

**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 ka Ho‘okolokolo a me ke Kuleana Hawai‘i  
House Committee on Judiciary & Hawaiian Affairs

‘Apelila 14, 2021

2:00 p.m.

Lumi 325

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,<sup>i</sup> 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,<sup>ii</sup> 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.<sup>iii</sup> 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.<sup>iv</sup> Ironically, Kaho‘olawe accounts for most of the federal “ceded” lands relinquished to the State since statehood,<sup>v</sup> and it was only released from federal control in 1993 after years of protests and lawsuits.<sup>vi</sup> 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.<sup>vii</sup> 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.<sup>viii</sup> **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.

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<sup>i</sup> 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).

<sup>ii</sup> MACKENZIE ET AL, *supra* note 1, at 27.

<sup>iii</sup> 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).

<sup>iv</sup> 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.

<sup>v</sup> 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.

<sup>vi</sup> *Id.* at 39-40.

<sup>vii</sup> *Id.* at 8.

<sup>viii</sup> See *Ching v. Case*, 449 P.3d 1146, 1160-62, 1174-80 (Haw. 2019).

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Submitted on: 4/12/2021 1:39:44 PM

Testimony for JHA on 4/14/2021 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
cheryl B.	Individual	Support	No

Comments:

Support

It is extremely irritating that this is not a bill OR that the US military does not understand its' kuleana to these islands. That for all of these past years, continuing through now, the State has not been able to enforce (even with a Hawai`i Supreme Court ruling) that the military clean up is appalling. Instead of rushing to issue them more leases, how about we hold them (yes, I know they can forcibly take) to cleaning up. SO many places, you know them. Make them clean up.

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Submitted on: 4/13/2021 9:22:31 PM

Testimony for JHA on 4/14/2021 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dana Keawe	Individual	Oppose	No

Comments:

I strongly oppose! Military needs to clean up all areas even Kahoolawe. No fencing off of areas. CLEAN IT UP AND RESTORE!!!