


OFFICE OF HAWAIIAN AFFAIRS
‘Ōlelo Hō‘ike ‘Aha Kau Kānāwai
Legislative Testimony

HCR189 HD1/HR158 HD1

Ke Kōmike Hale o ka Ho‘okolokolo a me ke Kuleana Hawai‘i
House Committee on Judiciary & Hawaiian Affairs

Malaki 29, 2021

2:00 p.m.

Lumi 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HCR189 HD1/HR158 HD1, which supports and urges the international and domestic repatriation of Native Hawaiian art, cultural items, and iwi kūpuna. The resolution specifically urges the Secretary of the Interior, Secretary of State, Secretary of Commerce, Secretary of Homeland Security, and the United States (US) Attorney General to work to determine the scope of illegal trafficking of these items domestically and internationally, and develop methods and explicit regulations to prevent such illegal activity. The Governor, Department of Land and Natural Resources (DLNR), and the State Historic Preservation Division (SHPD) are further called on to continue cooperating with domestic and international entities to facilitate repatriation efforts. **OHA has a vested interest in the repatriation of cultural items and iwi kūpuna from domestic and international entities, and successfully returned many cultural items and iwi kūpuna home over the past 30 years; thus, support from the federal and state government on these matters would be much appreciated and absolutely necessary in some instances as we continue to work towards more repatriations and the return of stolen cultural objects.**

Hawai‘i state law recognizes OHA as the principal public agency in the state responsible for the performance, development, and coordination of programs and activities relating to Native Hawaiians.¹ Furthermore, state law directs OHA to: advocate on behalf of Native Hawaiians;² advise and inform federal officials about Native Hawaiian programs; and coordinate federal activities relating to Native Hawaiians.³ In addition, OHA is a Native Hawaiian organization (NHO) specifically recognized by US law as having expertise to repatriate Hawaiian skeletal remains, funerary objects, sacred objects and objects of cultural patrimony;⁴ OHA accordingly has requisite standing to present claims for repatriation. As such, OHA will continue to conduct repatriation claims and serve as the voice for the Native Hawaiian people to bring iwi kūpuna, mea kapu (sacred objects), and moepū (funerary objects) home.

¹ Haw. Rev. Stat. § 10-3(3).

² Haw. Rev. Stat. § 10-3(4).

³ Haw. Rev. Stat. § 10-6(a)(4).

⁴ See National Museum of the American Indian Act of 1989 and the Native American Graves Protection and Repatriation Act of 1990.

In domestic repatriation cases, federally funded institutions are generally required to reach out to known lineal descendants or NHOs that could be culturally affiliated with human remains or funerary objects in their possession, pursuant to the Native American Graves Protection and Repatriation Act (NAGPRA).⁵ OHA also proactively works with Native Hawaiian beneficiaries to inquire about holdings in these institutions. In cases where the provenance of human remains or funerary objects indicates that they came from a Hawaiian burial context, with no other locational data, OHA seeks to claim them for the benefit of the Native Hawaiian community. In cases where descendants are identified, OHA provides support and resources for such individuals to navigate the NAGPRA process and ensure that repatriation is fully executed.

In cases where cultural objects are believed to have been stolen, and when those in possession of such objects fail to voluntarily surrender them, OHA would need the assistance of the state Attorney General to make a claim in State court, since such objects are not covered under NAGPRA. While this situation has not been the norm, OHA has observed at least a few instances where such legal intervention may be necessary. **Thus, support from the State on domestic repatriation matters, as urged by this resolution, would help in the pursuit of stolen cultural objects and overall repatriation efforts.**

For international cases, repatriation is often dependent on the laws of the respective country of the person or entity in possession of cultural objects. In the past, OHA has sought the assistance of the US Department of the Interior (DOI) Office of Native Hawaiian Relations and US embassies when institutions have requested acknowledgement of OHA's standing to make repatriation claims. Notably, the DOI was recently instrumental in getting 20 iwi kūpuna repatriated from the Duckworth Laboratory of the University of Oxford, by providing a letter verifying that there were no other claimants and explaining how a repatriation claim would be resolved under US federal law. Fortunately, after a decade since our initial repatriation claim was made, these iwi kūpuna from the Duckworth Laboratory were finally returned home to Hawai'i on March 1, 2020.

We anticipate needing further DOI and US embassy support going forward on many international repatriation claims as it has become a trend for institutions to request that respective US embassies provide authorization for OHA to conduct consultation on such claims. OHA further notes that the DOI put out a request to consult with NHOs and Native American tribes regarding international repatriation efforts in October of 2020. The formal invite letter from the DOI indicated that information shared through this consultation will help them to understand the scope of holdings abroad and how the DOI may be able to assist with priorities identified by tribes or NHOs. OHA participated in this consultation and provided information on active cases we are working on. We emphasized the trend of institutions requiring US embassy support and appreciated the US DOI's efforts to assist on this front. **OHA accordingly appreciates that the current resolution will support ongoing efforts by the DOI and embassies under the State**

⁵ NAGPRA consultation required by 43 CFR §10.9(b).

