

**SB**

**470**

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**Date:** Friday, February 06, 2015 9:10:17 AM  
**Attachments:** [SB470 KIRC Forfeiture Testimony HWN-WTL 020915 FINAL.pdf](#)

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**SB470**

Submitted on: 2/6/2015

Testimony for WTL/HWN on Feb 9, 2015 14:50PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Office of Hawaiian Affairs	Office of Hawaiian Affairs	Support	Yes

**Comments:**

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**SB470**  
**RELATING TO THE KAHOO LAWE ISLAND RESERVE**  
Senate Committee on Water and Land  
Senate Committee on Hawaiian Affairs

February 9, 2015

2:50 p.m.

Room 224

The Office of Hawaiian Affairs (OHA) Beneficiary Advocacy and Empowerment Committee will recommend to the Board of Trustees a position of **SUPPORT** for SB470, which restores asset forfeiture liability for offenses arising under Hawai'i Revised Statutes Chapter 6K and regulations adopted thereunder, in order to facilitate the enforcement of laws protecting the culturally treasured and historically storied island of Kaho'olawe.

Kaho'olawe, a kinolau of Kanaloa, remains a piko of Hawaiian culture, yet still retains visible scars from decades of previous mismanagement. Kaho'olawe was critical to the Hawaiian cultural renaissance, and continues to serve as an integral education center for traditional navigation, hula, natural resource management, and other cultural traditions and disciplines.

While numerous laws and regulations have been adopted to respect, restore, and protect Kaho'olawe and its natural and cultural resources, the relative isolation of the island substantially inhibits their enforcement. Asset forfeiture, as a civil enforcement mechanism not subject to the high burdens of proof of criminal prosecution, may therefore be a critical tool to address and deter violations of these important laws and regulations.

In light of the above, OHA urges the committees to **PASS** SB470.

Mahalo for the opportunity to testify on this important measure.

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**Date:** Saturday, February 07, 2015 7:49:04 AM  
**Attachments:** [SB470\\_KIRC\\_02\\_09\\_15\\_WTL\\_HWN.pdf](#)

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**SB470**

Submitted on: 2/7/2015

Testimony for WTL/HWN on Feb 9, 2015 14:50PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Nahoopii	KIRC	Support	Yes

Comments:

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KŪKULU KE EA A KANALOA

## KAHO`OLawe ISLAND RESERVE COMMISSION

811 Kolu Street, Suite 201, Wailuku, HI 96793  
Telephone (808) 243-5020 Fax (808) 243-5885  
Website: <http://kahoolawe.hawaii.gov>

### COMMISSION MEMBERS

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C. KALI KO BAKER, PhD  
CARTY S. CHANG  
HŌKŪLANI HOLT

Michael K. Nāho`opi`i  
*Executive Director*

### Testimony of MICHAEL K. NAHO`OPTI Executive Director

### Before the Senate Committees on Water & Land and Hawaiian Affairs

**Monday, February 9, 2015  
2:50 PM  
State Capitol, Conference Room 224**

### In consideration of SENATE BILL 470 RELATING TO THE KAHO`OLawe ISLAND RESERVE

Senate Bill 470 clarifies that that property or natural resources used or taken in violation of laws applicable to the Kaho`olawe island reserve shall be subject to forfeiture. The Kaho`olawe Island Reserve Commission (KIRC) supports this measure for it would strengthen our enforcement ability and provide the KIRC with another tool to manage the Reserve.

The Hawai'i Supreme Court, in *Carlisle v. One (1) Boat and Tran* (Nov 17, 2008), overturned an Intermediate Court of Appeals decision that allowed asset forfeiture in cases of resource destruction – ultimately taking the teeth out of any enforcement rules in place. According to the decision, the penalty sections of DLNR (and, therefore, KIRC) rules must specifically authorize forfeiture.

In 2008, the County of Maui Prosecuting Attorney started forfeiture proceedings for a helicopter that landed illegally on Kaho`olawe with passengers. Unfortunately, the Supreme Court decision for the *Carlisle v. One (1) Boat and Tran* case was issued prior to the hearing for the illegal landing of the helicopter, thus the helicopter had to be returned. In addition to the helicopter incident, the County of Maui Prosecuting Attorney has reported they have been consistently receiving reports of illegal fishing and other activities on and around Kaho`olawe; with Senate Bill 470, such fishing vessels could become subject to forfeiture.

The KIRC seeks the addition of the forfeiture clause to HRS 6K-8 to increase the penalties for violators, thus strengthening our enforcement capabilities and our protection of the Reserve's resources as well as protecting members of the public who may be ignorant of the dangers of unexploded ordnance on and around the Island.

