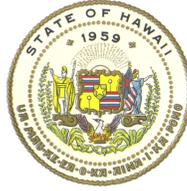


DAVID Y. IGE
GOVERNOR OF HAWAII



**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
WATER & LAND**

**Tuesday, February 2, 2021
9:00 AM**

State Capitol, Via Video Conference, Conference Room 430

**In consideration of
HOUSE BILL 98
RELATING TO AQUATIC RESOURCES**

House Bill 98 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 would further propose 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.

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.

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

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. Violators may demand a jury trial, and this could cause congestion of the court system. Conversely, 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

Submitted on: 1/30/2021 8:49:37 PM

Testimony for WAL on 2/2/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Robert Culbertson	Hawaii Island Group Sierra Club	Support	No

Comments:

Aloha Chair Tarnas and members of the committee,

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. With this bill and its Senate side companion SB 572 we can at last look to a 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. Please pass this important and overdue legislation!

Mahalo to all its supporters!

R A Culbertson,

Hawaii Island Group,

Sierra Club (marine activities section)



February 2, 2021, 9am

TO: Honorable Chair Tarnas and House Water and Land Committee members

SUBMITTED BY: Inga Gibson, Policy Consultant, For the Fishes
ponoadvocacy@gmail.com, 808.922.9910

RE: SUPPORT for HB98; Relating to Aquatic Resources

For the Fishes respectfully urges your **support of HB98** which specifies that any equipment, article, instrument, aircraft, vehicle, vessel, or business record used in violation of the aquatic resources law is subject to forfeiture. Authorizes the imposition of a criminal fine. Clarifies that the fine structure may be assessed on a per-specimen basis and makes violations of the aquatic resources law a misdemeanor, rather than a petty misdemeanor.

We request one additional amendment to allow for the immediate revocation or suspension of the Commercial Marine License (CML) for those charged with aquatic resource violations. If the person is found guilty and convicted their CML should be suspended for a minimum period during their probation. Cases involving numerous animals or offenses should allow the Department to extend the suspension of a CML for multiple years. Most states provide for the suspension, revocation or even lifetime revocation, of those convicted of natural resource violations.

These added provisions and increased penalties are long overdue. In addition to years of inadequate funding and staffing to DLNR, including their Division of Conservation and Resource Enforcement (DOCARE), laws have only allowed for paltry penalties, which do not serve to adequately hold violators accountable or serve as a deterrent to other potential offenders.

Further, this proposed increase in penalties should not preclude efforts to completely prohibit certain activities that severely degrade our marine environment, such as aquarium collecting for the mainland pet trade. The aquarium trade, similar to the shark fin trade that was prohibited in Hawaii in 2010, are inherently difficult to enforce, regardless of attempts to regulate or the penalties. In these trades, any legal activity only serves to provide cover for illegal activity.

Please see below media articles supporting the need for these increased penalties, fines and provisions, including the forfeiture of property involved in the offense:

Five aquarium collectors were separately found poaching our reef wildlife in West Hawaii in the past year alone. None of the defendants were forced to surrender their boats and in the one case where a boat was seized, it was subsequently returned, and even though the defendant pleaded guilty and was subsequently convicted. In another case, a poacher was only fined \$200.00 although the value of the reef wildlife poached exceeded \$37,000.00.

In none of these cases were the defendants CML's revoked or suspended, and for at least two of the defendants, their CML's were **in fact renewed after they had been charged and subsequently convicted.**

Thank you for your consideration of this testimony.

<https://www.staradvertiser.com/2020/06/06/hawaii-news/a-west-hawaii-aquarium-fisher-gets-a-small-fine-for-a-big-illegal-haul/>

<https://www.hawaiitribune-herald.com/2020/09/17/hawaii-news/illegal-aquarium-fishing-arrest-prompts-search-and-rescue-mission/>

<https://dlnr.hawaii.gov/blog/2020/09/16/nr20-143/>

<https://www.kitv.com/story/42561612/naalehu-man-arrested-for-illegal-takes-of-hundreds-of-fish>

<https://www.bigislandvideonews.com/2020/02/22/dlnr-two-men-caught-taking-550-tropical-fish-in-kawaihae/>

