

DAVID Y. IGE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
SUZANNE D. CASE  
Chairperson**

**Before the Senate Committee on  
COMMERCE AND CONSUMER PROTECTION**

**Tuesday, March 29, 2022  
10:00 AM**

**State Capitol, Conference Room 229 & Videoconference**

**In consideration of  
HOUSE BILL 1988, HOUSE DRAFT 2, SENATE DRAFT 1  
RELATING TO CORAL**

House Bill 1988, House Draft 2, Senate Draft 1 proposes to prohibit the sale, import, harvest, or export of coral products, with certain exceptions; and requires the Department of Land and Natural Resources (Department) to amend its administrative rules accordingly no later than 12/31/2024. **The Department appreciates the intent of this bill and offers the following comments and suggested amendments.**

The Department has promulgated administrative rules to make it unlawful for any person to take, break, or damage any stony coral (see Hawaii Administrative Rules 13-95-70). The Department issues Special Activity Permits (SAPs) pursuant to section 187A-6, Hawaii Revised Statutes, to authorize take of stony coral for scientific, educational, management, or propagation purposes. This bill would allow the harvest of coral products “by the State pursuant to a special activity permit for non-commercial purposes.” It would also allow the harvest of coral products by other persons for a number of other purposes without the need to obtain an SAP. The Department has concerns that the bill, as written, would greatly expand the harvesting of corals in a way that bypasses the Department’s SAP review process. The Department also has concerns that allowing only harvesting “by the State” pursuant to an SAP would exclude non-state entities from being able to harvest corals under an SAP for valid purposes such as coral restoration. To address these concerns, the Department suggests that SECTION 2 be amended to read as follows:

SECTION 2. Chapter 187A, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

**SUZANNE D. CASE**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**ROBERT K. MASUDA**  
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

"§187A- Sale, import, harvest, or export of coral products; prohibited. (a) It shall be unlawful for any person to import into, export from, sell in, harvest, or offer for sale in the State any coral product.

(b) This section shall not apply to:

(1) ~~[Coral products imported, exported, sold, harvested, or offered for sale]~~ ~~The import into, export from, sale in, or offer for sale in the State of any coral product~~ for the purposes of:

(A) Research or scientific identification by an accredited museum or university;

(B) Rehabilitation or restoration of historic and culturally significant Hawaiian sites;

(C) Cultural practices and sacraments performed by native Hawaiians;

(D) Use as limestone or construction materials, cosmetics, or medicines; or

(E) Education; ~~[or]~~

~~[-F)] (2) [Harvesting by the State] The harvest of coral products~~ pursuant to a special activity permit for non-commercial purposes; and

~~[-2)] (3) Coral products or harvesting expressly authorized by federal law or federal permit for non-commercial purposes.~~

(c) As used in this section:

"Coral" means a species of the phylum Cnidaria, including:

(1) All species of the orders Antipatharia (black corals), Scleractinia (stony corals), Gorgonacea (horny corals), Stolonifera (organpipe corals and others), Alcyonacea (soft corals), and Coenothecalia (blue coral) of the class Anthozoa; and

(2) All species of the order Hydrocorallina (fire corals and hydrocorals) of the class Hydrozoa;

provided that "coral" does not include jellyfish or man o' war.

"Coral product" means any product, including curios, jewelry, and other novel commercial products, that is made from dead coral or coral skeleton."

Thank you for the opportunity to comment on this measure.



**WRITTEN TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTY-FIRST LEGISLATURE, 2022**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1988, H.D. 2, S.D. 1, RELATING TO CORAL.

**BEFORE THE:**

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

**DATE:** Tuesday, March 29, 2022                      **TIME:** 10:00 a.m.

**LOCATION:** State Capitol, Room 229 and Videoconference

**TESTIFIER(S):**     **WRITTEN TESTIMONY ONLY.**  
(For more information, contact  
Melissa D. Goldman, Deputy Attorney General, or  
Linda Chow, Deputy Attorney General, at 587-2992.)

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Chair Baker and Members of the Committee:

The Department of the Attorney General (Department) offers the following comments regarding this bill.

The bill would add a new section to part I of chapter 187A, Hawaii Revised Statutes, that makes it unlawful for any person to "import into, export from, sell in, harvest, or offer for sale in the State any coral product." Page 1, line 16, through page 2, line 2. The new section would not apply to coral products imported, exported, sold, harvested, or offered for sale for certain purposes, including "[u]se as limestone or construction materials, cosmetics, or medicines" and "[h]arvesting by the State pursuant to a special activity permit for non-commercial purposes," nor would it apply to "[c]oral products or harvesting expressly authorized by federal law or federal permit for non-commercial purposes." Page 2, lines 3–19. The Department is concerned that this draft of the bill may be vulnerable to a few constitutional challenges.

First, the bill could be subject to challenge as being preempted by the Endangered Species Act, 16 U.S.C. § 1535. Under the Endangered Species Act, a state law or regulation that applies with respect to the importation or exportation of an endangered or threatened species is void to the extent it may prohibit what is authorized pursuant to an exemption or permit. See 16 U.S.C. § 1535(f). To clarify that all federally authorized activities are excepted from the prohibitions of the bill, we

recommend adding a provision exempting the sale, offer for sale, purchase, trade, or barter of "any coral product" that may be expressly authorized by federal law or permit from the new section. The provision exempting only federally permitted products and harvesting for *non-commercial* purposes is not sufficient to cure the defect. We would recommend reverting to the wording of House Draft No. 2, which exempted "[c]oral products expressly authorized by federal law or federal permit." Page 2, lines 16-18, House Bill No. 1988, House Draft No. 2.

