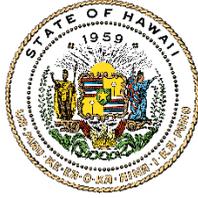


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

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**

**Tuesday, February 28, 2023
2:00 P.M.
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 1134, HOUSE DRAFT 1
RELATING TO KANEOHE BAY**

House Bill 1134, House Draft 1 proposes to prohibit commercial ocean activity in Kāneʻohe Bay waters without a permit from the Department of Land and Natural Resources (Department); and prohibit any person from advertising any commercial ocean use activity in Kāneʻohe Bay waters for which the person does not have a permit, lease, or license. **The Department offers the following comments.**

All persons and companies wishing to engage in commercial operations in any state ocean waters are already required to obtain a commercial use permit from the Department's Division of Boating and Ocean Recreation (DOBOR). Penalties already exist for persons and companies who violate DOBOR commercial operation restrictions. DOBOR has brought civil enforcement actions against violators and has been successful in some instances, resulting in the Board of Land and Natural Resources imposing thousands of dollars in administrative fines and prohibiting violators from obtaining any type of DOBOR permits for a particular period of time.

Unpermitted commercial activity is a pervasive problem statewide and is not only restricted to Kāneʻohe Bay. The most common enforcement difficulty is proving that an operator was compensated for their services. DOBOR has mirrored its definition of "commercial activity" after the definition implemented by the City and County of Honolulu, which DOBOR believes is the strongest definition for effective enforcement. However, both DOBOR and the Department's Division of Conservation and Resources Enforcement (DOCARE) encounter difficulties when customers of illegal commercial operators refuse to admit that they paid for the operator's services. The illegal commercial operators can then claim that the individuals are friends and/or family who did not pay for any services. Without being able to prove that the illegal commercial operator received compensation, an enforcement action would have a low likelihood of being successful.

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

To effectively monitor for illegal commercial activity statewide, DOBOR would need more staffing or the ability to re-allocate existing staff to ocean recreation activity monitoring. Due to staffing shortages and heavy workloads, DOBOR Harbor Agents are mostly stuck in the office handling clerical tasks, such as reviewing paperwork, accepting payments, and preparing letters. If DOBOR is able to execute its 2019 Strategic Plan, these Harbor Agents would be able to allocate more of their time to monitoring ocean recreation activities, responding more quickly to reports of illegal activity, and educating the public regarding ocean regulations. The DOCARE Marine Enforcement Unit that was established in the 2022 State Budget will also help with enforcement by ensuring that DOCARE can have a more consistent presence on beaches and ocean waters.

For the reasons above, the Department believes this measure is not necessary because it is duplicative of existing administrative rule restrictions. The Department instead recommends implementation of DOBOR's strategic plan, which would bring the essential programmatic changes for better monitoring, education, and enforcement.

Mahalo for the opportunity to comment on this measure.



Ka Moku'aina 'O Hawai'i Aha Moku O Pae'Aina

State of Hawai'i Aha Moku

P. O. Box 621

Honolulu, Hawaii 96809

Testimony of the Hawaii State Aha Moku
Before the House Committee on Judiciary and Hawaiian Affairs

2/28/2023

2:00 P.M.

Conference Room 325 & Videoconference

IN SUPPORT of House Bill 1134 HD 1

Relating to Kaneohe Bay

House Bill 1134 HD 1 prohibits ocean use activity in Kaneohe Bay waters without a permit. It prohibits any person from advertising any commercial ocean use activity in Kaneohe Bay waters for which the person does not have a permit, lease, or license.

The Hawaii State Aha Moku (Aha Moku) strongly supports this measure.

For decades, the residents of Ko'olaupoko Moku have been trying to protect Kaneohe Bay, including Ahu O Laka from desecration and exploitation of its natural and cultural heritage. Ahu O Laka, more commonly known as the "sandbar" is a wahi pana, a cultural sacred place with deep ties between the lineal and cultural descendants of Ko'olaupoko.

Kaneohe Bay is held in such respectful esteem by the people that the Kaneohe Bay Master Plan was developed pursuant to Act 208, Session Laws of Hawaii, 1990 by the users of Kaneohe. An existing rule for Kaneohe Bay is that on Sundays and federal holidays, all commercial ocean use activities shall be prohibited. The DLNR Division of Conservation and Resources Enforcement (DOCARE) does its best to enforce these rules, but it is difficult when all payments and business is done on social media. Continuous illegal commercial activities do not recognize or practice resource sustainability.

The concerns of the Public Trust including the generational and lineal descendants of the kanaka maoli of Ko'olaupoko are carefully outlined in Section 3. Section 200-39 HRS of HB 1134 HD 1 as well as the solutions that will finally protect our waters and our culture now and for future generations.

