

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
WATER & LAND**

**Wednesday, February 17, 2021
1:00 PM**

State Capitol, Via Video Conference, Conference Room 229

**In consideration of
SENATE BILL 572
RELATING TO AQUATIC RESOURCES**

Senate Bill 572 proposes to specify that any equipment, article, instrument, aircraft, vehicle, vessel, or business record used in violation of the aquatic resources law is subject to forfeiture and authorizes the imposition of a criminal fine. This bill also proposes to clarify that the fine structure may be assessed on a per-specimen basis and makes violations of the aquatic resources law a misdemeanor. The bill further proposes to permit the Department of Land and Natural Resources to recommend community service that benefits the resource damaged when a person is ordered to perform community service in lieu of a fine. The Department of Land and Natural Resources (Department) offers comments on this measure.

The Department appreciates the provisions of this bill which would allow funds from fines collected to be deposited to the Conservation and Resources Enforcement Special Fund. These funds could then be used to support the Department's law enforcement efforts through its Conservation and Resources Enforcement Program.

Upon review of the provisions this bill proposes, the Department notes some of the proposals may be unnecessary as they are already provided for in statute. These include the proposed amendments to Section 187A-12.5(b) and (c), Hawaii Revised Statutes (HRS). There are existing provisions found in Sections 187A-12.5(d) and (e), HRS, which allow for fines on a per-specimen basis. We note however, that the proposed changes would allow for greater fines on a per-specimen basis for second and third offenses.

The Department is also concerned that with the proposed changes to the language in Sections 187A-12.5(b) and (c), HRS, if a violation did not involve the actual take of any specimens, and only involved the use of illegal gear, for instance, the fine would be \$0. To avoid this, the

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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

Department recommends removing the language “for each specimen” from page 3, lines 10, 12-13, 16, 20, and page 4, lines 2-3, and 6, again noting that subsections (d) and (e) of 187A-12.5, HRS, already provide for per-specimen fines of up to \$5,000 and \$1,000, respectively.

Additionally, the Department is concerned that amending Section 187A-13, HRS, so that violations are elevated from a petty misdemeanor, to a full misdemeanor may have the unintended consequence of more case dismissals by the Courts. Our Courts are already congested as it is, and when violators are charged with a misdemeanor, the possibility of a jury trial comes into play, which creates an additional, mandatory, hearing where the defendant must waive or demand said jury trial, increasing court congestion. There is also a common sentiment that a petty misdemeanor is already too high of a charge for aquatic violations, which leads to many cases being plead down to a simple trespass infraction, or being dismissed altogether. While this trend is decreasing, we worry that an increase from a petty misdemeanor to a full misdemeanor will cause a relapse to the old ways of pleading down or dismissing aquatic resource cases. As such, the Department recommends not deleting the word “petty” from page 4, line 12. However, the Department does support and recommends amending this section to include authority for per-specimen fines for criminal penalties, as it already has per-specimen fines for civil penalties. To accomplish this, the Department recommends adding a new subsection to 187A-13, HRS, as well as to 188-70, HRS, to read as follows:

([]) In addition to subsection (a), a fine of up to \$1,000 may be levied for each specimen of all other aquatic life taken, killed, or injured in violation of subtitle 5 of title 12 or any rule adopted thereunder.

This would mirror the per-specimen administrative fine found in 187A-12.5, HRS.

Lastly, the Department notes it has existing statutory forfeiture authority under Section 199-7, HRS. Importantly, while the Department’s forfeiture authority already exists, the Department must amend the applicable penalty sections of the Hawaii Administrative Rules to specify forfeiture as a penalty within the rule to comply with the Carlisle v. One Boat decision. If this committee wishes to not duplicate the authority found in 199-7, HRS, then the Department recommends deleting the language found on page 2, lines 12-16.

Thank you for the opportunity to comment on this measure.



THE SENATE
THE THIRTY-FIRST LEGISLATURE
REGULAR SESSION OF 2021

COMMITTEE ON WATER AND LAND
Senator Lorraine R. Inouye, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

NOTICE OF HEARING

DATE: Wednesday, February 17, 2021
TIME: 1:00 PM
PLACE: Conference Room 229 & Videoconference

TESTIMONY OF THE OCEAN TOURISM COALITION IN OPPOSITION TO SB572.

