

DAVID Y. IGE
GOVERNOR OF HAWAII



**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**

**Thursday, February 23, 2017
1:30 PM
State Capitol, Conference Room 211**

**In consideration of
SENATE BILL 110, SENATE DRAFT 1
RELATING TO AQUATIC RESOURCES**

Senate Bill 110, Senate Draft 1, proposes to grant the Department of Land and Natural Resources (Department) authority to establish and operate in-lieu fee mitigation, 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 in-lieu fee mitigation is approved by the agency requiring mitigation, or for past damages to aquatic habitats or resources. **The Department strongly supports this measure and offers the following comments.**

Hawaii's rich and diverse aquatic habitats support an abundant array of aquatic life; however, these habitats, particularly our coral reefs, are susceptible to degradation from human and natural stressors. Mitigation banking and in-lieu fee are mechanisms that the Department may use to promote aquatic resource recovery, with a strong focus on restoring Hawaii's coral reef ecosystems. In the 2016 legislative session, the Department obtained authority to establish and operate mitigation banks for the same purposes. Mitigation banking is a mechanism in which a mitigation bank sponsor selects degraded aquatic habitats, restores aquatic functions, and quantifies these "banked" improvements as "credits" that are made available for purchase by responsible parties required by state and federal resource agencies to mitigate prospective or actual damage to aquatic resources. In-lieu fee is essentially mitigation banking in reverse: a third party in-lieu fee mitigation sponsor first collects funds from permit applicants or responsible parties required to mitigate actual natural resource damage and then the sponsor creates restoration projects using those funds. In-lieu fee mitigation sponsors typically combine the fees collected from many permitted projects or damage settlements to create larger and more ecologically-valuable mitigation projects. As the mitigation bank and in-lieu fee mitigation sponsor, the Department would be able to engage in more long-term resource restoration measures and better address aquatic resource losses. The Department expects to accept fees in-lieu of mitigation from two sources: 1) permittees required to mitigate

SUZANNE D. CASE
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damage from discharge or dredge and fill activities permitted under Section 404 of the Clean Water Act; and 2) unauthorized resource damage settlements, fines, and penalties.

The primary objective of both mitigation banking and in-lieu fee mitigation is to reduce aquatic resource losses where there are identifiable parties responsible for damaging these resources and resource agencies require these parties to compensate for those losses through “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 that remain after all appropriate and practicable avoidance and minimization has been achieved. Compensatory mitigation originated under the Clean Water Act’s Section 404 permit program (Section 404 program), established to regulate the discharge of dredge and fill material into the waters of the United States. Section 404 requires a permit from the United States Army Corps of Engineers (Corps) before dredged or fill material may be discharged into waters of the United States. In evaluating Section 404 permit applications, the Corps first makes a determination that potential impacts have been avoided to the maximum extent practicable; remaining unavoidable impacts will then be mitigated to the extent appropriate and practicable; and, finally, the Corps will require compensation for unavoidable aquatic resource losses. Permittees may either conduct the compensatory mitigation projects themselves, known as “permittee-responsible mitigation,” or transfer their obligations to a third party by paying into a mitigation bank or in-lieu fee. Although mitigation banking and in-lieu fee have traditionally been used under permit programs, these resource recovery mechanisms can also be used in the context of unauthorized resource damage, such as coral damage from ship groundings, where responsible parties are required to pay to remediate damages.

Natural resource agencies prefer mitigation banks and in-lieu fee mitigation to permittee-responsible mitigation because these third party mitigation bank or in-lieu fee sponsors are often public or private entities with more restoration experience, scientific expertise, and vested long-term interest in natural resource conservation. This measure would provide the Department with another innovative mechanism to improve state stewardship of aquatic public trust resources and habitats, increase accountability for aquatic resource damage, and provide higher quality remediation to make damaged resources whole again. Although in-lieu fee mitigation has been predominantly used to restore wetland and stream habitats in other parts of the United States, there has been an increasing national interest in using in-lieu fee mitigation to improve coral reef, sea grass, and estuarine habitats. The Department intends to be the first state in the nation to establish in-lieu fee mitigation for coral reefs.

The flexibility to use both mitigation banking and in-lieu fee mitigation will enable the Department, state and federal resource agencies, permit applicants, and other affected parties to select the most appropriate mitigation mechanism to restore damaged resources and reduce further net losses to public trust resources. The authority to conduct in-lieu fee mitigation is the next steps in the process of creating innovative tools mechanisms for aquatic resource conservation to protect the state’s valuable public trust resources. In conclusion, as mentioned previously, the Department supports this measure as written.

Thank you for the opportunity to comment on this measure.