<https://mauinow.com/2020/02/22/two-men-cited-for-illegal-aquarium-gear-fish/>

<http://dlnr.hawaii.gov/blog/2020/02/21/nr20-026/>

<https://www.hawaiinewsnow.com/2020/05/23/dlnr-proposes-k-fines-alleged-aquarium-fish-poachers/?outputType=amp>

[Kealakekua couple to pay \\$76,400 to settle aquarium poaching case | West Hawaii Today](#)

<https://www.staradvertiser.com/2021/01/14/breaking-news/west-hawaii-couple-fined-76k-for-the-illegal-harvest-of-aquarium-fish/>

HB-98

Submitted on: 1/31/2021 3:19:29 PM

Testimony for WAL on 2/2/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Nakachi	Moana Ohana	Support	No

Comments:

Strong Support



Environmental Caucus of The Democratic Party of Hawai'i

February 1, 2021

To: House Committee on Water and Land
Honorable David A. Tarnas, Chair
Honorable Patrick Pihana Branco, Vice Chair

Re: HB 98 – RELATING TO AQUATIC RESOURCES

Hearing: Tuesday, February 2, 2021, 9 a.m. via videoconference

Position: **STRONG SUPPORT**

Aloha, Chair Tarnas, Vice Chair Branco, 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 protection 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 Hawai'i Island in particular, and elsewhere throughout the state. With this bill and its Senate companion HB 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 increasing 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

HB-98

Submitted on: 2/1/2021 8:48:29 AM

Testimony for WAL on 2/2/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ted Bohlen	Hawaii Reef and Ocean Coalition	Support	No

Comments:

February 2, 2021

To: House Committee on Water & Land

Honorable Representative David A. Tarnas, Chair

Honorable Representative Patrick Pihana Branco, Vice Chair

Re: HB 98 – RELATING TO AQUATIC RESOURCES

Hearing: Tuesday, February 2, 2021, 9 a.m. via videoconference

From: Ted Bohlen

Position: STRONG SUPPORT

Aloha, Chair Tarnas, Vice Chair Branco, and Members of the Committee:

The HAWAI'I REEF AND OCEAN COALITION – HIROC – was formed in 2017 by coral reef scientists, educators, local Hawaii environmental organizations, elected officials, and others to address the crisis facing Hawaii's coral reefs and ocean species.

We are currently asking the Legislature to pass a handful of very important bills to save our coral reefs and other marine life – they are bills relating to sunscreens, cesspools, plastic marine debris, aquatic species, the climate crisis and sea level rise.

HIROC strongly supports this bill, which would significantly increase the penalties for violations of marine protection laws.

Coral reefs and other aquatic species are being harmed by violations of laws designed to protect aquatic ecosystems. There has not been enough serious enforcement of laws on the books. Penalties have been insufficient to deter violators. It has been challenging for DOCARE (DLNR's Department of Conservation Enforcement) and other law enforcement to pursue and prosecute those who poach aquatic resources. With this bill and its Senate side companion SB 572, there would be a more viable deterrent in the law.

While passage of this bill would constitute a significant step in the right direction, the bill should be amended to include revocation of any commercial marine licenses of violators where appropriate.

Increasing the monetary fines and asset forfeiture penalties would begin to compensate adequately for the existing drain on State financial resources.

Please pass this important and overdue legislation!

Mahalo!



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

COMMITTEE ON WATER & LAND

Rep. David A. Tarnas, Chair
Rep. Patrick Pihana Branco, Vice Chair

Rep. Sonny Ganaden Rep. Dee Morikawa
Rep. Bertrand Kobayashi Rep. Takashi Ohno
Rep. Sam Satoru Kong Rep. Bob McDermott

NOTICE OF HEARING

DATE: Tuesday, February 2, 2021
TIME: 9:00 a.m.
PLACE: VIA VIDEO CONFERENCE
 Conference Room 430
 State Capitol
 415 South Beretania Street

TESTIMONY OF THE OCEAN TOURISM COALITION IN OPPOSITION TO HB98 AS WRITTEN.

Dear Chair Tarnas, Vice Chair Branco, and Members of the Committee on Water and Land:

The Ocean Tourism Coalition (“OTC”) represents over 300 small ocean tourism businesses statewide. OTC has several critiques of HB98 (the “Bill”) that we would like addressed before the bill receives the legislature’s approval. The OTC supports the protection of endangered species, but would like clarification on whether this bill is also intended to apply to coral colonies, as the bill does not include a definition for the term “specimen” and HAR §§ 13-95 already covers the protection of coral. A definition of species should be added to make the purpose and effect of the rule clear.