The bill could also be challenged as causing an undue burden on interstate commerce in violation of the dormant commerce clause. The dormant commerce clause prohibits state legislation that discriminates against interstate or international commerce. Nondiscriminatory regulations that have only incidental effects on interstate commerce are valid unless "the burden imposed on such commerce is clearly excessive in relation to the putative local benefits." *Oregon Waste Sys., Inc. v. Dep't of Env'tl. Quality*, 511 U.S. 93, 99 (1994) (quoting *Pike v. Bruce Church, Inc.* 397 U.S. 137, 142 (1970)).

The Supreme Court has explained that "[w]hen discrimination against commerce . . . is demonstrated, the burden falls on the State to justify it both in terms of the local benefits flowing from the statute and the unavailability of non-discriminatory alternatives adequate to preserve the local interests at stake." *Hughes v. Oklahoma*, 441 U.S. 322, 336 (1979) (quoting *Hunt v. Washington Apple Advertising Com'n*, 432 U.S. 333, 353 (1977)). In other words, the regulation at issue must at least claim to further some local interest in order to survive a commerce clause challenge.

In the preamble to the bill, the Legislature recognizes that "while stony corals are legally protected in Hawaii, *the sale, import, and export of coral jewelry in the State still threaten coral reefs and reef ecosystems in Hawaii and other parts of the world,*" suggesting that there may be a *local* interest behind this bill. Page 1, lines 6–9 (emphasis added). However, there is no reason provided for the decision not to exempt commercial activities otherwise lawfully permitted, except for the "use as limestone or construction materials, cosmetics, or medicines." Page 2, lines 12-13.

This potential commerce clause issue may be remedied by clarifying the reason for distinguishing between coral products harvested for commercial purposes and those harvested for non-commercial purposes, such as by restricting commercial activities of only those coral species that are native to Hawaii, or by narrowing its burden on interstate commerce, such as by the measure's application to certain types of corals recognized to be endangered.

If the Committee decides to pass the bill, we recommend these changes be made to address the potential constitutional issues.

Thank you for the opportunity to provide this testimony.

**HB-1988-SD-1**

Submitted on: 3/24/2022 10:52:24 PM

Testimony for CPN on 3/29/2022 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Manuel Mejia	Testifying for CORAL (Coral Reef Alliance)	Support	Written Testimony Only

Comments:

Aloha Chair Baker and Vice-Chair Chang (CPN),

Mahalo for your leadership in championing the prohibition of the sale, import, harvest or export of coral products (whether from Hawaii or elsewhere). The Legislature rightly believes that the commercial use of coral contributes to the decline and degradation of coral reefs. Our coral reefs, and those worldwide are already under severe threat and pressure with climate change and their economic exploitation will only worsen and accelerate their demise. Coral reefs provide food and livelihoods to a billion people globally. In Hawaii, according to a USGS study, Hawaii receives the greatest total economic benefit from reefs of all U.S. states and territories, estimated at \$831 million per year in damage protection. In fact, the economic benefits of coastal and flood protection in Hawaii are greater than those in all other regions combined. Flood protection from coral reefs is valued at \$394 million per year on Oahu and \$375 million per year on Maui. Healthy coral reefs are the foundation of our nearshore ocean ecosystem and economy in Hawaii. In addition to flood protection, reefs provide \$10 million in nearshore fisheries that support local families, and more than \$1.6 billion in value to tourism each year — all while supporting the recreational, cultural and spiritual renewal of residents and visitors alike.

We need to end this archaic trade in coral products as it is not compatible with the sustainable tourism model that Hawaii is pursuing. Hawaii needs to be world leaders in protecting corals and passing this legislation is a step in the right direction. Thank you for your strong and pono leadership in passing this bill.

Sincerely,

Manuel Mejia

Regional Program Director

Coral Reef Alliance



## Environmental Caucus of The Democratic Party of Hawai'i

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To: The Honorable Rosalyn H. Baker, Chair  
The Honorable Stanley Chang, Vice Chair  
Committee on Commerce and Consumer Affairs

Re: **HB 1988, HD 2, SD 1– RELATING TO CORAL**

Hearing: Tuesday, March 29, 2022, 10:00 a.m., Conference Room 229 and Via Videoconference

**Position: Strong Support**

Aloha, Chair Baker and Vice Chair Chang and Members of the Committees on Commerce and Consumer Affairs:

The Environmental Caucus of the Democratic Party of Hawai'i strongly supports HB 1988, HD2, SD1 and requests that this measure be PASSED by your Committee. This bill would prohibit the sale, import, harvest, or export of coral products, with certain exceptions. It would require the Department of Land and Natural Resources to amend its administrative rules accordingly no later than 12/31/2024.

The commercial use of coral contributes to the decline and degradation of the State's coral reefs. Further, the sale, import, harvest, and export of coral jewelry in the State continues to threaten coral reefs and reef ecosystems in Hawaii and other parts of the world; therefore, this bill would offer protections to Hawaii's coral reefs as well as other reefs around the world.

