
A BILL FOR AN ACT

RELATING TO THE TAKING OF NATURAL RESOURCES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the State of Hawaii
2 has a substantial interest in regulating the extraction of its
3 natural resources under the Hawaii Constitution and statutory
4 scheme. As such, many laws and rules are in place for the
5 purpose of regulating the extraction of natural resources so as
6 to establish the taking of resources as highly regulated
7 activities, including commercial trade and distribution.
8 However, these regulations cannot be effectively enforced
9 without proper inspection authority as a check and balance on
10 unfettered harvest.

11 The legislature also finds that in light of the number and
12 nature of regulations that apply to resource extraction and the
13 type of enforcement procedures that are necessary to enforce
14 such regulations, persons involved in the extraction of
15 resources have a reduced expectation of privacy under the Fourth
16 Amendment, especially when engaged in such activity.

1 The legislature further finds that a warrantless
2 administrative search scheme is the only reasonable way to
3 enforce natural resource regulations.

4 SECTION 2. Chapter 199, Hawaii Revised Statutes, is
5 amended by adding a new section to be appropriately designated
6 and to read as follows:

7 "§199- Inspection; exhibit upon demand. (a) Section
8 199-7 notwithstanding, any police officer or agent of the
9 department of land and natural resources upon whom the board of
10 land and natural resources has conferred police powers may, in
11 the performance of the officer's or agent's primary duties, stop
12 and temporarily detain any person whom the officer or agent
13 reasonably believes is, or recently has been, engaged in
14 fishing, hunting, gathering, or any other activity involving the
15 take of natural resources, and may inspect any license, permit,
16 stamp, tag, or any written authorizations, as well as all
17 natural resources in the person's possession, including the
18 contents of any bag or container of any kind used to carry
19 natural resources, and any equipment, article, instrument,
20 aircraft, vessel, vehicle, or conveyance being used, to
21 determine whether the person is in compliance with title 12,
22 chapters 6D, 6E, and 6K, and any rules adopted thereunder,

1 relating to the protection and conservation of natural
2 resources. For purposes of this section, "natural resources"
3 includes, but is not limited to, any archaeological artifacts;
4 minerals; any aquatic life or wildlife or parts thereof,
5 including their eggs; and any land plants or parts thereof,
6 including seeds.

7 (b) Any license, permit, stamp, tag, or other written
8 authorizations, any natural resources in the person's
9 possession, and any device or apparatus designed to be or
10 capable of being used to take natural resources, shall be
11 exhibited upon demand to any person authorized by the department
12 of land and natural resources to enforce title 12, chapters 6D,
13 6E, and 6K, and any rule adopted thereunder, relating to the
14 protection and conservation of natural resources.

15 (c) Any person violating this chapter or any rule adopted
16 thereunder for which a penalty is not otherwise provided, shall
17 be guilty of a petty misdemeanor and any natural resources in
18 the person's possession, and any device or apparatus designed to
19 be or capable of being used to take natural resources, shall be
20 subject to seizure."

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1 SECTION 3. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 4. New statutory material is underscored.

5 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: *Sam*

8

BY REQUEST

JAN 22 2019

Report Title:

Natural Resources; Inspection

Description:

Clarifies that any police officer or agent of the Department of Land and Natural Resources upon whom the Board of Land and Natural Resources has conferred police powers may, in the performance of their primary duties, inspect certain items for compliance with title 12, chapters 6D, 6E, and 6K, Hawaii Revised Statutes, and any rule adopted thereunder, relating to the protection and conservation of natural resources.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO THE TAKING OF NATURAL RESOURCES.

PURPOSE: To clarify that any police officer or agent of the Department upon whom the Board of Land and Natural Resources (Board) has conferred police powers may, in the performance of the officer's or agent's primary duties, inspect certain items for compliance with title 12, chapters 6D, 6E, and 6K, Hawaii Revised Statutes (HRS), and any rule adopted thereunder, relating to the protection and conservation of natural resources.

MEANS: Add a new section to chapter 199, HRS.

JUSTIFICATION: Since 2007, there has been a number of attempts in the State Legislature to give the Department's Division of Conservation and Resources Enforcement (DOCARE) officers the authority to inspect bags or containers containing aquatic life without the need for probable cause. This legal issue has been identified as a hurdle to effectively enforcing fishing violations. In the Senate Standing Committee Report. No. 265, Senate Bill No. 663, Senate Draft 1, Regular Session of 2007, it was quoted, "*Hawaiian commercial and recreational marine life stocks are depleted, over-utilized, and in danger of irretrievable exhaustion. Although management tools have been enacted, fishery assessment depends on the voluntary cooperation of those who harvest these resources. While most fishers are willingly cooperative, increasing stock scarcity has led to conspicuous instances of obstruction of the efforts by the Division of Conservation and Resources Enforcement Officers to inspect catch. Your Committee finds that the current probable cause provision under section 187A-15, Hawaii*

Revised Statutes, does provide a degree of constitutional protection while at the same instance, may unduly hinder enforcement officers by preventing them from inspecting containers that may be used to transport fish and other aquatic life. Thus, this greatly weakens the effect of fisheries management measures, such as bag and size limits. While your Committee recognizes the seriousness of repealing the probable cause requirement from section 187A-15, Hawaii Revised Statutes, establishing an administrative inspection scheme will enable Division of Conservation and Resources Enforcement officers to better inspect and enforce the State's fishing laws."

For comparison, and until recently, this particular enforcement challenge did not exist for hunting violations, because game mammal and bird hunting licenses require a hunter to consent to these kind of searches as a condition of receiving the hunting license. Under section 13-123-22(1)(D) Hawaii Administrative Rules, consent to inspections is a condition of applying for game mammal hunting in public hunting areas. Senate Bill No. 663, Senate Draft 1, Regular Session of 2007, went so far as to reinforce this notion, "No probable cause is required because the consent to a search occurs when a hunting license is issued."

Since no similar license exists for non-commercial marine fishing, legislative efforts have attempted to address the consent to search issue for all aquatics violations by statute. Those legislative attempts have been unsuccessful.

Currently, DOCARE officers are attempting to gain voluntary compliance for an inspection. If, however, a lawful demand to exhibit is unsuccessful, then a limited and narrow inspection may be executed in cases involving hunting and commercial fishing, by virtue of holding licenses for these

activities. DOCARE officers are operating under the assumption that their limited inspection authority does NOT extend to saltwater recreational activities.

However, recent legal analysis has suggested that these assumptions regarding the inspections that the DOCARE officers currently conduct for hunting and commercial fishing may also be flawed and that the probable cause standard should be employed at all times.

Therefore, with clear legislative wording outlining a limited inspection authority coupled with the need to exhibit upon a lawful demand, the proposed legislation will allow any police officer or agent of the Department upon whom the Board has conferred police powers to have valid authority for a limited inspection while in the field and fulfill the need to adequately protect the natural and cultural resources of Hawaii.

Impact on the public: This bill would provide the Department with adequate authority to conduct field inspections for compliance with rules and regulations concerning the take of natural and cultural resources. Limited inspections are already occurring and this bill would clarify the general conditions under which the inspections would occur.

Impact on the department and other agencies: This bill would provide the Department with adequate authority and lessen confusion on when and where inspections can occur.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	LNR 405.

OTHER AFFECTED

AGENCIES:

None.

EFFECTIVE DATE:

Upon approval.