

**HB-1022**

Submitted on: 2/8/2021 5:34:03 PM

Testimony for EEP on 2/11/2021 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Troy A. Ogasawara	Individual	Oppose	No

Comments:

Dear Committee Members,

I strongly oppose this bill, HB1022. I believe that "Probable Cause" should be established before detention, search and seizure.

Reasonable belief would be applicable for the inspection of a tag, licence, permit or other documentation.

Sincerely,

Troy Ogasawara



February 9, 2021

Rep. Nicole E. Lowen, Chair  
Rep. Lisa Marten, Vice Chair  
COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

DATE: Thursday, February 11, 2021  
TIME: 9:00a.m.  
PLACE: VIA VIDEOCONFERENCE Conference Room 325

RE: **HB1022 RELATED TO THE TAKING OF NATURAL RESOURCES**

Dear Chair Lowen, Vice Chair Marten and Members of the Committee:

Hawaii Fishermen's Alliance for Conservation and Tradition, Inc. (HFACT) is in **STRONG OPPOSITION** to HB1022.

HFACT is a not-for-profit, IRS 501c(5) organization, that advocates for small boat commercial, non-commercial, and recreational fishermen throughout Hawaii. HFACT board members sit on a number of federal fisheries management and endangered species advisory committees as well as state marine and coastal zone advisory committees; and, HFACT is thoroughly familiar with and participates in ocean and marine resource management in Hawaii and the central Pacific.

There have been several attempts to pass a similar bill which have failed due to constitutional and statutory concerns contained in Article I, Sections 5 and 7 and Section 187-15, HRS, which guarantee citizens right to due process and equal protection as well as to be free from search and seizures without probable cause.

The primary justification for HB1022 appears to be to make the job of enforcement of fisheries laws easier for law enforcement. While HFACT believes law enforcement is necessary, we cannot support violation of our constitutional rights and statutory rights to make law enforcement's job easier. In our view, law enforcement officers need to be sufficiently trained so that probable cause can be sufficiently established pursuant to Section 187A-15, Hawaii Revised Statutes, before any inspection occurs. Without *probable cause* law enforcement has carte blanche to stop and inspect anyone if the officer reasonably believes that that person has engaged in fishing, hunting, gathering, or any other activity involving the take of natural resources under HB1022. ***Reasonable belief is an arbitrary, subjective, and overbroad standard*** which should not override Article I of our Constitution or Section 187A-15.

***Hawai'i Fishermen's Alliance for Conservation and Tradition, Inc.***  
***75-796 Hiona Street, Holualoa HI 96725***

The “Justification Sheet” states that “While most fishers are willingly cooperative, increasing stock scarcity has led to conspicuous instances of obstruction of the efforts by the Division...Officers to inspect catch.” Better training should provide officers with the legal requirements to determine probable cause. Inspection is not the only tactic to deter law violators. Violation of our Constitution is not a valid reason to justify the abrogation of the probable cause standard.

The impact to the public is broad and unlimited. What set of facts will constitute reasonable cause to an officer? The public is at the mercy of the officer if confronted with a stop and inspect verbal order. One can only imagine the plethora of activities which would fulfill “reasonable cause” but be insufficient to constitute probable cause. HB1022 **fails** to set forth any conditions under which inspections would occur

If the Department is confused about when and where inspections can occur, then it should be up to the Department to fully train its officers to “lessen the confusion”. Not by violating the Constitution and laws of Hawaii.

Thank you for the opportunity to voice our concerns related to HB1022.

Sincerely and Aloha,



Phil Fernandez  
President

**HB-1022**

Submitted on: 2/9/2021 3:08:51 PM

Testimony for EEP on 2/11/2021 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Steve Kaiser	Individual	Oppose	No

Comments:

Nowhere in this bill do I see probable cause. The idea of any law enforcement officer searching private property without probable cause should worry us all. If that language is added I have no problem with this bill. But circumventing the rights of search and seizure should never be compromised



February 11, 2021, 9am

**TO:** Honorable Chair Lowen and House Environmental Protection Committee members

**SUBMITTED BY:** Inga Gibson, Policy Consultant, For the Fishes  
[ponoadvocacy@gmail.com](mailto:ponoadvocacy@gmail.com), 808.922.9910

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

For the Fishes respectfully urges your **support of HB1022** 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.

