

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
JUDICIARY & HAWAIIAN AFFAIRS**

**Wednesday, February 10, 2021
2:00 PM**

State Capitol, Via Videoconference, Conference Room 325

**In consideration of
HOUSE BILL 98, HOUSE DRAFT 1
RELATING TO AQUATIC RESOURCES**

House Bill 98, House Draft 1 proposes to specify that any equipment, article, instrument, aircraft, vehicle, vessel, or business record used in violation of the aquatic resources law is subject to forfeiture and authorizes the imposition of a criminal fine. This bill also proposes to clarify that the fine structure may be assessed on a per-specimen basis and makes violations of the aquatic resources law a misdemeanor. The bill further proposes to permit the Department of Land and Natural Resources to recommend community service that benefits the resource damaged when a person is ordered to perform community service in lieu of a fine. **The Department of Land and Natural Resources (Department) offers comments on this measure.**

The Department appreciates the provisions of this bill which would allow funds from fines collected to be deposited to the Conservation and Resources Enforcement Special Fund. These funds could then be used to support the Department's law enforcement efforts through its Conservation and Resources Enforcement Program.

Upon review of the provisions this bill proposes, the Department notes some of the proposals may be unnecessary as they are already provided for in statute. These include the proposed amendments to Section 187A-12.5(b) and (c), Hawaii Revised Statutes (HRS). There are existing provisions found in Sections 187A-12.5(d) and (e), HRS, which allow for fines on a per-specimen basis. We note however, that the proposed changes would allow for greater fines on a per-specimen basis for second and third offenses.

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

The Department is also concerned that with the proposed changes to the language in Sections 187A-12.5(b) and (c), HRS, if a violation did not involve the actual take of any specimens, and only involved the use of illegal gear, for instance, the fine would be \$0.

Additionally, the Department is concerned that amending Section 187A-13, HRS, so that violations are elevated from a petty misdemeanor, to a full misdemeanor may have the unintended consequence of more case dismissals by the Courts. Our Courts are already congested as it is, and when violators are charged with a misdemeanor, the possibility of a jury trial comes into play, which creates an additional, mandatory, hearing where the defendant must waive or demand said jury trial, increasing court congestion. There is also a common sentiment that a petty misdemeanor is already too high of a charge for aquatic violations, which leads to many cases being plead down to a simple trespass infraction, or being dismissed altogether. While this trend is decreasing, we worry that an increase from a petty misdemeanor to a full misdemeanor will cause a relapse to the old ways of pleading down or dismissing aquatic resource cases. However, the Department does support and recommends amending this section to include authority for per-specimen fines for criminal penalties, as it already has per-specimen fines for civil penalties.

Lastly, the Department notes it has existing statutory forfeiture authority under Section 199-7, HRS. Importantly, while the Department's forfeiture authority already exists, the Department must amend the applicable penalty sections of the Hawaii Administrative Rules to specify forfeiture as a penalty within the rule to comply with the *Carlisle v. One Boat* decision.

Thank you for the opportunity to comment on this measure.

HB-98-HD-1

Submitted on: 2/9/2021 12:25:15 PM

Testimony for JHA on 2/10/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ian Garrod	DLNR	Comments	No

Comments:

I would like to testify for this bill. Please allow me Zoom access. Thank you.

HB-98-HD-1

Submitted on: 2/9/2021 12:26:59 PM

Testimony for JHA on 2/10/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Brian Neilson	DLNR	Comments	No

Comments:

I am available for comments on this bill. Please provide me Zoom access. Thank you.

HB-98-HD-1

Submitted on: 2/9/2021 12:28:08 PM

Testimony for JHA on 2/10/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
David Sakoda	DLNR	Comments	No

Comments:

I am available for comments on this bill. Please allow me Zoom access. Thank you.

