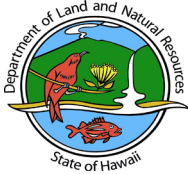


DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
WATER AND LAND**

**Monday, March 15, 2021
1:00 PM**

State Capitol, Via Videoconference, Conference Room 229

**In consideration of
HOUSE BILL 1022, HOUSE DRAFT 1
RELATING TO THE TAKING OF NATURAL RESOURCES**

House Bill 1022, House Draft 1 proposes to clarify that any officer of the Department of Land and Natural Resources (Department) upon whom the Board of Land and Natural Resources (Board) has conferred police powers may, in the performance of their official duties, inspect certain items for compliance with Title 12, Hawaii Revised Statutes (HRS), and any rule adopted thereunder, relating to the protection and conservation of natural resources. This bill also proposes to establish penalties for refusal to comply with inspection requests made by any police officer or agent of the Department upon whom the Board has conferred police powers. **The Department strongly supports this Administration measure.**

The underlying basis of this bill is to protect Hawaii's perishable and limited natural resources. This bill enables the Department's Division of Conservation and Resources Enforcement (DOCARE) officers to conduct inspections to ensure compliance with laws and rules, and allow for the speedy return of resources found to be in violation to their natural habitat so that they can be conserved.

The Department has further collaborated with Department of the Attorney General regarding House Draft 1 to narrow the language and clarify as follows:

- The proposed inspection authority would only be used in a civil enforcement context, manner and scope. As such, criminal prosecution and criminal penalties would not be applicable under this authority. Note: Under separate existing basis, if an agent or officer has probable cause, as provided by law, to believe that a bag, container, vehicle, or conveyance contains evidence of a violation of Subtitle 5 of Title 12, HRS, or any rule

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

ROBERT K. MASUDA
FIRST DEPUTY

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

adopted thereunder, examinations and searches may proceed under Section 187A-15, HRS, or any other applicable authority.

- The scope of this administrative inspection authority would be narrowed only to hunting and fishing activities, where fishing includes the take of any aquatic resource currently regulated by law. The original language provided for broad application of natural resources take.
- The administrative inspection authority would be limited to its actual use by DOCARE officers. The original language included use by other police officers in Hawaii.
- Refusal to exhibit items subject to administrative inspection would only result in a civil penalty. The original language provided a criminal penalty.

The Fourth Amendment of the United States (and Hawaii) constitution protects “[t]he right of the people to be secure in their persons, houses, papers and effects, against *unreasonable* searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” The key take away is that it protects against *unreasonable* searches. The United States Supreme Court has said that a warrantless search is reasonable when:

(1) the state has “special needs,” beyond its ordinary interest in the enforcement of criminal statutes, to conduct inspections¹.

- Hawaii has such “special needs” beyond its ordinary interest in the enforcement of criminal statutes, to conduct inspections. More than just enforcing criminal law, Hawaii has a distinct environmental, cultural, sustainable, and economic reason to protect its natural resources via inspections. Article XI, section 1 of our own constitution reads “[f]or the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.” The proposed search scheme grants officers the ability to effectively enforce our laws that protect our natural resources.

(2) the regulations in the particular area could not be effectively enforced if public officials could conduct inspections only when the officials have a reasonable suspicion that a violation has occurred².

- When it comes to managing resources, marine resources in particular, some of the most effective regulations to ensure fair and sustainable harvest are those that limit the size and number of fish one may take (size and bag limits). If held solely to the current probable cause standard for criminal enforcement, DOCARE officers would be required to know,

¹ See, e.g., *Vernonia*, 515 U.S. at pp.652-653; *Griffin v. Wisconsin*(1987) 483 U.S. 868, 873; *New Jersey v. T.L.O.*(1985) 469 U.S. 325, 351 (conc. opn. of Blackmun, J.).

² See, e.g., *Donovan*, 452 U.S. at pp.602-603; *Burger*, 482 U.S. at p.710.

beyond a reasonable doubt, that the resources possessed by a fisher were either too small or too many in number, before he/she may inspect them. It is impractical. To effectively ensure compliance with our natural resource regulations, DOCARE officers must be able to inspect without the need for probable cause or a reasonable suspicion that a violation occurred.

(3) the persons or businesses subjected to the inspection are engaged in a particular category of activity that reduces the reasonable expectation of privacy of those engaged in such activities in relation to the searches or seizures at issue, and the discretion of inspecting officials is reasonably constrained by the authorizing statute or regulation³.

