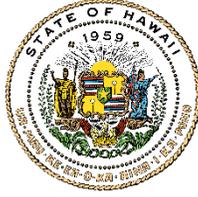


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA
DIVISION OF AQUATIC RESOURCES
1151 PUNCHBOWL STREET, ROOM 330
HONOLULU, HAWAII 96813

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

RYAN K.P. KANAKA'OLE
FIRST DEPUTY

CIARA W.K. KAHAHANE
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

Testimony of
DAWN N. S. CHANG
Chairperson

Before the House Committee on
ENERGY & ENVIRONMENTAL PROTECTION

Tuesday, February 11, 2025
10:15 AM

State Capitol, VIA VIDEOCONFERENCE, Conference Room 325

In consideration of
HOUSE BILL 1476
RELATING TO ENVIRONMENTAL ASSESSMENTS

House Bill 1476 proposes to require an environmental impact statement and consultation with the Office of Hawaiian Affairs for actions that propose any launch of a spacecraft from or reentry into state waters or the Papahānaumokuākea Marine National Monument (PMNM). **The Department of Land and Natural Resources (Department) appreciates the intent of this bill and offers the following comments.**

PMNM is a conservation area that encompasses about 582,578 square miles of the Pacific Ocean including and surrounding the Northwestern Hawaiian Islands. PMNM is currently administered by four co-trustees, the U.S. Department of Commerce through the National Oceanic and Atmospheric Administration, the U.S. Department of the Interior through the U.S. Fish and Wildlife Service, the State of Hawai'i through the Department of Land and Natural Resources, and the Office of Hawaiian Affairs. The day-to-day management of PMNM is overseen by seven agencies of the trustees including the Division of Aquatic Resources (DAR), the Division of Forestry and Wildlife, and the Office of Hawaiian Affairs. These seven co-managing agencies review and process all permits for all proposed regulated activities that take place in PMNM.

The State of Hawai'i has primary responsibility for the Northwestern Hawaiian Islands Marine Refuge and Kure Atoll Wildlife Sanctuary, both management areas fall within PMNM. Activities in these areas require Board of Land and Natural Resources approval as part of the permitting process. Activities in PMNM that take places outside of these two State of Hawai'i management areas do not require BLNR approval but are still subject to the permitting review process that requires approval by all seven co-managing agencies before a permit is issued.

Additionally, DAR provided comment on the 2024 draft environmental assessment for the expanded SpaceX landing zone that includes areas near the Main Hawaiian Islands and parts of PMNM. DAR is concerned with the potential effects of spacecraft landings on fishers, aquatic wildlife resources, and the general marine environment. Please see the public comment attached.

The Department also has concerns about this bill's potential unintended effects on the Chapter 343, HRS, environmental review process as discussed in the testimony of the Office of Planning and Sustainable Development.

Mahalo for the opportunity to provide comments on this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025**

ON THE FOLLOWING MEASURE:

H.B. NO. 1476, RELATING TO ENVIRONMENTAL ASSESSMENTS.

BEFORE THE:

HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

DATE: Tuesday, February 11, 2025 **TIME:** 10:15 a.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Alison S. Kato or Christopher J.I. Leong, Deputy Attorneys General

Chair Lowen and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purpose of this bill is to require the preparation of an environmental impact statement that includes consultation with the Office of Hawaiian Affairs for actions that propose any launch or reentry of a spacecraft into state waters or the Papahānaumokuākea Marine National Monument (PMNM). This bill seeks to accomplish this by amending section 343-5(a), Hawaii Revised Statutes (HRS), to add the intended action as a new trigger for an environmental assessment, subject to a presumption that the proposed action will have a significant effect on the environment and a requirement to proceed directly to preparation of a draft environmental impact statement that includes consultation with the Office of Hawaiian Affairs.

