

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
WAYS AND MEANS**

**Wednesday, February 28, 2018
11:00 AM
State Capitol, Conference Room 211**

**In consideration of
SENATE BILL 2052, SENATE DRAFT 1
RELATING TO FISHING**

Senate Bill 2052, Senate Draft 1 proposes to require the Department of Land and Natural Resources (Department) to license non-commercial marine fishing along with freshwater fishing, engage in public outreach prior to implementing the combined non-commercial freshwater and marine fishing license, and submit reports to the legislature. The measure would prohibit enforcement of the requirement to obtain a license to catch marine life for non-commercial purposes until 6/1/2020. **The Department supports this measure, subject to the following amendments and comments.**

A properly implemented non-commercial marine fishing license could greatly benefit fisheries management in a number of ways. Licenses would provide a means for the Department to collect better information and data to improve fisheries management. License revenues could fund fisheries monitoring, enhancement, and enforcement. A license program would foster more two-way dialogue between fishers and managers. It would also enhance fisheries enforcement by enabling enforcement officers to inspect for compliance. To ensure that all these benefits are realized, the Department offers the following comments.

The Department has strong concerns with Section 188-50(g), Hawaii Revised Statutes (HRS), which would disqualify any licensee or applicant who has been convicted of, pled guilty or nolo contendere to, or been granted a deferred acceptance of a guilty plea to a violation of this chapter in the preceding five years from obtaining or renewing a non-commercial license. This would be a strong incentive for compliance, but may be too harsh of a punishment in all situations. The Department suggests the following language as an alternative:

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

(g) Any person who has any outstanding criminal or administrative fines resulting from a violation of Title 12, Subtitle 5, or any rules adopted thereunder, shall not be eligible to obtain or renew a non-commercial freshwater and marine fishing license.

The Department recognizes the importance of protecting traditional and customary native Hawaiian rights, but has concerns with the language in Section 188-50(h), HRS, that would create a complete defense to the license requirement if a person establishes that they were engaging in a constitutionally protected traditional and customary practice. The Department believes that existing case law provides adequate protection for the exercise of traditional and customary native Hawaiian rights. Under current case law, the exercise of a traditional and customary practice is a valid defense, but one that must be balanced against the State's interest in protecting and preserving its natural resources. See *State v. Pratt*, 124 Haw. 329; 243 P.3d 289 (“The rights of Native Hawaiians to engage in customary or traditional Native Hawaiian practices, carried out on land that was undeveloped or less than fully developed, is not an absolute right, but is a right that needs to be balanced against the interest of the State of Hawaii in keeping the Kalalau State Park a wilderness area, protecting the area for all to enjoy, conserving park resources and providing for the health and safety of all who visit the area”). The Department suggests that Section 188-50(h) be amended to read:

(h) Nothing in this section shall be construed to restrict the exercise of traditional and customary rights protected pursuant to article XII, section 7, of the Hawaii State Constitution; provided that the rules adopted pursuant to subsection (a) shall allow for the exercise of traditional and customary practices by minimizing, to the extent practicable, any burden on practitioners, including burdens associated with obtaining a license or paying applicable fees, if any[; provided further that the exercise of a constitutionally protected traditional and customary practice shall be a complete defense to a violation of subsection (a)].

The Department suggests deleting Section 188-50(j), HRS, which would make violation of subsection (a) a mandatory misdemeanor. Existing laws provide a broad range of penalties sufficient for encouraging compliance, including a petty misdemeanor offense, minimum \$100 criminal fine, up to \$1000 administrative fine, revocation of license, community service, and a mandatory aquatic resources educational class.

Thank you for the opportunity to comment on this measure.



SB2052 SD1
RELATING TO FISHING
Senate Committee on Ways and Means

February 28, 2018

11:00 a.m.

Room 211

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on SB2052 SD1, which seeks to realize the potential management benefits of a noncommercial marine fishing license for the taking of marine life in Hawai'i.¹ OHA appreciates this bill's recognition of the need for the state to better manage resources of particular importance to Native Hawaiian cultural practitioners and subsistence communities. **OHA further appreciates the various amendments made to the SD1 draft addressing a number of our previous concerns, including those relating to the minimization of unintended consequences, impacts to rural communities and cultural practitioners, and the solicitation of input a range of perspectives and geographic locations.** OHA does note two remaining concerns for the Committee's consideration, regarding the potential impacts of criminal liability for fishing without a license, and ensuring the Department of Land and Natural Resources (DLNR) has sufficient flexibility to tailor a fair and equitable licensing system.

