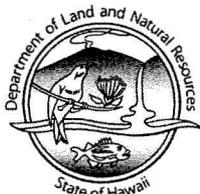


LINDA LINGLE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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LAND
STATE PARKS

**TESTIMONY OF THE CHAIRPERSON
OF THE BOARD OF LAND AND NATURAL RESOURCES**

**on House Bill 3176 -RELATING TO ADMINISTRATIVE PENALTIES FOR DAMAGE
TO STONY CORAL AND LIVE ROCK**

**BEFORE THE HOUSE COMMITTEE ON
JUDICIARY**

February 12, 2008

House Bill 3176 is an administration bill which would authorize the Board of Land and Natural Resources (Board) to impose administrative penalties for damage to stony coral and live rock based on area, in addition to a penalty on a per specimen basis, and if enacted, will allow more effective efforts to protect Hawaii's coral reef resources and deter potentially harmful future impacts. The Department of Land and Natural Resources (Department) strongly supports this administrative bill.

At the present time, Section 187A-12.5, Hawaii Revised Statutes (HRS), authorizes the Board to impose administrative fines for the taking, killing, or injuring of aquatic life on a "per specimen" basis. This approach has been and remains appropriate for situations involving fisheries violations.

Section 187A-12.5, HRS, does not apply well to environmental damage or to the breakage of living coral colonies and live rock, especially in circumstances involving vessel groundings and other large-scale resource damage incidents. In such cases it is difficult to determine the number of specimens that might have been originally present once they have been crushed or destroyed in such a grounding event. This allows parties a way to challenge the Department's damage estimates and the associated penalties proposed.

By way of example, the recent grounding of a charter dive vessel in the Molokini Marine Life Conservation District damaged many hundreds of coral colonies, but conducting damage assessments to determine the total number of injured specimens has been time consuming and difficult to quantify. The Department's evaluation by the number of coral heads damaged has been challenged by the responsible party. An area-based approach would have been far more practical in this situation, had this been available to the Department. The measure as proposed would therefore facilitate prosecution of such incidents, and reduce the possibility of challenges to such enforcement.

The State has a public trust obligation and must remain vigilant in its duty to protect Hawaii's natural resources for the benefit of all of its residents and future generations. The Department

000264

finds that in recent years, there has been an increase in the intentional violation of and blatant disregard for state natural resource laws and rules. Consequently, the State has been under considerable strain in fulfilling that obligation, due to ineffective enforcement tools, limited financial resources, and a shortage of enforcement personnel.

Examples of such behavior include unauthorized commercial activities on public beaches; operation of all-terrain vehicles on unencumbered or other restricted public lands; damage to archeological, historical or geologic features; destruction, defacing or removal of native trees or plants or other natural resources on public lands; damage to stony coral and live rock; the unauthorized grubbing and grading of conservation-zoned lands; construction of unauthorized single family residences or similar major structures within the Conservation District; and the construction of unauthorized seawalls.

In order to bring more severity to this issue, the Department is proposing three pieces of enforcement legislation, House Bill 3177 - RELATING TO PENALTIES FOR VIOLATIONS WITHIN THE CONSERVATION DISTRICT, House Bill 3178 - RELATING TO CIVIL PENALTIES FOR VIOLATIONS ON PUBLIC LANDS, and this measure, House Bill 3176 - RELATING TO ADMINISTRATIVE PENALTIES FOR DAMAGE TO STONY CORAL AND LIVE ROCK to deter unlawful behavior by increasing penalties for violations of the State's natural resources laws and rules.

Coral reefs are sacred to the Native Hawaiian people, and are signature ecosystems of the Hawaiian Islands. Their living substrate (coral, live rock, and calcareous algae) provides the food and shelter for the myriad of native and endemic reef organisms that populate the State's coastal waters. Hawaii's coral reefs also serve as the backbone for a large part of the State's vibrant marine tourism industry, creating many of our world-famous wave breaks, providing subsistence, recreational, and commercial fishing for residents and visitors alike, and maintaining a marine species endemism rate that ranks among the highest in the world. They also serve an increasingly important role in terms of natural defenses against rising sea levels resulting from global climate change.