Department to support NHOs, including OHA, where possible in international repatriation efforts.

For the above reasons, OHA urges the Committee to **PASS** HCR189 HD1/HR158 HD1. Mahalo for the opportunity to testify on this measure.

**TESTIMONY IN STRONG SUPPORT of HCR189/HR158 to REPATRIATE NATIVE
HAWAIIAN CULTURAL ITEMS AND IWI KUPUNA**

Chair Mark Nakashima, Vice Chair Scot Z. Matayoshi
Committee on Judiciary and Hawaiian Affairs
415 S. Beretania Street
Honolulu, HI 96813

Mahalo piha Chair Nakashima, Vice Chair Matayoshi, and Committee Members for hearing this resolution.

"Mai kaula 'i wale i ka iwi o nā kūpuna."

Do not dry out the bones of the ancestors. Do not discuss the ancestors too freely with strangers, for it is like bringing their bones out of their hiding places for everybody to stare at. -Pukui #2069

"Mai lawe wale i nā mea i ho'omoepū 'ia."

Don't wantonly take things placed with the dead

I write in **strong support** for returning our ancestors back to Hawai'i. It is an absolute travesty and perversion that there are Native Hawaiian families with their great grandparents kept in a dusty box on a museum shelf far away from Hawai'i.

"Native Hawaiian art and cultural items are preservations of masterful craftwork and highly refined techniques revered across the Pacific," as the resolution reads, is absolutely true. They are time capsules, models, story tellers in their own right of existence to practices and an art that is, "tragically in danger of becoming a lost art with each passing generation." **With each artifact that is lost from our native lands, we not only lose the practices of past generations, but rob our future generations of a connection to their identity.**

Their culture.

Their history.

Their pride.

Not only for those of Native Hawaiian lineage but for all those that call this place home. We have a collective responsibility to honor, protect, and cherish Native Hawaiians. **There is no other Hawai'i on this planet. We must hold true to the gravity of that reality.**

Thank you for your consideration.

With Aloha,

Rikako Ishiki

STRONG SUPPORT FOR BRINGING OUR HAWAIIAN CULTURAL ARTIFACTS HOME WITH HCR189/HR158!

Chair Mark Nakashima, Vice Chair Scot Z. Matayoshi
Committee on Judiciary and Hawaiian Affairs
Hawai'i State Capitol
Room 432 and 331

Aloha Chair Nakashima, Vice Chair Matayoshi, and Members,

I write in strong support of HCR189/HR158 relating to the repatriation of Native Hawaiian cultural artifacts and iwi kupuna, and thank you for hearing this measure.


When students learn about Native Hawaiian history, if they do not see the actual artifacts that color, shine light on, and indeed breathe the incredibly advanced and complex society Native Hawaiians had, will future generations be doomed to perceive Native Hawaiian culture as antiquated, under-developed, unornamented, unembellished, and uninspiring?

Museums and other entities in Hawai'i have been doing a great job, but if our museum shelves only hold a small portion of what is out there, and indeed are bare of the items that have been lost forever, how do future generations feel pride, connection, conduct perpetuation, or resilience of their lineage and the heritage of our Hawai'i as a whole?

This measure reiterates the importance of ensuring that Native Hawaiian cultural artifacts that are unlawfully or inappropriately taken from Hawai'i should be returned. **It also lists the international and domestic legal precedence and mechanisms for this to occur, and I urge the committee to strengthen the resolution by asking these entities to prioritize Native Hawaiian artifacts, and indeed all indigenous artifacts.** Stolen pieces of artwork by famous artists are certainly important and in danger of being lost; however, when we lose indigenous artifacts, we are losing the culture, heritage, and history of generations of civilizations. In a world of limited resources to combat illegal trafficking, isn't the latter more endangered and the impact deeper than the former?

Some items, listed in the resolution, which indeed should be much longer, detail the history and practices we lose when we lose these artifacts:

Kapa/Kapa pounders: a dying cultural art of traditional Native Hawaiian dress
Niho palaoa: a cultural artifact important to representation of Native Hawaiian Chiefhood
Mahiole: representing a long legacy of weaving, which is also an endangered art



'Aha 'ula: a legacy of feather work that is a lost art, which contains the remnants of extinct birds

Leiomano: A lost form of Hawaiian weaponry and a demonstration of warfare techniques

And the list goes on.

It is so sad to know that some of these items are in a person's house or private collection storage, far from their homelands, unable to be celebrated by the youth of Hawai'i.