Mahalo nui loa for this opportunity to testify. Please pass this bill.

Respectfully submitted,

*Melodie Adyja*

*Alan Burdick*

Co-Chairs, Environmental Caucus of the Democratic Party of Hawai'i

Email: [legislativepriorities@gmail.com](mailto:legislativepriorities@gmail.com)

**HB-1988-SD-1**

Submitted on: 3/26/2022 6:57:44 AM

Testimony for CPN on 3/29/2022 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Mike Nakachi	Testifying for Moana Ohana	Support	Written Testimony Only

Comments:

Aloha Mai Kakou,

This is another example of good legislation to help our unique resources of Hawaii Nei, Please do our best to protect our Natural resources, especially corals of Hawaii, both shallow ones that protect our islands to the deeper corals that have been here before the arrival of Man to these islands.

Corals a sacred Kinolau needs to be protected for Aina! Time of Man's desecration of our natural ancestors needs to stop! Please do your part as legislators to see bills like this get the highest amount of protection and the stiffest amount of fines and penalties to those who choose bad behavior to take away our sacred papa!

In strong (IMUA) support of HB1988 HD2 SD1

Mahalo nui loa, Mike Nakachi, Moana Ohana





March 26, 2022

Senator Rosalyn H. Baker, Chair

[COMMITTEE ON COMMERCE AND CONSUMER PROTECTION](#)

*Submitted Electronically via Regulations.gov*

**Re: RE: STRONG SUPORT HB 1988 HD2 SD1; RELATING TO CORAL**

Dear Chair Baker and Members of the Senate Committee on Commerce & Consumer Protection:

As the co-founder of Legacy Reef Foundation, a coral preservation and restoration non-profit based in Kona, Hawaii, we believe this bill is in the best interest of our struggling coral reefs.

This measure would prohibit the import, export, harvest and sale of products such as jewelry and trinkets made from both Hawaii sourced and non-Hawaii sourced corals. While take of Hawaii's stony corals have long been prohibited, there is still commercial harvesting of Hawaii's black corals. Pink and Gold corals used to be harvested but have been under a federal take moratorium due to overharvesting and habitat loss. Currently, any person with a mere \$100 Commercial Marine License can harvest Hawaii's most precious black coral and simply self-report what they took, after the fact, and without any verification.

It has been more than a decade since our deep-water corals have undergone any comprehensive stock assessment, therefore, any claim of sustainable harvesting is without demonstrable scientific merit. Deepwater corals grow extremely slowly and if left protected, can in fact live for thousands of years. Recent research (noted below) discovered a completely new species of black coral that for years had been misclassified. This research shows that we still know so little about our corals and our oceans and that all steps must be taken to protect them. There is also growing concern that federal waters outside of Hawaii will be subject to commercial seabed mining in the near future. This reminds us of the importance of protecting our corals whenever and wherever possible.

Importantly, Black coral, 'ēkaha kū moana, is a living native Hawaiian ancestor. Hawaiian history and culture is grounded in the kumulipo, where all life begins from the sacred coral polyp. Allowing commercial exploitation of these corals is disrespectful to native Hawaiian cultural values, traditions and practices.

We support the existing exemptions in the bill to ensure that corals may be taken for *non-commercial purposes*, as necessary, under a DLNR issued Special Activity Permit for research, education, replanting or aquaculture, or under a NOAA issued federal permit.



Further, we appreciate that some jewelry store owners may have existing inventory of black or other coral products and support their being given an extended effective date to lawfully sell these existing products.

Black corals are Hawaii's official state "gem" for their cultural significance and beauty. We do not sell our Hawaii state bird, the nēnē or Hawaii's sole native mammal, the 'ōpe'ape'a (Hawaiian hoary bat). We should extend this same protection to our critically important living corals.

Thank you for your consideration of this testimony. Below is additional information and recent news reports on the importance of protecting our precious corals—Hawaii's "redwoods."

Thank you for the opportunity to provide comments on this most important issue,

A handwritten signature in black ink, appearing to read "Bill Coney". The signature is fluid and cursive, with a long horizontal stroke at the end.

**Bill Coney**

Legacy Reef Foundation  
Co-Founder  
808.960.1223

[bill@legacyreeffoundation.org](mailto:bill@legacyreeffoundation.org)

[www.legacyreeffoundation.org](http://www.legacyreeffoundation.org)

**HB-1988-SD-1**

Submitted on: 3/26/2022 2:19:02 PM

Testimony for CPN on 3/29/2022 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Christopher Dean	Testifying for Clean The Pacific	Support	Written Testimony Only

Comments:

Clean The Pacific strongly supports this vital piece of legislation. We have to face the truth, there are 8 billion people on Earth now and we can't just keep taking and taking from our natural world. We can no longer afford to keep taking just for entertainment and luxury. Our coral reefs are the foundation of our marine ecosystem and they are dealing with unprecedented stressors, such as acidification, warming oceans, over fishing, and pollution. The last thing our coral reefs need is to be harvested just to decorate someone's home or body. We are so close to losing it all, one miss step could cause extinction. We have to be so careful and delicate with our environment now, we just can't take any risks. Please pass this legislation and protect the world's coral reefs.

