr.com  
**Subject:** \*Submitted testimony for HB483 on Feb 11, 2015 08:30AM\*

### **HB483**

Submitted on: 2/7/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Carl M Jellings Sr	Individual	Oppose	Yes

#### Comments:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, February 08, 2015 3:54 PM  
**To:** omhtestimony  
**Cc:** cwurry@yahoo.com  
**Subject:** Submitted testimony for HB483 on Feb 11, 2015 08:30AM

### **HB483**

Submitted on: 2/8/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

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

Comments: We need for these fish collectors to be held accountable for taking fish from our reefs and selling them for big money. Some follow the rules, but a lot do not ( as we saw the attack from the fish collector on the recreational diver) . They would not be attacking divers if they were held accountable It would be a big step in the right direction.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, February 08, 2015 10:57 AM  
**To:** omhtestimony  
**Cc:** dalesarver@hawaii.rr.com  
**Subject:** Submitted testimony for HB483 on Feb 11, 2015 08:30AM

### **HB483**

Submitted on: 2/8/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dale Sarver	Individual	Support	No

Comments: The marine Enforcement agencies need to be able to examine the catches of fishers in order to encourage compliance of our fishery rules. This inspection power should be applied to all fishers not just those with commercial licenses, and it should be throughout the State and not just West Hawaii. This is a standard and reasonable enforcement issue that is common in every other State I know of in the US. Until Hawaii decides to adequately protect and properly manage its marine resources they will continue to be overharvested and decline.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 09, 2015 6:12 AM  
**To:** omhtestimony  
**Cc:** neuhealth1@hotmail.com  
**Subject:** Submitted testimony for HB483 on Feb 11, 2015 08:30AM

**HB483**

Submitted on: 2/9/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Diane Neuman	Individual	Support	No

Comments: I am in support of law enforcement officers giving the authority to inspect catches on all commercial fishers in West Hawaii state waters. SEEING is BELIEVING.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 09, 2015 9:14 AM  
**To:** omhtestimony  
**Cc:** douglasperrine@yahoo.com  
**Subject:** Submitted testimony for HB483 on Feb 11, 2015 08:30AM

**HB483**

Submitted on: 2/9/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Douglas Perrine	Individual	Support	No

Comments: Passage of this bill is essential to enforcement of current and future laws managing and protecting marine resources. Without inspections there is no enforcement, without enforcement, effectively there is no law.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, February 08, 2015 4:46 PM  
**To:** omhtestimony  
**Cc:** gschultz@hawaii.rr.com  
**Subject:** Submitted testimony for HB483 on Feb 11, 2015 08:30AM

### **HB483**

Submitted on: 2/8/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Gregory Schultz	Individual	Support	No

Comments: A fisherman's refusal to allow inspection of his aquarium catch makes a mockery of any attempts to regulate this sensitive fishery. The only negative consequence to a legal fisherman would be the inconvenience, which is a small price for protection of an asset on which he also depends.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 09, 2015 8:51 AM  
**To:** omhtestimony  
**Cc:** janetgoodmanson@gmail.com  
**Subject:** Submitted testimony for HB483 on Feb 11, 2015 08:30AM

**HB483**

Submitted on: 2/9/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Janet Goodmanson	Individual	Support	No

Comments: It is essential that coolers be inspected, otherwise less than honest people have a way to hide catches that are illegal.

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**Sent:** Sunday, February 08, 2015 3:22 PM  
**To:** omhtestimony  
**Cc:** perinodesigns@gmail.com  
**Subject:** Submitted testimony for HB483 on Feb 11, 2015 08:30AM

### **HB483**

Submitted on: 2/8/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Judith Perino	Individual	Support	No

Comments: I support this bill.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 09, 2015 7:42 AM  
**To:** omhtestimony  
**Cc:** makani.christensen@gmail.com  
**Subject:** Submitted testimony for HB483 on Feb 11, 2015 08:30AM

**HB483**

Submitted on: 2/9/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
makani	Individual	Oppose	No

Comments: This is a 4th amendment issue. Illegal search and seizure.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, February 08, 2015 6:41 PM  
**To:** omhtestimony  
**Cc:** fishermud@yahoo.com  
**Subject:** \*Submitted testimony for HB483 on Feb 11, 2015 08:30AM\*