**HB-1022**

Submitted on: 2/9/2021 4:51:18 PM

Testimony for EEP on 2/11/2021 9:00:00 AM

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

Comments:

I support this bill as an enforcement tool for the protection of our natural resources.

**HB-1022**

Submitted on: 2/9/2021 5:03:12 PM

Testimony for EEP on 2/11/2021 9:00:00 AM

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

Comments:

Yes, this totally makes sense. I thought they already had powers.

**HB-1022**

Submitted on: 2/9/2021 7:42:33 PM

Testimony for EEP on 2/11/2021 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Joshua DeMello	Individual	Comments	No

## Comments:

I don't support the bill as it is written but I do support the intent. The bill looks like it gives DOCARE carte blanche to inspect. That is very dangerous and may violate our civil liberties. They do need to have a cause not just anyone. For example, a fishing license could require an inspection upon request. The license being the cause. Please be careful in affecting our liberties





Testimony Before The  
House Committee on Energy & Environmental Protection  
**IN SUPPORT OF HB 1022**  
Thursday, February 11, 2021, 9:00AM, Room 325

My name is Kevin Chang and I am the Co-Director 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 31 mālama 'āina community groups collectively referred to as E Alu Pū (moving forward together), 40 fishpond projects and practitioners called the Hui Mālama Loko l'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.** 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.



**WRITTEN TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTY-FIRST LEGISLATURE, 2021**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1022, RELATING TO THE TAKING OF NATURAL RESOURCES.

**BEFORE THE:**

HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

**DATE:** Thursday, February 11, 2021 **TIME:** 9:00 a.m.

**LOCATION:** State Capitol, Room 325, Via Videoconference

**TESTIFIER(S):** **WRITTEN TESTIMONY ONLY.**  
(For more information, contact Colin J. Lau,  
Deputy Attorney General, at 587-2991)

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Chair Lowen and Members of the Committee:

The Department of the Attorney General (Department) has concerns regarding this bill and offers the following comments.

The purpose of the bill is to establish the authority for administrative inspections by any police or conservation and resources enforcement officer upon less than probable cause to balance the unchecked extraction of wildlife and aquatic resources.

Our state currently has a statutory and regulatory scheme that requires: (1) any license or permit required for the take of aquatic resources or wildlife to be shown on demand to an enforcement officer (section 13-74-2, Hawaii Administrative Rules, section 183D-25, Hawaii Revised Statutes (HRS), respectively), (2) any regulated catch or wildlife taken to be shown (sections 187A-15 and 183D-25, HRS), but (3) requires any equipment or natural resources to be submitted for inspection upon probable cause that a violation of the rule or statute has occurred (section 199-7, HRS).

The Department has concerns about the lack of limits to the search scheme in the bill. The Department discussed the current draft of this bill with the Department of Land and Natural Resources (DLNR), and we are working closely with DLNR on a HD1 that will address those concerns.

Thank you for the opportunity to provide comments.

**HB-1022**

Submitted on: 2/10/2021 6:12:37 AM

Testimony for EEP on 2/11/2021 9:00:00 AM

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

Comments:

It is simply ridiculous that an enforcement officer cannot inspect a pillow case, being used as a catch bag, as a diver is exiting the water after a dive. When is Hawaii going to take enforcement of its natural resources seriously??...in the mainland, Fish and Game officers already have this exact ability to inspect coolers and catch bags. Stop treating DOCARE like its the legislatures whipping boy, they are the only line of defense we have against poachers and greed.

**HB-1022**

Submitted on: 2/10/2021 8:03:37 AM

Testimony for EEP on 2/11/2021 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Carrie Johnston - Hawaii Fishing News	Hawaii Fishing News	Oppose	No

Comments:

It is my understanding that this proposed legislation is unnecessary, and could encourage abuse of power and harassment of fishers without cause, and introduces new and unclear penalties for fishers. We do not want to criminalize (or even appear to..) a vital piece of our local culture and lifestyle.