Second, the OTC is concerned that Section 2 of the Bill gives the administration broad authority to seize property without proper justification. For example, Section 2 states that any “equipment, article, instrument, aircraft, vehicle, vessel, or business record used in violation of the provisions of this chapter may be seized and shall be subject to forfeiture according to the procedures set forth in chapter 712A.” However, there does not appear to be any “state of mind” requirement that would distinguish between

someone who intentionally harvests a green sea turtle and someone who anchors legally but then drags anchor over coral during a storm through no fault of their own.

Accordingly, given the extreme nature of seizing something like a vessel, the OTC requests that the term “intentional” be inserted in front of the term “violation” throughout the Bill. At the very minimum, a level of willful or reckless conduct should be required prior to forfeiture.

If you pass this bill, please ensure that the bill is amended to be clear in its language and effect. Local businesses and people should not be the bycatch of overly broad laws.

Sincerely,

Denver S. Coon, Director

Ocean Tourism Coalition

LATE

HB-98

Submitted on: 2/1/2021 10:00:59 AM

Testimony for WAL on 2/2/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
James E. Coon	Trilogy Excursions	Oppose	No

Comments:

We are supporting the OTC testimony against HB98 as written submitted on behalf of the Ocean Tourism Industry. As a environmentally responsible business and industry we are very concerned over the broad reach of this bill and the high fines and unbridled authority to confiscate property. While this might be appropriate for someone who knowingly violating a law or intentionally harming some protected species the penalty must fit the crime. Also keep in mind that violations within the Humpback Whale National Marine Sanctuary waters are subject to a Federal Penalty of FIVE TIMES the State Penalty. Most of Maui County boating waters fall within Sanctuary waters.

LATE

HB-98

Submitted on: 2/1/2021 10:58:25 AM

Testimony for WAL on 2/2/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Blake Moore	PacWhale EcoAdventures	Oppose	No

Comments:

PacWhale EcoAdventures is a 40 year old ocean tourism organization whose mission is to protect the oceans through science and advocacy and inspire environmental stewardship. I serve as the Director of the organization and respectfully submit our concerns with HB98 (the "Bill") that we would like addressed before the bill receives the legislature's approval.

We have long supported the protection of endangered species and actively work to protect the marine environment we operate within, but would like clarification on whether this bill is also intended to apply to coral colonies, as the bill does not include a definition for the term "specimen". It is well known that HAR §§ 13-95 already covers the protection of coral. A definition of species should be added to make the purpose and effect of the rule clear.

Section 2 of the Bill seems to give the administration broad authority to seize property without proper justification. For example, Section 2 states that any "equipment, article, instrument, aircraft, vehicle, vessel, or business record used in violation of the provisions of this chapter may be seized and shall be subject to forfeiture according to the procedures set forth in chapter 712A." However, there does not appear to be any "state of mind" requirement that would distinguish between someone intentional acts and those who, due to acts of God or other means out of their control, unintentionally cause harm.

Given the extreme nature of seizing something like a commercially operated vessel, we request that the term "intentional" be inserted in front of the term "violation" throughout the Bill. At the very minimum, a level of willful or reckless conduct should be required prior to forfeiture. If you pass this bill, please ensure that the bill is amended to be clear in its language and effect. Local businesses and people should bare the brunt of overly broad laws.

Respectfully,

Blake Moore - Director of Commercial Operations, PacWhale EcoAdventures

LATE

HB-98

Submitted on: 2/1/2021 11:42:19 AM
Testimony for WAL on 2/2/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jeff Strahn	Alii Nui Charters	Oppose	No

Comments:

We strongly oppose this bill as it is over reaching as to the penalties versus the crimes. If a 2 million dollar vessel accidentally hits the reef... You would lose your boat. We support the language submitted by OTC.

Thanks,

Jeff Strahn / General Manager

LATE

HB-98

Submitted on: 2/1/2021 2:34:22 PM

Testimony for WAL on 2/2/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Zachary LaPrade	Calypso Charters	Oppose	No

Comments:

We oppose this bill and support the testimony submitted by the Ocean Tourism Coalition.