- In light of the number and nature of the regulations that apply to fishing and hunting and the type of enforcement procedures that are necessary to enforce such regulations, anglers and hunters who have voluntarily chosen to participate in such highly regulated activities, have a reduced reasonable expectation of privacy under the Fourth Amendment, when engaged in such activity⁴.
- Additionally, the proposed legislation limits the scope of any search to enumerated items.
- The administrative search is required to take place within a reasonable distance from the area where the hunting/fishing occurred.
- And only those individuals who a DOCARE officer reasonably believes are or recently were involved in hunting or fishing (e.g., because they have the equipment or are actually engaged in the activity) are subject to inspection.

The proposed inspection will constitute a brief detention, similar to a traffic stop, of a known resource user and because the intrusion upon privacy occasioned by such a brief stop is much less significant than the intrusion resulting from an arrest or other extended detention of an individual, the ordinary probable cause and warrant requirements of the Fourth Amendment applicable to arrests or similar full-scale seizures of a person do not apply to such brief stops or detentions⁵.

Due process is addressed through the citation and appeal process. Upon receiving a notice of civil violation, an individual will have three options. They may admit and pay, admit and request mitigation of the fine, or deny and request an administrative contested case hearing. Contested case hearings are conducted by a hearings officer, and if desired, results may be appealed to the Circuit Court.

The Department recognizes the importance of ensuring that the administrative inspection authority this bill provides is used in a manner that is legally compliant and proper, and respectful of individual privacy and Native Hawaiian gathering rights. The Department will not tolerate misuse or abuse of the administrative inspection authority that would be provided by this bill. In recognizing the need to ensure high public confidence, the Department of the Attorney General

³ See, e.g., *Vernonia*, at p.657; *Skinner*, supra, 489 U.S. at p.627; *Biswell*, 406 U.S. at p.316.

⁴ *People v. Maikhiu*, 51 Cal. 4th 1074, 253 P.3d 247 (2011).

⁵ See *United States v. Brignoni-Ponce*(1975) 422 U.S. 881-884.

has extended, and the Department has accepted, an offer to train DOCARE Officers on the proper application of the provisions of this bill should it become law.

Thank you for the opportunity to comment on this measure.

LATE

HB-1022-HD-1

Submitted on: 3/14/2021 1:04:31 PM
Testimony for WTL on 3/15/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Colin Lau	Testifying for Dept. of the Attorney General	Support	No

Comments:

I am available for questions. Please allow me Zoom access. Thank you.



Testimony Before The
Senate Committee on Water and Land
IN SUPPORT OF HB 1022 HD 2
Monday, March 15, 2021, 1:00PM, Room 229

We are Kevin Chang and Miwa Tamanaha we are the Co-Directors of Kua'āina Ulu 'Auamo (or KUA). KUA works to empower grassroots rural and Native Hawaiian mālama 'āina groups - fishers, farmers, families- to celebrate their places and pass on their traditions to better Hawai'i and achieve 'āina momona— an abundant, productive ecological system that supports community well-being.

KUA employs a community-driven approach that currently supports a network of more than 36 mālama 'āina community groups collectively referred to as E Alu Pū (moving forward together), 40 fishpond projects and practitioners called the Hui Mālama Loko I'a, and a growing hui of Limu practitioners all from across our state.

KUA and the E Alu Pū network were founded by rural Native Hawaiian fishing community efforts concerned with a balanced use of their fisheries based on traditional subsistence resource management, values, and ethics more sensitive to the needs of their wahi (their places). Quite often fishery issues communities work to advance require that an often under resourced and remotely located DOCARE at least have the enforcement capacity this law will help to support.

KUA generally supports HB 1022 HD2. This bill addresses a lingering issue of concern in the fishing community for some time. It clarifies that police and natural resource enforcement officers have the inspection powers needed to ensure compliance with laws that restrict the improper taking of natural resources. Other states have utilized the same inspection authority to manage and protect natural resources and deterred violations and abuses of the law to great effect. This would also further solidify the ability of our relatively new environmental courts to better ensure justice and adjudicate violations which under current circumstances go unenforced.

Without this power the law as it is leaves Hawaii's precious and valuable natural resources subject to merely voluntary compliance.

Please pass this bill out of your committee and mahalo for this opportunity to testify.