I have seen what a dead reef looks like in the Caribbean waters around Grenada. It's all dead, 100% dead and never coming back. There's nothing left, not even the skeletal remains of the corals, just flat, gray, rubble on the floor of the ocean. You can't imagine how soul crushing it is to see that kind of devastation. To go from the most beautiful thing that has ever existed on planet Earth, to pure death is beyond endurable. We've already lost 50% of Hawaii's corals, please don't let this horror happen to our reefs.



**TESTIMONY OF TINA YAMAKI  
PRESIDENT  
RETAIL MERCHANTS OF HAWAII  
March 29, 2022  
HB 1988 HD2 SD1 RELATING TO CORAL**

Good morning, Chairperson Baker and members of the Senate Committee on Commerce and Consumer Protection. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii was founded in 1901, RMH is a statewide, not for profit trade organization committed to the growth and development of the retail industry in Hawaii. Our membership includes small mom & pop stores, large box stores, resellers, luxury retail, department stores, shopping malls, local, national, and international retailers, chains, and everyone in between.

Because we have some major concerns, we are respectfully opposing HB 1988 HD2 SD1 Relating to Coral. This measure prohibits the sale, import, harvest, or export of coral products, with certain exceptions. Requires the Department of Land and Natural Resources to amend its administrative rules accordingly no later than 12/31/2024. Effective 7/1/2050.

While we agree that we must protect our natural resources like coral, **we question if this measure is aimed to shut down many of our locally owned and operated stores who sell coral and are responsibly collecting coral by currently possessing a state permit to do so?**

**We are concerned that it will close many locally owned and operated shops who sell coral items** especially in the resort area. There are stores throughout our state that has current inventory that includes souvenirs and jewelry. Hawaii already has regulations that prohibit the harvesting of Hawaii's corals from our ocean. The only way to legally do so would be to have a state permit that to our understanding is not easy to acquire.

The way this bill is currently written we will see some of Hawaii's iconic locally owned jewelry stores closing who have been obtaining coral legally through a state permit. We will also see other local stores closing who sell jewelry and souvenirs from coral obtained outside of Hawaii. Many local retailers are only a one shop operation and cannot ship these products to a sister location on the mainland or internationally if the effective date is too soon. Retailers simply cannot afford to either sell them for a loss or after the effective date trash the products as we are one of the hardest hit industries on our islands during this ongoing pandemic.

**We are also concerned about the 501(c)(3) non profit organizations that are resellers.** Many people donate their used items to these organizations. The employees at these stores are not your typical retail employee and are not trained in what is real and what is fake products. Some of the replicas are hard to tell if they are real or fake. We must remember that coral is made into items such as but not limited to jewelry, decorative inlays, buttons, adornments, ornaments, and more.

**If the concern is illegal harvesting of Hawaii's coral, the focus should be on enforcement and cracking down on the violators.** Banning the sale of coral in Hawaii will not stop this type of illegal activity as those harvesting illegally will sell the product to someone outside of our state. By banning the sale of coral in Hawaii, it will only make this commodity even more desirable on the Black Market. People would still be able to purchase coral items on the worldwide internet. Bans on items like ivory work because it is a FEDERAL law

and is recognized nationwide. A state ban would have little or no effect and only make Hawaii's coral more desirable to be illegally harvested and sold outside of Hawaii.

The visitors to our islands have not returned yet and those that are here are not spending money in our stores. Retailers have taken a bit hit during this pandemic with 2 shutdowns where they still had to pay commercial lease rent, taxes, utilities, and other operational costs. Many are still in large financial debt but try to keep their doors open to keep their employees employed. Retailers are also being hit with supply chain disruption, higher cost and delays in shipping not to mention a recession in which inflation rose 7.9% in the last 12 months (the largest gain since 1982 according to the US Labor Department) and will be expected to see it raising in the months to come. We cannot afford more loss as we will just see more businesses closing down and more of our local people out of work.

Mahalo for this opportunity to testify.

**HB-1988-SD-1**

Submitted on: 3/27/2022 11:45:33 AM

Testimony for CPN on 3/29/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Ted Bohlen	Testifying for Hawai'i Reef and Ocean Coalition	Support	Written Testimony Only

Comments:

To: The Honorable Senator Rosalyn Baker, Chair, the Honorable Senator Stanley Chang, Vice Chair, and members of the Committee on Commerce and Consumer Protection:

From Hawai'i Reef and Ocean Coalition (by Ted Bohlen)

RE: Hearing RELATING TO CORAL, Tuesday, March 29, 2022, 10:00 am

Aloha Chair Baker, Vice Chair Chang, and members of the Committee on Commerce and Consumer Protection:

**The Hawai'i Reef and Ocean Coalition supports HB1988 HD2 SD1, provided the bill maintains the prohibition in SD1 on harvesting and commercial sale of local coral.**

The Hawai'i Reef and Ocean Coalition believes that a prohibition on importing, exporting, harvesting and commercial sale of coral products regardless of origin (including Hawai'i-sourced corals), is needed to protect corals, which are already under stress from ocean warming and acidification, sediments, nutrients and other pollution, over-fishing, and petrochemical sunscreens.