I currently see DOCARE and police having positive interaction with fishers, and these fishers join them in reporting violations/violators to protect our resources. This partnership is in place and already works well. It is 'community policing' style of partnership that has been well received - and not the style proposed here. This proposed new legislation could destroy this partnership relationship by introducing an aggressive and targeted relationship that has no aloha, and assumes guilt. After 2020, I am disappointed that this is being proposed. We should never want to destroy positive partnership relationships, or place unwarranted tension between all good people who see themselves as sharing the responsibility of peace keepers, and conservationists. Please do not take any action that could lead to criminalization and presumed guilt for participation in a vital cultural and family friendly activity, that had been a key lifeline for many families and Kapuna, addressing both stress as well as hunger concerns during COVID.

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

**Committee on Energy & Environmental Protection  
Thursday, February 11, 2021, 9:00 AM  
Conference Room 325, Via Teleconference**

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*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.*

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**The Nature Conservancy supports HB 1022 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 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 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.

BOARD OF TRUSTEES

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**HB-1022**

Submitted on: 2/10/2021 8:53:08 AM

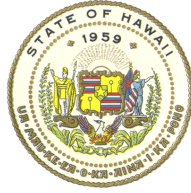
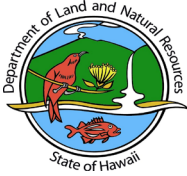
Testimony for EEP on 2/11/2021 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jason Redulla	DLNR	Support	No

Comments:

I would like to testify for HB 1022. Please allow me Zoom access. Thank you.

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 House Committee on  
ENERGY & ENVIRONMENTAL PROTECTION**

**Thursday, February 11, 2021  
9:00 AM**

**State Capitol, Via Videoconference, Conference Room 325**

**In consideration of  
HOUSE BILL 1022  
RELATING TO FUNDING TO THE TAKING OF NATURAL RESOURCES**

House Bill 1022 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 primary 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 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. **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 Conservation and Resources Enforcement 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 on a potential House Draft 1, below, 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 the Department's Conservation and Resources Enforcement 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 Department notes the public may have reservations and concerns of this bill including the potential for abuse of the administrative inspection authority by Conservation and Resources Enforcement Officers. The Department recognizes the importance of ensuring 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 has extended, and the Department has accepted, an offer to train Conservation and Resources Enforcement Officers on the proper application of the provisions of the potential House Draft 1 should it become law.

Thank you for the opportunity to comment on this measure.



SECTION 1. The legislature finds that the State of Hawaii has shown a substantial interest in regulating the extraction of its natural resources under the Hawaii Constitution and from its general statutory and administrative regulatory scheme in order to conserve, protect, and even propagate public natural resources, including their development and use, for the benefit of the people and future generations. In particular, many laws and administrative rules are in place for the purpose of regulating the extraction of natural resources associated with hunting and fishing, establishing the taking of such resources as highly regulated activities, including commercial and sport harvesting, and the subsequent use or trade and distribution of wildlife and aquatic resources and products.

The legislature also finds that the regulatory regime includes such aspects as licensing and permitting; bag, size, gender, seasonal, and species limitations for wildlife and fisheries; gear restrictions and limits on method of harvest; recognition of traditional practices related to the use of cultural resources; prohibition on the introduction of potentially competitive, harmful, noxious, or predatory non-native species; educational and scientific study permitting; establishment of protected areas, wildlife sanctuaries, game management areas, and limited entry areas (including freshwater reservoirs, game and fisheries management areas, and even

privately owned lands subject to agreement as a state game management area); that the regulatory scheme for natural resources associated with hunting and fishing in Hawaii is both extensive and pervasive, and an often overlapping of regimes. As a result, in light of the number and nature of regulations that apply and the procedures needed to enforce such regulations, the legislature finds that persons having voluntarily acquiesced to the regulatory environment in order to participate in natural resource extractive activities, especially for commercial uses of economically important species, have a reduced expectation of privacy under the Fourth Amendment of the U.S. Constitution, particularly while engaged in such activities and while present in the immediate area near where the activity took place.

