

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
WATER AND LAND**

**Wednesday, January 31, 2018
2:45 PM
State Capitol, Conference Room 224**

**In consideration of
SENATE BILL 2052
RELATING TO FISHING**

Senate Bill 2052 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 also proposes to amend the expenditure provisions of the Sport Fish Special Fund, under Section 187A-9.5, Hawaii Revised Statutes (HRS). **The Department supports this measure, subject to the following edits 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 strongly recommends leaving the Sport Fish Special Fund unamended. The Department receives significant federal funding through apportionments under the Dingell-Johnson Sport Fish Restoration Act. Apportionment of funds is contingent upon the adoption and maintenance of State laws that assent to the provisions of the Dingell-Johnson Sport Fish Restoration Act, including "a prohibition against the diversion of license fees paid by fishermen for any other purpose than the administration of said State fish and game department." The Division of Aquatic Resources is the State agency that regulates fisheries. Diversion of license

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

revenues for purposes other than managing fisheries (e.g., to the Division of Boating and Ocean Recreation to develop or maintain small boat harbors) would disqualify the State from receiving these federal funds. Alternatively, if amendments are sought, the Department strongly recommends seeking review of the proposed measure by the United States Fish and Wildlife Service to ensure that any amendments to Section 187A-9.5, HRS, do not disqualify the State from receiving federal funding.

In light of a recent Supreme Court ruling, the measure, as written, would potentially subject every non-commercial freshwater and marine license applicant to environmental review under the Hawaii Environmental Policy Act (“HEPA”) because of the discretionary language used in Section 188-50(b), HRS. The Department proposes amending the language to make it a ministerial license.

The Department also prefers to establish fees through administrative rulemaking, and to have the flexibility to explore options for shorter-term licenses, such as 1-day or 7-day licenses, in addition to annual licenses. This will allow us to better accommodate visitors and occasional fishers, and would allow the Department to adjust fees through rule amendments as necessary. Accordingly, the Department proposes amending (Highlighted in yellow) Section 188-50(b), HRS, as follows:

(b) The licenses ~~[may]~~ shall be issued by agents of the department of land and natural resources upon written application in such form as may be prescribed by the department together with payment of a fee. The fees for licenses and duplicate licenses shall be established by the department by rules adopted in accordance with chapter 91[.]; provided that~~[+]~~

(1) ~~the~~ The resident fee for licenses issued beginning August 1, 2019, and ending June 30, 2021, shall not be set at more than \$15 per year~~[+]~~

(2) The non resident fee shall be at least five times the amount of the resident fee; and

(3) Waivers or exemptions are prohibited unless otherwise required by law].

The Department suggests amending Section 188-50(e), HRS, to include the option to suspend a non-commercial marine fishing license to give the Department greater flexibility and discretion in dealing with violators. The following language is proposed:

(e) The department may ~~suspend or~~ revoke any license for any infraction of the terms and conditions of the license. Any person whose license has been revoked shall not be eligible to apply for another license until expiration of one year from the date of revocation.

The Department suggests deleting Section 188-50(h), HRS, which would make violation of this section 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.

SB-2052

Submitted on: 1/28/2018 3:33:56 PM

Testimony for WTL on 1/31/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
William K. Chang	Citizen	Support	No

Comments:

SB-2052

Submitted on: 1/28/2018 7:31:07 PM

Testimony for WTL on 1/31/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Darrell Tanaka	individual	Oppose	No

Comments:

I support a saltwater fishing license, but because of the recent court case involving the aquaium fish permit and the ban on that permit until an EIS is done, I fear that if we create a recreational license prior to the state conducting an EIS for saltwater recreational fishing, all fishing in Hawaii could be shutdown by court order.

SB-2052

Submitted on: 1/29/2018 8:15:28 AM

Testimony for WTL on 1/31/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Randall Nishimura		Oppose	No

Comments:

One of the measures of the Bill includes public outreach. I would support a bill that requires public outreach only. That would provide the Legislature the means to gauge public support before directing the Department to perform the licensing without adequate public support.

If the Department would like to pursue this as policy (assuming this is their desire) , they need to do their due diligence with the public before proposing such legislation.If it is the desire of special interest groups to do this, have them provide data that supports their desire.

With all due respect, this is an ass backwards approach to the issue.

LATE

SB-2052

Submitted on: 1/29/2018 8:04:07 PM

Testimony for WTL on 1/31/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Shyla Moon		Comments	No

Comments:

Please use information from the feasibility study working group done on non-commercial fishing licenses in Hawaii. Here's the website to Dlnr study: <http://dlnr.hawaii.gov/dar/announcements/feasibility-of-a-non-commercial-marine-fishing-registry-permit-or-license-system-in-hawaii/>

SB-2052

Submitted on: 1/30/2018 2:14:35 PM

Testimony for WTL on 1/31/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
		Comments	No

Comments:

Aloha Chair Rhoads and members of the Committee on Water And Land:

I submit some **comments** regarding this bill and what it may or may not be clear on.

