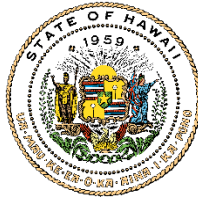


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAI'I | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621
HONOLULU, HAWAII 96809

Testimony of
DAWN N. S. CHANG
Chairperson

Before the House Committee on
JUDICIARY & HAWAIIAN AFFAIRS

Thursday, March 2, 2023
2:00 PM

State Capitol, VIA VIDEOCONFERENCE, Conference Room 325

In consideration of
HOUSE BILL 760, HOUSE DRAFT 1
RELATING TO AQUATIC RESOURCES

House Bill 760, House Draft 1 proposes to: 1) expand the Department Land and Natural Resources' (Department's) rulemaking authority to include any rule deemed necessary to protect certain aquatic life; 2) expand the Board of Land and Natural Resources' (BLNR's) authority to temporarily adopt, amend, or repeal certain natural resource rules by formal action at a publicly noticed meeting if the BLNR finds that such adoption, amendment, or repeal is necessary to implement effective and adaptive management measures in response to new or previously benign aquatic nuisance species, in light of newly available technology, or in light of newly available data; 3) and create new fines for violations of rules pertaining to the Department's prevention of or response to previously benign aquatic nuisance species. **The Department supports this bill.**

Pursuant to §187A-2, Hawaii Revised Statutes (HRS), the Department is mandated to manage and administer the aquatic life and aquatic resources of the State. The Department currently uses management tools such as size limits, bag limits, closed seasons, gear restrictions, and permitting of specific gear to regulate the State's fisheries through the adoption of administrative rules. Despite the variety of management tools available, the Department finds that broadening the suite of management tools would allow more effective management of the State's aquatic resources. For example, in 2021 the Legislature amended §187A-5, HRS, to authorize the Department to require permits for the use and possession of lay nets. During the rulemaking process to implement the lay net permit, it was suggested that the Department should also require permits for the use of surround nets, a similar but distinct fishing method. However, the Department lacks the express statutory authority to regulate surround nets. House Bill 760, House Draft 1 would authorize the Department to regulate other fishing methods, such as surround nets, through permits.

DAWN N. S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

LAURA H. E. KAAKUA
DEPUTY DIRECTOR - LAND

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

In 2021, the Legislature authorized the BLNR to temporarily adopt, amend, or repeal certain natural resource rules by formal action at a publicly noticed meeting if it finds that such adoption, amendment, or repeal is necessary to implement effective and adaptive management measures in response to rapidly changing resource conditions.¹ Through discussions with fishers, the Department has identified other factors that should inform the BLNR's implementation of adaptive management measures. These include the availability of new data on the status of aquatic resources, the development of new technologies that fall outside the scope of existing regulations, and the emergence of new or previously benign aquatic nuisance species. By expanding the BLNR's adaptive management authority to encompass new information, technology, and ecological threats, the Department will be better equipped to effectively manage the aquatic resources of the State.

Mahalo for the opportunity to testify in support of this measure.

¹ See Act 49 (SLH 2021)



HB760 HD1
RELATING TO AQUATIC RESOURCES
House Committee on Judiciary & Hawaiian Affairs

March 2, 2023

2:00 PM

Room 325

The Office of Hawaiian Affairs (OHA) respectfully **COMMENTS** on **HB760 HD1**, which would grant the Department of Land & Natural Resources (DLNR) an additional emergency authority under current Section 187A-5, HRS, to combat new aquatic nuisance. **OHA supports the underlying purpose of this measure to protect and preserve Hawai'i's precious aquatic and marine resources, while being cautious of the potential harm that auxiliary mechanisms may effect upon the integrity of constitutionally protected Native Hawaiian traditional and customary practices. OHA asks the Legislature to defer the measure due to the redundancies and excessiveness of the proposal, however, should the Legislature continue to advance this measure, OHA offers the following comments to enhance the protective function of this measure with regard to Hawai'i's natural resources and Native Hawaiian identity.**

