
A BILL FOR AN ACT

RELATING TO THE TAKING OF NATURAL RESOURCES.

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

1 SECTION 1. The legislature finds that the State has shown
2 a substantial interest in regulating the extraction of its
3 natural resources under the Hawaii State Constitution and its
4 general statutory and administrative regulatory scheme to
5 conserve, protect, and even propagate public natural resources,
6 including their development and use, for the benefit of the
7 people of the State and future generations. In particular, many
8 laws and administrative rules are in place for the purpose of
9 regulating the extraction of natural resources associated with
10 hunting and fishing, establishing the taking of such resources
11 as highly regulated activities, including commercial and sport
12 harvesting, and the subsequent use or trade and distribution of
13 wildlife and aquatic resources and products.

14 The legislature also finds that the regulatory regime
15 includes such aspects as licensing and permitting; bag, size,
16 gender, seasonal, and species limitations for wildlife and
17 fisheries; gear restrictions and limits on method of harvest;



1 recognition of traditional practices related to the use of
2 cultural resources; prohibition on the introduction of
3 potentially competitive, harmful, noxious, or predatory non-
4 native species; educational and scientific study permitting; and
5 establishment of protected areas, wildlife sanctuaries, game
6 management areas, and limited entry areas, including freshwater
7 reservoirs, game and fisheries management areas, and even
8 privately owned lands subject to agreement as a state game
9 management area. Additionally, the regulatory scheme for
10 natural resources associated with hunting and fishing in Hawaii
11 is extensive and pervasive and often involves the overlapping of
12 regimes. As a result, in light of the number and nature of
13 regulations that apply and the procedures needed to enforce such
14 regulations, the legislature further finds that persons having
15 voluntarily acquiesced to the regulatory environment in order to
16 participate in natural resource extractive activities,
17 especially for commercial uses of economically important
18 species, have a reduced expectation of privacy under the Fourth
19 Amendment of the Constitution of the United States, particularly
20 while engaged in such activities and while present in the
21 immediate area near where the activity took place.



1 These regulations, whether addressing extractive or even
2 non-extractive activities, cannot be effectively enforced
3 without a proper inspection authority as a check and balance
4 against unfettered harvesting, particularly for the often
5 solitary, distant, or far-flung pursuits of local and visitor
6 participants in fishing or hunting, given the expansive milieu
7 of Hawaii's ocean surface, submerged areas, coastlines, forests,
8 and valley terrain and limited enforcement personnel available
9 to police such areas. The geographical complexity of the
10 natural environment of an island state is overlaid by the
11 multitude of recreational, sport, aesthetic, political,
12 cultural, religious, and other non-extractive pursuits of
13 persons in the same areas as hunters and fishers.

14 Existing Hawaii law gives the department of land and
15 natural resources division of conservation and resources
16 enforcement officers express statutory authority to inspect,
17 upon demand, a required hunting license; for those persons with
18 a hunting license, inspect a person's game bag, container,
19 hunting coat or jacket, carrier, or vehicle that may conceal
20 game; upon probable cause, inspect, upon demand, the contents of
21 any bag, container, vehicle, or conveyance used to carry aquatic



1 life; and search and seize diverse things such as "any
2 equipment, article, instrument, aircraft, vehicle, vessel,
3 business records, or [a] natural resource used or taken in
4 violation of . . . title 12, or any rules adopted thereunder",
5 but only if there is probable cause to believe that a violation
6 of a rule or statute has occurred. The probable cause
7 requirement makes effective enforcement unlikely, as officers
8 are rarely able to meet this standard without having personally
9 observed the hunter or fisher actually taking proscribed
10 wildlife or aquatic life. For example, a fisher could have a
11 cooler of undersized fishes, but even if at a distance the
12 officer observed the take of an undersized fish or fishes, the
13 officer would likely lack probable cause to inspect the contents
14 of the cooler, and these violations would go undetected.
15 Specialized training is necessary to identify regulated species
16 from those that are not subject to regulation, and the
17 difficulty of being able to discern subtle differences in
18 length, gender, color, or other marks or measures from a
19 distance or under less than suitable lighting conditions
20 decreases the likelihood of a positive identification.



