

HB-1752

Submitted on: 1/27/2018 1:40:52 PM

Testimony for OMH on 1/30/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez		Support	No

Comments:

HB-1752

Submitted on: 1/29/2018 9:45:27 AM

Testimony for OMH on 1/30/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
John Kaneko	Hawaii Seafood Council	Comments	No

Comments:

HB 1752 would be strengthened by requiring wide spread public outreach and review of the findings of the study "Feasibility of a Non-commercial Fishing License" prior to the proposed legislation.

John Kaneko Program Manager, Hawaii Seafood Council

HB-1752

Submitted on: 1/29/2018 12:42:54 PM

Testimony for OMH on 1/30/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jim Hori, DDS		Comments	No

Comments:

I support the intent of this bill if it is presented to the fishermen in a transparent manner explaining to us where the money for the license is going and how it will be used. We are the only state without a license so possibly using a model in another state to follow can work well.

sincerely,

Jim Hori, DDS

HB-1752

Submitted on: 1/27/2018 6:02:37 PM

Testimony for OMH on 1/30/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Vivian S. Toellner	Hui Pono Holoholona	Support	No

Comments:

Hui Pono Holoholona strongly supports HB1751 and any efforts the legislature can take to strengthen laws that will protect Hawai'i's coral reefs, reef wildlife and aquatic resources. The time is now to take action given what we know about climate change, ocean pollution, coral bleaching and the decline in many rare plant and animal species. As the endangered species capitol of the world, we must do better at this critical moment in time, for ourselves and future generations. The simple solution is for the state to increase protection of Hawai`i aquatic resources. This will significantly benefit the economy in the short and long term, protect and increase reef wildlife, reduce animal cruelty and decrease government expenditures.

HB-1752

Submitted on: 1/28/2018 3:48:51 PM

Testimony for OMH on 1/30/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
William K. Chang	Citizen	Oppose	No

Comments:

A statewide discussion with the fishing community is necessary to review the recommendations made by the study group about non-commercial licensing BEFORE such legislation be proposed.

HB-1752

Submitted on: 1/28/2018 6:53:02 PM

Testimony for OMH on 1/30/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
James Silva	Waialua Boat Club	Oppose	No

Comments:

January 29, 2018

House Committee on Ocean, Marine Resources, & Hawaiian Affairs

DATE: Tuesday, January 30, 2018

TIME: 9:45 am

PLACE: Conference Room 312

HB1752 – RELATING TO AQUATIC LIFE

Honorable Chair Ing, Vice Chair DeCoite and Members of the House Committee on Ocean, Marine Resources and Hawaiian Affairs:

COMMENT

I appreciate the intent of the HB1752 and support the initiation of better managing our aquatic resources through the identification of the universe of users, but am seriously concerned that the introduction of a non-commercial marine license has not been afforded the transparency necessary to implement such a dramatic change in fisheries management. The working group's analyses and recommendations needs to be shared with the general fishing community before enacting enabling legislation that would more than likely result in public pushback due to their unfamiliarity of the action.

While attending numerous public informational and hearings, I sense that there is general consensus that a non-commercial license if properly implemented, managed and enforced is acceptable. Allow the Department and Division to initiate this dialog and vetting of the non-commercial license through public meetings and hearings as provided by the Chapter 91 Rulemaking authority and then introduce legislation that would be supported and accepted by the non-commercial fishing community. Such an understanding and acceptance by the community will ensure their support and compliance.

As a Commercial Marine License holder and bottom fish fisherman, I support the need to identify the universe of those extracting aquatic resources and what is being extracted to effectively monitor and manage our aquatic resources to ensure their sustainability for future generations.

Thank you for this opportunity to provide testimony on this measure.

Respectfully,

Roy N. Morioka, Oahu Fisherman

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 House Committee on
OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS

Tuesday, January 30, 2018
9:45 AM
State Capitol, Conference Room 312

In consideration of
HOUSE BILL 1752
RELATING TO AQUATIC RESOURCES

House Bill 1752 proposes to establish a non-commercial marine fishing license requirement, create a special fund and allocate revenues to administration of the licensing program or marine resource management and protection, and authorize the Department of Land and Natural Resources (Department) to adopt rules. **The Department supports this measure, subject to the following edits and comments.**

In light of a recent Supreme Court ruling, the measure, as written, would potentially subject every non-commercial marine fishing license applicant to environmental review under the Hawaii Environmental Policy Act ("HEPA") because of the discretionary language used in Section 188-A(b), Hawaii Revised Statutes (HRS). The Department proposes amending the language to make it a ministerial license.

The Department also prefers to establish fees through administrative rulemaking, and to have the flexibility to explore options for shorter-term licenses, such as 1-day or 7-day licenses, in addition to annual licenses. This will allow us to better accommodate visitors and occasional fishers, and would allow the Department to adjust fees through rule amendments as necessary.