In speaking with Senate staff, it has come to my attention that the fishing license covers freshwater fish (with fins and swims) but the intent of the marine portion of the license is to cover all marine life, including, octopus, crab, `opihi, pipipi, sea cucumbers, etc.

My concern is the consistency of the aquatic life covered between the freshwater coverage and the marine coverage.

If there is a "fishing" license for both, shouldn't the coverage be the same of the aquatic life covered?

If there is still the intent to differentiate between freshwater and marine coverage, this should be clearly identified and your committee report should justify why there is a difference, else this is just a bill pandering to a select segment of the concern raised by the State in not being able to quantify and identify what is being harvested in the marine environment.

Mahalo,

Cynthia K.L. Rezentes



LATE

SB2052
RELATING TO FISHING
Senate Committee on Water and Land

January 31, 2018

2:45 p.m.

Room 224

The Administration of the Office of Hawaiian Affairs (OHA) will recommend that the Board of Trustees offer the following **COMMENTS** on SB2052, 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, and urges the Committee to ensure that this legislation considers and addresses the below concerns relating to avoiding unintended consequences of certain language within the bill; affording the Department of Land and Natural Resources (DLNR) sufficient flexibility to ensure any licensing system is both practicable and equitable; and minimizing any unnecessary burdens on Native Hawaiian cultural and subsistence practitioners and the Native Hawaiian community in general.

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 does note that as written, this measure may inadvertently prohibit all noncommercial marine fishing activities, from the time it takes effect to the time that the DLNR is able to produce the forms and regulations necessary to implement a noncommercial marine fishing license program. **Accordingly, OHA respectfully recommends that, should this measure move forward, the noncommercial marine license requirement on page 7, lines 9-13, be deferred until the adoption of rules by the DLNR that implement the contemplated noncommercial marine fishing license program.**

Second, the two fee categories, prohibition on waivers and exemptions, and annual fee rates contemplated on page 8, lines 4-10, may inadvertently inhibit the DLNR from developing a license fee and administration structure that may be more equitable and practicable, and that can respond to changing conditions and needs. For example, different fee categories, 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 others who may merit different levels of consideration in a licensing program. In addition, an annual fee rate may not be the most efficient or effective way to administer a licensing program for both the state and licensees, when compared to alternative multi-year or even lifetime license periods. Fixing fee categories and mandating that fees be levied on an annual basis would limit the flexibility on the part of the DLNR to explore such alternative licensing approaches, which would instead require additional statutory changes.

Third, while OHA appreciates recognition of Native Hawaiian traditional and customary rights on page 10, lines 12-14, the proposed language does not clearly indicate the extent to which Native Hawaiian cultural practitioners may be subject to potential liability under the new section. **Accordingly, in order to best protect and encourage the perpetuation of Native Hawaiian cultural practices, OHA recommends amending the language on page 10, lines 12-14, to read as follows:**

“(g) Nothing in this section shall be construed to restrict the exercise of Native Hawaiian traditional and customary practices; provided that the rules adopted pursuant to subsection (a) shall provide and allow for the exercise of Native Hawaiian traditional and customary practices as protected pursuant to article XII, section 7 of the Hawai‘i State Constitution, by minimizing to the extent practicable any burden on Native Hawaiian traditional and customary practitioners, including those burdens associated with obtaining a license or paying any fees; provided further that the exercise of a Native Hawaiian traditional and customary practice shall be a

complete defense to a violation of subsection (a) of this section.”

Fourth, OHA notes that many Native Hawaiians live in remote, rural subsistence communities, and may have difficulty accessing the state offices, agents, and/or websites as may be necessary to obtain a license and comply with licensing laws and regulations. **Such individuals may face disproportionate and unreasonable burdens in complying with a license requirement, and may even forego compliance due to such burdens.** Accordingly, OHA urges the inclusion of additional language to be appropriately inserted and to read as follows:

“In the adoption of rules under subsection (a) and in the implementation of the licensing program under this section, the department shall explicitly consider and ensure reasonable opportunities for all individuals to apply for and obtain a non-commercial marine fishing license, including those residing in remote or rural communities, those who may be limited English proficient, those with limited transportation capacity, and others who may face disproportionate burdens in obtaining a non-commercial marine fishing license.”

Fifth, 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 10, line 15.² **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 10, line 15, to read as follows:**

“(h) 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

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.