**HB483**

Submitted on: 2/8/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
scott	Individual	Oppose	No

Comments:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, February 08, 2015 3:24 PM  
**To:** omhtestimony  
**Cc:** tinaowens@hawaii.rr.com  
**Subject:** Submitted testimony for HB483 on Feb 11, 2015 08:30AM

### **HB483**

Submitted on: 2/8/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Tina Owens	Individual	Support	No

Comments: The community of West Hawaii has been proactive in establishing significant marine management regulations for our waters. However, with no ability to find out if commercial fishers are abiding by the rules, there is little reason to assume that they will be very effective. Virtually every other state allows their game wardens/enforcement officers to inspect coolers, holds, boxes, etc. Compliance is always better if people know there is a penalty for violating regulations. Please give us this ability to inspect the catch of commercial fishers in West Hawaii.

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## ing2-Mary

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, February 08, 2015 1:14 PM  
**To:** omhtestimony  
**Cc:** viviansuet@hotmail.com  
**Subject:** Submitted testimony for HB483 on Feb 11, 2015 08:30AM

### **HB483**

Submitted on: 2/8/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

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

Comments: Aloha, I have an accounting background, and would be very suspect of anyone objecting to having their business, books and operations looked at by authorities. To be able to take (remove from all others enjoyment) and sell an Hawaiian Natural Resource has to come with accountability. Let's all be proud of what we do ! For Hawaii's sake, please support any bill that protects our natural resources. Aloha & Mahalo

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, February 08, 2015 9:51 PM  
**To:** omhtestimony  
**Cc:** waynelevin@hawaii.rr.com  
**Subject:** Submitted testimony for HB483 on Feb 11, 2015 08:30AM

### **HB483**

Submitted on: 2/8/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Wayne Levin	Individual	Comments Only	No

Comments: I am submitting testimony in support of HB 483. It is very important to insure the sustainability of West Hawaii's aquatic Eco system. There is reason to believe that some fish collectors are not complying with the current regulations. Only by insuring that enforcement personnel are able to inspect the catches of fish collectors, are we able to insure compliance.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 09, 2015 12:55 PM  
**To:** omhtestimony  
**Cc:** nahacky@ilhawaii.net  
**Subject:** Submitted testimony for HB483 on Feb 11, 2015 08:30AM

### **HB483**

Submitted on: 2/9/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ulla Carmiencke	Individual	Support	No

Comments: As an aquarium fisher-woman I follow all regulations and therefore expanded enforcement will not have a negative affect on my fishing. I do not support the right of anyone to violate fishing regulations by taking advantage of limited enforcement. This being the case I fully support this bill and suggest others do also. Sincerely, Ulla Carmiencke

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**ing2-Mary**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 09, 2015 4:43 PM  
**To:** omhtestimony  
**Cc:** alpineairhawaii@yahoo.com  
**Subject:** Submitted testimony for HB483 on Feb 11, 2015 08:30AM

**HB483**

Submitted on: 2/9/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
David Dart	Individual	Support	No

Comments: Hopefully in the future Hawaii will issue a general fishing license and inspections of coolers can be included in this regulation.

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## ing2-Mary

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**Sent:** Monday, February 09, 2015 12:39 PM  
**To:** omhtestimony  
**Cc:** nahacky@gmail.com  
**Subject:** Submitted testimony for HB483 on Feb 11, 2015 08:30AM

### **HB483**

Submitted on: 2/9/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Anthony Nahacky	Individual	Support	No

Comments: Like any fishery or business enterprise there is always one or two people that do not follow the regulations. As an aquarium fisherman for 48 years I fully support efforts to remove these individuals from the fishery through reasonable enforcement as proposed in this bill. This bill unlike many others concerning the aquarium fishery proposes useful regulation that will benefit all. Please support this bill, Sincerely Anthony Nahacky

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**To:** omhtestimony  
**Cc:** bfunai@hawaii.rr.com  
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**HB483**

Submitted on: 2/9/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Brian F. Funai	Individual	Oppose	No

Comments:

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**Cc:** hifish06@yahoo.com  
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### **HB483**

Submitted on: 2/10/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Clay Tam	Individual	Oppose	No

Comments: U.S. I oppose HB483 as a U.S. citizen it is our right of privacy that must be upheld.