Let's push the federal government to enact laws that enforce the Native American Graves Protection and Repatriation Act, namely:

Title 18 US Code §1170. Illegal trafficking in Native American human remains and cultural items

(a) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit, the human remains of a Native American without the right of possession to those remains as provided in the Native American Graves Protection and Repatriation Act shall be fined in accordance with this title, or imprisoned not more than 12 months, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, or imprisoned not more than 5 years, or both.

(b) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit any Native American cultural items obtained in violation of the Native American Grave Protection and Repatriation Act shall be fined in accordance with this title, imprisoned not more than one year, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, imprisoned not more than 5 years, or both.

Let's follow the creed of member states gathered at the United Nations in Article 11 and 12 of the UN Declaration on the Rights of Indigenous Peoples¹:

¹ *United Nations Declaration on the Rights of Indigenous Peoples*, A/RES/61/295 (13 September 2007) available from <https://undocs.org/A/RES/61/295>.



General Assembly

Distr.: General
2 October 2007

Sixty-first session
Agenda item 68

Resolution adopted by the General Assembly on 13 September 2007

[without reference to a Main Committee (A/61/L.67 and Add.1)]

61/295. United Nations Declaration on the Rights of Indigenous Peoples

Article 11


1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.



I respectfully urge passage of this measure by the committee. Thank you for your consideration.

Mahalo nui loa,

Daniel Lee

The Kawaihapai Ohana

Thomas T Shirai Jr – Po’o

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Waialua, HI 96791

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April 28, 2021

Public Hearing

Monday, March 29, 2021 / 2:00PM

House Committee on Judiciary & Hawaiian Affairs (JHA)

Chair - Representative Mark M Nakashima

Vice Chair – Representative Scot Z Matayoshi

RE: Testimony of Support for HCR 189 SD1 & HR 158 HD1 (Expressing Support For, and Urging the International and Domestic Repatriation of Native Hawaiian Art, Cultural Items and Iwi Kupuna)

Aloha Chair Nakashima & Committee Members,

I am testifying both as an individual and Po’o of The Kawaihapai Ohana which is a recognized Native Hawaiian Organization by The Department of Interior’s Office of Hawaiian Relations on their list of NHO’s. Part of The Kawaihapai Ohana’s mission statement (Kuleana) is to Malama Iwi Kupuna of Waialua Moku with an emphasis on Kawaihapai Ahupua’a and the Northwest Coastline of Waialua encompassing the Ahupua’a of Kamananui, Mokule’ia 1 & 2, Kikahi, Auku’u, Kawaihapai, Kealia and Ka’ena. What is known today as Haleiwa (Pa’ala’a Ahupua’a) continuing North is called The North Shore.

U.S. Department of the Interior – Office of Native Hawaiian Relations
Native Hawaiian Organization (NHO) Notification List

Kawaihapai Ohana

Established:
2001

Summary: Protection and preservation of na iwi kupuna, cultural & historical sites with their applicable mo’olelo (stories) of Waialua with a primary emphasis of the northwest coastline of Waialua that encompasses the ahupua’a of Kamananui, Mokuleia, Aukuu, Kikahi, Kawaihapai, Kealia & Kaena. The ultimate emphasis is ahupua’a of Kawaihapai.

Originally Registered:
12/19/2007

Last Renewed:
11/6/2012

Island: O’ahu	Moku: Waialua	Ahupua’a: Northwest Coastline of Waialua
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Contact: Mr. Thomas T. Shirai Jr.
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None Listed

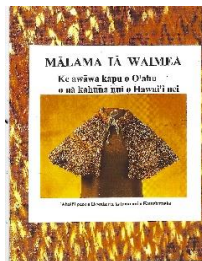
As an individual I am a SHPD (State Historic Preservation Division) Recognized Lineal Descendant of Kawaihapai Ahupua'a located in Waialua Moku where my Ohana Iwi Kupuna are buried. I'm also recognized by NAGPRA (Native American Graves Protection Act) Chapter 106 of The National Historic Preservation Act (NHPA) as a recognized Lineal Descendant. I've served 2 terms on the Oahu Island Burial Council (OIBC) as Waialua Moku Representative and served one term on The Office of Hawaiian Affairs (OHA) Native Hawaiian Historic Preservation Council (NHHPC) when it existed.