This bill may be subject to a potential challenge based on its title, "Relating to Environmental Assessments," because the bill requires the preparation of an environmental impact statement rather than an environmental assessment, which generally refers to a separate document in the environmental review process under chapter 343, HRS. Each bill must have one subject that is clearly expressed in its title. Pursuant to article III, section 14, of the Hawaii State Constitution, "Each law shall embrace but one subject, which shall be expressed in its title." The Hawaii Supreme Court has held that this provision is mandatory and a violation thereof would invalidate legislation. *Schwab v. Ariyoshi*, 58 Haw. 25, 31, 564 P.2d 135, 139 (1977). To avoid

this issue, some options would be to revise the substance of the bill to require preparation of an environmental assessment rather than an environmental impact statement, or to insert the substance of this bill into a new bill with an appropriate title.

Regardless of the addition of the new trigger to section 343-5(a), HRS, environmental review will not be required for applicant actions where there is no state or county discretionary approval required. Under section 343-5(e), HRS, environmental review is required for applicant actions where the action: (1) includes at least one statutory trigger in section 343-5(a), HRS, (2) requires a discretionary approval from a state or local agency; and (3) is not exempt under section 343-6, HRS. Here, it is unclear whether there is any discretionary approval that would be applicable to the "launch of a spacecraft from or reentry of a spacecraft into state waters or the Papahānaumokuākea Marine National Monument."

Additionally, while portions of Papahānaumokuākea Marine National Monument are part of the State of Hawaii, other portions of it are under federal jurisdiction. As the Legislature does not have the authority to legislate over federal lands, we recommend deleting "or the Papahānaumokuākea Marine National Monument" from page 6, lines 11-12.

As a separate technical note, the word "assessment" on page 2, line 1, should be replaced with the word "statement."

Thank you for the opportunity to provide comments.



TESTIMONY IN SUPPORT OF HOUSE BILL 1476
RELATING TO ENVIRONMENTAL REVIEW
House Committee on Energy & Environmental Protection
Hawai'i State Capitol

February 11, 2025

10:15 AM

Room 325

Aloha e Chair Lowen, Vice Chair Perruso, and Members of the Committee:

The Office of Hawaiian Affairs (OHA) respectfully submits this testimony in **SUPPORT** of HB1476. HB1476 would amend Hawai'i Revised Statutes (HRS) Chapter 343, the Hawai'i environmental Policy Act (HEPA), to include as an additional trigger for environmental review actions that include the launch or reentry of space craft into State waters or the Papahānaumokuākea Marine National Monument (PMNM).

OHA supports the intent of this bill to require HEPA review of space craft launch activities that pose a threat to Hawai'i's terrestrial and marine ecosystems. It is well known that the recent Environmental Assessment (EA) for SpaceX's proposed dramatic increase in the pace and frequency of space launches from Boca Chica Texas did not involve any local outreach or publication even though the proposed fallout area encompasses the archipelago. Further, as noted in the media, the EA disingenuously carves out PMNM waters from the impact area in an apparent blatant attempt to avoid consultation with appropriate parties (see below):¹

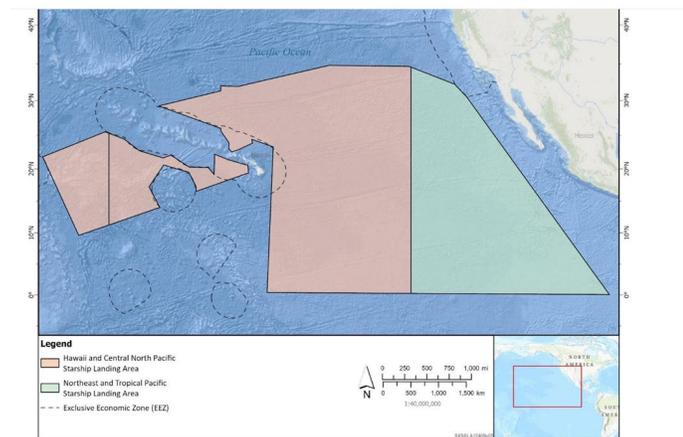


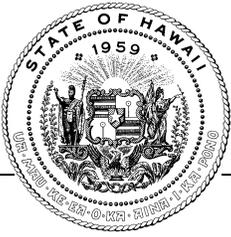
Figure 4 North Pacific Starship Landing Area (Hawaii and Central North Pacific Landing Area and Northeast and Tropical Pacific Ocean Landing Area)

¹ Federal Aviation Administration, Revised Draft Tiered Environmental Assessment for SpaceX Starship/Super Heavy Launch Vehicle Program Increased Cadence, at p. 14 (Nov. 2024).

