

ACT 47

H.B. NO. 1022

A Bill for an Act Relating to the Taking of Natural Resources.

Be It Enacted by the Legislature of the State of Hawaii:

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

The legislature also finds that the regulatory regime includes such aspects as licensing and permitting; bag, size, gender, seasonal, and species limitations for wildlife and fisheries; gear restrictions and limits on method of harvest; recognition of traditional practices related to the use of cultural resources; prohibition on the introduction of potentially competitive, harmful, noxious, or predatory non-native species; educational and scientific study permitting; and establishment of protected areas, wildlife sanctuaries, game management areas, and limited entry areas, including freshwater reservoirs, game and fisheries management areas, and even privately owned lands subject to agreement as a state game management area. Additionally, the regulatory scheme for natural resources associated with hunting and fishing in Hawaii is extensive and pervasive and often involves the overlapping of regimes. As a result, in light of the number and nature of regulations that apply and the procedures needed to enforce such regulations, the legislature further finds that persons having voluntarily acquiesced to the regulatory environment in order to participate in natural resource extractive activities, especially for commercial uses of economically important

species, have a reduced expectation of privacy under the Fourth Amendment of the Constitution of the United States, particularly while engaged in such activities and while present in the immediate area near where the activity took place.

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

Existing Hawaii law gives the department of land and natural resources division of conservation and resources enforcement officers express statutory authority to inspect, upon demand, a required hunting license; for those persons with a hunting license, inspect a person's game bag, container, hunting coat or jacket, carrier, or vehicle that may conceal game; upon probable cause, inspect, upon demand, the contents of any bag, container, vehicle, or conveyance used to carry aquatic life; and search and seize diverse things such as "any equipment, article, instrument, aircraft, vehicle, vessel, business records, or [a] natural resource used or taken in violation of . . . title 12, or any rules adopted thereunder", but only if there is probable cause to believe that a violation of a rule or statute has occurred. The probable cause requirement makes effective enforcement unlikely, as officers are rarely able to meet this standard without having personally observed the hunter or fisher actually taking proscribed wildlife or aquatic life. For example, a fisher could have a cooler of undersized fishes, but even if at a distance the officer observed the take of an undersized fish or fishes, the officer would likely lack probable cause to inspect the contents of the cooler, and these violations would go undetected. Specialized training is necessary to identify regulated species from those that are not subject to regulation, and the difficulty of being able to discern subtle differences in length, gender, color, or other marks or measures from a distance or under less than suitable lighting conditions decreases the likelihood of a positive identification.

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

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

“§199- Inspection; exhibit upon demand; penalty. (a) Notwithstanding section 199-7, any conservation and resources enforcement officer of the

department of land and natural resources upon whom the board of land and natural resources has conferred police powers may, in the performance of the officer's official duties, stop and temporarily detain any person who the officer reasonably believes is, or recently has been, engaged in hunting or fishing. During this brief detention, the officer, upon lawful demand, may inspect any license, permit, stamp, tag, or other documentation required for hunting or the taking of aquatic resources, as well as any game or aquatic life in the person's possession, including the contents of any receptacle or container of any kind that could reasonably be used to carry the regulated game or aquatic life, and any equipment, article, or device capable of taking the game or aquatic life, while reasonably proximate to the respective hunting or fishing area, to determine whether the person is in compliance with any provision of title 12 and any rules adopted thereunder regulating hunting or aquatic life and conservation of wildlife or aquatic resources. Unless otherwise allowable under section 183D-25, upon probable cause, or incident to arrest, the officer shall not inspect the clothing upon the person who is subject to a natural resource inspection related to hunting or fishing, nor shall the officer inspect the contents of any receptacle or container that could not reasonably be used to carry game or aquatic life.

(b) Any inspection shall be conducted within a reasonable distance from the environment in which the hunting or fishing took place and shall not include vehicular inspections beyond a reasonable distance unless upon probable cause or failure to heed a demand to stop when requested to submit to an administrative inspection for title 12 resources or equipment used for the capture or take of wildlife or aquatic resources as used in hunting or fishing. Inspections shall be conducted by any person authorized by the department of land and natural resources to enforce title 12 and any rule adopted thereunder.

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

- (1) For a first violation, a fine of not more than \$1,000;
- (2) For a second violation within five years of a previous violation, a fine of not more than \$2,000; and
- (3) For a third or subsequent violation within five years of a previous violation, a fine of not more than \$3,000.

(d) For the purposes of this section:

“Fishing” means the taking of any regulated aquatic life, as defined in section 187A-1.

“Game” or “wildlife” includes any animal parts thereof.”

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

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved June 8, 2021.)

Note

1. Edited pursuant to HRS §23G-16.5.