These regulations, whether addressing extractive or even non-extractive activities, cannot be effectively enforced without a proper inspection authority as a check and balance against unfettered harvesting, particularly for the often solitary, distant, or far-flung pursuits of local and visitor participants in fishing or hunting given the expansive milieu of Hawaii's ocean surface, submerged areas, coastlines, forests, and valley terrain, and the limited enforcement personnel available to police such areas. The geographical complexity of the island natural environment is overlaid by the multitude of

recreational, sport, aesthetic, political, cultural, religious, and otherwise non-extractive pursuits of persons in the same areas as hunters and fishers.

Current Hawaii law gives the department of land and natural resources division of conservation and resources enforcement officers express statutory authority: (1) to inspect upon demand a required hunting license (section 183D-25, Hawaii Revised Statutes); (2) for those persons with a hunting license, to inspect a person's game bag, container, hunting coat or jacket, carrier, or vehicle that may conceal game (section 183D-25); or upon probable cause, to inspect upon demand the contents of any bag, container, vehicle, or conveyance used to carry aquatic life (section 187A-15, Hawaii Revised Statutes); and (3) to search and seize diverse things such as, "any equipment, article, instrument, aircraft, vehicle, vessel, business records, or [a] natural resource used or taken in violation of ... title 12, or any rules adopted thereunder", but only if there is probable cause to believe that a violation of a rule or statute has occurred (section 199-7, Hawaii Revised Statutes). The probable cause requirement makes effective enforcement unlikely, as officers are rarely able to meet this standard without having personally observed the hunter or fisher actually taking proscribed wildlife or aquatic life, or by illegal method. For example, a fisher could have a cooler of undersized fishes, but

even if at a distance the officer observed the take of an undersized fish or fishes, the officer would likely lack probable cause to inspect the contents of the cooler, and these violations would go undetected. Specialized training is necessary to identify regulated species from those that are not subject to regulation, and the difficulty of being able to discern subtle differences in length, sex, color, or other marks or measures from a distance or under less than suitable lighting conditions decreases the likelihood.

This Act would allow division of conservation and resources enforcement officers, upon reasonable belief that a person is or was recently engaged in hunting or fishing, to briefly detain that person as necessary, to review any relevant licenses, permits or related documents to allow conduct of the activity, and to inspect the wildlife or aquatic life in that person's possession.

Instead of an officer spending long enforcement activity hours observing a single hunter or fisher as a predicate to establishing probable cause for an inspection, this Act would enable the officer to inspect the bag or catch of dozens of hunters or fishers, protecting an entire coastline or valley.

The legislature also finds that the limited inspections authorized by this Act include the purpose of recovering illicitly obtained wildlife and aquatic life and either

returning them to the natural environment before they expire, if feasible, or recovering them for any economic value if not.

Being able to conduct inspections with greater immediacy than Hawaii's law currently allows increases the chance the natural resource could survive a return to the wild.

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

**"§199-     Inspection; exhibit upon demand; penalty.**

(a) Section 199-7 notwithstanding, any conservation and resources enforcement officer 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 the officer's official duties, stop and temporarily detain any person whom the officer reasonably believes is, or recently has been, engaged in hunting or fishing. During this brief detention, the officer, upon lawful demand shall be permitted to inspect any license, permit, stamp, tag, or other documentation required for hunting or the taking of aquatic resources, as well as any game or aquatic life in the person's possession, including the contents of any receptacle or container of any kind that could reasonably be used to carry the regulated game or aquatic life, and any equipment, article, or device capable of taking the game or aquatic life, while reasonably proximate

to the respective hunting or fishing area, to determine whether the person is in compliance with any provision of title 12 and any rules adopted thereunder regulating hunting or the taking of aquatic life, and conservation of wildlife or aquatic resources. Unless otherwise allowable under section 183D-25, upon probable cause, or incident to arrest, the officer shall not inspect the clothing upon the person who is subject to a natural resource inspection related to hunting or fishing, nor shall the officer inspect the contents of any receptacle or container that could not reasonably be used to carry game or aquatic life. For purposes of this section, "fishing" shall refer to the take of any regulated "aquatic life" as defined in section 187A-1, and references to "game", or "wildlife", shall include any animal parts thereof.