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**Date:** Thursday, February 05, 2015 2:55:21 PM  
**Attachments:** [OTC-SB 470 - Relating to KIRC.pdf](#)

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**SB470**

Submitted on: 2/5/2015

Testimony for WTL/HWN on Feb 9, 2015 14:50PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Tim Lyons	Ocean Tourism Coalition	Oppose	Yes

Comments: Please deliver on behalf of Tim Lyons, Executive Director of the Ocean Tourism Coalition. Thank you.

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Ocean Tourism Coalition

*The Voice for Hawaii's Ocean Tourism Industry*  
Century Square-1188 Bishop St., Ste. 1003  
Honolulu, HI 96813-3304  
(808) 537-4308 Phone (808) 533-2739 Fax  
timlyons@hawaiiantel.net

February 9, 2015

Testimony To: Senate Committee on Water and Land  
Senator Laura H. Thielen, Chair  
  
Senate Committee on Hawaiian Affairs  
Senator Maile S.L. Shimabukuro, Chair

From: Tim Lyons, CAE  
Executive Director

Subject: S.B. 470 – RELATING TO KAHOO LAWE ISLAND RESERVE

Chair Thielen, Chair Shimabukuro and Members of the Joint Committees:

I am Tim Lyons, Executive Director of the Ocean Tourism Coalition. OTC represents about 300 ocean tourism businesses from throughout the state. We are opposed to this bill as it is written.

We think the bill has a lot of problems. It basically allows KIRC to seize, forfeit and presumably sell someone else's property for a violation of any one of their rules. In order to qualify for this event, all you have to do is run counter to one of their rules; a major one or a minor one. You could inadvertently leave yesterday's fishing pole in the boat and drift within one mile of their shoreline and have your million dollar commercial tourism vessel subject to forfeiture.

We note that currently, KIRC has the authority to impose fines of up to \$1000. This bill allows for the same violation of the same rules to seize an expensive boat that is the lifetime investment of a small business. Once seized, the owner, perhaps one of the 42 legally permitted vessels running to Molokini gets to go back, lay off all of his employees for a year or two while it is all contested and cancel his contracts, exposing himself to other lawsuits for non-performance. The question is...would KIRC do that?

We think that appears to be the purpose of this bill. They tried it with a helicopter that landed on the island for a lunch break. The helicopter was returned because of another court case however, had this been one of our small business members who inadvertently ran counter to one of the KIRC rules we think it would be extreme. And, in essence, they would be put out of business by confiscating their prime tool to make a living.

We do agree that violations can happen and we are not objectionable to some sort of penalty structure, perhaps a tiered structure and perhaps even beyond the \$1000. However, our prime question before any of that is, how many times has a \$1000 fine been assessed on the same person? Has it not been a deterrent? Do we really need a stronger penalty like forfeiture or seizure?

As written we cannot support it.

Thank you.



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**SB470**

Submitted on: 2/6/2015

Testimony for WTL/HWN on Feb 9, 2015 14:50PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Bruce Morita	Windward Sea Yacht Charters	Oppose	No

Comments: We oppose SB 470 since it blatantly ignores the laws and rules of Admiralty Law. Waters around Kohoolawe are navigable waters and although States do have some jurisdiction over these waters, it does not have the absolute power to pass legislation that affects vessels that are documented to engage in coastwise trade. States cannot pass laws that contradict the rights established under admiralty and maritime law that allows documented vessels to commercially operate on navigable waters of the United States. There are no other laws in the United States that confiscates vessels while rightfully operating under its license.

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**Date:** Thursday, February 05, 2015 12:14:45 PM  
**Attachments:** [SB470.doc](#)

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**SB470**

Submitted on: 2/5/2015

Testimony for WTL/HWN on Feb 9, 2015 14:50PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Jerrold Kowalski	Aqua Lung Pacific	Oppose	No

Comments:

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**Re: Oppose SB 470**

- I am Jerrod Kowalski and I am the General Manager for Aqua Lung Pacific in Aiea.
- **I oppose legislative efforts to forfeit property related to violations of natural resource use and or taking including Kaho'olawe island.**
- Forfeiture of property would be excessive.
- I realize that some states have forfeiture laws for such activities but I believe that leaving forfeiture to the discretion of the officers could lead to inconsistent enforcement and abuse.