As an initial matter, OHA acknowledges and appreciates the potential benefits that may be realized from a noncommercial marine fishing licensing program in Hawai'i. OHA has long-advocated for more responsible and proactive management and protection of our marine resources, particularly in light of their importance to our beneficiaries' culture, health, and economic self-sufficiency. OHA accordingly understands that the added data collection opportunities, avenues of communication and information sharing, and increased management and enforcement resources that may be provided through a noncommercial fishing license may potentially enhance the state's capacity to better manage, conserve, and protect natural and cultural marine resources essential for the continuation of Native Hawaiian traditional and customary and subsistence practices and lifestyles. **Notably, while fishing pressure and fishers alone are clearly not the only source of stress on our marine resources, OHA also understands that a licensing structure could potentially help to address a range of potential ocean threats and stressors including through additional data and information about these resources, solicited from fishers themselves.**

OHA offers the following additional comments for the Committee's consideration:

¹ OHA notes that the sequencing of "introduced freshwater game fish" and "marine life" on page 7, lines 11-12, may suggest that licenses are only required for the taking of "introduced . . . marine life," rather than marine life generally as apparently intended by this measure..

First, OHA notes that the criminal justice system disproportionately impacts Native Hawaiians at every stage of the criminal justice process, and that Native Hawaiians, especially those from subsistence communities, may be particularly likely to fish from nearshore waters for noncommercial purposes. OHA also believes that full criminal misdemeanor liability and a criminal record is not necessarily an appropriate penalty for failing to obtain a fishing license, as would result from the express language on page 9, line 2.² **Accordingly, in order to avoid exacerbating the impact of the criminal justice system on Native Hawaiians, OHA respectfully but strongly urges amending the language found on page 9, lines 1-3, to read as follows:**

“(j) Any violation of this section shall be subject to general administrative penalties as described under section 187A-12.5, provided that no criminal liability shall be imposed for a violation of this section.”³

Second, OHA appreciates the preamble’s clarification, that seeks to provide the DLNR some flexibility in issuing license for varying durations of less than a year. **However, OHA notes that the statutory prohibition on waivers and exemptions may nonetheless inadvertently limit the DLNR’s flexibility in developing a license fee and administration structure that may be more equitable and practicable, when fee waivers or exemptions may be more appropriate for certain fishers.** For example, fee waivers or exemptions may be more appropriate for subsistence fishers; cultural practitioners who, notwithstanding their constitutional rights and protections, may wish to acquire a license and avoid the potential burdens of defending themselves from a citation; fishers with extremely limited incomes; individuals who plan only to fish on a single occasion or “free day” established by the department; or others who may merit different levels of consideration in a licensing program. **Similarly, while this measure appears to contemplate fishing licenses to be issued on an annual basis, it may be more appropriate to issue multiple-year or lifetime licenses for certain fishers, including those who reside in isolated, rural areas or otherwise face heightened challenges in acquiring a license.** Accordingly, OHA respectfully recommends amending the language found on page 5, lines 12-13, to read as follows:

“(3) The department may provide for fee waivers or exemptions and issue licenses that are valid for periods longer or shorter than a year, as it deems appropriate.”

Mahalo nui for the opportunity to testify on this measure.

² Notably, all but the most egregious violations of aquatic resources laws and regulations are currently limited to petty misdemeanor liability.

³ HRS § 187A-12.5 provides for a civil fine of up to \$1,000 for a violation of general aquatic resources laws, as well as a \$1,000 per-specimen fine for marine life taken in violation of such laws. Fines are higher for endangered or threatened species. Such fines should constitute a more than sufficient deterrent to encourage compliance with a licensing requirement, provided that meaningful outreach and reasonable opportunities to comply are provided.

SB-2052-SD-1

Submitted on: 2/22/2018 4:32:47 PM

Testimony for WAM on 2/28/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Teresa L. Nakama	Testifying for BIFA	Oppose	No

Comments:

We hereby strongly oppose SB2052 SD1....The what is left of a fishing community on all Islands have not had the opportunity to voice their opposition of this bill and this serves nothing more than another tax burden to the fishing communities that fish for food to feed their ohana. We no longer have a large recreational fishing communities as we have had in the past and now the nubers are even less. The only real fishing community in existence is the Village of Miloli'i here on Moku O'Keawe, and they are managing their resources. What needs to be manage is extreme development near our shorelines and the potential private space port being proposed at Pohue Bay in Ka'u..these are the real dangers to our natural marine resources. I urge all representative to oppose and Kill SB 2052 SD1.

Respectfully Yours,

Teresa L. Nakama

BIFA Representative

Testimony of The Nature Conservancy of Hawai'i
Supporting SB 2052 SD1 Relating to Fishing
Senate Committee on Ways and Means
Wednesday, February 28, 2018, 11:00AM, 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 43,000 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 providing the Department of Land and Natural Resources (DLNR) with the statutory authority needed to license non-commercial marine fishing, including a related fee schedule. We recommend that the Legislature also authorize the DLNR to establish the detailed provisions of such licensing and fee schedule through the administrative rulemaking process, preceded by the public outreach described in Section 3 of the bill.