In summary, this bill will authorize the Board to assess administrative penalties for damage to stony coral and live rock on an area basis in addition to a per specimen basis, at the Board's discretion. This will result in more effective and appropriate financial redress in cases of damage to the coral reefs that are vital to the State's ecological and economic security.



Legislative Testimony

**HB 3176, RELATING TO ADMINISTRATIVE PENALTIES FOR DAMAGE
TO STONY CORAL AND LIVE ROCK**

House Committee on Judiciary

February 12, 2008

2:05 p.m.

Room: 325

The Office of Hawaiian Affairs SUPPORTS HB 3176, which would add needed layers of protection for our coral reefs.

A 2006 National Survey of Fishing, Hunting and Wildlife-Associated Recreation by the U.S. Fish and Wildlife Service shows that wildlife watching is increasing in this State, and so too is the revenue we generate from it. In 2006, Hawai'i's wildlife was given an estimated value of \$402.3 million, and wildlife watching spending has almost increased 50 percent from 2001. Our coral reefs play a large and valuable part in this; for example, Hanauma Bay saw 1 million visitors in 2006.

However, the coral reefs in this State are under enormous strain from a variety of sources both locally and from abroad. Locally, the increase in wildlife-watching has put pressure on these sensitive areas as has poorly planned coastal development and the associated runoff from compromised watersheds. The recent sinking of a tour vessel in Molokini that damaged hundreds of meters of coral is a perfect example of what can happen in an overly-used and poorly managed Marine Life Conservation District.

Abroad, there is increasingly clear knowledge and recognition that climate change places our coral reefs amongst those environments most threatened by this phenomenon. An increase in sea surface temperatures, rising sea levels, and more frequent and severe storms are some of the effects of climate change that can negatively impact coral reefs. These negative impacts lead to declines in biodiversity, coastal protection and income from reef fisheries and tourism. The resulting economic loss can total billions of dollars for our State.

000266

OHA sees that our State is reliant upon our threatened coral reefs for income and food; therefore, the protection of coral reefs should be a top priority for our policy makers. This bill takes us closer towards ensuring protection for a heavily used and stressed asset that we all need and enjoy.

OHA urges the Committee to SUPPORT HB 3176. Thank you for the opportunity to testify.

000267

Testimony of The Nature Conservancy of Hawai'i
Supporting H.B. 3176 Relating to Administrative Penalties for
Damage to Stony Coral and Live Rock
House Committee on Judiciary
Tuesday, February 12, 2008, 2:05PM, Room 325

The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawaii's native plants, animals, and ecosystems. The Conservancy has helped to protect nearly 200,000 acres of natural lands for native species in Hawai'i. Today, we actively manage more than 32,000 acres in 11 nature preserves on O'ahu, Maui, Hawai'i, Moloka'i, Lāna'i, and Kaua'i. We also work closely with government agencies, private parties and communities on cooperative land and marine management projects.

The Nature Conservancy of Hawaii supports H.B. 3176 Relating to Administrative Penalties for Damage to Stony Coral and Live Rock.

There is widespread agreement amongst a variety of stakeholders that Hawaii's fragile environment is in need of improved enforcement and prosecution of violations of our State natural resource laws. Specifically identified is the need for:

- Natural resource laws that are complete, clear and enforceable;
- Enhanced personnel and resources for enforcement;
- Consistent and fair enforcement;
- Community awareness and engagement to enhance compliance;
- Adequate investigation, prosecution and penalties for violations;
- Appropriate opportunity for administrative enforcement; and
- Improved understanding and management of cases in the court system.

H.B. 3176 addresses two of these needs to have natural resource laws that are complete, clear and enforceable, and providing appropriate opportunities for administrative enforcement. Currently, the DLNR does not have an appropriate way to deal with violations that involve large areas of coral damage such as vessel groundings. This bill would provide the Department with an appropriate method to calculate areas of coral damage and apply an appropriate fine for such violations.

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000268



Ocean Tourism Coalition

The Voice for Hawaii's Ocean Tourism Industry
820 Mililani Street, #810
(808) 205-1745 Phone (808) 533-2739 Fax
office@oceantourism.org

February 4, 2008

Testimony To: House Committee on Judiciary
Representative Tommy Waters, Chair

Presented By: James E. Coon, President
Ocean Tourism Coalition

Subject: H.B. 3176 – RELATING TO ADMINISTRATIVE PENALTIES FOR DAMAGE TO
STONY CORAL AND LIVE ROCK

Chair Waters and Members of the Committee:

I am James E. Coon, President of the Ocean Tourism Coalition (OTC), Hawaii's statewide organization. We represent the 300 small commercial passenger vessels operating out of state harbor facilities. We speak in conditional support of H.B. 3176 with proposed amendments.

