

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 Committees on  
HAWAIIAN AFFAIRS  
and  
WATER AND LAND**

**Friday, January 31, 2020  
1:45 PM  
State Capitol, Conference Room 229**

**In consideration of  
SENATE BILL 3020  
RELATING TO TRADITIONAL HAWAIIAN PRACTICES**

Senate Bill 3020 proposes to protect native Hawaiian traditional and customary practices. **The Department of Land and Natural Resources (“Department”) appreciates the intent of the bill and offers the following comments.**

The bill proposes to amend Section 190-1, Hawaii Revised Statutes (HRS), to add express language affirming protections for native Hawaiian traditional and customary practices afforded under article XII, section 7 of the State Constitution.

Article XII, section 7 provides:

The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua‘a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

The Department recognizes the importance of protecting native Hawaiian traditional and customary rights, as guided by Article XII, section 7 and as further delineated by case law. The Department also recognizes its constitutional right and obligation to manage and conserve the marine resources of the state through appropriate regulations. In balancing these interests, the Department carefully considers traditional and customary native Hawaiian rights and practices in

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

**ROBERT K. MASUDA**  
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**M. KALEO MANUEL**  
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

developing administrative rules. For example, the Department supports community-based management proposals, including Community-Based Subsistence Fishing Areas (CBSFAs), and has worked with communities such as Hā'ena and Ka'ūpūlehu and is working with communities such as Miloli'i, Ho'okena, Mo'omomi, Kīpahulu, and Maunaloa to adopt place-based rules that protect both aquatic resources as well as cultural fishing practices.

The proposed bill would add language to Section 190-1, HRS, that states, "This chapter shall not apply to, or in any way prohibit, native Hawaiian traditional and customary practices protected under article XII, section 7 of the state constitution." The Department believes this language is unnecessary as it does not expand protections afforded by the constitution. Further, the language could cause confusion among resource users, who may misinterpret the language as bypassing the State's constitutional regulatory rights and providing a free pass to start taking marine resources from Marine Life Conservation Districts. The taking of marine resources, even pursuant to valid native Hawaiian traditional and customary rights, must be balanced against the right of the state to set reasonable regulations.

Thank you for the opportunity to comment on this measure.



**SB3020**  
**RELATING TO TRADITIONAL HAWAIIAN PRACTICES**

Senate Committee on Hawaiian Affairs  
Senate Committee on Water and Land

January 31, 2020

1:45 p.m.

Room 229

The Office of Hawaiian Affairs Beneficiary Advocacy and Empowerment Committee will recommend that the Board of Trustees offer the following **COMMENTS** on SB3020, which seeks to explicitly exempt Native Hawaiian traditional and customary practices from state marine life conservation district laws and rules.

OHA commends this bill's explicit recognition of Native Hawaiian traditional and customary practices as described under Article XII, Section 7 of the Hawai'i State Constitution. While Native Hawaiians do have the right to reasonably engage in such practices, a lack of understanding on the part of law enforcement, landowners, and the public can often force practitioners to risk confrontation, conflict, or even citation or arrest in order to exercise their constitutional rights; notably, practitioners charged with violating the law in the course of engaging in Native Hawaiian traditional and customary practices must invest considerable time and resources to uphold their rights in court. In some instances, practitioners may forego the continuation of place-based traditional and customary practices otherwise passed down through generations, due to the burdens and risks they may face. Practitioners and other Native Hawaiian community members may even oppose management initiatives – including the establishment of marine life conservation districts – intended to protect natural and cultural resources that Native Hawaiian traditional and customary practices rely upon, based on concerns that their ability to perpetuate cultural practices may be impacted. Accordingly, OHA appreciates that an express statutory recognition and exemption of Native Hawaiian traditional and customary practices as proposed in this measure may address the concerns and challenges faced by practitioners in exercising their constitutional rights, by providing express notice to policymakers, law enforcement, and the public regarding their practices' protected status.

OHA does note that there are established legal standards established to determine what may constitute a Native Hawaiian traditional and customary practice, and that such practices are generally identified on a case-by-case basis. OHA also notes that the concept of what may constitute a Native Hawaiian traditional and customary practice, socially, culturally, and legally, may evolve over time – particularly in light of ongoing discussions within the Native Hawaiian practitioner and larger communities regarding the concept of mālama 'āina, as a stand alone cultural practice, and as an inherent value

found across practices. Accordingly, there may be differing and changing understandings of what constitutes a traditional and customary practice socially, culturally, and legally – which may have the potential to lead to conflicts among Native Hawaiian cultural practitioners, the larger Native Hawaiian community, law enforcement, and members of the public, among others, even if this measure is passed. In order to maximize this measure’s benefits, and minimize the risk of unintended consequences and conflicts in marine life conservation districts, continued information sharing between all such stakeholders may be critical. Indeed, such information sharing may be invaluable, both in and beyond the context of this measure, to the furtherance of the state’s constitutional responsibility to protect and enforce Native Hawaiian traditional and customary practices, and its moral obligation to ensure the perpetuation of a living Native Hawaiian culture.

Accordingly, should the Committees choose to move this measure forward, OHA respectfully urges the Department of Land and Natural Resources to initiate and support continual information sharing and dialogue regarding Native Hawaiian traditional and customary practices and rights, between its Division of Conservation and Resources Enforcement and Division of Aquatic Resources staff, its deputy attorney generals, Native Hawaiian cultural practitioners, Native Hawaiian rights legal experts, and the public, to facilitate a better shared understanding of Native Hawaiian practices and values, and to maximize the benefits that may be realized under this measure.

Mahalo for the opportunity to testify on this measure.

**SB-3020**

Submitted on: 1/28/2020 7:13:16 PM

Testimony for HWN on 1/31/2020 1:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Benton Kealii Pang, Ph.D.	Individual	Oppose	No

Comments:

**SB-3020**

Submitted on: 1/29/2020 7:29:07 AM

Testimony for HWN on 1/31/2020 1:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Nako'olani Warrington	Individual	Support	No

Comments:

**Please SUPPORT and PASS SB 3020. Mahalo!**

**SB-3020**

Submitted on: 1/29/2020 6:01:21 PM

Testimony for HWN on 1/31/2020 1:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
cheryl	Individual	Support	No

Comments:

WHY do we need this bill? IT SHOULD JUST BE that Traditional Hawaiian practices are protected? Every year, we go through this and every year we say the same thing. THE YEAR of the Hawaiian and all those ideas are lip service until we actually get it right and are pono.