1 The purpose of this Act is to allow division of
2 conservation and resources enforcement officers, upon reasonable
3 belief that a person is or was recently engaged in hunting or
4 fishing, to briefly detain that person as necessary to review
5 any relevant licenses, permits, or related documents to allow
6 conduct of the activity and inspect the wildlife or aquatic life
7 in that person's possession. Instead of an officer spending
8 long enforcement activity hours observing a single hunter or
9 fisher as a prerequisite to establishing probable cause for an
10 inspection, this Act would further enable the officer to inspect
11 the bag or catch of dozens of hunters or fishers, protecting an
12 entire coastline or valley. The limited inspections authorized
13 by this Act include the purpose of recovering illicitly obtained
14 wildlife and aquatic life and either returning them to the
15 natural environment before they expire, if feasible, or
16 recovering them for any economic value. Being able to conduct
17 inspections with greater immediacy than Hawaii's law currently
18 allows increases the chance the natural resource could survive a
19 return to the wild.



1 SECTION 2. Chapter 199, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§199- Inspection; exhibit upon demand; penalty. (a)
5 Notwithstanding section 199-7, any conservation and resources
6 enforcement officer of the department of land and natural
7 resources upon whom the board of land and natural resources has
8 conferred police powers may, in the performance of the officer's
9 official duties, stop and temporarily detain any person who the
10 officer reasonably believes is, or recently has been, engaged in
11 hunting or fishing. During this brief detention, the officer,
12 upon lawful demand, may inspect any license, permit, stamp, tag,
13 or other documentation required for hunting or the taking of
14 aquatic resources, as well as any game or aquatic life in the
15 person's possession, including the contents of any receptacle or
16 container of any kind that could reasonably be used to carry the
17 regulated game or aquatic life, and any equipment, article, or
18 device capable of taking the game or aquatic life, while
19 reasonably proximate to the respective hunting or fishing area,
20 to determine whether the person is in compliance with any
21 provision of title 12 and any rules adopted thereunder



1 regulating hunting or aquatic life and conservation of wildlife
2 or aquatic resources. Unless otherwise allowable under
3 section 183D-25, upon probable cause, or incident to arrest, the
4 officer shall not inspect the clothing upon the person who is
5 subject to a natural resource inspection related to hunting or
6 fishing, nor shall the officer inspect the contents of any
7 receptacle or container that could not reasonably be used to
8 carry game or aquatic life.

9 (b) Any inspection shall be conducted within a reasonable
10 distance from the environment in which the hunting or fishing
11 took place and shall not include vehicular inspections beyond a
12 reasonable distance unless upon probable cause or failure to
13 heed a demand to stop when requested to submit to an
14 administrative inspection for title 12 resources or equipment
15 used for the capture or take of wildlife or aquatic resources as
16 used in hunting or fishing. Inspections shall be conducted by
17 any person authorized by the department of land and natural
18 resources to enforce title 12 and any rule adopted thereunder.

19 (c) For violations of this section, the administrative
20 finances shall be as follows:

21 (1) For a first violation, a fine of not more than \$1,000;



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

3 (3) For a third or subsequent violation within five years
4 of a previous violation, a fine of not more than
5 \$3,000.

6 (d) For the purposes of this section:

7 "Fishing" means the taking of any regulated aquatic life,
8 as defined in section 187A-1.

9 "Game" or "wildlife" includes any animal parts thereof."

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

13 SECTION 4. New statutory material is underscored.

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



H.B. NO. 1022
H.D. 1
S.D. 2
C.D. 1

Report Title:

Natural Resources; Hunting; Fishing; Inspection; Penalties

Description:

Clarifies that any conservation and resources enforcement officer of the Department of Land and Natural Resources may, in the performance of official duties, stop and temporarily detain any person who the officer reasonably believes is, or recently has been engaged in, hunting or fishing for a natural resource inspection. Establishes penalties. (CD1)

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