OHA is one of four co-trustees for PMNM under the 2016 Executive Order expanding the monument to its current boundaries (the U.S. Exclusive Economic Zone).² As set forth in the 2016 Proclamation, which was the culmination of years of advocacy by Native Hawaiians and other ocean protectors, PMNM encompasses a highly pristine deep sea and open ocean ecosystem with unique biodiversity that constitutes a sacred, cultural, physical and spiritual landscape for the Native Hawaiian community. The terrestrial nearshore and marine resources encompassed in the original PMNM boundaries likewise include irreplaceable natural and cultural resources, including habitat for endangered species, and unique pre-contact archaeological sites. It is vital that the natural and cultural resources within PMNM be protected to the maximum extent feasible and HB1476 advances this goal.

Moreover, PMNM encompasses within its boundaries the Northwestern Hawaiian Islands that were ceded to the United States following the overthrow of the Hawaiian Kingdom in 1893. Traditionally, the Northwest Hawaiian Islands had unique significance and cultural uses for Native Hawaiians. OHA appreciates and extends a warm mahalo to the authors of this bill for recognizing the unique relationship and status Native Hawaiians have to the Northwest Islands, above and beyond that shared by the other monument co-trustees, making consultation with OHA particularly important.

² Presidential Proclamation 9478, Papahānaumokuākea Marine National Monument Expansion, 81 FR 60227.



**STATE OF HAWAII
OFFICE OF PLANNING
& SUSTAINABLE DEVELOPMENT**

JOSH GREEN, M.D.
GOVERNOR

MARY ALICE EVANS
DIRECTOR

235 South Beretania Street, 6th Floor, Honolulu, Hawai'i 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawai'i 96804

Telephone: (808) 587-2846
Fax: (808) 587-2824
Web: <https://planning.hawaii.gov/>

Statement of
MARY ALICE EVANS, Director

before the
HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

Tuesday, February 11, 2025, 10:15 AM
State Capitol, Conference Room 325

in consideration of
HB 1476
RELATING TO ENVIRONMENTAL ASSESSMENTS.

Chair Lowen, Vice Chair Perruso, and Members of the House Committee on Energy and Environmental Protection.

The Office of Planning and Sustainable Development (OPSD) offers the following **comments with concerns** on HB 1476, which would require an environmental impact statement and consultation with the office of Hawaiian Affairs for actions that propose any launch of a spacecraft from or reentry of a spacecraft into state waters or the Papahānaumokuākea Marine National Monument (marine monument). HB 1476 would amend HRS Chapter 343 to add the aforementioned action to the existing list of nine types of actions that trigger the environmental review process (aka HEPA).

In fact, unlike any of the other triggers, this new trigger would automatically presume such an action would have a significant impact on the environment and thus require an environmental impact statement (EIS), rather than an environmental assessment as in all other cases. Accordingly, we question if the title of this bill “relating to Environmental Assessments” is appropriate and legal for this bill that mandates an EIS by amending the statute named Environmental Impact Statements. There is nothing in the bill that speaks to environmental assessments. We defer to other authorities who can address the jurisdictional boundaries and authorities of/within the referenced state waters and marine monument.

