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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 Senate Committee on
WAYS AND MEANS**

**Tuesday, March 1, 2016
1:30 PM
State Capitol, Conference Room 211**

**In consideration of
SENATE BILL 2904
RELATING TO AQUATIC MITIGATION BANKS**

Senate Bill 2904 grants the Department of Land and Natural Resources (Department) authority to establish and operate aquatic mitigation banks, the purpose of which is to restore, create, enhance, or preserve aquatic habitats or resources as compensatory mitigation where a person is required to provide compensatory mitigation prospectively and the use of banked mitigation is approved by the agency requiring mitigation, or for past damages to aquatic habitats or resources. **The Department strongly supports this Administration measure.**

This measure would provide the Department with another mechanism to address the increasing adverse impacts to the State's aquatic public trust resources and habitats. Resource agencies identify the use of mitigation banks as the preferred form of compensatory mitigation. Compensatory mitigation refers to the restoration, creation, enhancement, or preservation of aquatic habitats or resources for the purposes of offsetting unavoidable adverse impacts. In a mitigation bank, aquatic resources or habitats are improved and "banked" in anticipation of potential future losses of similar resources or habitats. When a resource agency requires a responsible party to conduct compensatory mitigation, either in advance of permitted impacts to aquatic resources or habitats or as a part of remediation for unpermitted adverse impacts, the responsible party can satisfy this mitigation requirement through a mitigation bank.

Mitigation banking is an innovative tool for resource protection and restoration. The concept has existed at the federal level since 1983. In addition, at least twenty-eight states have developed their own legislation, rules, or guidance to offset resource losses from state permitting regimes, or for unplanned impacts to aquatic resources and habitats. Although mitigation banks have

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predominantly restored wetland and stream habitats, there has been an increasing national interest in using mitigation banks to improve coral reef, sea grass, and estuarine habitats.

The authority to develop mitigation banks is a first step in the process of creating innovative mechanisms for aquatic resource conservation. With this authority, the Department can promulgate appropriate rules and establish mitigation banks for a variety of habitat types, beginning with coral reefs. In conclusion, as mentioned previously, the Department supports this measure as written.



SB2904
RELATING TO ENVIRONMENTAL MITIGATION
Senate Committee on Ways and Means

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1:30 p.m.

Room 211

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB2904. This measure would authorize the Department of Land & Natural Resources (DLNR) to establish aquatic resource mitigation banks, to more effectively mitigate or compensate for the loss of aquatic resources impacted by both planned and unplanned activities.

Mitigation banking and similar programs may help to streamline state and federal permitting processes, while generating revenue to support efficient and coordinated resource conservation and protection programs. Well-established on the continental United States, particularly for wetland areas, mitigation banking seeks to address possible gaps and inefficiencies with traditional “permittee-responsible” mitigation, in which federal or state permittees are tasked with directly mitigating the environmental impacts of projects for which their permits are sought. Mitigation banks instead allow permittees to purchase “credits” or otherwise financially support mitigation efforts in a designated “bank” area or program, utilizing the more specific expertise and/or planning processes of the institution managing the “bank,” and taking advantage of the more easily measurable characteristics of an established mitigation operation. In this way, mitigation banking may provide for a more efficient and coordinated means to mitigate the impacts of development and other activities, while streamlining the permitting process for such development. Similarly, a mitigation bank can also ensure that fines collected as a result of unplanned activities that damage certain resources, are more appropriately assessed and dedicated to the restoration of similar resources within the bank.

OHA believes that the aquatic resource mitigation banks authorized by this bill may allow the DLNR’s Division of Aquatic Resources to engage in new, innovative, and much-needed aquatic habitat rehabilitation programs and initiatives, and ensure the more efficient and effective use of fees and fines resulting from activities that impact our aquatic resources.

Therefore, OHA urges the Committee to **PASS** SB2904. Thank you for the opportunity to testify on this measure.