Hawai'i's marine resources contribute to our unique way of life, and are a source of sustenance, recreation and economic prosperity. Unfortunately, they also face threats from pollution, sedimentation, overharvesting, and invasive species. Studies indicate that present day reef fish stocks in the main Hawaiian Islands have decreased by 75% in the past century. There is widespread agreement amongst a variety of stakeholders that Hawai'i's coastal environment needs improved management by government, communities, cultural practitioners, and the general public all working together. Licensing both commercial and non-commercial marine fishing is an important component of several necessary aspects of sound marine policies and strategies, including encouraging responsible fishing, regulating unsustainable fishing methods, strengthening enforcement, supporting community participation in fishery management, and gathering important data to support sound management decisions.

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SB-2052-SD-1

Submitted on: 2/21/2018 9:37:51 PM

Testimony for WAM on 2/28/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ty Spangler	Individual	Support	No

Comments:

As a fisherman and marine biologist who was born and raised in Hawaii, I am glad to see a bill proposing a non-commercial fishing license. It is no secret that the nearshore resources are facing increasing pressure and something must be done to protect our resources for future generations. I strongly believe that having a licensing system such as the one proposed in this bill will improve the state's ability to better enforce the current regulations. I have been going spearfishing for over a decade and have never once had an official check my catch to ensure it was within regulations. If the proceeds from this licensing system go towards improving enforcement, then there will be hope for the sustainment of our resources that so many people here in Hawaii rely on.

SB-2052-SD-1

Submitted on: 2/23/2018 9:30:43 AM

Testimony for WAM on 2/28/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Randy Cheung	Individual	Oppose	No

Comments:

Section 188-50(g) would basically ban a person from fishing in the state of Hawaii for 5 years for a single violation of chapter 188? What an absurd punishment... and this is on top of the petty misdemeanor?

SB-2052-SD-1

Submitted on: 2/22/2018 11:35:30 AM

Testimony for WAM on 2/28/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Tom Ogawa	Individual	Support	No

Comments:

Revenues from the fishing license would help support marine fishery enforcement and improve data collection capabilities pertaining to non-commercial fishing activities. Monitoring data that is more accurate and representative would provide resource managers with a solid foundation for making wise management decisions. As a non-commercial fisher myself, I support the bill and am willing to contribute a relatively small annual fee that would help to sustain fish populations and perpetuate fishing practices for future generations.

SB-2052-SD-1

Submitted on: 2/23/2018 1:46:00 PM

Testimony for WAM on 2/28/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Kealii Pang, Ph.D.	Individual	Support	No

Comments:

SB-2052-SD-1

Submitted on: 2/22/2018 10:27:06 AM

Testimony for WAM on 2/28/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Clay Tam	Individual	Oppose	No

Comments:

To the committee hearing SB2052,

I am personal submitting testimony in **opposition of SB2052**. For the fact that this issue is very polarized and should be administred through DLNR by a more transparent process. Willing and forcing complaince through the legislative process and law is not only wrong but an abuse of power.

If resource management and enforcement is an issue perhaps the legislature should consider increasing funding to the appropriate agencies to allow them to do the job that they were trained to do. To create another law to force an agency and individuals to react or comply purposely skirts the democratic process that our country was founded upon.

Thank you for your time and consideration of this testimony.

Sincerely,

Clay Tam

Voter, Fishermen and Taxpayer

SB-2052-SD-1

Submitted on: 2/21/2018 9:17:53 PM

Testimony for WAM on 2/28/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Darrell Tanaka	Individual	Support	No

Comments:

Fishermen pay enough taxes....the license is a good thing for management but it should be FREE.

SB-2052-SD-1

Submitted on: 2/26/2018 8:51:31 AM

Testimony for WAM on 2/28/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dusten Dudoit	Individual	Oppose	No

Comments:

I strongly oppose this bill. This would create a direct infringement upon my native gathering rights guaranteed to me by the Hawaii State Constitution. If money is needed for better management, require licenses from non residents or non-natives only who does not have a constitutionally protected right to gather. Charter fishing is big business here, I'm sure requiring license by non residents will add enough funds for better resource management.

Dusten Dudoit

Native Hawaiian Gatherer

SB-2052-SD-1

Submitted on: 2/27/2018 9:25:53 AM

Testimony for WAM on 2/28/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for OCC Legislative Priorities Committee, Democratic Party of Hawai'i	Support	No

Comments: