
A BILL FOR AN ACT

RELATING TO THE TAKING OF NATURAL RESOURCES.

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

1 SECTION 1. The legislature finds that the State has shown
2 a substantial interest in regulating the extraction of its
3 natural resources under the Hawaii State Constitution and from
4 its general statutory and administrative regulatory scheme in
5 order to conserve, protect, and even propagate public natural
6 resources, including their development and use, for the benefit
7 of the people of the State and future generations. In
8 particular, many laws and administrative rules are in place for
9 the purpose of regulating the extraction of natural resources
10 associated with hunting and fishing, establishing the taking of
11 such resources as highly regulated activities, including
12 commercial and sport harvesting, and the subsequent use or trade
13 and distribution of wildlife and aquatic resources and products.

14 The legislature also finds that the regulatory regime
15 includes such aspects as licensing and permitting; bag, size,
16 gender, seasonal, and species limitations for wildlife and
17 fisheries; gear restrictions and limits on method of harvest;



1 recognition of traditional practices related to the use of
2 cultural resources; prohibition on the introduction of
3 potentially competitive, harmful, noxious, or predatory non-
4 native species; educational and scientific study permitting;
5 and establishment of protected areas, wildlife sanctuaries, game
6 management areas, and limited entry areas, including freshwater
7 reservoirs, game and fisheries management areas, and even
8 privately owned lands subject to agreement as a state game
9 management area. Additionally, the regulatory scheme for
10 natural resources associated with hunting and fishing in Hawaii
11 is extensive and pervasive and an often overlapping of regimes.
12 As a result, in light of the number and nature of regulations
13 that apply and the procedures needed to enforce such
14 regulations, the legislature further finds that persons having
15 voluntarily acquiesced to the regulatory environment in order to
16 participate in natural resource extractive activities,
17 especially for commercial uses of economically important
18 species, have a reduced expectation of privacy under the Fourth
19 Amendment of the Constitution of the United States, particularly
20 while engaged in such activities and while present in the
21 immediate area near where the activity took place.



1 These regulations, whether addressing extractive or even
2 non-extractive activities, cannot be effectively enforced
3 without a proper inspection authority as a check and balance
4 against unfettered harvesting, particularly for the often
5 solitary, distant, or far-flung pursuits of local and visitor
6 participants in fishing or hunting, given the expansive milieu
7 of Hawaii's ocean surface, submerged areas, coastlines, forests,
8 and valley terrain and limited enforcement personnel available
9 to police such areas. The geographical complexity of the
10 natural environment of an island state is overlaid by the
11 multitude of recreational, sport, aesthetic, political,
12 cultural, religious, and other non-extractive pursuits of
13 persons in the same areas as hunters and fishers.

14 Existing Hawaii law gives the department of land and
15 natural resources division of conservation and resources
16 enforcement officers express statutory authority to inspect,
17 upon demand, a required hunting license; for those persons with
18 a hunting license, inspect a person's game bag, container,
19 hunting coat or jacket, carrier, or vehicle that may conceal
20 game; upon probable cause, inspect, upon demand, the contents of
21 any bag, container, vehicle, or conveyance used to carry aquatic



1 life; and search and seize diverse things such as, "any
2 equipment, article, instrument, aircraft, vehicle, vessel,
3 business records, or [a] natural resource used or taken in
4 violation of ... title 12, or any rules adopted thereunder", but
5 only if there is probable cause to believe that a violation of a
6 rule or statute has occurred. The probable cause requirement
7 makes effective enforcement unlikely, as officers are rarely
8 able to meet this standard without having personally observed
9 the hunter or fisher actually taking proscribed wildlife or
10 aquatic life. For example, a fisher could have a cooler of
11 undersized fishes, but even if at a distance the officer
12 observed the take of an undersized fish or fishes, the officer
13 would likely lack probable cause to inspect the contents of the
14 cooler, and these violations would go undetected. Specialized
15 training is necessary to identify regulated species from those
16 that are not subject to regulation, and the difficulty of being
17 able to discern subtle differences in length, gender, color, or
18 other marks or measures from a distance or under less than
19 suitable lighting conditions decreases the likelihood of a
20 positive identification.



