

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committees on
JUDICIARY
and
WAYS AND MEANS**

**Friday, April 8, 2022
9:50 AM**

State Capitol, Conference Room 211 & Videoconference

**In consideration of
HOUSE BILL 1653, HOUSE DRAFT 2, SENATE DRAFT 1
RELATING TO AQUATIC RESOURCES**

House Bill 1653, House Draft 2, Senate Draft 1 proposes to establish a tiered administrative fine system for each specimen of aquatic life taken, killed, or injured; establish a criminal fine structure on a per-specimen basis for violations involving aquatic life; authorize the Department of Land and Natural Resources (Department) to recommend community service that benefits the resource damaged when a person is ordered to perform community service in lieu of a fine; and authorize the Department to recommend certain probationary terms and conditions to the court. **The Department supports this measure and offers the following comments.**

A critical component of effective resource management is ensuring that management agencies have the appropriate suite of enforcement tools and penalties to encourage compliance with aquatic resource laws and to ensure just and reasonable punishment for violations.

SECTION 2 – Tiered administrative fines system for each specimen of aquatic life

Section 187A-12.5, Hawaii Revised Statutes (HRS), authorizes tiered administrative fines for aquatic resource violations (i.e., higher fines for repeat violations)¹ and additional non-tiered

¹ Section 187A-12.5, HRS, provides in relevant part:

(b) For violations involving threatened or endangered species, the administrative fines shall be as follows:

- (1) For a first violation, a fine of not more than \$5,000;
- (2) For a second violation within five years of a previous violation, a fine of not more than \$10,000; and

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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DEPUTY DIRECTOR - WATER

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LAND
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finer for each specimen of aquatic life unlawfully taken.² House Bill 1653, House Draft 2, Senate Draft 1 proposes to establish tiered administrative fines for each specimen of aquatic life unlawfully taken. Having tiered per specimen fines provides greater flexibility to pursue higher per specimen penalties for repeat violations if warranted. Therefore, the Department supports SECTION 2 of the bill as written.

SECTIONS 3, 4, 5, and 6 – per specimen criminal fine structure

Sections 187A-13, 188-70, 189-4, and 190-5, HRS, set forth criminal penalties for violations of these chapters and rules adopted thereunder. Criminal cases are prosecuted by City or County Prosecutors' Offices and adjudicated by the Judiciary, typically at the State District Court level. Prosecutors typically pursue one criminal count per violation, even if the violation involves the unlawful take of multiple specimens of aquatic life. This often results in penalties that are disproportionately low in relation to the value of aquatic life unlawfully taken. For example, a defendant who has unlawfully taken five specimens will often receive the same minimum penalty (\$100) as a defendant who has unlawfully taken a single specimen of the same species. Prosecutors do have the ability to charge separate counts for each specimen of aquatic life unlawfully taken, but this process is rarely utilized. Currently, when a case involves multiple specimens, some prosecutors will request a higher fine to reflect the take. However, the results vary widely, and resulting sentences remain inconsistent. Amending existing criminal penalty sections to expressly authorize per specimen criminal fines would make it easier for prosecutors to seek penalties proportionate to the violation. Therefore, the Department supports the inclusion of a per specimen criminal fine structure.

SECTIONS 3, 4, and 6 – Authorize the Department to recommend community service that benefits the resource damaged

Three existing aquatic resource penalty sections (Sections 187A-13, 188-70, and 190-5, HRS) authorize the court to require a defendant to perform community service in lieu of paying a monetary fine. SECTIONS 3, 4, and 6 of the bill propose to add language to allow the Department to recommend to the court community service that benefits the resource that was damaged. The Department supports this additional language, but notes that it may not be sufficient on its own to achieve the intended result. The court is already authorized to use resource-based community service as a sentencing tool, and the Department already has the ability to make specific community service recommendations. However, the Judiciary has a list

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- (3) For a third or subsequent violation within five years of the last violation, a fine of not more than \$15,000.
 - (c) For all other violations 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.

² Section 187A-12.5, HRS, provides in relevant part:

(d) In addition to subsection (b), a fine of up to \$5,000 may be levied for each specimen of threatened or endangered aquatic life taken, killed, or injured in violation of subtitle 5 of title 12 or any rule adopted thereunder.

(e) In addition to subsection (c), a fine of up to \$1,000 may be levied for each specimen of all other aquatic life taken, killed, or injured in violation of subtitle 5 of title 12 or any rule adopted thereunder.

