

**TESTIMONY**  
**SB68**  
**LATE**

# LATE TESTIMONY

Senator Clayton Hee, Chair, Committee on Water, Land, Agriculture, and Hawaiian Affairs, and  
Senator Carol Fukunaga, Chair, Committee on Economic Development and Technology

Wednesday, February 18, 2009  
2:45 p.m., Conference Room 229

Testimony in **Support** of SB 68

Aloha Chairs Hee and Fukunaga and members of the committees:

My name is Cynthia K.L. Rezentes and I am a concerned resident of the Wai`anae Coast. I **support** SB 68 extending the regulatory authority of the Department of Land and Natural Resources (DLNR) to any commercial use of state waters and marine resources, including those operations that originate from private marinas, and that is currently not already governed under any other chapter of the Hawaii Revised Statutes.

It is the responsibility of the DLNR to manage all of our natural resources under State control and it is imperative that our ocean resources be managed accordingly.

Along the Leeward Coast of O`ahu there is currently occurring a tremendous pressure on our natural resources by the visitor industry to take advantage of the opportunities to present unique experiences to our visitors. Unfortunately, if allowed to continue uncontrolled by the State, there could be the unfortunate consequences of continued deterioration of our local fishing industry.

As reported by our local fishermen, without some management of the numbers and actions of visitor industry businesses, the affects on the local fishing economy will cause a continuing deterioration and decrease of traditional and historical resources in our near-shore waters.

The current number of commercial businesses attempting to access specific areas of resources along the Leeward Coast, has continued to increase over the years. And, with the advent of the opening of Ocean Pointe Marina with over 700 slips, the numbers of boats wishing to access the Leeward Coast, what has been traditionally referred to as the fishing bread basket of O`ahu, will be at even higher risk from uncontrolled commercial activities.

This could be viewed as tantamount to an abdication of responsibility to management of the ocean resources by the State.

Therefore, I encourage you to support the passage of SB 68, which is intended to provide DLNR with the authority to manage our ocean resources from commercial activities, no matter where that activity is initiated.

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Legislative Testimony

**SB 68, RELATING TO COMMERCIAL ACTIVITIES ON OCEAN WATERS**  
Senate Committees on Water, Land, Agriculture, and Hawaiian  
Affairs; and  
Economic Development and Technology

February 18, 2009

2:45 p.m.

Room: 229

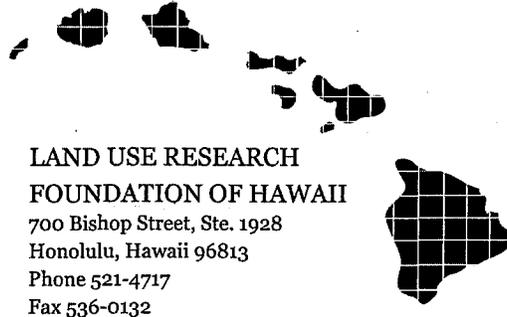
The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB 68, which would authorize the Department of Land and Natural Resources to regulate commercial enterprises that operate out of private marinas and utilize state waters or marine resources.

OHA understands that it is not the intent of this Act to provide for additional regulation of existing regulated commercial enterprises, but to address currently unregulated activities only. Commercial operations departing from private marinas that have an effect on state resources need to have oversight and state regulation.

A loophole exists in which a business that otherwise would be required to have a permit can now conduct its commercial activity in state waters without a permit simply by leaving from a private marina. This bill seeks to effectively close this gap in the law in an even keeled manner by treating like uses in a similar manner, no matter the point of origin.

This also makes sense because the marine resources that may be impacted by these types of commercial activities need the protection and oversight of the state regardless of whether they depart from a private marina. This bill merely adds the now-unchecked commercial actions into the list of the Board of Land and Natural Resources' (BLNR's) primary responsibilities. This bill also extends the administration of ocean recreation and coastal area programs to the BLNR in a cost effective way.

Therefore, OHA urges the Committee to PASS SB 68. Thank you for the opportunity to testify.



February 18, 2009

**Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs  
Committee on Economic Development and Technology  
Hearing Date: February 18, 2009, at 2:45 PM in CR 229**

**Testimony in Opposition to SB 68  
Relating to Commercial Activities on Ocean Waters.  
(Adds regulations by DLNR over private marinas)**

Honorable Chairs Clayton Hee and Carol Fukunaga, Vice-Chairs Jill Tokuda and Rosalyn Baker and WTL-EDT Committee Members:

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawai'i's significant natural and cultural resources and public health and safety.

LURF respectfully **opposes SB 68**, which expands the regulation by the department of land and natural resources (DLNR) over state waters and marine resources, including those operations that use private marinas.