Finally, OHA understands that, while the chapter 91 rulemaking process will involve a public hearing for any proposed rules implementing a noncommercial licensing program, such a hearing may not necessarily address all aspects of licensing administration, or allow for the full range of impacted communities, including rural and isolated subsistence communities, to provide valuable input and additional perspectives to guide the program's development. Accordingly, OHA appreciates the requirement that DLNR conduct "robust public outreach" prior to the implementation of a noncommercial marine license program. OHA does note that such language may be subjective, and may need additional, concrete requirements to better ensure that DLNR takes into account the diverse and varying perspectives and concerns of those affected by a noncommercial license requirement. Accordingly OHA recommends amending the language found on page 10, lines 16-18, to read as follows:

"SECTION 4. The department of land and natural resources shall engage in robust public outreach prior to the implementation of the non-commercial marine license, and, prior to the initiation of the rulemaking process described in chapter 91, shall hold at least one public meeting on each island with permanent residents, and afford all interested persons an opportunity to submit data, views, or arguments on any aspect of the license program or rules."

Mahalo nui for the opportunity to testify on this measure.

SB-2052

Submitted on: 1/30/2018 8:51:55 PM

Testimony for WTL on 1/31/2018 2:45:00 PM



Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	OCC Legislative Priorities	Support	No

Comments:

**PRESENTATION OF THE
OAHU COUNTY COMMITTEE ON LEGISLATIVE PRIORITIES
DEMOCRATIC PARTY OF HAWAII
TO THE COMMITTEE ON WATER AND LAND
THE SENATE
TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2018
Wednesday, January 31, 2018
2:45 p.m.**

Hawaii State Capitol, Conference Room 224

RE: Testimony in Support of SB 2052, RELATING TO FISHING

To the Honorable Karl Rhoads, Chair; the Honorable Mike Gabbard, Vice-Chair, and Members of the Committee on Water and Land:

Good morning, my name is Melodie Aduja. I serve as Chair of the Oahu County Committee ("OCC") Legislative Priorities Committee of the Democratic Party of Hawaii. Thank you for the opportunity to provide written testimony on Senate Bill No. 2052, relating to Non-commercial Marine Fishing License requirement established under the Department of Land and Natural Resources. The OCC Legislative Priorities Committee is in favor of House Bill No. 1752 and support its passage.

Senate Bill No. 2052, is in accord with the Platform of the Democratic Party of Hawai'i ("DPH"), 2016, as it aims to protect and restore marine protected areas with the

most fish depletion. Specifically, the DPH Platform states, “[w]e support democratic participation of citizens and residents to protect (i) valuable coastal ecosystems and reefs from misuse and (ii) beaches for public use and recreation. The Hawai’i Coastal Zone Management (CZM) law, HRS Chapter 205A, currently provides for public participation in management of coastal resources. We believe in the vigorous enforcement of our environmental laws and increased public-private stewardships and citizen involvement in protecting our resources.” (Platform of the DPH, P. 8, Lines 427-433 (2016)),

Given that Senate Bill No. 2052 establishes a non—commercial marine fishing license requirement; allocates any revenue generated to administration of the licensing program or marine resource management and protection; authorizes the Department of Land and Natural Resources to adopt rules and create a special fund, it is the position of the OCC Legislative Priorities Committee to support this measure as it protects Hawai’i’s valuable coastal ecosystems and reefs from misuse and depletion of marine life.

Thank you very much for your kind consideration.

Sincerely yours,

/s/ Melodie Aduja

Melodie Aduja, Chair, OCC Legislative Priorities Committee

Email: legislativepriorities@gmail.com, Tel.: (808) 258-8889

LATE

SB-2052

Submitted on: 1/30/2018 11:41:18 PM

Testimony for WTL on 1/31/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mark Fox	The Nature Conservancy	Support	Yes

Comments:

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 4 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.

LATE

SB-2052

Submitted on: 1/30/2018 9:31:06 PM
Testimony for WTL on 1/31/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Tovey		Oppose	No

Comments:

Aloha,

As an avid diver and a believer in being a good steward of the land and ocean, I oppose this bill. I have been fishing years and my family has been fortunate to benefit from what the ocean provides. With everything in Hawaii costing so much, I have counted on obtaining fish for sustenance for my family and believe that God provides this for me to enjoy. I do not over fish, I respect the oceans, and everything I hunt is eaten. Please do not require a license for non-commercial fishermen like myself. It's already tough to live in Hawaii if you're not making a ton of money, so please do not make fishermen like myself pay more for being responsible stewards of the land. Every time I go out to dive, I target invasive species so that native Hawaiian fish can survive and thrive in our reefs. I do not sell fish & have never fished for profits. Please maintain the status quo, so I do not have to suffer and deal yet another cost to live in Hawaii. Mahalo for your time.