It is fine for the bill to prohibit the import, export and commercial sale of coral products from elsewhere. **BUT, if sales of coral from elsewhere are prohibited and local coral can be harvested and sold commercially, there will be increased harvesting and potential poaching of local coral; there will be open season on Hawaii's corals. This ironically would be worse for Hawai'i corals than the status quo.** Anyone can harvest coral in Hawai'i with a \$100 Commercial Marine License, and there will be little or no enforcement protection (since it will be nearly impossible to determine the species and origin of the coral jewelry and different products). **The bill therefore must not exempt the harvesting and commercial sale of Hawai'i-sourced coral products, while prohibiting commercial sales of coral products from elsewhere.**

The Hawai'i Reef and Ocean Coalition does not object to the exemptions for:

- research or scientific identification by an accredited museum or university,
- rehabilitation or restoration of historic and culturally significant Hawaiian sites,
- cultural practices and sacraments performed by native Hawai'ians,

- replanting and aquaculture under a DLNR Special Activity Permit, or
- education.

**Please pass this bill, provided it maintains the prohibition on harvesting (except for the limited exemptions specified above) and commercial sales of Hawaii's corals!**

Mahalo!

Hawai'i Reef and Ocean Coalition (by Ted Bohlen)

**HB-1988-SD-1**

Submitted on: 3/27/2022 7:33:58 PM

Testimony for CPN on 3/29/2022 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Robert Culbertson	Testifying for Big Island "Reef Keepers" Hui	Support	Written Testimony Only

Comments:

Dear Chair Baker and Members of the Senate Committee on Commerce and Consumer Protection,

Big Island Reef Keepers Hui strongly supports this bill.

The existing exemptions in the bill ensure that corals may be taken for non-commercial purposes, as necessary, under a DLNR issued Special Activity Permit for research, education, replanting, aquaculture, or under a NOAA issued federal permit.

Allowing commercial exploitation of these corals is disrespectful to native Hawaiian cultural values, traditions and practices.

It's time to step it up for all Hawaiian reef wildlife!

Mahalo nui loa!

R A Culbertson,

For Big Island 'Reef Keepers Hui'

Honokaa





Legacy Reef Foundation



Haereticus Environmental Laboratory

Fair Wind



Environmental Caucus of The Democratic Party of Hawaii

March 29, 2022, 10am

**RE: STRONG SUPORT HB 1988 HD2 SD1; RELATING TO CORAL**

Dear Chair Baker and Members of the Senate Committee on Commerce & Consumer Protection:

For the Fishes, Conservation Council for Hawaii, Kai Palaoa, Moana Ohana, Sierra Club of Hawaii Moku Lua Group, Kalanihale, Center for Biological Diversity, Friends of Hanauma Bay, Legacy Reef Foundation, Haereticus Environmental Laboratory, Hawaii Reef & Ocean Coalition, Environmental Caucus of the Democratic Party of Hawaii, Fair Wind Charters and Ocean Defenders Alliance-Hawaii ask for your **SUPPORT of HB1988**.

This measure would prohibit the import, export, harvest and sale of products such as jewelry and trinkets made from both Hawaii sourced and non-Hawaii sourced corals. While take of Hawaii’s stony corals have long been prohibited, there is still commercial harvesting of Hawaii’s black corals. Pink and Gold corals used to be harvested but have been under a federal take moratorium due to overharvesting and habitat loss. Currently, any person with a mere \$100 Commercial Marine License can harvest Hawaii’s most precious black coral and simply self-report what they took, after the fact, and without any verification.

It has been more than a decade since our deep-water corals have undergone any comprehensive stock assessment, therefore, any claim of sustainable harvesting is without demonstrable scientific merit. Deepwater corals grow extremely slowly and if left protected, can in fact live for thousands of years. Recent research (noted below) discovered a completely new species of black coral that for years had been misclassified. This research shows that we still know so little about our corals and our oceans and that all steps must be taken to protect them. There is also growing concern that federal waters outside of Hawaii will be subject to commercial seabed mining in the near future. This reminds us of the importance of protecting our corals whenever and wherever possible.

Importantly, Black coral, ‘ēkaha kū moana, is a living native Hawaiian ancestor. Hawaiian history and culture is grounded in the kumulipo, where all life begins from the sacred coral polyp. Allowing commercial exploitation of these corals is disrespectful to native Hawaiian cultural values, traditions and practices.

We support the existing exemptions in the bill to ensure that corals may be taken for *non-commercial purposes*, as necessary, under a DLNR issued Special Activity Permit for research, education, replanting or aquaculture, or under a NOAA issued federal permit.

Further, we appreciate that some jewelry store owners may have existing inventory of black or other coral products and support their being given an extended effective date to lawfully sell these existing products.

Black corals are Hawaii's official state "gem" for their cultural significance and beauty. We do not sell our Hawaii state bird, the nēnē or Hawaii's sole native mammal, the 'ōpe'ape'a (Hawaiian hoary bat). We should extend this same protection to our critically important living corals.

Thank you for your consideration of this testimony. Below is additional information and recent news reports on the importance of protecting our precious corals—Hawaii's "redwoods."

Inga Gibson

Pono Advocacy

On behalf of For the Fishes and the above-noted organizations

[PonoAdvocacy@gmail.com](mailto:PonoAdvocacy@gmail.com), 808.922.9910

"How many species are we actually losing before we know they exist?" Montgomery asked, adding the answer is still unknown.

