
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 availability of aquatic resources enforcement personnel,
15 and the higher standard of probable cause, instead of reasonable
16 suspicion, applied by the statute to their inspection authority,
17 prevents the department from effectively monitoring compliance
18 with resource regulations to ensure the continued success of the
19 West Hawaii regional fishery management 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 subject only to
11 constitutional limitations is 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, may conduct examinations and inspections of:

- 10 (1) The commercial license, permit, or registration issued
11 to any individual, pursuant to subtitle 5 of title 12
12 or any rule adopted thereunder, if the officer
13 reasonably believes the individual is engaged in
14 conduct governed by this chapter;
- 15 (2) The contents of any bag or container of any kind that
16 the agent reasonably believes may be used to carry
17 aquatic life harvested pursuant to a commercial
18 license, permit, or registration required under
19 subtitle 5 of title 12 or any rule adopted thereunder;
- 20 (3) Any area of a vessel or vehicle that the officer
21 reasonably believes may be used to transport aquatic



1 life harvested in the West Hawaii regional fishery
2 management area pursuant to a commercial license,
3 permit, or registration required under subtitle 5 of
4 title 12 or any rule adopted thereunder; or
5 (4) The premises, containers, fishing equipment, marine
6 animals, and records required by the department of any
7 shipping agent or other person placing or attempting
8 to place aquatic resources into interstate or
9 intrastate commerce if the officer reasonably believes
10 those items relate to activities conducted in the West
11 Hawaii regional fishery management area. Officers may
12 inspect the records required by the department of any
13 wholesale outlet selling aquatic resources for
14 compliance with the terms of their 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. The authority to inspect for activities
20 related to the West Hawaii regional fishery management area
21 under this chapter is separate and in addition to any inspection



1 rights or obligations under sections 187A-15 and 189-14 or other
2 state or federal law.

3 (b) Any item, article, natural resource, or other
4 evidence, when obtained through an administrative inspection
5 pursuant to subsection (a) that occurs without probable cause of
6 a violation of law, shall not be used as evidence in any
7 criminal proceeding and may only be used to pursue authorized
8 civil penalties, including any authorized monetary fines under
9 section 187A-12.5, natural resources-related community service,
10 or asset forfeiture as may be authorized by the department under
11 this chapter to enforce regulations in the West Hawaii regional
12 fishery management area.

13 (c) Prior consent to administrative inspection by a duly
14 authorized agent of the department while within the West Hawaii
15 regional fishery management area shall be a condition of any
16 commercial license, permit, or registration issued pursuant to
17 subtitle 5 of title 12 or any rule adopted thereunder. While
18 within the West Hawaii regional fishery management area and
19 engaged in activities authorized pursuant to the commercial
20 license, permit, or registration, no person shall refuse to
21 allow any duly authorized agent of the department to conduct an



1 examination and inspection described in subsection (a) for
2 purposes of determining compliance with the terms of the
3 commercial license, permit, or registration.

4 (d) While within the West Hawaii regional fisheries
5 management area, any individual to whom a commercial license,
6 permit, or registration has been issued, pursuant to subtitle 5
7 of title 12 or any rule adopted thereunder, shall physically
8 possess the license, permit, or registration at all times when
9 engaged in fishing activities conducted pursuant to the license,
10 permit, or registration; and shall not permit any other person
11 to carry, display, or use the license, permit, or registration
12 in any manner unless otherwise authorized by the department.

13 (e) Any individual licensed, permitted, or registered,
14 pursuant to subtitle 5 of title 12 or any rule adopted
15 thereunder, who engages in fishing activities within the West
16 Hawaii regional fishery management area upon demand shall:

17 (1) Produce the required license, permit, or registration
18 for inspection;

19 (2) Produce for inspection the marine life, bag, or other
20 closed container that the officer reasonably believes
21 could be used to take or transport aquatic resources



1 for which a license, permit, or registration is
2 required; and

3 (3) Allow inspection pursuant to this section.

4 (f) Any individual who refuses to allow the inspection or
5 produce the requested items or documents shall have their
6 license, permit, or registration immediately suspended and may
7 be subject to board revocation of the license, permit, or
8 registration."

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

12 SECTION 4. New statutory material is underscored.

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



Report Title:

Aquatic Life; West Hawaii; Inspection; DLNR

Description:

Authorizes administrative inspections within the West Hawaii regional fishery management area. (HB483 HD1)

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