**SB 68.** The purpose of this bill is to authorize DLNR to regulate commercial enterprises that operate out of private marinas and use state waters or marine resources. However, the bill indicates that it is not the intent of this bill to provide for additional regulation of existing regulated commercial enterprises, but to address currently unregulated activities only.

SB 68 proposes to amend HRS §200-3 by adding additional responsibility to the Board of Land and Natural Resources for:

- (5) Regulating the commercial use of [~~boating facilities;~~] state waters and marine resources, including those operations that use private marinas;

SB 68 also amends HRS §200-4(a), which would allow the chairperson of the Board of Land and Natural Resources to adopt rules necessary, among other rules already statutorily required, to do the following:

(9) To regulate commercial activities in state waters including those operations originating from private marinas; provided that no new permit shall be required for those commercial activities regulated by any other chapter. For the purposes of this paragraph, "commercial activity" shall have the same meaning as in section 188-40.6."

HRS §188-40.6 defines commercial activity as "to engage in any action or to attempt to engage in any action for compensation in any form. The action or actions may include, but are not limited to, providing, or attempting to provide, guide services, charters, tours, and transportation to and from the location or locations for which such services are provided."

**LURF's Position.** LURF is writing **in opposition** to this bill based on the following:

- The language of the bill presents an overbroad and vague regulation over those who operate and own private marinas. This bill increases the reach of DLNR's regulatory power over government and private marinas, taking away power from private landowners. The broad definition of commercial activity would include all type of guided tours, chartered boats, tours and all transportation to and from the location or locations where the service is provided. This bill is overbroad and vague as to what DLNR would be able to regulate.
- Although the bill indicates that this is not an attempt to provide for additional regulation of existing regulated commercial enterprises, the effect would be just that, meaning increased regulation upon businesses and private individuals who are trying to make a living or providing unique water-related activities to our visiting tourists. Additionally, local citizens who operate small vessels for fishing operations or boat tours cannot afford more regulations, since business is already in a downturn.
- It not only requires more regulation upon private landowners, but also burdens a heavily tasked Department of Land and Natural Resources with duties that it would have difficulty enforcing, due to budget constraints and resource availability.
- There is already a statute in place that allows the DLNR to regulate such activities under HRS §200-4(5), which allows the chairperson to adopt rules necessary "to regulate and control recreational and commercial use of small boat harbors, launching ramps, and other boating facilities owned or controlled by the State and the ocean waters and navigable streams of the State."

Based on the above, we respectfully request that SB 68 **be held** in the Senate Committees on Water, Land, Agriculture and Hawaiian Affairs and Economic Development and Technology.

Thank you for the opportunity to express our **opposition** to SB 68.

# Bryan Y.Y. Ho

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HONORABLE CAROL FUKUNAGA  
Chair  
Economic Development & Technology  
11<sup>th</sup> Senatorial District  
Room 216, Hawaii State Capitol  
415 So. Beretania Street  
Honolulu, Hawaii 96813

VIA FACSIMILE

HONORABLE CLAYTON HEE  
Chair  
Water, Land, Agriculture & Hawaiian Affairs  
23<sup>rd</sup> Senatorial District  
Room 228, Hawaii State Capitol  
415 So. Beretania Street  
Honolulu, Hawaii 96813

VIA FACSIMILE

Re: SB 68  
Committees: ETD and WLA&HA  
Hearing Date: 2/18/09  
Time: 2:45 p.m.  
Room 229

Senators Fukunaga & Hee:

I submit this testimony in opposition to SB 68.

SB 68 purports to authorize the Department of Land & Natural Resources ("DLNR") to regulate the commercial use of state waters and marine resources, including companies that operate out of private marinas. This measure, as well as, its companion SB 90, is superfluous because the DLNR is already authorized and responsible to, "regulate and control recreational and commercial use of . . . the ocean waters and navigable streams of the State", under Hawaii Revised Statute §200-4(5). Moreover,

HONORABLE CAROL FUKUNAGA  
HONORABLE CLAYTON HEE  
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because the current law gives DLNR broad jurisdiction to regulate and control the commercial use of all ocean waters of the State, the commercial activities of vessels that operate out of private marinas are already within the scope of the DLNR's authority.

If it is the intent of this Legislature to have DLNR restrict the number of commercial operators that use the ocean waters and marine resources on an area by area basis, a mechanism to accomplish that goal is already in place. As noted in DLNR Chair, Laura H. Thielen's, written testimony in opposition to SB 90, the DLNR has established ten Ocean Recreation Management Areas ("ORMA") around the State for purposes of protecting marine resources, as well as, reducing conflicts between recreational and commercial users. DLNR has exclusive jurisdiction through the Administrative Rule making process to regulate the type and volume of commercial activity that can occur in any one ORMA. Commercial permits for parasailing, jetski, water sledding and high speed boating are specific examples of activities where DLNR, after careful study and public comment, decided that concerns regarding user conflict, public safety, protection of marine resources and the ecosystem mandated that the number of commercial permits issued be limited on an area by area basis. There is no reason why this process cannot be applied to other types of commercial activities.