<https://www.civilbeat.org/2022/02/scientists-find-a-new-black-coral-hidden-in-plain-sight-in-the-pacific/>

"Besides being a vast reservoir of biodiversity, the deep ocean provides us with benefits ranging from carbon sequestration, to medicine, to food chains that sustain billions of people," said Amon, who is a marine biologist and director and founder of SpeSeas. "But climate change, habitat destruction, and overfishing are already stressing the ocean, and seabed mining would jeopardize ocean health even more. If we continue to proceed on this path blindly, we will lose parts of our ocean before we truly know them and the benefits they offer. We can't effectively manage and protect what we don't know, understand and value."

<https://www.hawaii.edu/news/2022/03/10/unknowns-deep-sea-mining/>

"The coral reefs are "not like weeds or grasses that might, if you cut it, they will come back. They are more like redwood forests in that if you remove it, it's basically permanently gone," Wagner said. "They grow very slowly, they reproduce very slowly ... They're not equipped to withstand impact."

These deep-sea corals are important sinks for carbon. In addition, the ecosystems hold potential importance for humanity in other ways. Early [Covid-19 vaccine testing included the use of enzymes](#) found in these habitats."

<https://www.civilbeat.org/2021/10/we-may-know-less-about-the-deep-sea-than-the-moon-should-we-be-digging-it-up/>

"These long-living corals are much like the redwoods of the ocean. They're not only slow-growing and long-lived, but also provide important habitat for many other species," Wagner said. Mining their habitat could potentially wipe them out before we know their true value."

<https://www.reuters.com/article/mining-deepsea-idUSKBN27E0H8>



March 28, 2022

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair

Senator Stanley Chang, Vice Chair

March 29, 2022 at 10:00 a.m.

VIA VIDEO CONFERENCE

Conference Room 229

**Re: TESIMONY IN STRONG SUPPORT OF HOUSE BILL 1988 HD2 SD1 -  
RELATING TO CORAL.**

Aloha Chair Baker and Members of the Committee on Commerce and Consumer Protection,

Please accept these comments submitted by the Center for Biological Diversity (Center) in **strong support of House Bill 1988 HD2 SD1**, which would prohibit the sale, import, or export of coral products, with limited exceptions and requires the Department of Land and Natural Resources to amend its administrative rules accordingly.

The Center is a non-profit 501(c)(3) membership corporation dedicated to the protection of native, threatened, and endangered species and the habitats they depend on to survive. Through science, policy, and environmental law, the Center is actively involved in conserving marine ecosystems. The Center has more than 88,000 members throughout the United States, including Hawai'i, with a direct interest in ensuring that imperiled species are properly protected from destructive practices in our oceans. In pursuit of this mission, the Center has worked extensively to protect ocean ecosystems in Hawai'i and nationwide from various threats including improper commercial exploitation. The Center is highly invested in conserving fragile and impacted Hawaiian coral reefs and the marine species that depend on them.

Our corals are in crisis. Many scientists now believe the very existence of coral reefs may be in jeopardy unless we intensify our efforts to protect them (Frieler et al. 2013). The world has lost a third of its coral reefs due to climate change, pollution, and unsustainable harvesting practices in the past 30 years. The aggregate effects of these stressors are decreasing our reef's resilience and increasing susceptibility to disease and invasive species. Time is of the essence – we must protect our coral reefs before it is too late.

Sadly, Hawai'i still allows for commercial harvesting of our precious black corals. All one needs is a \$100 Commercial Marine License that only requires after the fact self-reporting. This

is shocking as the Department of Land and Natural Resource's own Hawai'i State Action Plan lists overharvesting as a significant threat to black corals.

Black coral is characterized by its extremely slow growth, delayed reproduction, long life, and low survivorship and recruitment of larvae (Parker et al. 1997). Scientists characterize black coral as among "the slowest growing organisms of any known fishery past or present" (Grigg 1993). Our black corals are particularly vulnerable to overexploitation from harvesting because of their patchy distribution and limited larval dispersal, slow growth rate, and delayed reproduction. Black coral colonies inhabit a very specific habitat type, and they create critical habitat for invertebrates and fish, including commensal species that are dependent upon black coral for their very survival.

The most recent research suggests that, since 1998, there has been a decline in larger older black coral and a more recent decline in black coral under 5 years old (Grigg 2004; Montgomery 2006). The causes for decline have been attributed to increased harvesting and over-growth by an invasive species (Montgomery 2006). Furthermore, NOAA (73 FR 47098, 2008) reported a decrease in the overall biomass of black coral within Au'au Channel of at least 25% between 1976-2001 (Grigg 2004), with notable declines in both recruitment and the abundance of legal-sized colonies.

As explained above, past research demonstrates a decline in our black corals, and a comprehensive stock assessment has not been done in years, so any claim of sustainable harvesting for jewelry or trinkets in Hawaiian waters is without merit.

It is imperative that this legislature protect our coral for both scientific and cultural reasons. Native Hawaiians have long recognized the importance of our coral. In the Kumulipo (Hawaiian creation chant) for example, coral is revered as the first organism created:

*Hanau ka 'Uku-ko'ako'a, hanau kana, he 'Ako'ako'a, puka  
Born was the coral polyp, born was the coral, came forth*

The Center humbly asks this committee **pass House Bill 1988 HD2 SD1.**

Mahalo for your consideration,

/s/ Maxx Phillips

Maxx Phillips, Esq.