As explained below, the Department also recommends depositing license fees into the existing Sport Fish Special Fund. Accordingly, the Department proposes amending (Highlighted in yellow) Sections 188-A(b) and (c), HRS, as follows:

(b) Non-commercial marine fishing licenses [may] shall be issued by agents of the department upon written application in

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

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON P.E.
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

such form as may be prescribed by the department together with payment of a fee. The ~~[fee] fees~~ for ~~[a]~~ non-commercial marine fishing ~~[license] licenses~~ shall be ~~[a fixed flat rate fee of \$_____ for state residents and \$_____ for non-state residents.]~~ established by the department by rules adopted in accordance with chapter 91. All fees collected shall be deposited into the sport fish special fund under section 187A-9.5.

(c) Any non-commercial marine fishing license issued pursuant to this section shall be valid for ~~[a period of]~~ no longer than one year from the date of its issuance.

The Department suggest amending (Highlighted in yellow) Section 188A-A(d), HRS, as follows, to allow authorized officers of the Department to inspect catch as appropriate:

(d) No person to whom a license has been issued under this section shall permit any other person to carry, display, or use the license for any purpose. Every person to whom a license has been issued under this section shall show the license, ~~and any aquatic resources, and any implement used or capable of taking aquatic resources,~~ upon demand of any officer authorized to enforce the fishing laws of the State.

The Department suggests amending (Highlighted in yellow) Section 188-A(f), HRS, to include the option to suspend a non-commercial marine fishing license to give the Department greater flexibility and discretion in dealing with violators. The following language is proposed:

(f) The department may ~~suspend or~~ revoke any non-commercial marine fishing license for any violation of the terms and conditions of the non-commercial marine fishing license. Any person whose non-commercial marine fishing license has been revoked shall not be eligible to apply for another non-commercial marine fishing license until expiration of one year from the date of revocation.

The Department recommends adding (Highlighted in yellow) an additional subsection to Section 188-A, HRS, to comply with the requirements of Section 576D-13, HRS. Similar language is found in the Department's recreational freshwater fishing license statute, Section 187A-9.5, HRS, and commercial marine license statute, Section 189-2, HRS. It reads as follows:

() The department shall suspend, refuse to renew, reinstate, or restore, or deny any license or application if the department has received certification from the child support enforcement agency pursuant to section 576D-13 that the licensee or applicant is not in compliance with an order of support as defined in section 576D-1 or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding.

The department shall issue, renew, restore, or reinstate a license only upon receipt of an authorization from the child support enforcement agency, the office of child support hearings, or the family court.

The Department strongly recommends depositing revenues from the non-commercial marine fishing licenses into the existing Sport Fish Special Fund, established under Section 187A-9.5, HRS, rather than a new non-commercial marine license special fund. The Department receives significant federal funding through apportionments under the Dingell-Johnson Sport Fish Restoration Act. Apportionment of funds is contingent upon the adoption and maintenance of State laws that assent to the provisions of the Dingell-Johnson Sport Fish Restoration Act, including “a prohibition against the diversion of license fees paid by fishermen for any other purpose than the administration of said State fish and game department.” The existing Sport Fish Special Fund statute complies with this requirement. Any new special fund that receives revenues from non-commercial fishing licenses will need to undergo extensive federal review, or put the State at risk of losing a significant source of federal funds.

Thank you for the opportunity to comment on this measure.



HB1752
RELATING TO AQUATIC LIFE

House Committee on Ocean, Marine Resources, & Hawaiian Affairs

January 30, 2018

9:45 a.m.

Room 312

The Administration of the Office of Hawaiian Affairs (OHA) will recommend that the Board of Trustees offer the following **COMMENTS** on HB1752, which seeks to realize the potential management benefits of a noncommercial marine fishing license for the taking of nearshore resources in Hawai'i. OHA appreciates the recognition of the need for the state to better manage resources of particular importance to Native Hawaiian cultural practitioners and subsistence communities, and urges the Committee to ensure that this legislation considers and addresses the below concerns relating to avoiding unintended consequences of certain language within the bill; afford the Department of Land and Natural Resources (DLNR) sufficient flexibility to ensure any licensing system is both practicable and equitable; and minimize any unnecessary burdens on Native Hawaiian cultural and subsistence practitioners and the Native Hawaiian community in general.

OHA acknowledges and appreciates the potential benefits that may be realized from a noncommercial fishing licensing program in Hawai'i. OHA has long-advocated for more responsible and proactive management and protection of our marine resources, particularly in light of their importance to our beneficiaries' culture, health, and economic self-sufficiency. OHA accordingly understands that the added data collection opportunities, avenues of communication and information sharing, and increased management and enforcement resources that may be provided through a noncommercial fishing license may potentially enhance the state's capacity to better manage, conserve, and protect natural and cultural marine resources essential for the continuation of Native Hawaiian traditional and customary and subsistence practices and lifestyles. **Notably, while fishing pressure and fishers alone are clearly not the only source of stress on our marine resources, OHA also understands that a licensing structure could potentially help to address a range of potential ocean threats and stressors including through additional data and information about these resources, from fishers themselves.**

OHA offers the following additional comments for your consideration:

First, OHA does note that as written, this measure may inadvertently prohibit all noncommercial fishing activities, from the time it takes effect to the time that the DLNR is able to produce the forms and regulations necessary to implement a noncommercial fishing license program. **Accordingly, OHA respectfully recommends that, should this measure move forward, the prohibition on noncommercial fishing in subsection (a) be**

deferred until the adoption of rules by the DLNR that implement the contemplated noncommercial fishing license program.

