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# 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 of Hawaii  
2 has shown a substantial interest in regulating the extraction of  
3 its natural resources under the Hawaii State Constitution and  
4 from its general statutory and administrative regulatory  
5 framework to conserve, protect, and propagate the State's  
6 natural resources and its development and uses for the benefit  
7 of the people and future generations. Many laws and  
8 administrative rules are created to regulate the extraction of  
9 natural resources associated with hunting and fishing, establish  
10 the taking of such resources as highly regulated activities,  
11 including commercial and sport harvesting, and monitor the  
12 subsequent use or trade and distribution of wildlife, aquatic  
13 resources, and related products. This regulatory framework  
14 includes various issues such as:

15           (1) Licensing and permitting, including educational and  
16           scientific study permits;



- 1 (2) Bag, size, gender, seasonal, and species limitations  
2 for wildlife and fisheries;
- 3 (3) Gear restrictions and limits on method of harvest;
- 4 (4) Recognition of traditional practices related to the  
5 use of cultural resources;
- 6 (5) Prohibition on the introduction of potentially  
7 competitive, harmful, noxious, or predatory nonnative  
8 species; and
- 9 (6) Establishment of protected areas, wildlife  
10 sanctuaries, game management areas, and limited entry  
11 areas (including freshwater reservoirs, game and  
12 fisheries management areas, and even privately owned  
13 lands subject to agreement as a state game management  
14 area).

15 The regulatory framework for natural resources associated with  
16 hunting and fishing in Hawaii is both extensive and pervasive,  
17 and often overlaps with the regulations of other departments and  
18 agencies.

19 Considering the number and nature of regulations that apply  
20 and the procedures needed to enforce such regulations, the  
21 legislature further finds that persons who participate in



1 natural resource extractive activities, especially for  
2 commercial uses of economically important species, have a  
3 reduced expectation of privacy under the Fourth Amendment of the  
4 U.S. Constitution, particularly while engaged in such activities  
5 and while present in the immediate area where the activity took  
6 place. These regulations, whether addressing extractive or even  
7 non-extractive activities, cannot be effectively enforced  
8 without a proper inspection authority as a check and balance  
9 against unfettered harvesting, considering the geographically  
10 complex and expansive milieu of Hawaii's ocean surface,  
11 submerged areas, coastlines, forests, and valley terrain, and  
12 the limited enforcement personnel available to police such  
13 areas. Hawaii's natural environment is overlaid with a  
14 multitude of recreational, sport, aesthetic, political,  
15 cultural, religious, and otherwise non-extractive pursuits of  
16 persons in the same areas as hunters and fishers as well.

17 Currently Hawaii law gives the department of land and  
18 natural resources' division of conservation and resources  
19 enforcement officers express statutory authority to:

20 (1) Inspect a required hunting license upon demand under  
21 section 183D-25, Hawaii Revised Statutes;



1           (2) For those persons with a hunting license, inspect a  
2           person's game bag, container, hunting coat or jacket,  
3           carrier, or vehicle that may conceal game under  
4           section 183D-25, Hawaii Revised Statutes;

5           (3) Inspect the contents of any bag, container, vehicle,  
6           or conveyance used to carry aquatic life upon probable  
7           cause under section 187A-15, Hawaii Revised Statutes;  
8           and

9           (4) Search and seize various items; provided that there is  
10          probable cause to believe that a violation of a rule  
11          or statute has occurred under section 199-7, Hawaii  
12          Revised Statutes.

13          This probable cause standard makes effective enforcement  
14          unlikely, as officers are rarely able to meet this standard  
15          without having personally observed the hunter or fisher taking  
16          proscribed wildlife or aquatic life by illegal means. For  
17          example, a fisher could illegally have a cooler of undersized  
18          fishes, but if the officer observed the take of an undersized  
19          fish or fishes at a distance, the officer may lack probable  
20          cause to inspect the contents of the cooler, causing violations  
21          like these to continue undetected. Specialized training is



1 necessary to identify regulated species from those that are not  
2 subject to regulation, and the difficulty of discerning subtle  
3 differences in length, sex, color, or other marks or measures  
4 from a distance or under less than suitable lighting conditions  
5 decreases the likelihood of catching a hunter or fisher in the  
6 act of an illegal take. Instead of requiring an officer to  
7 spend hours observing an unlicensed hunter or fisher to  
8 establish probable cause for an inspection, this Act would  
9 enable the officer to inspect the bag or catch of dozens of  
10 hunters or fishers, thereby protecting an entire coastline or  
11 valley.

12 The legislature also finds that the limited inspections  
13 authorized by this Act may recover illicitly obtained wildlife  
14 or aquatic life and lead to either returning the natural  
15 resource to the natural environment before it expires, if  
16 feasible, or recovering it for any economic value if not.  
17 Conducting inspections with greater immediacy increases the  
18 chance that the illegally extracted natural resource could  
19 survive a return to the wild.

20 This Act would allow the division of conservation and  
21 resources enforcement officers, upon reasonable belief that a



1 person is or was recently engaged in hunting or fishing, to  
2 briefly detain that person as necessary, to review any relevant  
3 licenses, permits or related documents to allow conduct of the  
4 activity, and to inspect the wildlife or aquatic life in that  
5 person's possession.

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

9 "§199- Inspection; exhibit upon demand; penalty. (a)  
10 Section 199-7 notwithstanding, any conservation and resources  
11 enforcement officer of the department of land and natural  
12 resources upon whom the board of land and natural resources has  
13 conferred police powers may, in the performance of the officer's  
14 official duties, stop and temporarily detain any person whom the  
15 officer reasonably believes is, or recently has been, engaged in  
16 hunting or fishing.

17 During this brief detention, the officer, upon lawful  
18 demand, shall be permitted to inspect any license, permit,  
19 stamp, tag, or other documentation required for hunting wildlife  
20 or for taking aquatic resources, as well as any game or aquatic  
21 life in the person's possession, including the contents of any



1 receptacle or container of any kind that could reasonably be  
2 used to carry the regulated game or aquatic life, and any  
3 equipment, article, or device capable of taking the game or  
4 aquatic life, while reasonably proximate to the respective  
5 hunting or fishing area, to determine whether the person is in  
6 compliance with any provision of title 12, and any rules adopted  
7 thereunder, relating to the protection and the conservation of  
8 natural resources.

9 Unless otherwise allowable under section 183D-25, upon  
10 probable cause or incident to arrest, the officer shall not  
11 inspect the clothing upon the person who is subject to a natural  
12 resource inspection related to hunting or fishing, nor shall the  
13 officer inspect the contents of any receptacle or container that  
14 could not reasonably be used to carry game or aquatic life.

15 For purposes of this section, "fishing" shall refer to the  
16 taking of any regulated aquatic life as defined in section  
17 187A-1, and references to "game" or "wildlife" shall include any  
18 animal parts thereof.

19 (b) Any inspection shall be conducted:

20 (1) Within a reasonable distance from the environment that  
21 the fishing or hunting took place; and



1       (2) Shall not include mobile inspection unless upon:

2           (A) Probable cause; or

3           (B) Failure to heed a demand to stop and submit to an  
4           administrative inspection for title 12 resources  
5           or for capture equipment used to hunt wildlife or  
6           take aquatic resources;

7 by any officer authorized by the department of land and natural  
8 resources to enforce title 12, and any rule adopted thereunder,  
9 relating to the protection and conservation of natural  
10 resources.

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

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

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

16       (3) For a third or subsequent violation within five years  
17       of the last violation, a fine of not more than  
18       \$3,000."

19       SECTION 3. This Act does not affect rights and duties that  
20 matured, penalties that were incurred, and proceedings that were  
21 begun before its effective date.



- 1 SECTION 4. New statutory material is underscored.
- 2 SECTION 5. This Act shall take effect upon its approval.



**Report Title:**

Natural Resources; Inspection; Penalties

**Description:**

Clarifies that any officer of the Department of Land and Natural Resources (DLNR) upon whom the Board of Land and Natural Resources (Board) has conferred police powers may, in the performance of their official duties, inspect certain items for compliance with protection and conservation of natural resources regulations related to hunting and fishing. Establishes penalties for refusal to comply with inspection requests made by any officer of DLNR upon whom the Board has conferred police powers. (SD1)

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