

JAN 20 2023

A BILL FOR AN ACT

RELATING TO NATIVE HAWAIIAN TRADITIONAL AND CUSTOMARY FISHING PRACTICES.

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

1 SECTION 1. The legislature finds that the department of
2 land and natural resources is responsible for managing and
3 administering the aquatic wildlife resources of the State. The
4 department utilizes a variety of management tools to both
5 increase yields for Hawaii fishers and protect aquatic resources
6 from overexploitation. Management tools such as size limits,
7 bag limits, closed seasons, gear and method regulations, and
8 place-based fishing restrictions are all vital aspects of the
9 department's mission to both increase fish yields and conserve
10 Hawaii natural aquatic resources for future generations.

11 The legislature recognizes that article XII, section 7 of
12 the Hawaii State Constitution provides protections for "all
13 rights, customarily and traditionally exercised for subsistence,
14 cultural and religious purposes and possessed by ahupua'a
15 tenants who are descendants of native Hawaiians who inhabited



1 the Hawaiian Islands prior to 1778, subject to the right of the
2 State to regulate such rights."

3 The legislature further finds that, despite these
4 constitutional protections, individuals who choose to exercise
5 their rights to gather aquatic resources in ways that contravene
6 state fishing laws are subjected to the risk of civil and
7 criminal citation and arrest before being afforded an
8 opportunity to validate their traditional and customary rights.
9 Allowing for permits to be issued by the department of land and
10 natural resources for the purpose of exercising traditional and
11 customary fishing practices would provide a less burdensome
12 avenue for individuals to lawfully exercise legitimate
13 traditional and customary fishing practices protected the Hawaii
14 State Constitution.

15 The purpose of this Act is to provide the department with
16 authority to issue special activity permits for the purpose of
17 recognizing and protecting individuals exercising their right to
18 engage in traditional and customary fishing practices as
19 protected by the Hawaii State Constitution.

20 SECTION 2. Section 187A-6, Hawaii Revised Statutes, is
21 amended to read as follows:



1 **"§187A-6 Special activity permits.** (a) Notwithstanding
2 the provisions of any other law, the department may take aquatic
3 life or possess or use any fishing gear for scientific,
4 educational, management, or propagation purposes, for removal of
5 aquatic species, or for implementing the powers and duties as
6 described by section 187A-2; subject to chapter 195D. The
7 department shall consider using chemicals or electrofishing
8 devices only when it has determined that no other reasonable
9 alternative would be appropriate. The application of chemicals
10 or operation of electrofishing devices shall be in accordance
11 with established procedures and with the proper training to
12 ensure that the intended results are achieved.

13 (b) Notwithstanding the provisions of any other law, the
14 department may issue permits, not longer than one year in
15 duration, to any person to take aquatic life, possess or use
16 fishing gear, or engage in any feeding, watching, or other such
17 non-consumptive activity related to aquatic resources, otherwise
18 prohibited by law, in any part of the State, for scientific,
19 educational, management, or propagation purposes, subject to
20 chapter 195D and subject to those restrictions the department
21 deems desirable. The department may revoke any permit for any



1 infraction of the terms and conditions of the permit. Any
2 person whose permit has been revoked shall not be eligible to
3 apply for another permit until the expiration of one year from
4 the date of revocation.

5 (c) The department may issue permits to any person
6 exercising their Native Hawaiian traditional and customary
7 practices protected by law to take aquatic life, possess or use
8 fishing gear, or engage in any feeding, watching, or other such
9 non-consumptive activity related to aquatic resources, otherwise
10 prohibited by law, in any part of the State, subject to chapter
11 195D. The permits authorized by this subsection are not
12 required by any person exercising their constitutionally
13 protected traditional and customary practices, but are intended
14 to assist in the recognition and protection of any person
15 exercising their protected rights.

16 [~~e~~] (d) The department may adopt rules pursuant to
17 chapter 91 for the purpose of this section.

18 [~~d~~] (e) For the purposes of this section, unless the
19 context clearly indicates otherwise:



1 "Fishing gear" means any device, including the use of any
2 chemical or electricity that is either designed to take aquatic
3 life or could be used to take aquatic life."

4 SECTION 3. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: *Massiel Arroyo*



S.B. NO. 1036

Report Title:

DLNR; Protection; Recognition; Native Hawaiian Traditional and Customary Fishing Practices; Aquatic Resources

Description:

Authorizes the department of land and natural resources to issue special activity permits for the purpose of recognizing and protecting individuals exercising their Native Hawaiian traditional and customary rights.

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