On behalf of The Kawaihapai Ohana and myself we Strongly Support HCR 189 HD1 and HR 158 HD1. Although many of our Cultural, Religious and Artifacts and Iwi Kupuna are still in custody of other Museums and Educational Institutions worldwide and they need to come back home. Furthermore are sold on the black market or private collectors and this needs to cease immediately. Sadly this has been going on for a longtime in Hawaii thru hobbies that includes antique bottle collecting by collectors who are simply in it for financial gain along with others who are disrespectful and apathetic to Kanaka Maoli and our Culture. I've seen this online via social media in the form of "show and tell" posts or for trade. It hurts me a lot because bottle collection was a hobby that my Grandparents and I did in the early 1970's and the reward was spending cherished time with them which is priceless no matter what we found. Also as Kanaka Maoli my Grandparents and I stayed away from Hawaiian Cultural Sites or Landscapes therefore only exploring sites of former Plantation Camps in Waialua that he knew. Many collectors with great collections often trespassed into construction sites like in Chinatown or Kakaako because of the urban development and many of those sites encounter Iwi Kupuna or Cultural Sites which includes ancient Loko Ia (Fishponds), stone walls or auwai (agricultural ditches)

An example of a successful NAGPRA Repatriation that was originally a loan from another museum was the return of High Chief Kalaniopu'u Cape and Helmut. It is now in the permanent holdings of Bishop Museum. In the 1990's after a long NAGPRA Repatriation process Hui Malama I Na Kupuna O Hawaii Nei successfully repatriated many Iwi Kupuna and brought them home to Hawai'i Nei.



This legislation HCR 189 HD1 and HR 158 HD1 can apply locally here in Hawaii with our Museums. Perhaps High Priest Hewahewa's Cape made of Pueo feathers and only one in existence made of it can be repatriated from the former Honolulu Academy of Arts to Bishop Museum Collections and Inventory.



In 2005 The Department of Transportation Airport Division despite having knowledge SEVEN YEARS PRIOR to disturbing my Ohana Iwi Kupuna at Kawaihapai Ahupua'a which my Grandpa, Mother, Wife and I spent an entire afternoon with SHPD (State Historic Preservation Division) share information of our Ohana and our relationship to Kawaihapai further adding where not to disturb culturally sensitive places that included our Ohana burial site. This was extensively covered by Leslie Wilcox and the entire KHON2 News Staff from 2005 to 2007 when they were repatriated to me and reburied at Kawaihapai Ahupua'a with kokua from OHA Staff and KHON2 News crew covering this. The amount of time for this HRS Chapter 6E and NAGPRA process is considered quite fast compared to others.

The screenshot shows a news article on the KHON2 website. At the top is the KHON2 logo and a banner for 'Hawaii at Six WEEKNIGHTS'. Below the banner is a navigation menu with links for Home, News, Sports, Traffic Cams, Weather, Features, Web, Local News, World Report, Morning News, Government News, and Business. The main content area features a video player with a 'PLAY' button and a '6:55' duration indicator. The video shows a man in a light-colored shirt standing in a room with bookshelves, likely a library or archive, while another person is partially visible in the foreground. Below the video is the article title 'Ancestral Iwi Returned to Mokuleia' by Andrew Pereira. The article text discusses the return of ancestral bones to Mokuleia after being removed from Dillingham Airfield. It mentions Thomas Shirai Jr. as the first person not affiliated with any native Hawaiian group to reintroduce his ancestor's iwi. The article also notes that Shirai believes the bones are from his great, great, great grandmother, Napuakau Kakulu, who died in 1896. It further states that Shirai, who kept meticulous records of his family's history, was convinced by the Historic Preservation Division to return the iwi directly to him. The article concludes with a quote from Shirai about the burial site and mentions that the unmarked burial ground was registered with the Department of Land and Natural Resources. At the bottom of the article are social media sharing options: SAVE THIS, EMAIL THIS, PRINT THIS, and MOST POPULAR.

which oversees the State Historic Preservation Division, but the records were lost.

After receiving the iwi in a brown cardboard box, Shirai and two workers from the Office of Hawaiian Affairs wrapped them in kapa cloth and placed them inside two lauhala baskets for the car ride from Kapolei to Mokuleia.

Once at Dillingham Airfield the three men hiked past a row of palm trees and overgrown brush to the site of the illegal sand mining. After digging a hole, Shirai carefully placed the lauhala baskets inside and covered them with sand.

"Okay tutu," Shirai said as he completed the reburial. "Sorry we disturbed you but some people no like listen, so now you back at home."

The State Department of Transportation leases the land at Dillingham Airfield from the U.S. Army. In the fall of 2005 the airfield's supervisor allowed a local contractor to remove high quality sand in exchange for burying dead trees and brush.

DOT spokesman Scott Ishikawa says an investigation showed the supervisor did not profit from the sand mining. The supervisor was officially reprimanded by the DOT but was allowed to keep his job.

In May of 2007 Barry Fukunaga, the former director of the Department of Transportation sent a letter of apology to Shirai.

Andrew may be reached at apereira@khon2.com or ph. 591-4263.
Story Updated: Dec 26, 2007 at 6:54 PM HST

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Mahalo for the opportunity to provide Testimony of Strong Support for HCR 189 HD1 and HR 158 HD1. Malama Iwi Kupuna.

Thomas T Shirai Jr

Lineal Descendant – Kawaihapai Ahupua'a