Beyond presuming the subject action would have a significant effect on the environment, which normally would 1) necessitate the preparation of an EIS Preparation Notice (EISPN) that would be published in *The Environmental Notice* (TEN) and 2) require a public scoping meeting that would have to be held during the 30-day public comment period following publication of the EISPN in the TEN, the language in this bill would eliminate this EISPN/scoping process as the language requires the action proceed directly to the subsequent preparation of the draft EIS. This is a dramatic departure from the standard HEPA process and would remove a substantial avenue of public participation and transparency.

Additionally, in lieu of the typically extensive public scoping/consultation process offered by the publication of the EISPN, this bill mandates that only the office of Hawaiian affairs be consulted during this phase when the draft EIS is being prepared. Again, this is a dramatic departure from the standard and widely appreciated HEPA process.

Since this bill would primarily be oriented towards a private/applicant-based (e.g., SpaceX) proposal to launch or retrieve a spacecraft from/into state waters or the marine monument, an important aspect of HEPA to consider is the fact that a discretionary approval from a State or county agency is required, in addition to a Chapter 343 trigger, in order for the HEPA process to apply to an action proposed by an applicant. Without a discretionary permit approval, merely adding this proposed trigger would not result in the intended preparation of an EIS. We suggest the Legislature confirm with potential approving agencies if a discretionary approval is, in fact, required for such an action.

Further, if a discretionary approval is already required for such an action, then existing Chapter 343 triggers, such as the very common triggers of 1) Use of state ... lands or 2) Use of the conservation district are already available to ensure such proposed actions undergo HEPA review.

Thank you for the opportunity to testify on this measure.



SIERRA CLUB OF HAWAI'I

HOUSE COMMITTEES ON ENERGY & ENVIRONMENTAL PROTECTION And WATER & LAND

February 11, 2025 @ 10:15 AM HST Conference Room 325
SIERRA CLUB OF HAWAI'I COMMENTS ON HB1476:
Relating to Environmental Assessments

Aloha Chair Lowen and Vice Chair Perruso,

The following are Sierra Club concerns on HB 1476.

We concur with the intent of this bill, i.e. to protect Hawaiian waters from the potential for SpaceX to dump spaceship or payload debris or waste into Hawaiian waters, which could include the waters surrounding the Main Hawaiian Islands, the Papahānaumokuākea Marine National Monument, the Northwestern Hawaiian Coral Reef Ecosystem Reserve, the Northwestern Hawaiian Islands State Refuges, the Papahānaumokuākea UNESCO World Heritage site, the US Fish and Wildlife Service Refuges, and the Pacific Islands Heritage National Marine Monument.

We, however, advise against amending HEPA for this purpose. HEPA already covers any use of state or county lands or submerged lands. We are concerned that amendments to HEPA as proposed in HB 1476 could weaken existing environmental law. Please delete Section 10, including all of 10 (A) and(B), (lines 14-21, page 6).

Instead of amending HEPA, we recommend that you review existing regulations, including those issued by the Department of Land and Natural Resources (DLNR) and the Division of Boating and Outdoor Recreation (DOBOR), regarding dumping, littering and natural resources damage, e.g. when a vessel runs aground, to determine whether (1) the existing regulations are sufficient to prohibit the dumping of debris or waste by a spaceship or its payload and, if so, (2) whether existing regulations impose sufficiently large penalties for such dumping. If the existing regulations do not provide sufficiently large penalties for spaceship or payload debris or waste or natural resource damage, we recommend proposing amendments to the language of the relevant regulations to provide sufficient penalties.

Mahalo,

Dave Raney
Sierra Club of Hawai'i

HB-1476

Submitted on: 2/6/2025 9:07:09 AM

Testimony for EEP on 2/11/2025 10:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Patricia Cadiz	Individual	Support	Written Testimony Only

Comments:

Full support. We must protect our ocean environment!

HB-1476

Submitted on: 2/9/2025 1:32:58 PM

Testimony for EEP on 2/11/2025 10:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Jessica Chang	Individual	Oppose	Written Testimony Only

Comments:

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Aloha Chair Lowen, Vice-Chair Perruso, and members of the Committee on Energy & Environmental Protection,

Mahalo nui loa for recognizing and opposing the danger posed by SpaceX plans to dump waste in the waters surrounding Hawai'i and the Papahānaumokuākea Marine National Monument. Your vigilance regarding these threatening activities is crucial.