We agree with the intent of this bill and protecting the reef, but we would like to see a more scientific formula for determining the per meter values of various coral reefs. Not just one blanket value. Areas of coral have different values based on the amount of use an area sees by the public. For example, Hanauma Bay is the most valuable reef in Hawaii as is Molokini Crater with approximately 1000 visitors per day. It would seem appropriate to take the study by DAR which is based on Cesar et al.'s study of the economics of Hawaii's coral reefs (Cesar et al 2002).

000269

The DAR report uses Hanauma Bay results as a proxy for values associated with other MLCD's and reefs. (The reported Hanauma Bay value of \$91.63 per m2 per year contrasts to Cesar's estimates of \$3.51 per m2 per year for Kihei coast, and \$.73 per m2 per year for the Kona Coast found in the same report.)

There are some points that need to be considered. First, the very high per m2 figure for Hanauma Bay is due to the very high levels of use there (up to 3000 people per day). Since almost all of the economic value estimated in Cesar et al. is a result of human use (about 96% of the total value), the more users in a location, the higher total use value per m2.

We propose to make the Hanauma Bay economic values the base line in determining the value of any specific reef damage. Economists and ecologists can then determine the number of years that an area will be out of service and apply the appropriate yearly recovery rate based on the estimated amount of use an area sees on a daily basis.

(e) In addition to Subsection C, a fine of up to \$5,000 per square meter of area damaged may be levied for damaging or breaking stony coral or live rock based on the economic values of Hawaii's coral reefs by Cesar et al 2002.

If you pass this bill, please amend it to reflect a more scientific basis to establish reef value.

Thank you.

000270

A BILL FOR AN ACT

RELATING TO ADMINISTRATIVE PENALTIES FOR DAMAGE TO STONY CORAL AND
LIVE ROCK.

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

1 SECTION 1. Section 187A-12.5, Hawaii Revised Statutes, is amended
2 to read as follows:

3 " [†] §187A-12.5 [†] **General administrative penalties.** (a) Except
4 as otherwise provided by law, the board is authorized to set,
5 charge, and collect administrative fines and to recover
6 administrative fees and costs, including attorney's fees and costs,
7 or bring legal action to recover administrative fines, fees, and
8 costs, including attorney's fees and costs, or payment for damages
9 or for the cost to correct damages resulting from a violation of
10 subtitle 5 of title 12 or any rule adopted thereunder.

11 (b) For violations involving threatened or endangered species,
12 the administrative fines shall be as follows:

13 (1) For a first violation, a fine of not more than \$5,000;

14 (2) For a second violation within five years of a previous
15 violation, a fine of not more than \$10,000; and

16 (3) For a third or subsequent violation within five years of the
17 last violation, a fine of not more than \$15,000.

C00271

1 (c) For all other violations the administrative fines shall be as
2 follows:

3 (1) For a first violation, a fine of not more than \$1,000;

4 (2) For a second violation within five years of a previous
5 violation, a fine of not more than \$2,000; and

6 (3) For a third or subsequent violation within five years of the
7 last violation, a fine of not more than \$3,000.

8 (d) In addition to subsection (b), a fine of up to \$5,000 may be
9 levied for each specimen of threatened or endangered aquatic life
10 taken, killed, or injured in violation of subtitle 5 of title 12 or
11 any rule adopted thereunder.

12 (e) In addition to subsection (c), a fine of up to \$5,000 per
13 square meter of area damaged may be levied for damaging or breaking
14 stony coral or live rock based on an accepted economic valuation
15 method.

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

20 [~~(f)~~] (g) Any criminal penalty for any violation of subtitle 5 of
21 title 12 or any rule adopted thereunder shall not be deemed to
22 preclude the State from recovering additional administrative fines,
23 fees, and costs, including attorney's fees and costs.

24 (h) For the purposes of this section:

25 "Accepted economic valuation method" is a valuation approach to

000272

1 estimating the value of a reef within a total economic value frame
2 work.