Aloha 'Āina Momona.



HB1022 HD1
RELATING TO THE TAKING OF NATURAL REOSURCES
Ke Kōmike ‘Aha Kenekoa o ka Wai a me ka ‘Āina
Senate Committee on Water and Land

Malaki 15, 2021

1:00 p.m.

Lumi 229

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on HB1022 HD1, which seeks to facilitate the enforcement of laws regulating the taking of natural and cultural resources.

OHA appreciates the intent of this measure, to reduce barriers that may inhibit conservation and resources enforcement officers from ensuring compliance with laws protecting our natural and cultural resources and sites. OHA also notes that other jurisdictions have implemented various warrantless inspection and search mechanisms for resource enforcement purposes, in recognition of their significant interest in protecting their respective natural resources. **OHA itself has previously supported similar, non-criminal administrative inspection proposals, based on the concerns raised by rural Native Hawaiian communities regarding the state’s lack of capacity to address illegal fishing activities, and thereby protect their ability to perpetuate their traditional and customary and subsistence gathering practices.**

OHA does note that this measure would allow for warrantless searches of any individual suspected of having engaged in hunting or the taking of aquatic resources, including resources gathered in the exercise of Native Hawaiian traditional and customary practices. Such authority may have an inadvertent but substantial chilling effect on Native Hawaiian cultural practitioners who may feel intimidated by the potential for an unexpected intrusion of privacy by law enforcement, any time they seek to gather resources or visit cultural sites in the course of conducting their constitutionally protected practices. The breadth of the proposed inspection authority may also raise constitutional challenges that would otherwise undermine the intent and effect of this measure.

Accordingly, while OHA appreciates that the original scope of this measure has been narrowed to provide for the inspection of individuals who are a “reasonable distance” from the area they are suspected of taking natural resources from, OHA does recommend that the Committee consider limiting the inspection authority granted under

this measure to areas with place-based management structures in place, such as community-based subsistence fishery management areas or marine life conservation districts, where a heightened regulatory scheme may warrant diminished expectations of privacy.

To further minimize the chilling potential of this measure and mitigate any potential constitutional issues, OHA also respectfully recommends amending HB1022 HD1 to 1) expressly recognize the rights of Native Hawaiian traditional and customary practitioners in statute; and 2) limit the liability for violations arising out of evidence gathered from warrantless inspections to civil liability, rather than criminal liability, by:

Amending the language on page 8, lines 3-4, to read as follows:

"(c) Any person not engaged in an activity protected by Article XII, Section 7, HRS 1-1, HRS 7-1, or any other law, rule, or court opinion which protects the proper and lawful exercise of traditional and customary Native Hawaiian rights for subsistence, religious, and cultural purposes, who violates subsection (b), in addition to any other penalties, shall be subject to administrative fines as follows:"

And adding the following subsection after page 8, line 10, to read as follows:

"(d) Any item, article, natural resource, or other evidence, when obtained through an administrative inspection pursuant to subsection (a) that occurs without probable cause of a violation of law, may be used to pursue any and all authorized civil and administrative penalties authorized by law."

Mahalo nui for the opportunity to testify on this measure.

HB-1022-HD-1

Submitted on: 3/14/2021 12:51:32 PM

Testimony for WTL on 3/15/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ted Bohlen	Testifying for Hawaii Reef and Ocean Coalition	Support	No

Comments:

To: The Honorable Senator Lorraine Inouye, Chair, the Honorable Senator Keith-Agaran, Vice Chair, and Members of the Senate Committee on Water and Land.

From: HAWAI'I REEF AND OCEAN COALITION – HIROC (by Ted Bohlen)

Re: Hearing HB1022 HD1 RELATING TO THE TAKING OF NATURAL RESOURCES

Hearing Date: Monday, March 15, 2021, 1:00 pm, by videoconference

Position: STRONG SUPPORT FOR HB1022 HD1!

Aloha Chair Inouye, Vice Chair Keith-Agaran, and Members of the Senate Committee on Water and Land:

The HAWAI'I REEF AND OCEAN COALITION – HIROC – was formed in 2017 by coral reef scientists, educators, local Hawaii environmental organizations, elected officials, and others to address the crisis facing Hawaii's coral reefs and other marine life.

Our reefs and oceans are under great stress and need funding for protection! Coral bleaching, polluted runoff, unsustainable fishing, and invasive species are all degrading our reefs and oceans that are critical for protecting our aquatic life and shorelines and maintaining our tourism and recreational economy.

