

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 House Committee on
WATER & LAND

Thursday, February 10, 2022
8:30 AM

State Capitol, Via Videoconference, Conference Room 430

In consideration of
HOUSE BILL 1988
RELATING TO CORAL

House Bill 1988 proposes to prohibit the sale, import, or export of coral products, with certain exceptions and requires the Department of Land and Natural Resources (Department) to amend its administrative rules accordingly no later than 12/31/2022. **The Department appreciates the intent of this bill and offers the following comments.**

The bill, as written, does not define “coral.” There are many different types of invertebrate organisms that are commonly referred to as coral, including stony corals (order Scleractinia) and precious corals, such as black coral (Order Antipatharia), gold coral (genus Gerardia), and pink or red coral (genus Corallium). The Department recommends amending the bill to establish a precise definition for the term “coral.”

Federal law defines coral as “species of the phylum Cnidaria, including— (A) all species of the orders Antipatharia (black corals), Scleractinia (stony corals), Gorgonacea (horny corals), Stolonifera (organpipe corals and others), Alcyonacea (soft corals), and Coenothecalia (blue coral), of the class Anthozoa; and (B) all species of the order Hydrocorallina (fire corals and hydrocorals) of the class Hydrozoa.”¹ The Department notes that phylum Cnidaria also includes organisms such as jellyfish and Portuguese man o’ war.

State law currently prohibits the sale of stony coral (order Scleractinia), with exceptions that allow the sale of imported stony coral fragments for jewelry or legally dredged stony coral rubble for agricultural or other industrial uses.² This bill would allow dredged stony coral

¹ 16 U.S. Code § 6409(3)

² Hawaii Administrative Rule (HAR) § 13-95-70(a)(3) states: “It is unlawful for any person to sell any stony coral; except that stony coral rubble pieces or fragments imported for the manufacture and sale of coral jewelry, or dead

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COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
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material to continue to be used legally for construction, but it would outlaw the use of stony coral material for jewelry and agricultural uses.

State law currently regulates the take of black coral³ and prohibits the take, possession, or sale of pink or gold coral without a permit.⁴ Over the past five years, only one Commercial Marine Licensee has reported harvesting black coral. Over the past 7 years, the Department has issued special activity permits to four individuals/institutions to collect black, gold or pink coral for research or educational purposes. If black, gold, and pink corals are included within the definition of “coral,” this bill would continue to allow the import, export, or sale of black, gold, or pink coral for education and research, but it would outlaw the sale of legally harvested black coral. It would also adversely impact businesses that sell precious coral jewelry.

Finally, the Department requests that the deadline for rulemaking be pushed back to December 31, 2023.

Thank you for the opportunity to comment on this measure.

stony coral obtained through legal dredging operations in Hawaii for agricultural or other industrial uses, may be sold.”

³ HAR § 13-91-2(b) states: “No person shall take, destroy or possess any black coral with a base diameter of less than 3/4 inches from State marine waters.”

⁴ HAR § 13-91-2(a) states: “No person shall take, or destroy any pink or gold coral in State marine waters, or possess, sell, or offer for sale such corals in the State except as provided in §13-91-3, provided that any approved harvest shall not be made using nets, dredges, trawls, mops, explosives, or any other destructive, or non-selective methods, and all such corals taken in State marine waters shall be landed in the State.”

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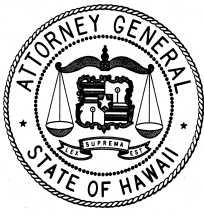
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**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:
H.B. NO. 1988, RELATING TO CORAL.

BEFORE THE:
HOUSE COMMITTEE ON WATER AND LAND

DATE: Thursday, February 10, 2022 **TIME:** 8:30 a.m.

LOCATION: State Capitol, Via Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General, or
Melissa D. Goldman, Deputy Attorney General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General offers the following comments.

This bill would add a new section to chapter 187A, Hawaii Revised Statutes, that makes it unlawful for any person to "import into, export from, sell, or offer for sale in the State any coral product." The bill provides that its prohibitions are subject to certain exceptions, including when the coral would be used "as limestone or construction materials, cosmetics, or medicines," among other things. Page 2, lines 6–17. As currently written, this measure would be vulnerable to a few constitutional challenges.

First, the bill could be subject to challenge as being preempted by the Endangered Species Act, 16 U.S.C. § 1535. Under the Endangered Species Act, a state law or regulation that applies with respect to the importation or exportation of an endangered or threatened species is void to the extent it may prohibit what is authorized pursuant to an exemption or permit. See 16 U.S.C. § 1535(f). To ensure that all federally authorized activities are excepted from the prohibitions of the bill, we recommend adding a provision exempting the sale, offer for sale, purchase, trade, or barter of "any coral product" that may be expressly authorized by federal law or permit from the new section.