We, the undersigned, are writing to submit comments on two bills.

HB 1476 regarding SpaceX potentially dumping debris in the waters surrounding Hawai'i and Papahānaumokuākea Marine National Monument. The intent of this bill is well meaning but, according to HEPA experts, the proposed language would endanger existing environmental law, and a different approach is needed.

o Recommendation: Delete language amending (weakening) HEPA and use a different approach, described below. Oppose the language of this bill.

HB 658 proposes weakening of environmental law in a manner which endangers state protected areas, potentially including Papahānaumokuākea.

o Recommendation: Oppose HB 658.

In addition, we also oppose bills that propose to weaken HEPA language, including language regarding fisheries.

OVERVIEW

Regarding HB 1476 proposing to amend Hawaii Environmental Policy Act (HEPA)

We fully oppose plans by SpaceX to dump spaceship or payload debris or waste in the waters surrounding the Main Hawaiian Islands, the Papahānaumokuākea Marine National Monument, the Northwestern Hawaiian Coral Reef Ecosystem Reserve, the Northwestern Hawaiian Islands State Refuges, the Papahānaumokuākea UNESCO World Heritage site, the US Fish and Wildlife Service Refuges, and the Pacific Islands Heritage National Marine Monument.

- 1) We urge you NOT to amend HEPA, and to DELETE the language amending HEPA from HB 1476: Section 10 in its entirety, including all of 10 (A) and (B) (Lines 14 – 21, page 6). We oppose this language.**

Rationale: HEPA already covers any use of state or county lands or submerged lands (waters). By definition, this includes the use of state or county lands or waters for the dumping of spacecraft debris or waste. In fact, it is potentially substantially harmful to amend HEPA as proposed in HB 1476 to specify "spacecraft". since "use" of any sort is already covered under HEPA. Amending HEPA in this manner can create confusion and could generate dangerous future impacts, and inadvertently weaken HEPA.

- 2) We urge you, instead of amending HEPA, to examine existing regulations (routinely used by DLNR, DOBOR) regarding dumping, littering and natural resource damage (for example, when a ship runs aground) to determine whether
 - (a) the existing regulations are sufficient to prohibit the dumping of debris or waste by a spaceship or its payload and, if so,
 - (b) whether existing regulations impose sufficiently large penalties for such dumping.
- 3) If existing regulations on dumping, littering, or natural resource damage are not sufficiently broad as to include "spaceship" or "payload" debris or waste, we recommend proposing an amendment to the language of those regulations specific to dumping, littering or natural resource damage to ensure that the relevant regulations duly prohibit "debris or waste from a spaceship or its payload" from entering state lands or waters (submerged lands);
- 4) If the existing regulations do not provide sufficiently large penalties for spaceship or payload debris or waste or natural resource damage, we recommend proposing an amendment to the language of the relevant regulations to provide sufficient penalties.

In summary: please do not amend, at all, any HEPA language, as proposed in HB 1476.

- 5) **In addition**, we urge you to pass a resolution expressing deep concern about, and opposition to, SpaceX plans to dump debris or dangerous waste from spaceships or their payloads into waters surrounding Hawai'i or surrounding protected areas, including the Papahānaumokuākea Marine National Monument. It is important to make it clear that the state legislature strongly opposes any such dumping.

Regarding HB 658 RELATING TO ENVIRONMENTAL REVIEW

"Clarifies the scope of an action subject to environmental review"

We have deep concerns and urge you to oppose - HB 658: Relating to Environmental Review which proposes to severely undermine state environmental law.