1 The purpose of this Act is to allow division of
2 conservation and resources enforcement officers, upon reasonable
3 belief that a person is or was recently engaged in hunting or
4 fishing, to briefly detain that person as necessary to review
5 any relevant licenses, permits, or related documents to allow
6 conduct of the activity and inspect the wildlife or aquatic life
7 in that person's possession. Instead of an officer spending
8 long enforcement activity hours observing a single hunter or
9 fisher as a prerequisite to establishing probable cause for an
10 inspection, this Act would further enable the officer to inspect
11 the bag or catch of dozens of hunters or fishers, protecting an
12 entire coastline or valley. The limited inspections authorized
13 by this Act include the purpose of recovering illicitly obtained
14 wildlife and aquatic life and either returning them to the
15 natural environment before they expire, if feasible, or
16 recovering them for any economic value. Being able to conduct
17 inspections with greater immediacy than Hawaii's law currently
18 allows increases the chance the natural resource could survive a
19 return to the wild.



1 SECTION 2. Chapter 199, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§199- Inspection; exhibit upon demand; penalty. (a)
5 Notwithstanding section 199-7, any conservation and resources
6 enforcement officer of the department of land and natural
7 resources upon whom the board of land and natural resources has
8 conferred police powers may, in the performance of the officer's
9 official duties, stop and temporarily detain any person whom the
10 officer reasonably believes is, or recently has been, engaged in
11 hunting or fishing. During this brief detention, the officer,
12 upon lawful demand, shall be permitted to inspect any license,
13 permit, stamp, tag, or other documentation required for hunting
14 or the taking of aquatic resources, as well as any game or
15 aquatic life in the person's possession, including the contents
16 of any receptacle or container of any kind that could reasonably
17 be used to carry the regulated game or aquatic life, and any
18 equipment, article, or device capable of taking the game or
19 aquatic life, while reasonably proximate to the respective
20 hunting or fishing area, to determine whether the person is in
21 compliance with any provision of title 12 and any rules adopted



1 thereunder regulating hunting or aquatic life, and conservation
2 of wildlife or aquatic resources. Unless otherwise allowable
3 under section 183D-25, upon probable cause, or incident to
4 arrest, the officer shall not inspect the clothing upon the
5 person who is subject to a natural resource inspection related
6 to hunting or fishing, nor shall the officer inspect the
7 contents of any receptacle or container that could not
8 reasonably be used to carry game or aquatic life. For purposes
9 of this section, "fishing" shall refer to the take of any
10 regulated aquatic life, as defined in section 187A-1, and
11 references to "game", or "wildlife" shall include any animal
12 parts thereof.

13 (b) Any inspection shall be conducted within a reasonable
14 distance from the environment from which the fishing or hunting
15 took place and shall not include mobile inspection unless upon
16 probable cause or failure to heed a demand to stop and submit to
17 an administrative inspection for title 12 resources or capture
18 equipment relating to hunting or the taking of aquatic
19 resources, such as fishing, by any person authorized by the
20 department of land and natural resources to enforce title 12 and



1 any rule adopted thereunder relating to the protection and
2 conservation of natural resources.

3 (c) For violations of this section, the administrative
4 finances shall be as follows:

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

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

8 (3) For a third or subsequent violation within five years
9 of the last violation, a fine of not more than
10 \$3,000."

11 SECTION 3. This Act does not affect rights and duties that
12 matured, penalties that were incurred, and proceedings that were
13 begun before its effective date.

14 SECTION 4. New statutory material is underscored.

15 SECTION 5. This Act shall take effect on July 1, 2050.



Report Title:

Natural Resources; Inspection; Penalties

Description:

Clarifies that any conservation and resources enforcement officer of the Department of Land and Natural Resources may, in the performance of their official duties, stop and temporarily detain any person whom the officer reasonably believes is, or recently has been engaged in hunting or fishing for a natural resource inspection. Establishes penalties for refusal to comply with inspection requests. Effective 7/1/2050. (HD1)

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