3 "Breaking" means hitting or applying sufficient force to reduce to
4 smaller pieces or to crack without actually separating into pieces.

5 "Damaging" means causing extensive injury resulting in irreparable
6 harm or death.

7 "Live rock" means any rock or coral to which marine life is visibly
8 attached.

9 "Stony coral" means any of a variety of invertebrate species
10 belonging to the order *Scleractinia* characterized by having a hard,
11 calcareous skeleton that are native to the Hawaiian Islands."

12 SECTION 2. Statutory material to be repealed is bracketed and
13 stricken. New statutory material is underscored.

14 SECTION 3. This Act shall take effect upon its approval.

Further, it is intended by your Committee that the valuation consider the various uses which include direct uses values, indirect use values, option values, bequest values and existence values. This is the same methodology as applied in the Cesar et.al 2001 report "Economic Valuation of Coral Reefs of Hawaii".

C00274

JUDtestimony

From: carl [REDACTED]
Sent: Friday, February 08, 2008 5:19 PM
To: JUDtestimony
Subject: Fw: H B 3176

Legislative Staff:

Please forward my testimony re

DATE: Tuesday, February 12th, 2008
TIME: 2:05pm
PLACE: Conference Room 325

Aloha COMMITTEE ON JUDICIARY

Honorable Chair Rep. Tommy Waters,

Honorable Vice Chair Rep. Blake K. Oshiro, Vice Chair

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Rep. Alex M. Sonson	Rep. Cynthia Thielen

Carl Jellings Fishermen from Waianae In Support of(HB 3176) Stony coral

Just want to explain My rational for supporting HB 3176 Stony coral , in the last 5 years We have had in Waianae 3 major Coral colony destruction incidents1, We had a Landing craft anchor over our artificial reef area it had 2 anchors one at the bow and one at the stern the ship was facing bow to shore and stern was facing deep water I dont know how long the achor was set deep water side, I do know that the shore side anchor was set 600 yards direct shoreline of the ship this was a huge landing craft that was anchored in the same position for 3 days , just on the shore side of this ship is a place we call the 65 it was 300 yards from were the craft was anchored, We were going to fish there,

We were somewhat reluctant when we first approached but we seemed to be far enough away not to cause any conflicts for there manuver"s they were training and re certifying divers probable seal teams,

After making our first jump we came across thier anchor line a 2 inch cable that laid across the bottom the cable had moved across the reef flatenning it completely on the tide

000275

change the current would pull the ship toward the south until it was too tight to drag any further then on the next change it would drag North until becoming too tight to drag ,, this went on for three days this caused the destruction of coral 30 yards wide 150 feet long , rules are on my boat no coral come"s up on any net, much emphasis is made on effort as not to brake any coral , , this ship come"s in and crushes 1500 square yards of coral more than the entire State of fishermen could do in all thier lifetime"s put together ,, this Story is documented dar staff came out to investigate but the ship had left durring the night, Several other incidents have been documented , The Kalaeloa incident was another,

Mahalo Carl Pao Jellings

000276

Representative Tommy Waters, Chair
Representative Blake K. Oshiro, Vice Chair
Committee on the Judiciary

Tuesday, February 12, 2008
2:05 p.m., Conference Room 325

In Support of HB3176-Relating to Administrative Penalties for Damage to Stony Coral and Live Rock

Chair Waters, Vice Chair Oshiro and members of the Committee on the Judiciary:

I am Cynthia K.L. Rezendes, and I am in support of HB 3176.

Along the Wai`anae Coast, deterioration of our reefs have occurred over the years due to many reasons, including the changing landscape of our near shore lands and changes to our watersheds.

The additional pressures being experienced by the increase of a populace wishing to experience the near-shore waters via snorkeling, diving, wildlife-watching, etc. has slowly contributed to additional deterioration of the resources that are necessary for our near-shore ecology.

Damage caused by anchoring in areas with stony coral and live rock by boaters who are not aware of the underwater topography, damage caused by vessels that sink or go aground on our reef cause damage that will take years to recover from, if ever. This damage not only affects the reef but affects all life in the area.

Therefore, I urge the committee to support HB 3176.

Thank you for the opportunity to testify.

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