OHA is concerned with the potential for this measure to narrow the scope of existing law and asks whether the measure's proposed amendment to HRS §187A-5(b), on Page 6, lines 14-19, is even necessary. The Board of Land and Natural Resources (BLNR) should already have the authority to initiate rulemaking "to prevent or respond to new or previously benign aquatic nuisance species," or "in light of newly available technology or data." These rulemaking triggers are already assumed under the statute's existing language when it "is necessary to implement effective and adaptive management measures in response to rapidly changing resource conditions." **OHA maintains, here, that by further enumerating triggers beyond the scope of the existing law, this measure is either narrowing the scope of protections that currently exist, or is creating ambiguity in the law to the degree that it must be questioned what exactly is contained within the statement trigger, "in response to rapidly changing resources conditions," if not to respond to "previously benign aquatic nuisance species" or "newly available technology or data." Again, OHA is of the belief that the additional triggers proposed by this measure are already contained within the existing wording of the law.**

As the principal public agency in the State responsible for the performance, development, and coordination of programs and activities relating to Native Hawaiians,¹ OHA also wishes to express concern for the heavy-hand of this measure in its proposal to impose such a punitive fine without accounting for instances where the exercise of

¹ Haw. Rev. Stat. §10-3.



HB760 HD1
RELATING TO AQUATIC RESOURCES
House Committee on Judiciary & Hawaiian Affairs

constitutionally protected Native Hawaiian traditional and customary practices could intersect with proposed rules pursuant to Chapter 187A-5. OHA wishes to emphasize that the civil penalty for desecrating and destroying Native Hawaiian cultural resources is, at most, \$20,000 per day.² While OHA strongly believes that the intentional erasure of a facet of Native Hawaiian identity is an atrocious act deserving of weighted punitive justice; this Legislature has determined that the punitive threshold shall be “not less than \$500 nor more than \$20,000 for each separate violation.”³ Under this proposed mechanism, a Native Hawaiian traditional and customary practitioner, exercising their constitutionally protected rights, could be charged with a violation of this statute and face, at minimum, a \$50,000 per day civil penalty – one that must be challenged in court with the possibility of added financial burden.

In addition, Chapter 187A already establishes a system of penalties for violation of rules made pursuant to this Chapter.⁴ It is unclear whether this measure’s proposed penalty would be in addition to the general administrative penalties⁵ and general penalty⁶ of community service already established by Chapter 187A. OHA understands that this measure’s proposed punitive thrust is for the purpose of discouraging the violation of laws that are implemented to protect our natural resources and does not ask the Legislature to refrain from doing so, however, **OHA insists that the proposed penalty is excessive and asks that, should the Legislature continue with advancing this measure, as written, then the Legislature should ensure protections for Native Hawaiian traditional and customary practitioners whose practices could likely be perceived as violative of these rules by amending the paragraph on Pages 7, lines 20-21, and Page 8, lines 1-4, to include the following recommended language:**

; provided that for rules adopted pursuant to section 187A-5(b)(1)(B), a person who violates the rule shall be subject to a fine of no more than \$50,000 per day of violation for a first violation and a fine of no more than \$100,000 per day of violation for each subsequent violation. Nothing contained in this section shall diminish, alter, or amend

² Haw. Rev. Stat. §6E-11.5.

³ Id.

⁴ Haw. Rev. Stat. §187A-12.5 and §187A-13.

⁵ Haw. Rev. Stat. §187A-12.5.

⁶ Haw. Rev. Stat. §187A-13.



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any existing rights, privileges or practices of the Native Hawaiian people.”

