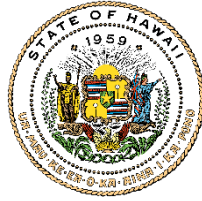
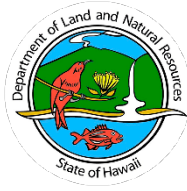


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



**STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA**

P.O. BOX 621
HONOLULU, HAWAII 96809

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

LAURA H.E. KAAKUA
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

**Testimony of
DAWN N. S. CHANG
Chairperson**

**Before the Senate Committees on
WATER AND LAND
and
HAWAIIAN AFFAIRS**

**Wednesday, February 8, 2023
1:05 PM**

State Capitol, Conference Room 229 & Videoconference

**In consideration of
SENATE BILL 1036
RELATING TO NATIVE HAWAIIAN TRADITIONAL AND CUSTOMARY FISHING
PRACTICES**

Senate Bill 1036 proposes to authorize the Department of Land and Natural Resources (Department) to issue special activity permits for the purpose of recognizing and protecting individuals exercising their Native Hawaiian traditional and customary rights. **The Department supports this bill.**

Article XII, section 7 of the Constitution of the State of Hawai'i provides protections for "all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights." Despite these constitutional protections, individuals who choose to exercise their rights to gather aquatic resources in ways that contravene state fishing laws are subjected to the risk of civil and criminal citation and arrest before being afforded an opportunity to validate their traditional and customary rights.

The Department currently has authority to issue Special Activity Permits (SAPs) for scientific, educational, management, or propagation purposes.¹ Allowing the Department to issue SAPs for

¹ See § 187A-6, Hawaii Revised Statutes

the purpose of exercising traditional and customary fishing practices would provide a less burdensome avenue for individuals to lawfully exercise legitimate traditional and customary fishing practices protected by the Hawaii State Constitution.

Mahalo for the opportunity to testify in support of this measure.



SB1036
RELATING TO NATIVE HAWAIIAN TRADITIONAL AND CUSTOMARY FISHING PRACTICES

Senate Committee on Water and Land
Senate Committee on Hawaiian Affairs

February 9, 2023

10:30 AM

Room 211

The Office of Hawaiian Affairs (OHA) **OPPOSES** SB1036, which would create an arbitrary mechanism attached to the exercise of Native Hawaiian rights that could lead to the erosion of those constitutionally protected rights and a system of abuse, which in turn, could cause irreparable harm to Native Hawaiian cultural practitioners.

This measure’s proposed mechanism is no less inappropriate than an optional permitting process to better assist law enforcement in its identification of an individual based on their race, skin color, national origin, gender, sexual orientation, disability, or religion. OHA understands that the underlying intent of the Legislature, with the proposal of this measure, is to protect our precious and finite natural resources. However, the preamble of this measure suggests that there exist contraventions to resource protection laws by Native Hawaiian cultural practitioners engaged in constitutionally protected traditional and customary practices. As the principal public agency in the State responsible for the performance, development, and coordination of programs and activities relating to Native Hawaiians,¹ **OHA must strongly disagree with that notion and affirmatively state that traditional and customary Native Hawaiian practices embody long-held principles in sustainability that have allowed the Native Hawaiian people to thrive in these islands for millennia. Native Hawaiian traditional and customary practitioners are not the problem, and this proposal is not the solution.**

The concept proposed by this measure may sound both productive and innocuous, however, this measure would instead establish a pathway – one that currently does not exist – for the potential systemic abuse of constitutionally protected Native Hawaiian rights. This measure would institutionalize that potential for abuse. OHA provides this explanation in the hope that the Legislature would defer this measure and leave the regulation of Native Hawaiian cultural practices to their respective communities of Native Hawaiian cultural practitioners.

¹ HRS §10-3.



SB1036
RELATING TO NATIVE HAWAIIAN TRADITIONAL AND CUSTOMARY FISHING PRACTICES

Senate Committee on Water and Land
Senate Committee on Hawaiian Affairs

Native Hawaiian cultural practitioners engaged in traditional and customary practices, including those who are connected to coastal, marine, and aquatic resources, such as lawai'a (fishers), are protected by Article XII, Section 7 of the Hawai'i State Constitution. This protection exists in the absence of any form of identification and continues to exist despite the identification, perception, or belief of any enforcement officer.

This measure states that the intent of the proposed mechanism is “to assist in the recognition and protection of any person exercising their protected rights,” which “would provide a less burdensome avenue for individuals to lawfully exercise legitimate traditional and customary fishing practices protected [by] the Hawaii State Constitution.” OHA is deeply concerned by the inference of this measure that there needs to be a mechanism that assists in singling out individuals, who may be engaged in a constitutionally protected activity. **The equivalent implementation of this proposed policy would see members of any religion being subject to an optional permit to better assist law enforcement in determining which worshippers were legitimate practitioners, for their own protection.**

Furthermore, by creating a permitting system for the identification of Native Hawaiian traditional and customary practices – even one that is optional – the Legislature would be facilitating the potential erosion of constitutionally protected Native Hawaiian rights. This proposed mechanism, with the force and effect of law, could become the open floodgate that causes cascading regulations on every single traditional and customary practice belonging to Native Hawaiians.

Finally, OHA wishes to emphasize the critical importance of Native Hawaiian agency in the perpetuation, and even self-regulation, of Native Hawaiian traditional and customary practices. Any form of identification for Native Hawaiian cultural practitioners should come from a process created by that community of practitioners, for that community of practitioners.

OHA appreciates the opportunity to provide testimony on this measure and urges the Legislature to DEFER SB1036. Mahalo nui loa.



Ka Moku'aina 'O Hawai'i Aha Moku O Pae'Aina

State of Hawai'i Aha Moku

P. O. Box 621

Honolulu, Hawaii 96809

Testimony of the Hawaii State Aha Moku

Before the Senate Committee on

Water and Land

Hawaiian Affairs

Wednesday, February 8, 2023

1:05 PM

Conference Room 229

LATE

IN SUPPORT of Senate Bill 1036

Relating to Native Hawaiian Traditional and Customary Fishing Practices

Senate Bill 1036 authorizes the department of land and natural resources (DLNR) to issue special activity permits for the purpose of recognizing and protecting individuals exercising their Native Hawaiian traditional and customary rights.

The Hawaii State Aha Moku (Aha Moku) supports this measure.

It is true that despite constitutional protections individuals who choose to exercise their rights to gather aquatic resources in ways that contravene state fishing laws are subjected to the risk of civil and criminal citation and arrest before being afforded an opportunity to validate their traditional and customary rights.

However, we caution DLNR to make sure that when giving out these permits they 1) identify the exact place where the person wants to exercise their rights; and 2) if they are not from the ahupua'a they wish to fish and gather, then protocol calls for Kupuna or konohiki of the specific site to be consulted. We have found too often, people who are Hawaiian do not understand that natural resources of an ahupua'a comes with cultural responsibilities. Ahupua'a have traditional gathering rights that are protected by the konohiki or *lawaiia* (native Hawaiian fisherman) of that place. Just fishing where one wants without asking is considered "*maha'oi*".

Thank you for the opportunity to share Kupuna knowledge with you.

Respectfully,

Leimana DaMate, Luna Alaka'i/Executive Director

Hawaii State Aha Moku

808-640-1214

Leimana.k.damate@hawaii.gov

Pae'Aina: Moku O Keawe, Moku O Piilani, Moku O Kanaloa, Nana'i Kaula, Moloka'i Pule O'o, Moku O Kakuhihewa, Manokalanipo, Ka'Aina O Kawelonakala