Thank you,

Jerrod Kowalski  
General Manager  
Aqua Lung Pacific

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**SB470**

Submitted on: 2/5/2015

Testimony for WTL/HWN on Feb 9, 2015 14:50PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Anela Evans	Individual	Support	No

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**Date:** Thursday, February 05, 2015 3:16:25 PM

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**SB470**

Submitted on: 2/5/2015

Testimony for WTL/HWN on Feb 9, 2015 14:50PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Carmela Noneza	Individual	Support	No

**Comments:**

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**Date:** Saturday, February 07, 2015 3:33:48 PM

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**SB470**

Submitted on: 2/7/2015

Testimony for WTL/HWN on Feb 9, 2015 14:50PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Carol-Marie K. Lee	Individual	Support	Yes

Comments: I support SB 470 which adds Offenses subject to forfeiture to HRS Chapter 6K. This will add more "bite" to the enforcement of Hawaii Administrative Rule 13-261. Thus adding more protection of cultural, marine, and natural resources within the Kaho`olawe Island Reserve. I humbly ask for your support for this measure. Mahalo

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**Date:** Friday, February 06, 2015 12:32:06 PM

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**SB470**

Submitted on: 2/6/2015

Testimony for WTL/HWN on Feb 9, 2015 14:50PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Charles r. Lindsey	Individual	Support	No

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**Date:** Thursday, February 05, 2015 1:59:17 PM

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**SB470**

Submitted on: 2/5/2015

Testimony for WTL/HWN on Feb 9, 2015 14:50PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Destiny Mahaulu	Individual	Support	No

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**Date:** Friday, February 06, 2015 9:36:21 AM

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**SB470**

Submitted on: 2/6/2015

Testimony for WTL/HWN on Feb 9, 2015 14:50PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Emma Panui	Individual	Support	No

Comments: I, Emma Panui, support KIRC bill SB470. Please support this important measure to provide financial support and stability of the restoration and protection of the Kaho'olawe Island Reserve, which will benefit all of Hawai'i's people for generations to come. As the only Island Reserve set up entirely in trust for a Native Hawaiian Sovereign Entity, the KIRC is well poised to change the economic landscape and life quality of Native Hawaiians and the communities in which they reside by means of a truly unique experience on the island of Kaho'olawe. The State must maintain the responsibility of supporting the Kaho'olawe Rehabilitation Trust Fund. As the only island listed on the National Register of Historic Places in its entirety, containing nearly 3,000 archaeological sites and features, it is imperative that the State preserves this important resource for current and future generations through this financial support system. Without the KIRC's ongoing protection of Kaho'olawe's coastal ecosystem, including the adjacent nearshore environment and coral reefs that can be covered with, and choked by, derelict fishing gear, nets, a huge variety of plastics and other debris items, species including the endangered Hawaiian monk seal, threatened green sea turtle, endangered hawksbill sea turtle, endangered humpback whale, endangered Hawaiian dark-rumped petrel, and endangered Newell's shearwater will be put at risk. It is imperative that a trust fund be stabilized to continue this work. Kaho'olawe is a unique ecosystem preserving immensely valuable cultural and biological resources. It is surrounded by the richest marine ecosystems remaining in the Main Hawaiian islands and providing replenishment of fish and invertebrates to other islands' waters. The KIRC's massive restoration program designed to revitalize the ecology and cultural history of the island will benefit all of Hawai'i's people for generations to come. Please support this bill.

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**Date:** Saturday, February 07, 2015 9:28:14 PM

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**SB470**

Submitted on: 2/7/2015

Testimony for WTL/HWN on Feb 9, 2015 14:50PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
johann winkler	Individual	Support	Yes

Comments:

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Date: Saturday, February 07, 2015 1:50:51 PM

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**SB470**

Submitted on: 2/7/2015

Testimony for WTL/HWN on Feb 9, 2015 14:50PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Kevin Gavagan	Individual	Support	No