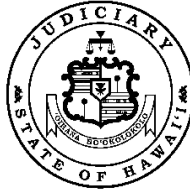
of approved community service work sites where Defendants may be referred. The issue is that there may not be an available community service location where work performed would benefit the resource damaged. To achieve the goal of having defendants perform community service that benefits the resources damaged, more community service opportunities need to be identified and established. The Department is interested in working with the Judiciary to identify and vet additional worksites and programs that would benefit aquatic resources.

SECTIONS 3, 4, 5, and 6 – Authorize the Department to recommend certain probationary terms and conditions to the court

The Courts have the existing discretionary authority to sentence a defendant to a term of probation pursuant to Chapter 706, HRS. Section 706-623, HRS, provides guidance on the period of probation for various levels of crimes. Section 706-624(2), HRS, sets forth a list of discretionary conditions that the Court may utilize in sentencing a defendant to probation. This list includes conditions that the defendant “refrain from engaging in a specified occupation, business, or profession bearing a reasonably direct relationship to the conduct constituting the crime,” “refrain from entering specified geographical areas without the court’s permission,” and “satisfy other reasonable conditions as the court may impose.”³ Despite this existing authority, these types of probationary sentences are extremely rare for aquatic resource violations. The Department strongly supports the language in the bill that expressly authorizes the Department to recommend probationary terms and conditions consistent with existing authority. Including this language directly in aquatic resource penalty statutes will hopefully encourage prosecutors and courts to think outside the box when seeking and issuing sentences in order to more effectively deter aquatic resource violations.

Thank you for the opportunity to comment on this measure.

³ See HRS § 706-624(2)(f), -(m), and -(t).



The Judiciary, State of Hawaii

Testimony to the Thirty-First State Legislature, 2022 Regular Session

Senate Committee on Ways and Means
Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair

Friday, April 8, 2022 at 9:50 a.m.
Conference Room 229 & Videoconference

by
Brook M. Mamizuka
Probation Administrator
First Circuit Court

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 1653, House Draft 2, Senate Draft 1, Relating to Aquatic Resources

Purpose: Establishes a tiered administrative fine system for each specimen of aquatic life taken, killed, or injured. Establishes a criminal fine structure on a per-specimen basis for violations involving aquatic life. Authorizes 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. Authorizes the Department of Land and Natural Resources to recommend to the certain probationary terms and conditions to the court. Effective date 7/1/2022. (SD1)

Judiciary's Position:

The Judiciary supports the tiered administrative fine system for aquatic life taken, killed, or injured. However, we have significant concerns as to whether the Department of Land and



House Bill 1653, H.D. 2, S.D. 1, Relating to Aquatic Resources
Senate Committee on Ways and Means
Senate Committee on Judiciary
April 8, 2022 at 9:50 a.m.
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Natural Resources (DLNR) should have the authority to recommend to the court an order of community service worksites.

The Community Service Sentencing Program has predetermined worksites that have been vetted. The worksite protocols are necessary to ensure a safe and healthy work environment for defendants and worksite personnel. The establishment of these protocols reduce agency liability.

The probation office's main purpose is to rehabilitate offenders through treatment and services. The probation office is unable to provide monitoring for entry and access into aquatic resources, estuaries, rivers, streams, and ocean waters. We do not have staffing nor the ability and training to police the handling and operating of fishing and boating gear and/or equipment.

The Judiciary would be open to working with DLNR to identify and vet aquatic-based community worksites and programs that DLNR would like to support. We would also be willing to work with DLNR on the probation conditions requiring enforcement of geographic areas within waters of the State where aquatic resources may be found, including ocean waters, estuaries, rivers, and streams.

Thank you for the opportunity to testify on House Bill No. 1653, H.D. 2, S.D.1.



Mālama Pūpūkea-Waimea
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Hale'iwa, HI 96712

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Federal Nonprofit Organization
501(c)(3) FEIN 27-0855937
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JDC/WAM Public DM: Fri. April 8, 2022, 9:50 am

Senator Karl Rhoads, JDC Chair
Senator Jarrett Keohokalole, JDC Vice Chair
Senator Senator Donovan M. Dela Cruz, WAM Chair
Senator Gilbert S.C. Keith-Agaran, WAM Vice Chair
Members of JDC and WAM

Re: HB1653 HD2 SD1 – RELATING TO AQUATIC RESOURCES

Aloha Chair Rhoads, Chair Dela Cruz, Vice Chair Keohokalole,
Vice Chair Keith-Agaran, and Members of JDC-WAM,

**Mālama Pūpūkea-Waimea (MPW) strongly supports HB1653
HD2 SD1, with the amendments offered by DLNR, and urges your
Committees to pass this important bill.**

MPW is a “Makai Watch” group (currently the only such group on O‘ahu) that works in collaboration with Department of Land and Natural Resources (DLNR) Division of Conservation and Resources Enforcement (DOCARE) to educate, document, and report marine resource violations for appropriate enforcement action.