(b) Any inspection shall be conducted:

- (1) Within a reasonable distance from the environment from which the fishing or hunting took place; and
- (2) Shall not include mobile inspection unless upon
  - (A) Probable cause; or
  - (B) Failure to heed a demand to stop and submit to an administrative inspection for title 12 resources or for capture equipment used in hunting wildlife or in the taking of aquatic resources;

by any person authorized by the department of land and natural resources to enforce title 12, and any rule adopted thereunder, relating to the protection and conservation of natural resources.

(c) For violations of this section, unless any other enhanced penalties apply under the circumstances, the administrative fines shall be as follows:

- (1) For a first violation, a fine of not more than \$1,000;
- (2) For a second violation within five years of a previous violation, a fine of not more than \$2,000; and
- (3) For a third or subsequent violation within five years of the last violation, a fine of not more than \$3,000."

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

SECTION 4. New statutory material is underscored.

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

**Report Title:**

Natural Resources; Inspection; Penalties

**Description:**

Clarifies 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 duties, inspect certain items for compliance with title 12, Hawaii Revised Statutes, and any rule adopted thereunder, relating to the protection and conservation of wildlife or aquatic resources as related to hunting and fishing, respectively.

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



**HB-1022**

Submitted on: 2/10/2021 9:38:49 AM

Testimony for EEP on 2/11/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Damien Kenison	Kauhako Ohana Association	Support	No

Comments:

HB 1022

I am testifying in support of HB 1022 because it will give DOCARE the tools it needs to monitor and enforce the rules and regulations already in place. How can illegal fishing be stopped if officers are unable to see if the fisherman has fish illegally caught in a managed area or if they are using prohibited equipment or bait. Why make rules if you cannot enforce them?

Our marine resources are important part of our economy. Rules and regulations are established to ensure sustainability for the benefit of subsistence and commercial fishers. The ocean resources also play a big part in Tourism. Why would we not want to enhance DOCARE's ability to protect our fish for the large majority of stakeholders here in Hawaii?

There will be those who claim that this bill will infringe upon the rights of native Hawaiian fishermen but these people forget that the traditional penalties for violating kapu were very strict as the protection of marine species was paramount to the survival of the people. People ignore the fact that traditional practices were based on traditional management, seasonal closures, pono practices.

Those who claim that this bill will lead to harassment and infringement on native Hawaiian gathering right are those who are practicing illegal fishing. DOCARE is a government agency which is bound by laws established for the protection of our fish according to a mandate requiring fair and respectful treatment of all stakeholders.

I have seen aquarium collectors poaching in the Ho'okena Fish Replenishment Area as they pretended to fish with a rod and reel from their boat. Aquarium collectors are prohibited from transiting or anchoring in a FRA with their equipment. Giving DOCARE the ability to search their boat would prevent this from occurring.

Finally, regarding the ban on the use of animal chum for netting opelu. That rule is not enforced and has led to the degradation of the koa or opelu aggregating areas here in Kona. There will be those who say that the opelu schools are healthy but 50 years ago a fisherman could paddle out to the koa in front of their village and using vegetable palu

(chum) net enough opelu to fill their hatch. Today fishermen using chopchop or animal chum in boats need to traverse the coastline looking for opelu and only netting a large cooler on a good day.

This bill will go a long way to protecting our i'ē<sup>1</sup>a adequately and appropriately. Please consider my mana'ē<sup>1</sup>o in support of this bill and consider passing it.

Mahalo,

Damien Kenison

President-Kauhakā• Ohana Association

PO Box 38, Honaunau, HI, 96726

808- 987-9149

**HB-1022**

Submitted on: 2/10/2021 12:04:48 PM

Testimony for EEP on 2/11/2021 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
marino carreira	Individual	Oppose	No

Comments:

Dlnr is a law enforcement just as Hpd. The Hawaii courts and 9th circuit and even higher courts have established that if a crime has occurred and if there is evidence of that crime in a closed container or compartment or other enclosed unit the police cannot just search whenever they feel like it! They need to obtain either consent from the owner or a search warrant! By allowing law enforcement to punish a person if they refuse allow a search that would be illegal and considered coercion! Allowing law enforcement to bypass what the higher courts established would crest an abuse of power and the state would be liable for litagation! Just because you create a bill to allow for search without a warrant doesn't mean it's legal and can over rule what the high courts established is needed. Dlnr is lazy! And they don't want to get search warrants! Hpd and feds all have to get search warrants and Dlnr should be no different!