This bill would authorize DLNR to better enforce laws relating to natural resources by authorizing temporary detention and inspection upon reasonable belief of violation relating to hunting or fishing. It would also provide for penalties for refusal to comply with inspection requests. HIROC believes this bill would help prevent unsustainable fishing and maintain our reef and ocean health.

Please pass this Bill!

Mahalo!

Hawaii Reef and Ocean Coalition (by Ted Bohlen)



March 15, 2021 1pm

TO: Honorable Chair Inouye and Members of the Senate Water and Land Committee

SUBMITTED BY: Inga Gibson, Policy Consultant, For the Fishes
ponoadvocacy@gmail.com, 808.922.9910

RE: SUPPORT for HB1022 HD1; Relating to the Taking of Natural Resources

For the Fishes respectfully urges your **support of HB1022 HD1** which clarifies that any police officer or agent of the Department of Land and Natural Resources (Department) upon whom the Board of Land and Natural Resources (Board) 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. Establishes penalties for refusal to comply with inspection requests made by any police officer or agent of the Department upon whom the Board has conferred police powers.

DOCARE has long sought this clarification in statute so they may better enforce natural resource violations, specifically those that involve marine animals that may be kept out of plain sight in coolers or boat hulls. To our knowledge, every other state fish and wildlife law enforcement agency has long had this clear, necessary authority and directive to investigate alleged violations of the take of prohibited wildlife. Further, those failing to comply with justified requests of DOCARE officers to inspect potentially prohibited wildlife, should be held accountable for non-compliance.

We urge the Committee's support of this important, long overdue statutory amendment so DOCARE can better carry out their mandate to protect our natural resources, held in the public trust for all of Hawaii.

Thank you for your consideration of this testimony.

**Testimony of The Nature Conservancy
In Support of HB 1022, HD 1 Relating to the Taking of Natural Resources**

**Committee on Water and Land
Monday, March 15, 2021, 1:00 PM
Conference Room 229, Via Teleconference**

The Nature Conservancy of Hawai'i is a non-profit organization dedicated to the preservation of the lands and waters upon which all life depends. The Conservancy has helped protect more than 200,000 acres of natural lands in Hawai'i and Palmyra Atoll. We manage 40,000 acres in 13 nature preserves and work in over 50 coastal communities to help protect and restore the nearshore reefs and fisheries of the main Hawaiian Islands. We forge partnerships with government, private parties, and communities to protect forests and coral reefs for their ecological values and for the many benefits they provide to people.

The Nature Conservancy supports HB 1022 HD 1 establishing inspection and enforcement powers for the State Department of Land & Natural Resources, Division of Conservation and Resources Enforcement.

Hawai'i's environment is the engine that drives our economy and a natural, recreational, and cultural treasure that supports our island lifestyle and livelihoods. At the same time, our native forests and nearshore reefs and fisheries are threatened by local stresses from overharvest, sedimentation, and invasive species, as well as impacts from global climate change, including increasing storms, sea levels, and temperatures.

The State Department of Land & Natural Resources (DLNR) is charged with protecting our natural environment, with the Division of Conservation and Resources Enforcement (DOCARE) enforcing our natural resource protection laws. However, DOCARE officers currently cannot conduct an inspection of anyone taking natural resources unless they have probable cause of a violation or consent. This is an unreasonably high bar when our limited number of officers are working to protect our natural resources from mauka to makai. Other States have and use the same inspection authority included in HB 1022 HD 1 to help enforce laws that protect natural resources and deter poaching. For example, in California wildlife officers are authorized to conduct compliance inspections that would likely require warrants or probable cause in other contexts. Some of these include:

- Authorization to inspect boats, buildings other than dwellings, and containers that may contain fish or wildlife (Fish and Game Code, section 1006)
- Authorization to “enter and examine any...place of business where fish or other fishery products are packed, preserved, manufactured, bought or sold, or to board any fishing boat...or vehicle or receptacle containing fish...and may examine any books and records containing any account of fish caught, bought, canned, packed, stored or sold.” (Fish and Game Code, section 7702)

Hawai'i's existing law limits DLNR's ability to protect our natural environment from poaching and other resource law violations. Natural resource users have long called for more enforcement of natural resource violations. HB 1022 HD 1 is an important step toward achieving compliance with and enforcement of Hawai'i's natural resource protection laws.

