

HCR35/HR28

**STRONGLY 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

Malaki 19, 2021

9:00 a.m.

Lumi 430

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HCR35/HR28, 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 remediation and restoration actions to take place prior to such lands’ transition to State ownership or control. 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,^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 Mākua 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 for proactive and carefully informed discussions and consensus-building, in order to ensure that the transfer of ownership or control of “ceded” lands from the federal government to the State includes appropriate remediation and restoration measures – a critical component of restorative justice for Native Hawaiians who maintain claims to these lands.**

Therefore, OHA urges the Committee to **PASS** HCR35/HR28. 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 (HŌKŪLANI 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 (Haw. 2019).

HCR-35

Submitted on: 3/17/2021 4:29:10 PM

Testimony for CMV on 3/19/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jim Albertini	Malu 'Aina	Support	No

Comments:

Aloha Legislators,

Our organization strongly supports HCR 35 for military clean-up. On Hawaii Island, we have documented 57 present and former military sites involving hundreds of thousands of acres of military lands in need of clean-up. It's not only the surface and subsurface that needs clean up but the possible contamination of the groundwater and nearshore waters from military toxins need to be addressed as well. Military ordnance by the barge loads has been dumped in Hilo bay and off Kawaihae. More than 2,000 fifty-five gallon drums of nuclear waste from refueling nuclear submarines (contaminated tools, clothing, etc) have been dumped off Oahu's southern shores. This is all documented in a book I co-authored entitled "The Dark Side of Paradise --Hawaii in a Nuclear World." In addition, there is the issue of the winds transporting extremely hazardous Depleted Uranium (DU) oxide particles long distances. DU oxide is created when DU metal is burned from being hit with high explosives. The military has officially confirmed the DU metal spotting rounds have been used at Schofield and Pohakuloa. Likely Makua too, and possibly Kaho'olawe and other sites as well. The military always has plenty of money to make its mess but too little to clean up its mess. Stop Military Bombing of Hawaii and Clean up the mess.

Mahalo.

Jim Albertini for Malu Aina



**Testimony to the House Committee on Corrections, Military, & Veterans
Friday, March 19, 2021 at 9:00 A.M.
Via Videoconference**

**RE: HCR 35 / HR 28, 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** HCR 35 and HR 28.

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 engage in thorough removal of hazardous substances, pollutants, contaminants, and military munitions from military activities including those found as far back as WWII-era. The Armed Forces will continue to aggressively engage in munition remediation to improve public safety and reduce the risk they pose to present and future users of our communities.

Thank you for the opportunity to offer testimony.

HCR-35

Submitted on: 3/16/2021 9:03:17 PM

Testimony for CMV on 3/19/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Max Moonier	Individual	Support	No

Comments:

Rather than being wasteful and fencing off land, we should try to restore it to what it should be.

HCR-35

Submitted on: 3/17/2021 2:33:43 PM

Testimony for CMV on 3/19/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Quinn	Individual	Support	No

Comments:

Dear Honorable Committee Members,

Please support HCR35.

Thank you,

Andrea Quinn

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Submitted on: 3/17/2021 5:00:09 PM

Testimony for CMV on 3/19/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Patricia Blair	Individual	Support	No

Comments:

It's an abomination that the US military has not cleaned up it's ordnance! How does Hawaii State Gov. allow such an infraction?

HCR-35

Submitted on: 3/17/2021 6:26:16 PM

Testimony for CMV on 3/19/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Isaac Harp	Individual	Support	No

Comments:

The United States military is the worst polluter on the planet. Unfortunately, United States military leaders have not learned how to clean up after themselves, which requires adoption of HR28 to urge them to do so.

Mahalo, Isaac "Paka" Harp

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Submitted on: 3/17/2021 8:24:19 PM

Testimony for CMV on 3/19/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Cory Harden	Individual	Support	No

Comments:

Aloha legislators,

I stongly support this measure. On Hawaii Island, we have 57 present and former military sites involving hundreds of thousands of acres of military lands in need of clean-up. Contamination from ground sites may have spread to the oceans and groundwater. In addition, old ordnance has been dumped in the ocean (remember "Ordnance Reef" on O'ahu). And cleanup for depleted uranium appears woefully inadequate.

mahalo,

Cory Harden

HCR-35

Submitted on: 3/18/2021 1:47:27 PM

Testimony for CMV on 3/19/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Nana-Honua Manuela	Individual	Support	No

Comments:

Per the recognized State of War between the USA & Hawaii, it is time for the US Military to clean up all of it's presense in Hawaii and negotiate a treaty of peace and de-occupy the country of Hawaii.