Hawai'i Director and Staff Attorney

Center for Biological Diversity

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**LATE**

To: The Honorable Rosalyn H. Baker, Chair, The Honorable Stanley Chang, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

We support this bill, but ask that you reconsider the amendment in HD3 making state permitted harvesting unlawful and pass this bill as written in HD2. BLNR and DLNR both supported HB1988 HD2. In the House both the WAL and CPC committees passed the bill creating an amendment for allowing state permitted harvest. This is a well-researched, scientifically managed, low impact fishery under fire without merit.

Making the importation and sale of foreign corals unlawful supports the local consumer by avoiding the purchase of products potentially damaging to the environment with unknown origins and takes a firm stance on science and sustainability. It also supports local companies who sell jewelry made with Hawaiian black coral, and who boost the local economy and provide jobs for the local workforce.

According to NOAA, black coral harvested in Hawaii has been a low participation fishery. There are currently no federal permit holders. They have set annual catch limits (ACL's) and accountability measures (AM's) since 2012. Within each of those years harvest has remained below the ACL's. Black coral harvested in state waters is reported monthly by the fisher, and all black coral purchased in the state is reported by the buyer as a dealer report. This system enables a verification of what is being harvested and sold. This ensures consumer protection by validating that such coral being sold was legally harvested in Hawaii. Further, HB1988 HD2 would made it possible to make unlawful the sale of black coral without such documentation. This is the next logical step in further ensuring the environmental and consumer protection of our resources.

Much of what has been imported for decades is either fake, low quality, or sourced from countries with no oversight and thus low cost. The flood of such products lowers the value of sustainably harvested Hawaiian black coral and makes it difficult for the consumer to differentiate what is from Hawaii and what is not. CITES appendix 2 severely limits the ability to export Hawaiian black coral serving as an additional measure of checks and balances while promoting the domestic sale of locally made jewelry.

Black coral is our state gem and beloved by many. In Hawaii, black corals are most abundant in depths of from 90 to 300 feet, which is well beyond recreational dive limits. Harvesting is difficult and dangerous. We do not believe that excluding foreign corals would significantly impact the amount of Hawaiian black coral harvested. Black coral in Hawaii is managed as a renewable resource. The amount being removed from the ocean is miniscule as compared to the overall volume of the black coral biomass population. The regrowth rate insures the long-term viability of the population.

Please reconsider the amendment HD3 and pass this bill as drafted as HD2. Thank you for the opportunity provide testimony on this measure,

Steve Brown  
Maui Divers of Hawaii

**LATE**

Testimony regarding HB 1988 from Cliff Slater, Chairman of Maui Divers Jewelry.

Pre-COVID we had 320 employees and we are now working our way back to that level. We have an ESOP allowing our employees to share in ownership of the company. Our competitors also have a considerable number of employees.

From the beginning, before there were any coral harvesting regulations, we followed the advice of the late UH Professor Richard Grigg, as what was needed to ensure the sustainability of black coral. Subsequently we followed both state and federal sustainability regulations as they were enacted.

Dr. Sylvia Earle, internationally renowned marine biologist, “explorer-in-residence” at National Geographic, and Time Magazine’s first “Hero for the Planet,” said at a press conference, that Maui Divers’ selective harvesting “serves as a model for others interested in the sustained use of a resource.

Let me leave you with an important thought: In contrast to reef-building corals, whose structures may last for many thousands of years, precious corals live only 75 to 150 years, after which they die, fall over, and decompose into sand. We harvest very little of the black coral that is available, most of it decomposes naturally.

We would prefer that you pass HB 1988 HD 2.

Thank you for your attention.

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**HB-1988-SD-1**

Submitted on: 3/24/2022 3:26:23 PM

Testimony for CPN on 3/29/2022 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Douglas Perrine	Individual	Support	Written Testimony Only

Comments:

Hawaii should not be involved in coral trafficking, period. Coral is the basis of the nearshore marine ecosystem in Hawaii and throughout the tropics. Removing coral endangers our shoreline structures and our food supply.

**HB-1988-SD-1**

Submitted on: 3/25/2022 4:53:31 PM

Testimony for CPN on 3/29/2022 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Dara Carlin, M.A.	Individual	Support	Written Testimony Only

Comments:

Stand in Support



**HB-1988-SD-1**

Submitted on: 3/26/2022 8:35:48 AM

Testimony for CPN on 3/29/2022 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Dorothy Norris	Individual	Support	Written Testimony Only

Comments:

Please consider extending the effective date for the prohibition of new coral sales. The coral reef is still recovering from the devastating temperature trama from several years ago and the collection of corals can be as harmful as the collection of reef fish. Coral reef habitat is essential to continued visitorship and appreciation of our island. We do not add an extra stress to this sensitive habitat.

**HB-1988-SD-1**

Submitted on: 3/26/2022 10:52:44 AM

Testimony for CPN on 3/29/2022 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Tapani Vuori	Individual	Support	Written Testimony Only

Comments:

To: The Honorable Michael Gabbard, Chair, The Honorable Clarence Nishihara, Vice Chair, and Members of the Senate Committee on Agriculture and Environment, and The Honorable Senators Lorraine R. Inouye, Chair, Gilbert S.C. Keith-Agaran, Vice Chair, and members of the Senate Committee on Water and Land

From: Tapani Vuori

RE: HB1988 HD2 SD1

**I strongly support HB1988 HD2 SD1 !**

Thank you.