Dear Chair Inouye and Vice Chair Kieth-Agaran:

The Ocean Tourism Coalition (“OTC”) represents over 300 ocean tourism businesses statewide. OTC’s greatest concern with SB795 (the “Bill”) is that it may have unintentional consequences and allow the forfeiture of vessels beyond the Bill’s original intent. Accordingly, OTC was very appreciative of the House Committee on Water and Land adding the word “intentional” to the Bill to narrow its scope and application. We believe that this will help avoid situations of vessel forfeiture where a rule is violated through accident (e.g., unintentional marine life strikes).

In addition, upon listening to various testimony in prior hearings, it appears that the original intent of the Bill was to address concerns relating to the illegal taking of marine life (i.e., poaching). Accordingly, OTC would like to offer the following alternative amendment of the bill that would limit the bill’s application and scope:

“§187A- Any equipment, article, instrument, aircraft, vehicle, vessel, business record, or other asset used in fishing, possession, or sale of aquatic life in violation of this chapter may be seized and shall be subject to forfeiture according to the procedures set forth in chapter 712A.”

This language mirrors the current language in §187A, and OTC believes that this would be an effective way of narrowing the Bill and avoiding the forfeiture of a vessel

for violations unrelated to the taking of marine life. OTC is strongly against the idea that ANY violation, as the Bill is currently written, could result in the forfeiture of a vessel.

Sincerely,

Denver S. Coon, Director, OTC

SB-572

Submitted on: 2/16/2021 12:20:20 PM

Testimony for WTL on 2/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Zachary LaPrade	Testifying for Calypso Charters	Oppose	No

Comments:

Our Company Agrees with the Testimony of the Ocean Tourism Coalition and Strongly Opposes SB795.

SB-572

Submitted on: 2/15/2021 12:39:56 PM

Testimony for WTL on 2/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Hawaii Reef and Ocean Coalition	Testifying for Hawaii Reef and Ocean Coalition	Support	No

Comments:

Honorable Senator Inouye, Chair

Honorable Senator Keith-Agaran, Vice Chair, and Members of the Senate Committee on Water and Land.

From: HAWAI'I REEF AND OCEAN COALITION – HIROC (by Ted Bohlen)

Re: Hearing SB572 RELATING TO AQUATIC RESOURCES

Hearing Date: Tuesday, [February 16, 2021, 1:00 pm](#), by videoconference

Position: STRONG SUPPORT FOR SB572!

Aloha Chair Inouye, Vice Chair Keith-Agaran, and Members of the Senate Committee on Water and Land:

The HAWAI'I REEF AND OCEAN COALITION – HIROC – was formed in 2017 by coral reef scientists, educators, local Hawaii environmental organizations, elected officials, and others to address the crisis facing Hawaii's coral reefs and other marine life.

Our reefs and oceans are under great stress and need funding for protection! Coral bleaching, polluted runoff, unsustainable fishing, and invasive species are all degrading our reefs and oceans that are critical for protecting our aquatic life and shorelines and maintaining our tourism and recreational economy.

This bill would increase penalties for violation of laws protecting aquatic resources, including forfeiture of equipment used in violations. HIROC believes this bill would help maintain our reef and ocean health.

Please pass this Bill!

Mahalo!

Hawaii Reef and Ocean Coalition (by Ted Bohlen)

SB-572

Submitted on: 2/15/2021 5:42:25 PM

Testimony for WTL on 2/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Cathy Goeggel	Testifying for Animal Rights Hawai'i	Support	No

Comments:

This is very important - there must be sufficient financial discouragement for breaking the law.

Please pass this bill.

SB-572

Submitted on: 2/15/2021 8:51:40 PM

Testimony for WTL on 2/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mary James	Individual	Support	No

Comments:

I support SB572.

SB-572

Submitted on: 2/16/2021 12:21:12 PM

Testimony for WTL on 2/17/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kaikea Nakachi	Individual	Support	No

Comments:

I believe we need many more protections for our oceans, particularly in regards to the harvesting of resources. An easy way to do that is to increase the penalties for existing laws. I am absolutely in support of giving sharper teeth to existing laws. Illegal harvest of marine resources is theft from every person in Hawaii, and should be more than a slap on the wrist. Take their boat, take their gear, and help prevent bad behavior and lawbreakers from continuing to steal from everyone and disrespecting us all.