MPW is also a qualified community service site for natural resources violators sentenced by the Environmental Court.

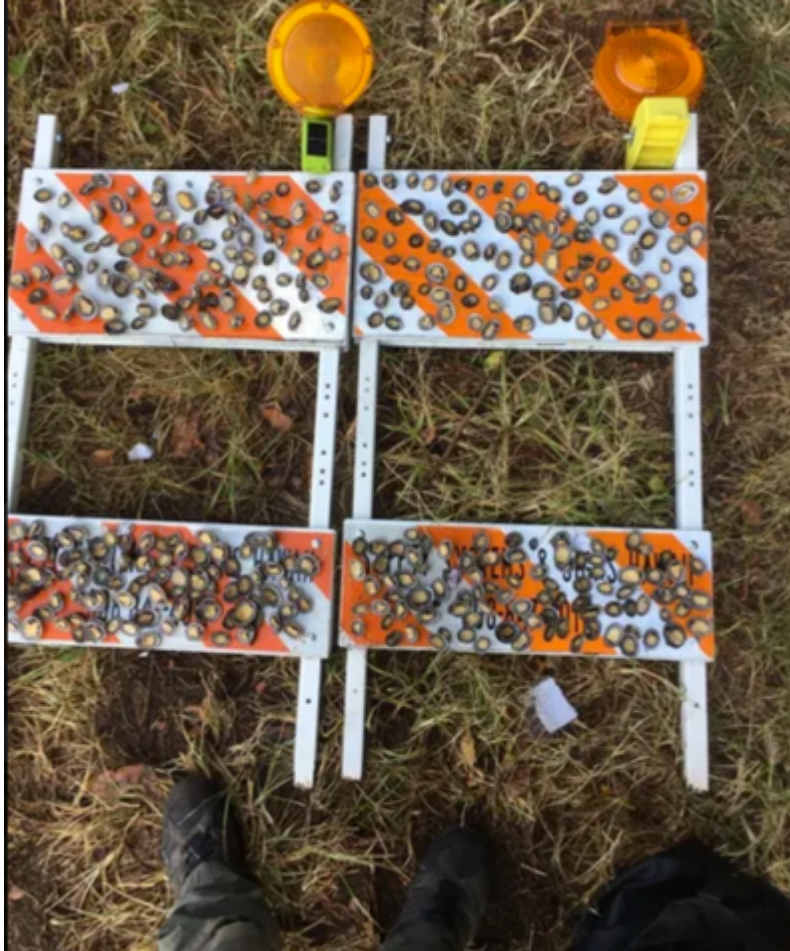
The **photo below** provides just one vivid example of why this bill is important to help DLNR and the entire enforcement chain to better enforce the laws that protect our marine resources.

Based on a community tip, a DOCARE officer caught a poacher brazenly taking **378 ‘opihi** in the Pūpūkea Marine Life Conservation District in 2021. The poacher (who had a criminal record), was charged with **1 count** of violating our natural resources laws - he should have been charged with **378 counts!** Due to the “one count” nature of the charge, this case became a low priority in the prosecutors office and judicial system and the violator (who failed to appear in court) was never brought to justice.

A “per specimen” fine as proposed by this bill will mean the consequences in the criminal justice system better fit the crime. It would make these kinds of mutiple specimen cases a higher priority for the prosecutors and Environmental Court.

HB1653 makes that key change in the law as well as adding other tools to the enforcement toolbox (e.g., a tiered administrative fine

system, community service recommendations) so that our marine resources enforcement system is more robust, fitting to the impact on the resources, and also supports programs that can change violator behavior in the long-run.



378 'opihi taken illegally in the Pūpūkea Marine Life Conservation District

Thank for you for moving this bill forward and for working with DLNR on the proposed amendments.

There are no direct fiscal implications of this bill – just a better law enforcement system for all who use and enjoy our marine resources.

Mahalo nui and best regards,

A handwritten signature in cursive script that reads "Denise Antolini".

Denise Antolini
President, MPW



April 8, 2022

Senate Judiciary and Ways & Means Committees

Re: Amendments needed HB 1635; Relating to Aquatic Resource Violations

Dear Chairs Rhoads and Dela Cruz and Members of the Committees,

For the Fishes, dedicated to the protection of coral reef wildlife, notes that certain provisions in the current draft of HB1653 in fact weaken existing law. For example, under existing law, aquatic resource violations are petty misdemeanors carrying up to 30 days and jail and up to \$1000.00 fine. Please see below table for the Committee’s consideration, explaining how HB1653 would in fact lower potential fines and the need to amend the various chapters to set mandatory minimum, rather than maximum, fines.