HB-98-HD-1

Submitted on: 2/8/2021 10:05:35 PM

Testimony for JHA on 2/10/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Burdick	Environmental Caucus of the Democratic Party of Hawaii	Support	No

Comments:



February 9, 2021

To: House Committee on JUDICIARY & HAWAIIAN AFFAIRS

Honorable Representative Mark M. Nakashima, Chair

Honorable Representative Scot Z. Matayoshi, Vice Chair

Re: HB 98, HD 1 – RELATING TO AQUATIC RESOURCES

Hearing: Wednesday, February 10, 2021, 2 p.m. via videoconference

Position: **STRONG SUPPORT**

Aloha, Chair Rep. Mark M. Nakashima, Vice Chair Rep. Scot Z. Matayoshi, and Members of the Committee:

The Environmental Caucus of the Democratic Party of Hawai'i and its Natural Resources Committee are in strong support of this bill, which would significantly increase the penalties for violations of marine related laws.

For years, frustrated citizens and subsistence fishers have been dismayed by the lack of serious enforcement of laws on the books and difficulty in pursuing and prosecuting known criminal poaching rings of aquatic resources on Hawaii Island in particular, and elsewhere throughout the state. With this bill and its Senate side companion SB 572, we can at last look to a more viable deterrent in the law that puts the legal advantage to our side where it should be, rather than the routine 'cost of doing business' for poachers as has been the routine for too long.

We note also that while this constitutes a significant step in the right direction, an even more effective measure would include revocation of any commercial marine licenses when applicable. By doing so, the ambiguities between 'legal' and 'illegal' operations become more obvious in the times when DOCARE (Department of Conservation Enforcement) needs to act. We also hope that by upping the monetary fines and asset forfeiture penalties any revenues from such proceedings might begin to compensate adequately for the existing drain on State financial resources.

Please pass this important and overdue legislation, and 'Mahalo' to all its supporters!

Alan B. Burdick, Co-Chair

Environmental Caucus, and Co-Chair

Natural Resources Committee of the Environmental Caucus

Burdick808@gmail.com 927-1500



HOUSE OF REPRESENTATIVES
THE THIRTY-FIRST LEGISLATURE
REGULAR SESSION OF 2021

COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Rep. Mark M. Nakashima, Chair
Rep. Scot Z. Matayoshi, Vice Chair

Rep. Linda Ichiyama	Rep. Nadine K. Nakamura
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Rep. Matthew S. LoPresti	Rep. Chris Todd
Rep. Nicole E. Lowen	Rep. James Kunane Tokioka
Rep. Angus L.K. McKelvey	Rep. Gene Ward

NOTICE OF HEARING

DATE: Wednesday, February 10, 2021
TIME: 2:00 PM
PLACE: VIA VIDEOCONFERENCE
Conference Room 325
State Capitol
415 South Beretania Street

TESTIMONY OF THE OCEAN TOURISM COALITION ON HB98 HD1.

Dear Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee on Judiciary and Hawaiian Affairs:

The Ocean Tourism Coalition (“OTC”) represents over 300 ocean tourism businesses statewide. OTC’s greatest concern with HB98 is that it may have unintentional consequences and result in the forfeiture of vessels beyond the bill’s original intent. Accordingly, OTC was very appreciative of the Committee on Water and Land adding the word “intentional” to the bill to narrow its scope and application. We believe that this will help avoid situations of vessel forfeiture where a rule is violated through accident (e.g., unintentional marine life strikes).

In addition, upon listening to various testimony in the prior hearing, it appears that the original intent of this bill was to address concerns relating to the illegal taking of marine life (i.e., poaching). Accordingly, OTC would like to offer the following alternative amendment of the bill that would limit the bill’s application and scope to its original intent:

“§187A- Any equipment, article, instrument, aircraft, vehicle, vessel, business record, or other asset used in **fishing, possession, or sale of aquatic life in** violation of

this chapter may be seized and shall be subject to forfeiture according to the procedures set forth in chapter 712A.”

This language mirrors the current language in §187A, and OTC believes that this would be an effective way of narrowing the bill and avoiding any unintended consequences.

Sincerely,

Zachary , Director, OTC

HB-98-HD-1

Submitted on: 2/8/2021 12:37:26 PM

Testimony for JHA on 2/10/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Quinn	Individual	Support	No

Comments:

Dear Honorable Committee Members,

Please support HB98.

Thank you,

Andrea Quinn

HB-98-HD-1

Submitted on: 2/8/2021 10:37:20 PM

Testimony for JHA on 2/10/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Fern Anuenue Holland	Individual	Support	No

Comments:

Thank you for supporting this bill Representatives!