Mahalo for the opportunity to testify in support of HB 1022 HD 1.

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HB-1022-HD-1

Submitted on: 3/12/2021 4:23:31 PM

Testimony for WTL on 3/15/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kaitlyn Jacobs	Testifying for Surfrider Foundation O'ahu Chapter	Support	No

Comments:

On behalf on Surfrider Hawai'i Region, we support this bill. Overfishing and unregulated fishing are doing immense harm to our local fish populations. If we want to fish sustainably and ensure that the resources will be plentiful in the future, we must allow our regulating bodies to enforce the current rules. This is a huge issue in Hawai'i and we only want there to be incentive created for fishers to abide by the laws set into place according to scientific evidence. If you have any questions regarding sustainable fishing and natural resource management please do not hesitate to contact me; thank you for the opportunity to testify.

HB-1022-HD-1

Submitted on: 3/11/2021 8:10:29 PM

Testimony for WTL on 3/15/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
William K. Chang	Individual	Oppose	No

Comments:

I strongly oppose this bill.

Mahalo for allowing my testimony

LATE

HB-1022-HD-1

Submitted on: 3/15/2021 8:04:26 AM

Testimony for WTL on 3/15/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Camile Cleveland	Individual	Support	No

Comments:

I support this bill.

LATE

HB-1022-HD-1

Submitted on: 3/15/2021 8:12:14 AM

Testimony for WTL on 3/15/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Elizabeth Benyshek	Individual	Support	No

Comments:

Aloha,

I am writing to support HB1022 HD1, which allows DLNR to do cooler checks to avoid illegal fishing. This is incredibly important, because the demand for fish is high and illegal fishing has a direct negative effect the market. Please support this bill to ensure safe fishing practices.

Thank you for your time and consideration.

Elizabeth Benyshek

Vice Chair, Surfrider Foundation Oahu Chapter

LATE



**MĀLAMA
PŪPŪKEA-WAIMEA**
PROTECTING OUR OCEAN'S RESOURCES

Mālama Pūpūkea-Waimea
Post Office Box 188
Hale'iwa, HI 96712

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Federal Nonprofit Organization
501(c)(3) FEIN 27-0855937
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Late Testimony – In Support

March 15, 2021

COMMITTEE ON WATER AND LAND

Re: **HB 1022, HD1 - RELATING TO THE TAKING OF NATURAL RESOURCES. Hearing: Monday, March 15, 2021, 1:00 PM**

Aloha Chair Inouye, Vice Chair Keith-Agaran, and Members of WTL:

Mālama Pūpūkea-Waimea (MPW) is a Hawai'i non-profit organization founded on the North Shore of O'ahu in 2005. Our mission is "working to replenish and sustain the natural and cultural resources of the Pūpūkea and Waimea ahupua'a for present and future generations through active community stewardship, education, and partnerships." For sixteen years, our stewardship and education efforts have focused on the Pūpūkea Marine Life Conservation District (MLCD), one of only three MLCDs on O'ahu.

We strongly support HB1022 HD1. The standard of "reasonable belief" is a sufficient safeguard to balance the State's duty to protect natural resources and users' individual civil rights. As indicated in DLNR's testimony in strong support, the bill has been **carefully narrowed in scope in collaboration with the AG's office** to narrow its scope yet achieve the key conservation goal. On this issue, Hawai'i is unfortunately **far behind how other states** support natural resources enforcement, yet our islands deserve the highest level of protection.

MPW has partnered with DOCARE for over ten years as a community "Makai Watch" organization that keeps "eyes and ears" on the ocean around the Pūpūkea MLCD. Our organization has observed, documented, monitored, and reported numerous illegal activities in this marine protected area. Despite limited resources, DOCARE has stepped up to the plate to provide officer coverage, intervention, and enforcement. Officers can often "catch violators in the act" but are helpless to inspect, which is a logical enforcement step to obtain key evidence. It makes no sense. **The cooler inspection authority provides a critical missing tool in the DOCARE enforcement toolkit.**

Please support the bill and move it along! Mahalo nui and best regards,

Denise Antolini
President, MPW

LATE

HB-1022-HD-1

Submitted on: 3/15/2021 9:47:50 AM

Testimony for WTL on 3/15/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Daniel Amato	Individual	Support	No

Comments:

Please support HB1022!