COMMITTEE ON WAYS AND MEANS

Senator Jill N. Tokuda, Chair
Senator Donovan M. Dela Cruz, Vice Chair

NOTICE OF DECISION MAKING

DATE: Thursday, February 23, 2017
TIME: 1:30 PM
PLACE: Conference Room 211

TESTIMONY OF THE OCEAN TOURISM COALITION SPEAKING
IN SUPPORT OF SB110,SD1

Chair Senator Tokuda, Vice Chair Dela Cruz and Members of the Committee on Ways and Means:

My name is James E. Coon, President of the Ocean Tourism Coalition **speaking in Support of SB 110, SD1**. The OTC represents over 300 small ocean tourism businesses state wide. Most of these are family businesses which are locally owned and operated. Many of them have been in business for several decades and are an important and valued part of their respective communities. Most of these businesses operate from State Boating Facilities. Most of these businesses also access day use moorings and Marine Life Conservation Districts.

We support the intent of this bill which gives additional tools to DAR for in-lieu fee mitigation to restore, create, enhance, or preserve aquatic habitats or resources as compensatory mitigation.

Sincerely,

James E. Coon, President
Ocean Tourism Coalition



LATE

February 23, 2017

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Chair

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Legislative Affairs Committee Co-Chairs

SUPPORT FOR SB110 SD1
RELATING TO AQUATIC LIFE
Thursday, February 23, 2017 1:30 pm State Capitol, Conference Room 211

Senator Jill Tokuda, Chair
Senator Donovan Dela Cruz, Vice Chair
Senate Committee on Ways and Means

Submitted on Behalf of the Democratic Party of Hawaii

The Democratic Party of Hawaii supports SB110 SD1 "Relating to Aquatic Life," the intent of which is to promote education about near-shore aquatic life with the aim of developing a plan for its comprehensive management. **Passage of SB110 SD1 is consistent with the DPH's Environmental Wellbeing legislative priority for this Legislative Session to support legislation to improve marine/ocean health.**

Respectfully submitted,

/s/ Tim Vandever (tim@hawaiidemocrats.org)
Chair of the Democratic Party of Hawai'i

/s/ Margaret Wille (margaretwille@mac.com)
/s/ Sean Smith (simashang@yahoo.com)
Legislative Affairs Committee Co-chairs

Testimony of The Nature Conservancy of Hawai'i
Supporting S.B. 110 SD1 Relating to Aquatic Resources
Senate Committee on Ways and Means
Thursday, February 23, 2017, 1:30PM, Room 211

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 S.B. 110 SD1 that would authorize the Department of Land and Natural Resources to use in-lieu fee mitigation to restore, create, enhance, or preserve aquatic resources as compensatory mitigation.

Hawai'i's nearshore waters are home to more than 7,000 forms of marine life, a quarter of them found nowhere else on Earth. In addition to biological significance, the vast coral reef ecosystem is a valuable asset that contributes culturally and economically to Hawai'i's future. The coral reef ecosystem creates habitat for many fish and invertebrate species with commercial value, supports tourism and recreational industries, and shelters coastlines from natural disturbances. Life in Hawai'i depends upon a healthy and thriving marine environment.

Over the past several decades, the health of Hawai'i's rich aquatic environment has been significantly altered due to human caused and natural stresses. With the added threats from global climate change predicted to occur within the next 50 years, the need to protect our reefs and other aquatic resources has never been more urgent.

The U.S. Army Corps of Engineers (Corps) anticipates dozens of permitting actions in Hawai'i over the next few decades that will likely have unavoidable impacts on aquatic resources under the jurisdiction of the Corps, the Environmental Protection Agency (EPA) and the State of Hawai'i. In such instances, compensatory mitigation may be required to replace the loss of wetland, stream, coral reef and/or other aquatic resource functions and services. The DLNR is proposing to establish mitigation bank (authorized by the Legislature last year) and in-lieu fee (ILF) programs, as contemplated under Corps and EPA laws and regulations, to help make more effective and ecologically sound decisions regarding compensatory mitigation for both unavoidable impacts and for marine violations that harm the nearshore marine resources.

The primary objective of the ILF program is to ensure "no net loss" of acreage and/or function of marine aquatic resources (e.g., coral reefs, sea grass beds, wetlands, streams). The DLNR's proposed ILF and mitigation bank programs will help protect, maintain, and restore functional aquatic ecosystems by consolidating mitigation requirements of multiple projects into an organized plan, locating mitigation projects within proximity of ongoing multi-agency regional conservation efforts to optimize ecological benefits, and achieving accountability by using monitoring and effectiveness standards approved by the Corps and EPA.

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