In 2020 alone, tips from the public led to the investigation and subsequent arrest of three large-scale aquarium poaching operations involving 8 individuals in West Hawaii. Below is a summary of specimens (animals poached), minimum and maximum fines allowed under current law, minimum and maximum fines that would be allowable under HB1653, the retail value of the animals and the CML status of defendants.

DEFENDANT	NO. OF SPECIMENS/ CHARGE	MIN/MAX FINES PER CURRENT LAW	MIN/MAX FINES HB1653 HD2 SD1	RETAIL VALUE OF ANIMALS	CML STATUS
TERAZONO-NEWMAN	550	\$55,000/\$137,500/\$550,000	\$100/\$250/\$137,500	\$37,466	NEVER SUSPENDED
HOWARD-TORIYAMA	235	\$23,500/\$58,750/\$235,000	\$100/\$250/\$58,750	\$24,730	NO LICENSE
BEEVERS	336	\$33,600/\$84,000/\$336,000	\$100/\$250/\$84,000	\$36,484	NEVER SUSPENDED
TOTALS	1121	\$280,250/\$1,121,000	\$300/\$750/\$280,250	\$98,680.00	

While the court did not ultimately fine the defendants anywhere near the maximum fine allowable under current law, as proposed under HB1653, the fine would essentially be insignificant if the court chose only to fine the mandatory minimum and no per specimen fine. Therefore, we suggest the following changes:

AMENDMENTS:

1. The easiest change to would be to simply keep the current petty misdemeanor penalty and add **“each specimen shall constitute a separate offense”** (allowing up to \$1000 per penalty) for each of the below statutes, coupled with the below mandatory minimums.

2. HRS 187A-13 General Penalty, Page 4, lines 6-8 amend to minimum fine for 1st offense \$250, 2nd offense \$500, third offense \$1000
3. HRS 188-70 Penalties, Page 5, lines 8-10, amend to minimum fine for 1st offense \$100, 2nd offense \$200, 3rd offense \$300
4. HRS 189-4, Page 8, lines 10-14, amend to minimum fine for 1st offense \$250, 2nd offense \$500, 3rd offense \$1000
5. HRS 190-5, Page 10, lines 6-10, amend to minimum fine for 1st offense \$250, 2nd offense \$500, 3rd offense \$1000
6. Threatened & Endangered species are prohibited from sale and thus do not have a “retail market value.” Retail market value need only apply to those animals that are not yet protected under state or federal law from commercial sale, such as those animals taken for aquarium pet trade or commercial food purposes.
7. A person convicted of violating these sections **should be subject to revocation of their Commercial Marine License**. While DLNR currently has this discretion, this same discretion should be provided to the courts and mandatory upon conviction for the term of probation.

DOCARE states that illegal fishing and other aquatic resource violations are the most challenging offenses to enforce, given they occur on and/or under the water, and often at night, where DOCARE lacks adequate resources, equipment (boats) and staffing. DOCARE relies heavily on tips and information from the public, including from boaters, fishers and other ocean users. Because enforcement is so challenging, penalties must be significant enough to deter would be violators on their first offense, and hold those who are charged, accountable, otherwise, fines and penalties for aquatic resource violators simply become the “cost of doing business.”

In closing, a tiered penalty system is only effective if there are enough resources to enforce the laws. There have been few if any cases where a violator has been charged for the same offense on numerous occasions. First offense penalties must be significant enough to deter the criminal activity from occurring in the first place.

Thank you for your consideration of the above amendments.

Sincerely,

Inga Gibson, For the Fishes
Policy@FortheFishes.org

HB-1653-SD-1

Submitted on: 4/6/2022 10:44:27 AM

Testimony for JDC on 4/8/2022 9:50:00 AM

Submitted By	Organization	Testifier Position	Testify
Klayton Kubo	Individual	Support	Written Testimony Only

Comments:

Support

HB-1653-SD-1

Submitted on: 4/6/2022 8:16:57 PM

Testimony for JDC on 4/8/2022 9:50:00 AM

Submitted By	Organization	Testifier Position	Testify
Darrell Tanaka	Individual	Support	Written Testimony Only

Comments:

This bill is designed to address repeat offenders and enhance the current penalty system for poachers....I support this bill, thank you.