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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
JUDICIARY & HAWAIIAN AFFAIRS**

**Monday, March 21, 2022
2:00 PM**

State Capitol, Via Videoconference, Conference Room 325

**In consideration of
SENATE BILL 204, SENATE DRAFT 1, HOUSE DRAFT 1
RELATING TO AQUATIC RESOURCES**

Senate Bill 204, Senate Draft 1, House Draft 1 proposes to authorize the Department of Land and Natural Resources (Department) to use in-lieu fee mitigation to restore, create, enhance, preserve, or any combination thereof, aquatic habitats or resources as compensatory mitigation. **The Department fully supports this measure.**

Compensatory mitigation refers to the restoration, creation, enhancement, or preservation of aquatic habitats or resources for the purposes of offsetting unavoidable adverse impacts. Generally, when prospective permittees anticipate damages to natural resources, natural resource agencies require that all reasonable measures are taken to avoid and minimize the impact on the natural resources at the site of the project. When unavoidable damage does occur, resource agencies will require compensatory mitigation to offset the resource losses. Permittees must then either conduct the new compensatory mitigation projects themselves or transfer their obligations to mitigate damage to a third party by paying into a mitigation bank or in-lieu fee. These two third party compensatory mitigation mechanisms can also be used in the context of unauthorized resource damage, such as coral damage from ship groundings, where responsible parties are required to pay to remediate damages. Natural resource agencies prefer mitigation banks and in-lieu fee mitigation to permittee-responsible mitigation because these third-party mitigation bank or in-lieu fee sponsors are often public or private entities with more experience, scientific expertise, and vested long-term interest in natural resource conservation.

This measure would provide the Department with another innovative mechanism to improve state stewardship of aquatic public trust resources and habitats, increase accountability for aquatic resource damage, and provide higher quality remediation to make damaged resources whole again. In the 2016 Legislative Session, the Department obtained authority to establish and

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operate mitigation banks for the same purposes. Mitigation banking is a mechanism in which a mitigation bank sponsor selects degraded aquatic habitats, restores aquatic functions, and quantifies these “banked” improvements as “credits” which can then be sold to responsible parties required by state and federal resource agencies to mitigate prospective or actual damage to aquatic resources. In-lieu fee is essentially mitigation banking in reverse: a third party in-lieu fee mitigation sponsor accepts funds from permit applicants or responsible parties required to provide compensation in order to mitigate actual natural resource damage and then develops restoration projects. In-lieu fee mitigation sponsors typically combine the fees collected from many permitted projects or damage settlements with smaller scale impacts and create larger and more ecologically-valuable mitigation projects.

In the future, the Department expects to accept fees in-lieu of mitigation from two sources: 1) unauthorized resource damage settlements, fines, and penalties; and 2) permittees required to mitigate damage by state or federal law. Although in-lieu fee mitigation has been predominantly used to restore wetland and stream habitats in other parts of the United States, there has been an increasing national interest in using in-lieu fee mitigation to improve coral reef, sea grass, and estuarine habitats. The Department intends to be the first state in the nation to establish in-lieu fee mitigation for coral reefs.

The authority to conduct in-lieu fee mitigation is the next step in the process of creating innovative tools mechanisms for aquatic resource conservation to protect the state’s fragile and valuable public trust resources. In conclusion, as mentioned previously, the Department fully supports Senate Bill 204, Senate Draft 1, House Draft 1.

Thank you for the opportunity to comment on this measure.

SB-204-HD-1

Submitted on: 3/20/2022 11:06:30 AM

Testimony for JHA on 3/21/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
David Sakoda	DLNR	Support	Remotely Via Zoom

Comments:

I am available for questions to DLNR. Please allow me Zoom access.