LATE

HB-98

Submitted on: 2/1/2021 2:34:59 PM
Testimony for WAL on 2/2/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Phil Kasper	Malolo Charters	Oppose	No

Comments:

We oppose this bill and support the testimony submitted by the Ocean Tourism Coalition.

HB-98

Submitted on: 1/30/2021 10:40:51 PM

Testimony for WAL on 2/2/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Gregg Gruwell	Individual	Support	No

Comments:

I will never forget a Aquarium Collection hearing at DLNR several years ago when, during a break, I overheard a discussion between two collectors. One was bragging to the other how easy it was for him to collect fish. He would wait outside the entrance to Hanauma Bay and when the fish swam out in schools outside the bay he'd scoop them up by the hundreds.

All collectors are about is the money ¨¸ They don't care that I don't see puffer fish or box fish on the Kona Coast anymore! Sustainable to them is there are the 25% of the fish I saw in 1988 left to catch and sell. Every snorkel trip for me now is a heartbreaking experience. We need to use every legal means available to stop this disposable practice! What fish are left after climate change and pollution should not be left to the devices of the Aquarium Trade!

Mahalo - Gregg Gruwell, Hawaii County

RELATING TO AQUATIC RESOURCES. HB98

I am testifying in support this bill.

Simply put, any additional laws which may close loopholes which have allowed individuals and businesses to get away with violating the aquatic resources law helps preserve the natural resources protected by that law. This law will increase the penalties for violating the law and itemize additional ways in which violations may be identified. Efforts to protect our resources are too often dismissed as unnecessary over-reaction. The reality is that every violation, and every violator that finds a way around those laws is pushing us towards points of no return and nothing that can stop these abuses should be dismissed.

HB-98

Submitted on: 2/1/2021 8:11:37 AM

Testimony for WAL on 2/2/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Diane Ware	Individual	Support	No

Comments:

Dear Chair Tarnas and committee members,

I strongly support this measure to rectify the lackadaisical enforcement of regulations governing our natural aquatic resources for the Hawaiian people from whom these resources were stolen and for all residents who rely on healthy reefs for our collective benefit. After Supreme Court rulings and consequently more attention by DLNR we are seeing firsthand the magnitude of poaching on our reef resources. This measure will send a message to poachers that they cannot longer get away with poaching for their personal gain and the Pet Industry they sell these resources to.

Mahalo for our reef ecosystem,

Diane Ware

99-7815 Kapoha, Volcano HI 96785

LATE

HB-98

Submitted on: 2/1/2021 9:28:14 AM

Testimony for WAL on 2/2/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Greg Howeth	Individual	Oppose	No

Comments:

“We oppose this bill and support the testimony submitted by the Ocean Tourism Coalition.”

LATE

HB-98

Submitted on: 2/1/2021 2:49:55 PM

Testimony for WAL on 2/2/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Donna Henders	Individual	Oppose	No

Comments:

I oppose this bill and support the testimony submitted by the ocean tourism coalition. Thank you

LATE

HB-98

Submitted on: 2/1/2021 7:16:46 PM

Testimony for WAL on 2/2/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Glennon T. Gingo	Individual	Support	No

Comments:

Aloha from Holualoa on the Island of Hawaii.

I'm testifying strongly in favor of this bill.

The need for much improved Aquatic and Marine enforcement is long overdue. We are faced with the ever present lack of conservation enforcement which leads directly to the effects of degraded ecosystems and to a large extent our aquatics and ecotourism.

In addition to rules and laws, is the greater need for Judicial 'Intelligence' on the part of prosecutors and judges; Without their keen understanding of these specific rules and laws, we risk losing long term environmental protection and revenue generation.

With Much Aloha

Mahalo Nui Loa

Glennon T. Gingo

HB-98

Submitted on: 2/2/2021 2:10:13 PM

Testimony for WAL on 2/2/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Donna Goodale	Individual	Support	No

Comments:

Feb. 2, 2021

Dear House Committee on Water and Land: I fully support bill HB98. We need to have clear, concise regulations and laws to protect our natural resources. We also need both adequate and proportional responses to violations of our resource protective laws. Forfeiture should be a good deterrent as long as it is used when the persons are found to be in violation of the laws and not just suspected of a violation. This bill helps to make enforcement of marine protective laws more practical and possible.

Thank you,

Donna Rodes Goodale

donna@goodale.org

Kailua Kona, HI