
A BILL FOR AN ACT

RELATING TO OCEAN RESOURCES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the Hawaii State
2 Constitution establishes clear fiduciary duties with respect to
3 Hawaii's natural resources, which are held and maintained in
4 trust on behalf of the people of the State. In order to explore
5 methods to better fulfill these public trust duties and
6 responsibilities, the legislature established the West Hawaii
7 regional fishery management area in 1998. The West Hawaii
8 regional fishery management area is differentiated from other
9 nearshore marine managed areas by the statutory authority of the
10 department of land and natural resources to regulate fisheries
11 in West Hawaii specifically, with the guidance and advice of the
12 West Hawaii Fisheries Council.

13 The legislature also finds that the West Hawaii regional
14 fishery management area has proven to be a moderate and notable
15 success, particularly in fulfilling its purposes of improving
16 the sustainability of West Hawaii's nearshore fisheries,
17 reducing user conflicts, and providing important opportunities



1 for scientific research and monitoring. However, the
2 legislature further finds that this success continues to be
3 threatened by the difficulties of resource monitoring and of
4 ensuring compliance with West Hawaii regulations. For example,
5 reported poaching activities in West Hawaii's fish replenishment
6 areas indicate that ongoing illegal actions and adverse impacts
7 to fisheries ecosystems and their sustainability pose an
8 increasing threat of user conflicts and potentially confound
9 scientific research and monitoring projects.

10 In addition, the lack of reliable data regarding fishing
11 pressure and extraction levels in West Hawaii generally further
12 undermines the State's capacity to monitor and enhance West
13 Hawaii's nearshore fishery resources. Unfortunately, the
14 limited capacity of resources enforcement personnel, and their
15 lack of inspection authority absent evidence establishing
16 probable cause, prevents the department from effectively
17 monitoring compliance with resource regulations to ensure the
18 continued success of the West Hawaii regional fishery management
19 area.

20 Accordingly, the legislature finds that probable cause
21 requirements render criminal investigation and enforcement an



1 inappropriate and insufficient tool for resource compliance
2 monitoring within the West Hawaii regional fishery management
3 area. The legislature also finds that the State has an
4 important constitutional interest in conserving and managing the
5 State's aquatic resources. Given the necessity of adequate
6 inspection authority to effectively monitor fishery activities,
7 and the lowered expectation of privacy for permitted or licensed
8 extraction activities relating to the aquatic resources of the
9 State, the legislature further finds that an administrative
10 inspection scheme allowing inspections without probable cause or
11 criminal liability may be necessary to fulfill the State's
12 constitutional duties.

13 The purpose of this Act is to provide enhanced tools to
14 better ensure compliance and monitoring of aquatic resource
15 direct extraction activities within West Hawaii by establishing
16 administrative inspection authority for vessels and catch
17 containers of permitted fishers within the waters of West Hawaii
18 and the premises of any wholesale outlet selling aquatic
19 resources.



1 SECTION 2. Chapter 188F, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§188F- Administrative inspection of commercial fishers
5 and wholesalers within the West Hawaii regional fishery
6 management area. (a) Subject to subsection (b), any agent of
7 the department upon whom the board has conferred police powers,
8 or who has otherwise been authorized to conduct administrative
9 inspections under this section, may conduct examinations and
10 inspections of:

11 (1) The commercial license, permit, or registration issued
12 to any individual, pursuant to subtitle 5 of title 12
13 or any rule adopted thereunder, if the officer
14 reasonably believes the individual is engaged in
15 conduct authorized by the license, permit, or
16 registration;

17 (2) The contents of any bag or container of any kind that
18 the agent reasonably believes may be used to carry
19 aquatic life harvested pursuant to a commercial
20 license, permit, or registration required under
21 subtitle 5 of title 12 or any rule adopted thereunder;



1 (3) Any area of a vessel or vehicle that the officer
2 reasonably believes may be used to transport aquatic
3 life harvested pursuant to a commercial license,
4 permit, or registration required under subtitle 5 of
5 title 12 or any rule adopted thereunder; or

6 (4) The premises, containers, fishing equipment, marine
7 animals, and records required by the department of any
8 shipping agent or other person placing or attempting
9 to place aquatic resources into interstate or
10 intrastate commerce. Officers may inspect without
11 warrant or probable cause the records required by the
12 department of any wholesale outlet selling aquatic
13 resources for compliance with the terms of their
14 commercial license;

15 provided that authority granted under this section shall not
16 extend to quarters in a boat, building, or other property used
17 exclusively as a private domicile and shall not extend to
18 transitory residences in which a person has a reasonable
19 expectation of privacy.

20 (b) Any item, article, natural resource, or other
21 evidence, when obtained through an administrative inspection



1 pursuant to subsection (a) that occurs without probable cause of
2 a violation of law, shall not be used as evidence in any
3 criminal proceeding and may only be used to pursue authorized
4 civil penalties, including any authorized monetary fines,
5 natural resources-related community service, or asset
6 forfeiture.

7 (c) Prior consent to administrative inspection by a duly
8 authorized agent of the department while within the West Hawaii
9 regional fishery management area shall be a condition of any
10 commercial license, permit, or registration issued pursuant to
11 subtitle 5 of title 12 or any rule adopted thereunder. While
12 within the West Hawaii regional fishery management area and
13 engaged in activities authorized pursuant to the commercial
14 license, permit, or registration, no person shall refuse to
15 allow any duly authorized agent of the department to conduct an
16 examination and inspection described in subsection (a) for
17 purposes of determining compliance with the terms of the
18 commercial license, permit, or registration.

19 (d) While within the West Hawaii regional fisheries
20 management area, any individual to whom a commercial license,
21 permit, or registration has been issued, pursuant to subtitle 5



1 of title 12 or any rule adopted thereunder, shall physically
2 possess the license, permit, or registration at all times when
3 engaged in fishing activities conducted pursuant to the license,
4 permit, or registration; and shall not permit any other person
5 to carry, display, or use the license, permit, or registration
6 in any manner unless otherwise authorized by the department.

7 (e) Any individual licensed, permitted, or registered,
8 pursuant to subtitle 5 of title 12 or any rule adopted
9 thereunder, who engages in fishing activities within the West
10 Hawaii regional fishery management area who refuses to:

11 (1) Produce the required license, permit, or registration
12 upon demand; or

13 (2) Give consent, or who withdraws previously given
14 consent, to an inspection of a bag or other closed
15 container that the officer reasonably believes could
16 be used to take or transport aquatic resources for
17 which a license, permit, or registration is required,
18 shall have their license, permit, or registration immediately
19 suspended and may be subject to board revocation of the license,
20 permit, or registration."



1 SECTION 3. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 4. New statutory material is underscored.

5 SECTION 5. This Act shall take effect upon its approval.

6

INTRODUCED BY: Nicole E. Lawen

[Signature]
Rick Schultz

Brad Kolger
Irde Schingus

[Signature]

[Signature]

[Signature]
[Signature]

[Signature]
[Signature]

[Signature] [Signature]

[Signature]

Tom Brown

[Signature]

Guthrie Thelen

Karl Alford
Cindy Evans

Walter A. Bulatti

[Signature]



H.B. NO. 483

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the bottom.

JAN 23 2015



H.B. NO. 483

Report Title:

Aquatic Life; West Hawaii; Inspection; DLNR

Description:

Authorizes administrative inspections within the West Hawaii regional fishery management area.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