The bill could also be challenged as causing an undue burden on interstate commerce in violation of the dormant commerce clause. The dormant commerce clause prohibits state legislation that discriminates against interstate or international commerce. Nondiscriminatory regulations that have only incidental effects on interstate

commerce are valid unless "the burden imposed on such commerce is clearly excessive in relation to the putative local benefits." *Oregon Waste Sys., Inc. v. Dep't of Env'tl. Quality*, 511 U.S. 93, 99 (1994) (quoting *Pike v. Bruce Church, Inc.* 397 U.S. 137, 142 (1970)).

The Supreme Court has further explained that "[w]hen discrimination against commerce . . . is demonstrated, the burden falls on the State to justify it both in terms of the local benefits flowing from the statute and the unavailability of non-discriminatory alternatives adequate to preserve the local interests at stake." *Hughes v. Oklahoma*, 441 U.S. 322, 336 (1979) (quoting *Hunt v. Washington Apple Advertising Comm'n*, 432 U.S. 333, 353 (1977)). In other words, the regulation at issue must at least claim to further some local interest in order to survive a commerce clause challenge.

In the preamble to the bill, the Legislature recognizes that the "import, export and sale of coral jewelry in the State threatens coral reefs and reef ecosystems *in other parts of the world*," suggesting that there may be no *local* interest behind this bill. Page 1, lines 5–8 (emphasis added).

This potential commerce clause issue may be remedied by clarifying the local interest, such as restricting commercial activities of only those coral species that are native to Hawaii, or by narrowing its burden on interstate commerce, such as by the measure's application to certain types of corals recognized to be endangered.

If the Committee decides to pass the bill, we recommend these changes be made to address the potential constitutional issues.

Thank you for the opportunity to provide this testimony.

HB-1988

Submitted on: 2/8/2022 4:01:37 PM

Testimony for WAL on 2/10/2022 8:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Inga Gibson	For the Fishes	Comments	Yes

Comments:

February 10, 2022, 830am

Re: HB1988 Coral Products - Comments

Dear Chair Tarnas and House Water & Land Committee members,

We appreciate the intent of HB1988, to prohibit the import and sale of **dead** coral products, including coral jewelry and trinkets, however, the bill does not seem to prohibit the commercial harvesting of **live** coral (i.e. black coral) from Hawaii's own waters, or the continued commercial sale of this live coral, which is then used to create such jewelry and trinkets.

See: <https://www.mauivers.com/collections/black-coral-jewelry>

If the measure allows for continued commercial harvesting and sale of black coral, as regulated by DAR & NOAA, it is likely we will see increased harvesting, more collectors entering the fishery (currently <3, per below), and a higher likelihood of violations, given the increased commercial market value of the coral. This could prove extremely detrimental to these species.

See: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/hawaii-black-coral-diving-fishery-mmpa-list-fisheries>

If we are to set an example of the critical importance of marine species, especially in light of their death and declines due to pollution, over-harvesting, commercial exploitation and climate change impacts, **we must extend these same protections to our own live marine life-- all corals and the millions of marine animals** who have been taken for the non-essential "ornamental" aquarium pet trade.

It is true irony that more than 30 years ago, in 1986, the state legislature prohibited the take of ocean rock, sand and certain corals, yet to this day, continues to allow for the mass commercial extraction of our **live** marine wildlife, 99 percent of which leaves the state for the profit of mainland reef wildlife dealers and corporations.

Thank you for the opportunity to provide testimony.

Inga Gibson, For the Fishes

HB-1988

Submitted on: 2/9/2022 8:28:56 AM

Testimony for WAL on 2/10/2022 8:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Lisa Bishop	Friends of Hanauma Bay	Comments	No

Comments:

Re: HB1988 Coral Products - Comments

Aloha Chair Tarnas and WAL Committee members,

We appreciate the intent of HB1988, to prohibit the import and sale of **dead** coral products, including coral jewelry and trinkets. However, the bill does not seem to prohibit the commercial harvesting of **live** coral (i.e. black coral) from Hawaii's own waters, or the continued commercial sale of this live coral, which is then used to create such jewelry and trinkets.

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See:

<https://www.fisheries.noaa.gov/national/marine-mammal-protection/hawaii-black-coral-diving-fishery-mmpa-list-fisheries>

Please amend this Bill to include the prohibition of commercial harvesting of live coral (i.e. black coral) from Hawaii's own waters, or the continued commercial sale of this live coral, which is then used to create such jewelry and trinkets.