If it is the intent of the Legislature to have DLNR exercise control over the operations of private marinas and dictate the number of commercial tenants they can accommodate, such a measure would be unenforceable and illegal.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Bryan Y. Ho

cc: Hon. Rosalyn H. Baker (Vice Chair EDT)  
Hon. Jill N. Tokuda (Vice Chair WLA&HA)  
Hon. David Y. Ige  
Hon. Sam Slom  
Hon. Robert Bunda  
Hon. Russell S. Kokubun  
Hon. Dwight Y. Takamine  
Hon. Fred Hemmings

**From:** Noa Napoleon [freeoceanaxs@yahoo.com]  
**Sent:** Wednesday, February 18, 2009 10:15 AM  
**To:** WTLTestimony  
**Subject:** SB 68 Amended (late) testimony

**LATE TESTIMONY**

Testimony of

Noa Napoleon  
1750 Kalakaua Ave #103  
Hon, HI 96815

In Support of SB 68

Re: Commercial Activities on Ocean Waters

Hearing Date: Feb 18, 2009  
Time: 2:45 pm  
Room 229

Senate Committees

Senate Committee's on Water, Land, Agriculture, and Hawaiian affairs/ Economic Development and taxation.

Aloha Chair's Hee, Fukunaga, and committee members,

As you know the DLNR proposed Recreational Renaissance bills (SB 949 and HB 1766), focus primarily on Harbor commercial leases and facility upgrades. The Renaissance proposal does not address the longstanding need for better overall management, which is a serious omission in my view. What's needed is more efficient resource protection, not large infusions of cash though I understand the need to upgrade harbor infrastructure. I am especially concerned with the portions of this bill that deal with regulation of commercial activities on our public beaches, and do strongly support any effort to ensure that commercial obstructions such as the storage of commercial rental equipment on Waikiki beach and other beaches, are carefully scrutinized and properly regulated. No matter what happens with the Recreational Renaissance proposal (which I oppose) the Boating division is still going to need to hire new staff, in addition to having to set out rules that make sense to everyone. This bill (SB 68) was vetoed by the Governor last year so I think it will be vetoed again but I would just make the point that the measure attempts to address old issues at DLNR.

Most if not all of Hawaii's public beaches are being inundated with roving commercial businesses that are not adequately regulated by the state. It is doubtful whether Boating Administrators have the professional wherewithal to manage all that the new harbor upgrades will demand given the mandate that the Renaissance legislation would bring. I have reason to believe that the promises

DLNR has made to the public about protecting public beaches are shallow promises at best. Loop holes in the rules are the result of years of neglect. What DLNR uses for rules are what have been called ..."past practice" theories on who and what gets regulated. The confusion over how to regulate beach commercialism is causing increased tension between commercial users and those of the general public. I would just suggest that this bill (SB 68), be amended to add that DOBOR (division of Boating and Ocean Recreation) be required to create an additional position within its division called "ORMA Officer of Licensing and Permitting." By creating this new position within DOBOR it would free boating officials to focus on boating and harbor issues without distraction, in addition to allowing for more direct control of beach related commercialism. I am not against commercialism of this nature but do believe that a better and more uniform regulatory system would ensure that the division does its part to protect against harmful social and environmental effects that unregulated commercialism is causing. Finally, in light of the Ceded lands debate, I do feel lawmakers should be aware of the difficulties in devising any sort of commercial permitting system that uses public (recreational) harbors as a base of operation. Moreover any such system should not jeopardize or negate in any way the ceded land issue currently under review by the United States Supreme Court. All DLNR Commercial lease must be short term and must not be construed as negations or justifications for any state claims on submerged lands. DOBOR staff has submitted a rule write process currently under review by the Attorney General which could go against the Spirit of this and other bills I've seen moving through the legislature on this subject. Legislators should therefore request to review this rule write as they consider SB 68, that way you might include and or require this piece of legislation to go with the Renaissance package, this way we are assured that enforcement and management issues are also addressed. We need to devise enforcement strategies that above all preserves the character of small boat harbors. Mahalo,

Noa Napoleon

**LATE TESTIMONY**

**LATE TESTIMONY**

Testimony of

Noa Napoleon  
1750 Kalakaua Ave #103  
Hon, HI 96815

In Support of SB 68

**Re: Commercial Activities on Ocean Waters**

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Time: 2:45 pm  
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Senate Committee's on Water, Land, Agriculture, and Hawaiian affairs/  
Economic Development and taxation.

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LIVE TESTIMONY

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Noa Napoleon

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**(END)**