**HB-1022**

Submitted on: 2/10/2021 1:28:43 PM

Testimony for EEP on 2/11/2021 9:00:00 AM

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

Comments:

RE: HB 1022, Relating to the Taking of Natural Resources

Aloha Chair Lowen, Vice-Chair Marten, and members of the Committee,

Thank you for the opportunity to submit testimony in support of House Bill 1022.

We are [NAME/ORGANIZATION]. This bill establishes important inspection and enforcement powers for the state Department of Land & Natural Resources (DLNR).

Our state depends on healthy marine and terrestrial ecosystems; they're what feed us, protect our shorelines, support our cultural practices, and maintain our billion-dollar visitor and recreation industry. Under current laws and procedure, officers of the Department's Division of Conservation and Resources Enforcement (DOCARE) may not perform an inspection of a person engaged in 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 the resources that belong to all of us and to future generations. Other states have and use the same inspection authority in HB 1022 to help enforce laws to manage and protect natural resources and deter poaching.

Existing law leaves Hawaii's precious and valuable natural resources subject to merely voluntary compliance. The state's fishers, hunters, hikers, divers, and other natural resource users have long called for more enforcement of natural resources regulations. The inspection and enforcement authority reflected in this bill are important steps toward achieving compliance with Hawaii law.

Thank you for the opportunity to testify on HB 1022.

Bryce Groark

**HB-1022**

Submitted on: 2/10/2021 3:12:39 PM

Testimony for EEP on 2/11/2021 9:00:00 AM

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

Comments:

Please support to protect our natural resources.

**HB-1022**

Submitted on: 2/10/2021 3:55:24 PM

Testimony for EEP on 2/11/2021 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ron Dellinger	Individual	Oppose	No

Comments:

I stongly "OPPOSE" this overreach of authority and so should you, as our representatives.



**HB1022**  
**RELATING TO THE TAKING OF NATURAL REOSURCES**  
Ke Kōmike Hale o ke Ikehu a me ka Ho‘omalu Ao Kūlohelohe

Pepeluali 11, 2021

9:00 a.m.

Lumi 325

The Office of Hawaiian Affairs (OHA) Committee on Beneficiary Advocacy and Empowerment will recommend that the OHA Board of Trustees **COMMENT** on HB1022, 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 narrower, 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.

However, OHA does have concerns regarding the breadth of this measure, which would allow for warrantless searches of any individual in any area suspected of having any natural resources in their possession, 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.

To minimize the chilling potential of this measure and to mitigate any potential constitutional issues, OHA respectfully recommends amending HB1022 to 1) expressly recognize the rights of Native Hawaiian traditional and customary practitioners in statute; 2) limit the proposed inspection authority to discrete, specific, and highly-regulated areas, such as community based subsistence fishing areas and natural area reserves; 3) 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 1, line 9, to read as follows:

"stop and temporarily detain any person within or within 50 yards of the boundaries of any designated natural area reserve, wildlife sanctuary, public hunting area, fishery management area, public fishing area, marine life conservation district, community-based subsistence fishery management area, or fish replenishment area or any other area designated under chapter 188F or rules adopted thereunder, whom the officer or agent"

Amending the language on page 2, line 15, 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) shall be subject to a petty misdemeanor and, in addition to any other penalties, shall be"

And adding the following subsection after page 2, line 20, 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 penalties and administrative penalties authorized by law."

Mahalo nui for the opportunity to testify on this measure.



**HB-1022**

Submitted on: 2/10/2021 4:50:23 PM

Testimony for EEP on 2/11/2021 9:00:00 AM

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

Comments:

Dear Committee Members, It is critical that our police and DLNR officers (DOCARE) be given inspection powers to ensure compliance with laws restricting the improper taking of natural resources. Please vote "yes" on this bill. Mahalo.