If we are to set an example of the critical importance of marine species, especially in light of their death and declines due to pollution, over-harvesting, commercial exploitation and climate change impacts, **we must extend these same protections to our own live marine life-- all corals and the millions of marine animals** who have been taken for the non-essential "ornamental" aquarium pet trade.

It is true irony that more than 30 years ago, in 1986, the state legislature prohibited the take of ocean rock, sand and certain corals, yet to this day, continues to allow for the mass commercial extraction of our **live** marine wildlife, 99 percent of which leaves the state for the profit of mainland reef wildlife dealers and corporations.

Mahalo for the opportunity to testify on this important issue today.

Lisa Bishop

President

Friends of Hanauma Bay

HB-1988

Submitted on: 2/9/2022 8:51:29 AM

Testimony for WAL on 2/10/2022 8:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Christopher Dean	Clean The Pacific	Oppose	Yes

Comments:

It's too bad, I want to support this bill, because I'm most definitely against the commodification of wildlife. I feel the amendments that need to be done on this bill are too significant to support in its current form. For starters, it says nothing about protecting Hawaii's living corals. I understand that there are laws against taking living corals in Hawaii, but this bill should include that no dead or living corals shall be taken from Hawaiian waters. Also, I don't like exemption #4, using corals for limestone or construction materials, cosmetics or medicine. All corals should be listed as endangered. 80% of the world's corals are already dead and with the climate disaster getting worse exponentially, we can't afford to impact any corals, for any reason, anywhere. They are the foundation of all life on Earth.

Also, I am perplexed why you're trying to save the coral reefs in other nations, but we can't protect our own reefs from the commercial aquarium industry. Reef fish are a vital component of a healthy reef. It's not enough to preserve Hawaii's reef fish at levels deemed to be just above endangered, we need huge numbers of fish to have a healthy ecosystem, not just enough for a tourist to say oooo look, a fish.

This bill reminds me of our invasive species laws at the airport. Everyone has to have all their bags X-rayed before they leave Hawaii, but coming in, just your word of honor is enough. It's a double standard and I'm befuddled as to why Hawaii's Legislators pass laws to protect everyone else, but not us.

Please, let's rework this bill in an expeditious manner to include the protection of all coral reefs, and marine animals, including Hawaii's. Then I will eagerly sign on to it.

HB-1988

Submitted on: 2/9/2022 4:38:50 PM

Testimony for WAL on 2/10/2022 8:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
COLE SLATER	Maui Divers of Hawaii, LTD	Oppose	Yes

Comments:

Testimony will be given during the Zoom Call.

HB-1988

Submitted on: 2/7/2022 7:38:42 PM

Testimony for WAL on 2/10/2022 8:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Douglas Perrine	Individual	Support	No

Comments:

The trade in coral skeletons is unconscionable in the face of the threats to coral reefs which constitute ecosystems that are critically important to island and coastal nations throughout the tropics. Please pass this bill to criminalize a practice that should never have been legal in the first place.

HB-1988

Submitted on: 2/8/2022 8:23:27 AM

Testimony for WAL on 2/10/2022 8:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Darrell Tanaka	Individual	Oppose	No

Comments:

I oppose this bill....first, it requires the DLNR to amend administrative rules by the end of 2022, how can they do that if they haven't yet been able to amend administrative rules from acts passed in the 2021 legislature session?? Such as the Kona crab law change that fishermen wants to see happen but the dlnr hasn't had the time?? Secondly, this law proposes to stop all sales of pink and black coral, which has been harvested and used for jewelry for decades, they are found in deep depths and are harvested only when they are large enough to use for jewelry which means all the small ones are left behind to grow. Those corals have very little to do with nearshore reef health...I don't see how this bill will have a significant impact for our reefs, it'll end up hurting businesses and alienating people who appreciate coral jewelry and products....we have to be careful of what we ban, because if you take away people's love and joy for the oceans, people will eventually just resent government and stop caring about our reefs.

HB-1988

Submitted on: 2/8/2022 9:31:09 AM

Testimony for WAL on 2/10/2022 8:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Randy Cates	Individual	Oppose	No

Comments:

I appose HB 1988, as somone who over the years has worked hard on repairing reefs and damaged areas I understand the importance of protecting our resources, I also know that coral have and can be harvested sustainably and Hawaii has great examples of this. Black corals for example have a long history in Hawaii and the black coral beds remain sustainable, also it should not be a crime to gather dead coral found on our shorelines. One othe aspect that has not been considered is that there is the potential for aquacultured coral products/industry that we should foster and not close the door on. Hawaii's corals are not in danger as we are all led to believe, and there certianlyis not a concern of over harvest as there is not industry to speak of.