Second, the flat fees contemplated in subsection (b) and the one-year timeline in subsection (c) may inadvertently inhibit the DLNR from developing a license fee and administration structure that may be more equitable and practicable, and that can respond to changing conditions and needs. For example, decreased or gratis fees might be appropriate for subsistence fishers; cultural practitioners who, notwithstanding their constitutional rights and protections, may wish to acquire a license and avoid the potential burdens of defending themselves from a citation; fishers with extremely limited incomes; individuals who plan only to fish on a single occasion; or others who may merit more favorable consideration in a licensing program. In addition, a one-year renewal timeline may not be the most efficient or effective way to administer a licensing program for both the state and licensees, when compared to alternative multi-year or even lifetime license periods. Fixing fees and license periods in statute would limit the flexibility on the part of the DLNR to address such individuals and circumstances, which would instead require additional statutory changes.

Third, while OHA appreciates subsection (g)'s recognition of Native Hawaiian gathering rights and traditional and customary practices, the proposed language does not clearly indicate the extent to which Native Hawaiian cultural practitioners may be subject to potential liability under the new section. **Accordingly, in order to best protect and facilitate the perpetuation of Native Hawaiian cultural practices, OHA recommends amending the language on page 3, lines 13-16, to read as follows:**

"(g) This section shall not restrict the exercise of Native Hawaiian traditional and customary practices; provided that the rules adopted pursuant to subsection (a) shall provide and allow for the exercise of Native Hawaiian traditional and customary practices as protected pursuant to Article XII, section 7 of the Hawai'i State Constitution, by minimizing to the extent practicable any burden on Native Hawaiian traditional and customary practitioners, including those burdens associated with obtaining a license or paying any fees; provided further that the exercise of a Native Hawaiian traditional and customary practice shall be a complete defense to a violation of subsection (a) of this section."

Fourth, OHA notes that many Native Hawaiians live in remote, rural subsistence communities, and may have difficulty accessing the state offices, agents, and/or websites as may be necessary to obtain a license and comply with licensing laws and regulations. **Such individuals may face disproportionate and unreasonable burdens in complying with**

a license requirement, and may even forego compliance due to such burdens.

Accordingly, OHA urges the inclusion of additional language to be appropriately inserted and to read as follows:

“In the adoption of rules under subsection (a) and in the implementation of the licensing program under this section, the department shall explicitly consider and ensure reasonable opportunities for all individuals to apply for and obtain a noncommercial marine fishing license, including those residing in remote or rural communities, those who may be limited English proficient, those with limited transportation capacity, and others who may face disproportionate burdens in obtaining a noncommercial marine fishing license.”

Fifth, OHA notes that the criminal justice system disproportionately impacts Native Hawaiians at every stage of the criminal justice process, and that Native Hawaiians, especially those from subsistence communities, may be particularly likely to fish from nearshore waters for noncommercial purposes. OHA also believes that criminal misdemeanor liability and a criminal record may not necessarily be an appropriate penalty for failing to obtain a fishing license. Accordingly, in order to avoid exacerbating the impact of the criminal justice system on Native Hawaiians, OHA urges the inclusion of additional language limiting a violation of proposed section 188-A to civil, noncriminal remedies, to be appropriately inserted in that section and to read as follows:

“Any violation of this section shall be subject to general administrative penalties as described under section 187A-12, provided that no criminal liability shall be imposed for a violation of this section.”

Finally, OHA understands that, while the chapter 91 rulemaking process will involve a public hearing for any proposed rules implementing a noncommercial licensing program, such a hearing may not necessarily address all aspects of licensing administration, or allow for the full range of impacted communities, including rural and isolated subsistence communities, to provide valuable input and additional perspectives to guide the program’s development. Accordingly, to better ensure that DLNR takes into account the diverse and varying perspectives and concerns of those affected by a noncommercial license requirement, OHA recommends the inclusion of an additional bill section expressly requiring public hearings throughout the islands, to read as follows:

SECTION ____. In developing a non-commercial marine license program and rules as required under this Act, and prior to the initiation of the rulemaking process described in chapter 91, the department of land and natural resources shall hold at least one public meeting

on each island with permanent residents, and afford all interested persons an opportunity to submit data, views, or arguments on any aspect of the program or rules.

Mahalo nui for the opportunity to testify on this measure.