



SCR103 SD1

URGING THE UNITED STATES MILITARY TO CLEAN UP MUNITIONS AND EXPLOSIVES OF CONCERN IN HAWAII UNDER THE MILITARY MUNITIONS RESPONSE PROGRAM

Ke Kōmike Hale o nā mea Pa‘ahao, ke Kuleana Pū‘ali Koa, a me Nā Koa Kahiko
House Committee on Corrections, Military, & Veterans

‘Apelila 7, 2021

9:00 a.m.

Lumi 430

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SCR103 SD1, which urges the United States military to clean up munitions and explosives of concern in Hawai‘i under the Military Munitions Response Program.

As an initial matter, OHA notes that Native Hawaiians have a heightened interest in the substantial acreage of federal and state lands currently under military control. In addition to the estimated 114,499.67 acres of federal lands that are eligible for transfer to the State under Public Law 88-233,ⁱ another 30,176.18 acres are controlled by the federal government under leases set to expire in 2029. These lands are overwhelmingly part of the 1.8 million acres of former Government and Crown Lands that were taken as a result of the unlawful overthrow of the Hawaiian Kingdom in 1893,ⁱⁱ and that were “ceded” to the United States’ federal government upon annexation – despite strong opposition from and without any consent by, or compensation to, Queen Lili‘uokalani or the Native Hawaiian people.ⁱⁱⁱ Native Hawaiians continue to maintain unrelinquished claims to the entire “ceded” lands corpus, including those lands held or controlled by the federal government, and therefore have a particularly heightened interest in ensuring that these lands are properly remediated and not rendered unusable due to military training activities.

Notably, historical and ongoing examples of the treatment of “ceded” lands under federal ownership or control raise particular concerns regarding the need for meaningful remediation and restoration actions by the U.S. military. For example, the island of Kaho‘olawe was taken for U.S. military use in 1953, with assurances that it would be restored to a “habitable condition”; to this day, only 9% of the island has been cleared beyond the surface level.^{iv} Ironically, Kaho‘olawe accounts for most of the federal “ceded” lands relinquished to the State since statehood,^v and it was only released from federal control in 1993 after years of protests and lawsuits.^{vi} Additionally, there are still ongoing concerns about the remediation of Mākuā Valley in Wai‘anae, O‘ahu, which has also been used for live-fire training, and which will also need substantial remediation and restoration as a result of such activities.^{vii} The Hawai‘i Supreme Court has also recently

called attention to the potential for irreparable harm to 22,971 acres of state “ceded” lands leased to the federal government at at Pōhakuloa, Hawai‘i Island, which the court found were not adequately cared for as required under the public trust doctrine.^{viii} **These historical and recent examples counsel the need to ensure that “ceded” lands used by the federal government for military purposes are appropriately remediated and restored for non-military use – a critical component of restorative justice for Native Hawaiians who maintain claims to these lands.**

Therefore, OHA urges the Committee to **PASS SCR103 SD1**. Mahalo nui for the opportunity to testify on this important issue.

ⁱ Section 5(e) of the Admission Act provided a five-year window for the federal government to convey back to the State of Hawai‘i lands it no longer needed; after this five-year period, title to those lands would have vested permanently in the United States. However, Public Law (P.L.) 88-233, abolished the five-year deadline so that the federal government could relinquish control of “ceded” lands at any time. Notably, P.L. 88-233 was a double-edged sword: in exchange for removing the deadline for the federal government to relinquish lands, nearly 228,000 acres of “ceded” lands set aside for national parks, monuments, and reservations became the fee-simple property of the federal government. These lands are now ineligible for transfer under P.L. 88-233. In any case, the federal government has continued to maintain control over the vast majority of the lands it retained upon statehood notwithstanding the lack of any significant federal use, such as Bellows Air Force Base in East O‘ahu. MELODY MACKENZIE ET AL., NATIVE HAWAIIAN LAW TREATISE 84-85 (2015).

ⁱⁱ MACKENZIE ET AL, *supra* note 1, at 27.

ⁱⁱⁱ The state of Hawai‘i and the United States have both acknowledged this injustice, as well as the role of the U.S. military in the unlawful overthrow of the Hawaiian Kingdom. See, e.g., The Apology Resolution, Pub. Law No. 103-150, 107 Stat. 1510 (1993); Act 359 (Reg. Sess. 1993).

^{iv} MELODY MACKENZIE, *supra* note 3 at 39; DAVIANNA MCGREGOR, KANALOA KAHO‘OLAWE, in DETOURS: A DECOLONIAL GUIDE TO HAWAI‘I 261, 264 (HÖKŪLANI K. AIKAU ET. AL, ED.) 2019.

^v According to a 2012 inventory of public lands, 31,247.49 acres have been transferred to the state pursuant to P.L. 88-233, of which Kaho‘olawe comprises 28,776.70 acres. *Id.* at 84.

^{vi} *Id.* at 39-40.

^{vii} *Id.* at 8.

^{viii} See *Ching v. Case*, 449 P.3d 1146, 1160-62, 1174-80 (Hawai‘i 2019).



**Testimony to the House Committee on Corrections, Military, & Veterans
Wednesday, April 7, 2021 at 9:00 A.M.
Written Testimony**

**RE: SCR 103, STRONGLY URGING THE UNITED STATES MILITARY TO CLEAN UP
MUNITIONS AND EXPLOSIVES OF CONCERN IN HAWAII UNDER THE MILITARY
MUNITIONS RESPONSE PROGRAM.**

Chair Ohno, Vice-Chair Ganaden, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** SCR 103.

The Chamber's Military Affairs Council (MAC) was established in 1985 to specifically advocate on behalf of Hawaii's military as it is the second economic driver for the State of Hawaii, comprised of business leaders, state and local officials, non-profit organizations, community leaders and retired U.S. flag and general officers to advocate and liaison with the military commands.

As a community partner in Hawaii, we take the military munitions response (MMR) seriously. We continue to actively advocate for the removal of military munitions from Hawaii lands which have come from previous military activities and training. The MAC works with the military commands and landowners to increase the op-tempo of munition remediation and removal to reduce risk, and to allow for the productive use of these former training lands.

Thank you for the opportunity to offer testimony.

SCR-103-SD-1

Submitted on: 4/1/2021 6:38:34 PM

Testimony for CMV on 4/7/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Carlos A. Santana	Individual	Support	No

Comments:

They say they leave an area better than when they arrived...hold them to it.