OHA takes care to note that it has met with DLNR’s Division of Aquatic Resources (DAR) on a similar matter involving the intersection between Hawai’i’s aquatic and marine resources and Native Hawaiian traditional and customary practices, with assurances that OHA will coordinate with relevant communities of Native Hawaiian practitioners to better ensure the protection of our natural resources without disrupting the integrity of Native Hawaiian culture and identity and without eroding the constitutional rights of Native Hawaiians.⁷

OHA appreciates the opportunity to testify on this measure and urges the Legislature to **DEFER HB760 HD1**. Mahalo nui loa!

⁷ Haw. Stat. Con. Art. XII, Sec. 7 (1978).



Environmental Caucus of The Democratic Party of Hawai'i

February 28, 2023

To: The Honorable David A. Tarnas, Chair.
The Honorable Gregg Takayama, Vice Chair, and Members of the
House Committee on Judiciary and Hawaiian Affairs
House of Representatives, Hawaii State Legislature

Re: **HB 760 – Relating to Aquatic Resources**

Hearing: Thursday, March 2, 2023, 2:00 pm, Room 325 & videoconference

Position: **Support**

Aloha, Chair Tarnas, Vice Chair Takayama, and Committee Members:

The Environmental Caucus of the Democratic Party of Hawai'i has an enrolled membership of 7,500 voting residents here in Hawai'i. We support HB 760, which would substantially expand the statutory authority of the Department of Land and Natural Resources to respond quickly and effectively to sudden environmental threats to coral reefs and other areas in our near-shore waters by expanding DLNR's rule-making authority and providing other means for DLNR to protect the marine environment.

As was noted in earlier testimony on this bill by the Coordinating Group on Alien Pest Species, "A new aquatic nuisance species can emerge at any time and may require an immediate response to prevent its introduction or spread. The actions required to respond to a new aquatic nuisance species may change as new research on the species and its methods of spread are discovered. The rule-making process prescribed by chapter 91, HRS, does not allow DLNR to implement measures to protect State aquatic resources from such a new species. As noted in House Bill 760, DLNR could use the expanded adaptive management authority now to address the threat of stony coral tissue loss disease, an unprecedented coral disease that is a substantial threat to the continued existence and health of stony coral reef ecosystems"

The Environmental Caucus agrees with that testimony and the testimony of DLNR in support of this bill. On behalf of the Environmental Caucus, we urge you to PASS SB 760. We thank you very much in advance for your favorable consideration of this bill.

Alan B. Burdick and *Melodie Adjeja*, co-chairs
Environmental Caucus of the Democratic Party of Hawai'i

Burdick808@gmail.com 808-927-1500
legislativepriorities@gmail.com 808-258-8889

HB-760-HD-1

Submitted on: 3/1/2023 10:16:46 AM

Testimony for JHA on 3/2/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Steve Roy Kaiser	Individual	Oppose	Remotely Via Zoom

Comments:

Aloha

I have never been in favor of HB 760. It has always been overreaching and allows the DLNR little if any oversight. And now it wants to go further by having no limits on what it can do. And while its veiled as method to control invasive species it has added Page 6 line 18-19 that changes can be initiated by new technology or new data. New data and technologies are great. However lets look at transit studies or catch per unit effort (CPUE). Long time studies mean methods have to remain constant. New technology or data based on either could substantially change data making all pervious data obsolete and could skew down numbers while ignoring all previous data. That is just one example and I'll limit my comments to just that one. And then page 5 line 16-18 the bill states any restriction or requirement as deemed necessary. Deemded necessary by the departemnt is a very broad term that has no qualifiers. I would challenge where any such language is inserted in other bills. Could you see that applied to Liquor commision or Public Safety?

Thank you for you time and consideration

HB-760-HD-1

Submitted on: 3/1/2023 10:58:05 PM

Testimony for JHA on 3/2/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Bert Weeks	Individual	Support	Written Testimony Only

Comments:

As a marine scientist, I support this bill as it gives managers the flexibility to respond to environmental conditions in real time. The political process does not move at the speed of the environment and lengthy bureaucratic processes may prevent necessary actions to be taken in a timely matter.