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**Cc:** rnvfishing@gmail.com  
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### **HB483**

Submitted on: 2/9/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Roy N Morioka	Individual	Oppose	No

Comments: Chair Ing and Vice Chair Lowen and Members of the Committee on Ocean, Marine Resources and Hawaiian Affairs: I strongly oppose HB438 as it violates the essence of our United States Constitution' 4th Amendment by removing the need for probable cause. SOH licensed commercial fisherman, understand that they are subject to such inspections. However, for a non-commercial, subsistence, native practitioner or recreational fisher person, child, or visitor to be subjected to such an inspection violates their Constitutional right. This measure for West Hawaii is precedent setting and therefore problematic. Respectfully Submitted, Roy N. Morioka

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**To:** omhtestimony  
**Cc:** dean@HawaiiGoesFishing.com  
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### **HB483**

Submitted on: 2/9/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dean Sensui	Individual	Oppose	No

Comments: I oppose this bill on the basic principle of civil rights. There's a sentence in this bill that states, "...the legislature further finds that an administrative inspection scheme allowing inspections without probable cause or criminal liability may be necessary to fulfill the State's constitutional duties." Search without probable cause violates the 4th Amendment of our nation's constitution which is supposed to apply to all citizens. A search of private property, without probable cause, can be conducted only if there is imminent danger to life or property, or with the consent of the property owner. Let's not start moving down the path of setting aside constitutional rights for the sake of expediency. I believe some of our relatives and neighbors had a negative experience with this right after Dec. 7, 1941. Thank you for your thoughtful consideration. Dean Sensui. Executive producer, Hawaii Goes Fishing.

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**Cc:** tony@pop-hawaii.com  
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**HB483**

Submitted on: 2/10/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Tony Costa	Individual	Oppose	No

Comments:

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Testifier: Wanda Rowan, Supporter. Submitted Mon Feb 9, 2015  
For Committee: OMH (Ocean, Marine Resources, & Hawaiian Affairs)  
Hearing: 2/11/2015 8:30 AM  
HB483

Aloha,

Without HR 483 passed, it will be a short time until Hawaii is left without its abundance of beautiful reef fish. This bill is so urgently needed as fishermen, aquarium collectors, and others are currently able to poach within fishery management areas.

This measure will help protect these resources and does not require additional funding. It simply allows inspections of coolers to insure existing take and no take laws are being adhered to.

I support HB 483 to allow administrative inspections within the West Hawaii regional fishery management area. Without inspections there is no enforcement of marine conservation legislation. We need this to stop poaching.

Please approve this bill to protect West Hawaii's natural resources.

Mahalo nui,

Wanda Rowan

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**To:** omhtestimony  
**Cc:** Smith6849@hawaii.rr.com  
**Subject:** Submitted testimony for HB483 on Feb 11, 2015 08:30AM

**HB483**

Submitted on: 2/9/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Bob Smith	Individual	Support	No

Comments: Aloha, Please support HB483. It is crucial to making the rules for the West Hawaii Fisheries work. Mahalo, Bob Smith

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# House Committee on Ocean, Marine Resources, & Hawaiian Affairs

Representative Kaniela Ing Chair

Representative Nicole Lowen Vice Chair

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## **Testimony in Support of Bill HB 483**

**February 7, 2015**

Chairperson Ing and Committee Members,

My name is Dennis Yamaguchi and I support the passage of HB-483. I am a full time commercial fisherman for aquarium fish on Oahu. Although this bill pertains only to the West Hawaii Fisheries Management Area on Hawaii Island, I believe enforcement of any of Hawaii's fishing laws is necessary for managing the State's resources. Administrative inspection authority within the waters of West Hawaii will be a step in the right direction.

Please pass HB-483. Thank you.