Randy Cates

HB-1988

Submitted on: 2/9/2022 12:22:38 AM

Testimony for WAL on 2/10/2022 8:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Kimeona Kane	Individual	Support	No

Comments:

Aloha nui,

When the corals die, so will we. It is critically important to recognize the cultural component here, as in our Kumulipo, the first things to emerge from the pō, was the coral polyps. This is critical in our understanding to ensure that we do everything we can to protect them. Passing this bill will take us one step closer to securing our very future here on earth. No corals should be exported, and no corals should be imported, both pose serious risks and threats. Making sure that industries cannot make a short term profit without being held accountable is seriously important. Please support our futures, the resources of our kai, and the very life on this planet by doing our small part and leading the way to a possible global mind shift.

Mahalo nui,

Kimeona Kane

Aloha,

My name is Ian Chun. I am a small scale black coral diver from the Kau district of Big Island and oppose HB1988. I became aware of HB1988 last night and am disheartened that as a stakeholder who has filed fish tickets for black coral landings I only became aware of the bill through a social media post. As a career diver in the recreational, technical, scientific, and commercial disciplines I have spent thousands of hours underwater interacting with the marine environment. I am all too aware of the importance and urgency in protecting the health and biodiversity of the marine world not only here in Hawaii but globally. **Importation** of corals for curios and jewelry has been a major concern for decades. Many countries have exploited their coral resources with little to no scientific research into their sustainability. Unfortunately the USA has long been the largest importer of coral products. Without a proper chain of command regulating the sale and importation of coral products has been long overdue. Hawaii has been a leader in passing new regulations to protect our reef building corals from toxic sunscreens, our sharks from being sport fished, our dolphins from being pursued for tourism, and the manner in which we target reef fish with nets.

This bill aims to add to Hawaii's commitment to our reefs and those world wide but in doing so punishes a fishery with over 60 years of peer reviewed science and sustainability. Black Coral is not only the Hawaii State Gem it is also a model for success on how to manage a deep water coral fishery. Cooperation between researchers, regulatory agencies, and harvesters has proven to the world that with enough hard work and passion we can manage our deep water coral fishery. Shallow water reef building corals have been illegal to take or damage for decades in Hawaii. Even for accredited organizations the regulatory process to take fragments, propagate, or reintroduce reef building corals is arduous. CITES appendix 2 controls the import and export of Hawaiian Black Coral through detailed checks and balances into the USA while all other precious corals from around the world are allowed to enter or exit the country without the same oversight. There have long been measures in place to protect Hawaii's most vulnerable corals and more emphasis should be placed on making the importation or sales of foreign corals unlawful. We should not erase the decades of hard work and dedication it took to build such a small scale sustainable fishery by making the sale of **any** coral product illegal in Hawaii.

Harvesting Black Coral is done by the hands of divers. The depths in which *Antipathes* is found far exceeds recreational diving depths. A single dive can exceed 4 hours for a mere 25 minutes on the bottom. It requires discipline, focussed preparation, and years of training to even attempt. I am proud and passionate to be able to supplement my income by being such a diver. Bringing our State Gem up from the deep to share with locals and tourists alike brings me great satisfaction. Being one of the few very lucky people to interact with a deep water habitat has driven me to voluntarily make decisions that further our already celebrated fishery. With a generous donation from Hawaii's own award winning and famed jewelry manufacturer Maui Divers we have partnered to establish a repopulation program to propagate Black Coral underwater using a first of its kind non toxic adhesive developed by Purdue University and being manufacturer by Mussel Polymers Inc. Mussel Polymers Inc has developed an adhesive that will be used in coral restoration globally and chosen my project to be one of the first in use. Once receiving an approval of meeting the criteria of the Coral Restoration Implementation Guide we are poised and prepared to bring this new technique to Hawaii and work with other coral restoration

organizations to use in their programs. This is self funded and voluntarily proposed. The state of Hawaii never required it to be done.

I urge the state of Hawaii to reconsider the domestic affect this bill will have on our small scale sustainable fishery and world renowned state gem and focus on the solidifying it's stance on the unlawful importation and sale of corals from unknown and poorly managed origins.

Ian Chun

Hawaiian Black Coral

HB-1988

Submitted on: 2/9/2022 5:35:15 PM

Testimony for WAL on 2/10/2022 8:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Klayton Kubo	Individual	Oppose	No

Comments:

Oppose