Comments: Dear State officials, My name is Kevin Gavagan, “n”ative Hawaiian resident, tax payer, hotel worker, Boy Scout leader, and concerned American citizen. I have been watching bills go before the legislature that were written to request support of Kahoolawe and the Kahoolawe Island reserve commission. I’ve watched as other laws took precedent over the care we owe this little island. I have watched the KIRC operation slim itself down as it used up the last of a Federal appropriation to repair the damage to Kahoolawe after years of military bombing. I watched the military handle the operation and try to best put its foot forward and in what was a most “cost efficient” way try to clean up the island. I listened to State representatives and other individuals be critical of the efficiency of spending money on Kahoolawe’s clean up and environmental restoration. I listened to public testimony on what we should do with Kahoolawe and heard everything from harvesting energy to building a Casino. All issues are important and multifaceted and will warrant years of more deliberation and care. The one thing that seems to stand out in my mind, for any of us who are American and or Hawaiian, this Little Island was there in our time of need. It helped us to win freedom all over the world since WWII. We struck down tyranny and oppression through the strength of our military, which military was made strong directly through the use of this tiny island. Like many war veterans, it is now time to let her rest. She is damaged but still good. She needs help and care. No matter how much we find room to complain about how much that care costs, it is our KULEANA, our RESPONSIBILITY to malama aina. To care for the land and perpetuate it for the benefit of our children is a phase not far away. Our state seal should remind us of our responsibility today. People are watching the actions you take and we will all be judged for failure to act responsibly. There is a spirit about Kahoolawe that is unfailing and know that if you fail to act responsibly today the people will find a way to act and give Kahoolawe the aloha it needs. Kahoolawe is a refuge, a reserve, a symbol of what can be good in our culture. To conserve and protect. Think of the hundreds and men, women, and children that have had this lesson engrained in them while serving on this island to restore its damaged eco system. Where all around us otherwise we take, we exploit to our benefit and advantage in the name of progress, here is Kahoolawe teaching us how to be better stewards to reserve and conserve. Do you not think that each one of these men, woman and child volunteers return to their homes with lessons of restoration learned

from Kahoolawe. The KIRC's waiting list is humungous. People line up out the door spending their own time and money to be a part of this Kahoolawe experience. How does the entire state not benefit from the malama aina of this island. I am one of those volunteers, I come back enriched by the goodness of that island, I am invigorated in the knowledge that if we can be successful on Kahoolawe and all of its limitations, we can better care for the other places around us in need with similar problems. Called Kanaloa by my ancestors, it shows us the way. Please support KIRC, an organization devoted to its care.

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**Date:** Thursday, February 05, 2015 2:09:04 PM

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**SB470**

Submitted on: 2/5/2015

Testimony for WTL/HWN on Feb 9, 2015 14:50PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Kelly McHugh	Individual	Support	No

Comments:

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**Date:** Thursday, February 05, 2015 12:47:12 PM

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**SB470**

Submitted on: 2/5/2015

Testimony for WTL/HWN on Feb 9, 2015 14:50PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Mei Mailou-Santos	Individual	Support	No

Comments:

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**Date:** Friday, February 06, 2015 11:38:13 AM

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**SB470**

Submitted on: 2/6/2015

Testimony for WTL/HWN on Feb 9, 2015 14:50PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Noelani Puniwai	Individual	Support	No

Comments: I, Noelani Puniwai, support KIRC SB 470 Please support the restoration of this precious island. If we as a people cannot do that, then there is no hope for Planet Earth. Please support this bill.

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**SB470**

Submitted on: 2/5/2015

Testimony for WTL/HWN on Feb 9, 2015 14:50PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Paahana Kincaid	Individual	Support	No

Comments:

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**SB470**

Submitted on: 2/5/2015

Testimony for WTL/HWN on Feb 9, 2015 14:50PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Paul K Higashino	Individual	Support	No

Comments:

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**SB470**

Submitted on: 2/6/2015

Testimony for WTL/HWN on Feb 9, 2015 14:50PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Roselle Bailey	Individual	Comments Only	No

Comments: I strongly support SB470

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**SB470**

Submitted on: 2/6/2015

Testimony for WTL/HWN on Feb 9, 2015 14:50PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Terri Gavagan	Individual	Support	No

Comments:

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I, Terri Gavagan, support KIRC bill SB470.

...

Please support this important measure to assist the Kaho'olawe Island Reserve Commission (KIRC) in its mission to protect the natural resources in the Reserve. This measure could help the KIRC not only in its efforts to conserve the unique resources of the Reserve but also help educate the public in the importance of its mission.

...

Without the KIRC's ongoing protection of Kaho'olawe's coastal ecosystem, including the adjacent nearshore environment and coral reefs that can be covered with, and choked by, derelict fishing gear, nets, a huge variety of plastics and other debris items, species including the endangered Hawaiian monk seal, threatened green sea turtle, endangered hawksbill sea turtle, endangered humpback whale, endangered Hawaiian dark-rumped petrel, and endangered Newell's shearwater will be put at risk.

...

Kaho'olawe is a unique ecosystem preserving immensely valuable cultural and biological resources. It is surrounded by the richest marine ecosystems remaining in the Main Hawaiian islands and providing replenishment of fish and invertebrates to other islands' waters. Please support this bill.