Dennis Yamaguchi

Ms. Jojo Tanimoto  
P.O. Box 44337  
Kawaihae, Hawaii 96743  
Cell Phone No.: 808-895-5226  
Email: [Homesteadlady001@yahoo.com](mailto:Homesteadlady001@yahoo.com)

Committee on Ocean, Marine Resources and Hawaiian Affairs  
Rep. Kaniela Ing, Chair  
Rep. Nicole Lowen, Vice-Chair

HB 483-  
Providing Comments in OPPOSITION to the Purpose of this Bill.

Dear Sir:

I am OPPOSED to HB 483 because of the following:

- a: (Page 1, Line 11) ...with the guidance and advice of the West Hawaii Fisheries Council (WHFC) (an advisory council to the Division of Aquatic Resources (DAR) of the Department of Land and Natural Resources (DLNR) *who have ignored the opposition of the South Kohala community and any requests to mitigate issues in this community;*
- b: (Page 1, Line 17)...reducing user conflicts; *becomes a problem in other communities because of no mitigation of the issues.*
- c: (Page 2, Lines 2 and 3) the Legislature finds that this success (*in one community despite impacts to other communities is possibly not known by the Legislators and other determining authorities because nothing in this ACT reflects a problem elsewhere*) continues to be threatened by the difficulties of resource monitoring and ensuring compliance with West Hawaii regulations,
- d: (Page 2, Line 6) adverse impacts to fisheries ecosystems and their sustainability (*includes neighboring communities and traditional ahupua'a's*).

In 2014, I was a member of the Aha Moku on the island of Hawaii-South Kohala Moku. The Legislative Annual Report-2014 will reflect issues successfully completed in my community. There are other issues pending and one of them includes an opposition to the 10-Year Moratorium In the North Kona ahupua'a-Kaupulehu. Though I do not represent the Aha Moku in this testimony, the steps to reporting and trying to accomplish compromises have not been forthcoming in this instance because of conflicting issues between mokus. One discussion was held in Waimea with the WHFC and the South Kohala community objected strenuously.

I am making this testimony to request that our Legislators take the time and make an effort to consider this long-term Moratorium in Kaupulehu as wrong; and help the South Kohala community avoid threats to our fishery eco-system and our marine sustainability. I hope the example of conflict of two opposing Aha Moku communities can traditionally work out a mitigation. This step was never included in this ACT 483.

For the sake of time, I remember reading a regulation (I don't remember where in the regulations) a 5 Year Review and Public Hearing is supposed to take place. This Kaupulehu issue heads straight toward 10 Years and no opposing views are enlisted. This regulation is also not included in ACT 483.

Kohala is the community our Ali'i Kamehameha comes from. Kamehameha had to feed the people from the natural resources in the Kohala moku. Today's political boundaries splits this community into north and south. The South Kohala boundary includes the Pu'u Kohala heiau at the National Park. Huge populations fed themselves from agriculture and the historic fish spawning area of Kawaihae. The spawning area is a secret area according to cultural, historical and traditional practices (protected by the Aha Moku). This area has not been inventoried by the Preservation Division of DLNR.

Kawaihae's marine ecosystem was maimed with the construction of the Commercial Harbor by the military in the 1950's. The Pelekane Watershed was blasted to retrieve the boulders to erect the breakwater walls at the Harbor. Today, the erosion issues from the watershed play an integral part of polluted water quality. The Department of Health has not yet addressed this issue. The United States Army Corps of Engineers (USACE) is waiting and has promised to address this issue in Pelekane Bay once the Watershed has been stabilized. A lot of partnering of government, organizations, and other individuals participate in this watershed project.

The next step is to get the State Land Use Commission to recognize that Pelekane Watershed is part of the Kohala Watershed. Their maps do not reflect this major error. Requests to correct this data has been made part of the public hearing process recently held in January. Then, this portion of the Pelekane Watershed can be recognized as the impacted erosion area and further protection can be implemented.

The nearshore areas house the historical opelu fish habitat (fishing ko'a). It is difficult to live in the silt environment from the blasted coral and dredging of the harbor. Still the original families and descendants work as they have done in generations past. The Kawaihae neighborhood houses almost 200 native Hawaiian families in the Hawaiian homestead community here. The marine environment is important to the communities here and nearby Hamakua, Kohala, and the neighboring communities.