**HB-1988-SD-1**

Submitted on: 3/26/2022 1:45:46 PM

Testimony for CPN on 3/29/2022 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Cynthia Punihaole Kennedy	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Baker and the members of the Commerce and Consumer Protection Committee

I strongly support HB 1988 HD2 SD1, which Prohibits the sale, import, harvest, or export of coral products, with certain exceptions. We must protect our coral reef because it is the Rainforest of the Ocean.

**HB-1988-SD-1**

Submitted on: 3/26/2022 2:02:27 PM

Testimony for CPN on 3/29/2022 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Keith Neal	Individual	Support	Written Testimony Only

Comments:

I support this act as it's prohibits the sale, import, harvest, or export of coral products, with certain exceptions.

**HB-1988-SD-1**

Submitted on: 3/27/2022 9:36:57 PM

Testimony for CPN on 3/29/2022 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Lisa Hallett	Individual	Support	Written Testimony Only

Comments:

Aloha Committee members,

I strongly support this bill.

sincerely,

Lisa Hallett

To: The Honorable Rosalyn H. Baker, Chair, The Honorable Stanley Chang, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection,

I support this bill but request your committee reconsider the amendment in HD3 making state permitted harvesting unlawful and pass this bill as written in HD2. BLNR and DLNR both supported HB1988 HD2. In the House both the WAL and CPC committees passed the bill creating an amendment for allowing state permitted harvest. This is a well researched, scientifically managed, low impact fishery under fire without merit.

Making the importation and sales of foreign corals unlawful supports the local consumer from buying products potentially damaging to the environment with unknown origins and takes a firm stance on science and sustainability.

Black coral harvested in Hawaii by NOAA's own admission has been a low participation fishery. There are currently no federal permit holders. They have set annual catch limits (ACL's) and accountability measures (AM's) since 2012. Within each of those years harvest has remained below ACL's.

Black coral harvested in state waters gets reported monthly by the fisher. All coral sold in the state gets reported by the buyer as a dealer report. This system facilitates a checks and balances record of what is being harvested, sold, and to whom is in possession of black coral. Is is a model method for ensuring consumer protection by validating that such coral being sold was legally harvested in Hawaii. HB1988 HD2 would have made it possible to make unlawful the sale of black coral without such documentation. If a dealer does not have a fish report linked to the harvester they purchased from and a dealer report showing when and how much they purchased the coral would be deemed unlawful. This was a logical step in further ensuring the environmental and consumer protection of our resources.

Much of what has been imported for decades is either fake, low quality, or sourced from countries with no oversight and thus low cost. The flood of such products lowers the value of sustainably harvested Hawaiian black coral and makes it difficult for the consumer to differentiate what is from Hawaii and what is not. CITES appendix 2 severely limits the ability to export Hawaiian black coral serving as additional measure of checks and balances while promoting the domestic sale of locally made jewelry. Hawaii coral products harvested, designed, and crafted in our state bring a premium with a modest market. It is our state gem and beloved by many.

Black coral is found well beyond recreational dive limits. It requires a high flow, deep, and dark environment. Conditions which it is found in commercially viable beds are treacherous and require highly skilled technical divers with a support team knowledgeable of local weather and water conditions. This is by no means a pay to play fishery. It requires very niche skills that cannot be obtained with a \$100 commercial fishing license. There is a reason participation remains low and I do not believe the assumption that making the importation and sale of foreign corals unlawful will create any impact on new fishery participation. I have never read an article or study referencing poaching. There is no empirical data proving a population threat or decline to black coral, illegal harvesting practices, or an increase in fishery participation. In fact over the last 20 years there has been a steady decline. There is no "stock pile" of black coral and even if there were requiring a fish report matching a dealer report to make for the lawful sale of the stock render it illegal without one. Please reconsider the amendments to HD3 and pass this bill as drafted as HD2.

Thank you for the opportunity to speak on this measure,  
Ian Chun



**LATE**

**HB-1988-SD-1**

Submitted on: 3/28/2022 10:03:58 AM  
Testimony for CPN on 3/29/2022 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Diane Ware	Individual	Support	Written Testimony Only

Comments:

Dear Chair and Committee Members,

I strongly support all unnecessary extraction of marine and aquatic life from our reefs and seabeds including our black corals.

Importantly, Black coral, ‘ēkaha kū moana, is a living native Hawaiian ancestor. Hawaiian history and culture is grounded in the kumulipo, where all life begins from the sacred coral polyp. Allowing commercial exploitation of these corals is disrespectful to native Hawaiian cultural values, traditions and practices. Extraction of natural and wildlife resources for mere profit is a continuation of the colonial system established here over 200 years ago and our land and marine resources have suffered greatly not to mention the native Hawaiian culture and people.

I do support the existing exemptions in the bill to ensure that corals may be taken for non-commercial purposes, as necessary, under a DLNR issued Special Activity Permit for research, education, replanting or aquaculture, or under a NOAA issued federal permit.

Mahalo nui for a pono passing of this bill HB1988.

Diane Ware, 99-7815 Kapoha Pl, Volcano Hi,96785