This bill proposes to drastically weaken the definition of an "activity" that would trigger environmental assessment requirements - including "commercial boating

and recreational activities” - by exempting from the definition of activity any “ongoing or recurring activities that have been lawfully permitted and are governed by applicable administrative rules or management plans within state-managed areas, including ocean recreation management areas, marine life conservation districts, and game management areas.”

Rationale for voting against this bill:

The entire point of HEPA is to allow the state or relevant agency to use the latest science to assess whether an activity should be permitted. Under HEPA, when a permit runs out, the activity ceases. Just because an activity has been approved in the past, does not mean it should be automatically renewed, which is what this bill seems to propose.

A new permit or authorization is needed to do the activity again – it is a new action, requiring a new environmental review that considers the most up to date information, considers the impacts of the previous activity, and any cumulative impacts or relevant changes in the environment, in order to assess whether the activity should be allowed. This process requires transparency, public input as well as input from external independent experts who must be allowed to weigh in. The environmental review determines whether or not a new permit can be granted. That is the foundation of HEPA.

For example, in state waters of Papahānaumokuākea, permits are given on an annual basis only. This is precisely to allow the state to protect this fragile and endangered ecosystem and to evaluate, on an annual basis, using the latest science, considering cumulative impacts and informed by independent expert and public input, whether or not to grant a new permit for activities in state waters.

This bill represents a dangerous attempt to exempt all activities, including commercial and recreational activities, from assessment and public comment simply because an activity is “repeated” and has been allowed in the past.

We are all too familiar with activities which were once thought to have minimal impact, but later turned out to be highly damaging or to have highly damaging cumulative impacts. Climate change comes to mind, among other things.

For these reasons, we oppose and urge you to oppose passage of this dangerous bill and any other bills recommending the weakening of HEPA language, including language regarding fisheries.

Mahalo nui loa!

Isaac “Paka” Harp, fisherman

Former Chair of the first Native and Indigenous Rights Advisory Panel to the Western Pacific Regional Fishery Management Council

Co-founder, Northwestern Hawaiian Islands (NWHI) hui

Former Vice-Chair of the NWHI Coral Reef Ecosystem Reserve Advisory Council

Former Chair of the NWHI Reserve Enforcement Working Group

Founding member of the Papahānaumokuākea Cultural Working Group
Former member of the Hawaiian Islands Humpback Whale Sanctuary Advisory Council

Dave Raney

Northwestern Hawaiian Islands hui co-founder
Sierra Club National Marine Committee Member
Former NWHI Coral Reef Ecosystem Reserve Advisory Council Secretary
Former U.S. Coral Reef Task Force Member
Former Chair, Sierra Club Coral Reef Subcommittee

Stephanie Fried, Ph.D

Northwestern Hawaiian Islands hui co-founder
Former NWHI Coral Reef Ecosystem Reserve Advisory Council Alternate
Senior Scientist, Environmental Defense Fund, 1995-2009

Cha Smith

Northwestern Hawaiian Islands hui co-founder
KAHEA: The Hawaiian-Environmental Alliance, Founder

Lynette Cruz

Malama Makua

Jim Albertini

Malu 'Aina, President

Richard Rucker

Waimea

The Keawekane-Stafford 'Ohana

Kainoa Stafford
C. Pi'ikea Keawekane-Stafford
Kainoaokana'iaupuni Keawekane-Stafford
Kili'apuokuakini Keawekane-Stafford

Claudia Quintanilla

James Kastner

Lynda Williams, Physicist
Hilo

Jennifer Waipa

Kapi'olani Spencer
Moku O Keawe

HB-1476

Submitted on: 2/10/2025 2:28:36 PM

Testimony for EEP on 2/11/2025 10:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Andrew Grandinetti	Individual	Support	Written Testimony Only

Comments:

My name is Andrew Grandinetti, and I strongly support HB1476. Hawaii's land and ocean environments are not only important to our health and well being, they are also integral to the economic well being of the state. Any potential theats to the sensitive balance of our ecosystems must be carefully evaluated so I fully support any bill that can help protect our enfironment.