ACT 483 would allow one community to close their boundaries; the DLNR neighboring seashores to close as well; and the NOAA Habitat Blueprint Program will close everything else continuously. That would include all the areas of the major hotels along the Queen Ka'ahumanu Highway (perhaps 35 miles continuously of prime seashore). The next community is Kawaihae.

The Purpose of ACT 483 is to ensure compliance and monitoring of activities. ACT 483 needs to include how this measure will seriously impact and provide financial, enforcement and regulation for the impacted neighboring, historical community as well.

Thank you for your assistance and considerations.

Sincerely,

Ms. Jojo Tanimoto  
Kawaihae Hawaiian Homesteader and Community member



2/11/15

Born and raised on Oahu, I am deeply passionate about the sustainability of our ocean resources and believe that if this bill gets passed, we as a community will be able to manage our resources better. I strongly support this bill.

Sincerely,  
Jhana Young

ing2-Mary

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**To:** omhtestimony  
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**Subject:** Submitted testimony for HB483 on Feb 11, 2015 08:30AM

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**HB483**

Submitted on: 2/11/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Edwin Watamura	Individual	Oppose	No

Comments: Treading dangerous ground here as this law intends on violating the 4th Amendment. Our privacy rights need to be protected

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**HB483**

Submitted on: 2/11/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michelle Sylvester	Individual	Oppose	No

Comments:

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**HB483**

Submitted on: 2/11/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
jason Hijirida	Individual	Oppose	No

Comments: I oppose this bill because it unjustly targets spear fishermen as the cause of the damage to the reefs in the designated area without any research what so ever. How can a group of people with access to this area every other year cause so much damage when there are other groups who use this area every day of every year. This is a bill with a private agenda to discriminate again one group of people.

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**To:** omhtestimony  
**Cc:** jonikamiya@gmail.com  
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**HB483**

Submitted on: 2/10/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Joni Kamiya	Individual	Support	No

Comments: Fishermen deserve to be free of harassment when doing their activities. They should be free from any worries that they may be subject to this kind of behavior.

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**Cc:** wekeis333@gmail.com  
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**HB483**

Submitted on: 2/10/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Tony Sylvester	Individual	Oppose	No

Comments:

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**HB483**

Submitted on: 2/10/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Marc Kawamoto	Individual	Oppose	No

Comments:

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**Sent:** Tuesday, February 10, 2015 7:37 PM  
**To:** omhtestimony  
**Cc:** shyla.moon@ymail.com  
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**HB483**

Submitted on: 2/10/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Shyla Moon	Individual	Oppose	No

Comments: I strongly oppose DLNR to have any rights to search on a notion or hint that someone is stealing or violating the law. It is giving DLNR way too much power to do what they want when they want. The section stating that if someone in that area refuses to show permit, license or registration to official person they get their license, permit or registration immediately suspended and the board will look over giving back - that is unfair. Would you do that to someone with their purse? No. So keep privacy rights in Hawaii. Strongly oppose! Innocent until proven guilty.

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**To:** omhtestimony  
**Cc:** kawamotok008@hawaii.rr.com  
**Subject:** Submitted testimony for HB483 on Feb 11, 2015 08:30AM



**HB483**

Submitted on: 2/10/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kurt Kawamoto	Individual	Oppose	No

Comments: Strongly oppose.

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**To:** omhtestimony  
**Cc:** mel@malinowski.com  
**Subject:** Submitted testimony for HB483 on Feb 11, 2015 08:30AM



**HB483**

Submitted on: 2/10/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Mel Malinowski	South Kohala Reef Alliance	Support	Yes

Comments: Our kapus are useless if unenforceable. Enacting HB483 is needed to allow reasonable inspections so as to detect forbidden activities. These inspections would harm no one, and should be allowed. We encourage you to pass HB483.

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**To:** omhtestimony  
**Cc:** morrislures@yahoo.com  
**Subject:** Submitted testimony for HB483 on Feb 11, 2015 08:30AM



**HB483**

Submitted on: 2/10/2015

Testimony for OMH on Feb 11, 2015 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Nick Morris	Individual	Oppose	No

Comments: Totally against this. This takes away from our constitutional rights.

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