Respectfully,

Frances "Rocky" Kaluhiwa, Aha Moku Representative of Ko'olaupoko, Po'o O Kakuhihewa

Hawaii State Aha Moku

808-286-7955

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Ko`olau Foundation

P. O. Box 4749
Kane`ohe, HI 96744

February 28, 2023

To: Rep. David A. Tarnas, Chair
Rep. Gregg Takayama, Vice Chair
And Members, Committee on Judiciary and Hawaiian Affairs

From: Aaron D. Mahi, President
Mahealani Cypher, Board Member

Re: Support for H.B. 1134, H.D.1, Relating to Kane`ohe Bay

Aloha Chair Tarnas, Vice Chair Takayama and Committee Members:

The Ko`olau Foundation strongly supports H.B. 1134, H.D. 1, which would prohibit commercial activities in Kane`ohe Bay waters without a permit as well as advertising for such regulated activity.

Our organization is dedicated to the perpetuation of cultural practices and sustainability of the natural resources of our islands. We are especially concerned about the over-commercialization of Kane`ohe Bay.

This has been a growing problem for this important Windward O`ahu coastal area, which has experienced significant growth in commercial activity over the past decade. Generally, a limited number of legal commercial tour boats are permitted in this bay, which conforms to the Kane`ohe Bay Master Plan.

Unfortunately, there are many unlicensed illegal tour companies operating in or using Kane`ohe Bay and adversely affecting marine resources and the waters of the bay.

We urge your support for H.B.1134, H.D.1, and join us in working together to malama the kai of Kane`ohe.

Mahalo for considering our mana`o.



KO'OLAUPOKO HAWAIIAN CIVIC CLUB

February 8, 2023

To: Linda Ichiyama, chair House Committee on Water and Land

From: Nancy Davlantes, Government Relations Committee

Subject: SUPPORT for HB1134 – Prohibiting commercial ocean use activity in Kaneohe Bay waters without a permit.

Aloha Chair Ichiyama and Committee Members,

Ko'olaupoko Hawaiian Civic Club writes in **STRONG SUPPORT** for the passage of HB1134, which would prohibit commercial ocean use activity in Kaneohe Bay without a permit. This year, our club voted on legislative priorities to mālama i ke kai, one of which was this issue, specifically concern regarding growing commercial activity on Kane' ohe Bay.

The Bay and Ahu o Laka are sacred wahi pana to native Hawaiians of Koolaupoko but have been sorely tested by unpermitted tour operators promoting and advertising on social media without regard for rules, regulations, and cultural awareness. This has been made worse because the state entities responsible for protecting these resources do not work on weekends or holidays—the times when Heeia Boat Harbor is busiest and when vehicles park illegally at the harbor and along both sides of Kamehameha Highway.

All this activity is contrary to what was envisioned when the Kaneohe Bay master plan was established in 1990 and sought to create a framework for managing the Bay's natural resources while accommodating approved uses. It is now past time to update the law regarding restricted activities in and on the Bay and to provide enforcement mechanisms for various entities to issue subpoenas and take custody of any personal property related to any violation of the rules.

For too long certain members of the public have been pushing the envelope to see what would be tolerated, and for too long those in charge of protecting this sacred place have been without the resources they need to do their job.

For these reasons, we **STRONGLY URGE** you to pass this bill out of committee.

The Ko'olaupoko Hawaiian Civic Club was established in 1937 and is one of the largest in the Association of Hawaiian Civic Clubs nationwide. Ko'olaupoko HCC is a not-for-profit community organization dedicated to preserving and perpetuating the history, heritage and culture of Native Hawaiians and providing leadership and scholarships. Its membership is open to people of Hawaiian ancestry and those who are "Hawaiian at heart."

P. O. Box 664 * Kaneohe, HI 96744
Ph. (808) 235-8111 / 226-4195 * www.koolaupoko-hcc.org

HB-1134-HD-1

Submitted on: 2/24/2023 4:44:58 PM

Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dana Keawe	Individual	Support	Written Testimony Only

Comments:

support

HB-1134-HD-1

Submitted on: 2/27/2023 4:23:10 PM

Testimony for JHA on 2/28/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Joe Pickard	Individual	Support	Written Testimony Only

Comments:

Aloha members of the Committee. My name is Joe Pckard and I am writing to support HB1134. I'm a regular user of Kaneohe Bay and was involved in the drafting the Kaneohe Bay Master Plan. For over two years members of the Windward Community, Neighborhood Boards, Hawaii Institute of Marine Biology, Fishing, Commercial and Recreational community met and came up with a Plan to best manage the Bay for Hawaii's future generations. A consensus was reached and the limits to commercial recreation was then enacted into Law.

However, since the opening up of tourism after the COVID epidemic there have been a number of unpermitted tour operators conducting tours on the Bay which exceeds the limits outlined in the Kaneohe Bay Master Plan. Some operate from Heeia Pier while others operate from private residences, on State property along the Highways, or the Kaneohe Bay Yacht Club. These unpermitted operators do not pay State fees, General Excise Tax, nor have insurance to cover the State of Hawaii against accidents.

They are also operating on Sundays and Holidays, and anchoring at Ahu O Laka, which is expressly prohibited under the Plan. Additionally, they have been bullying recreational boaters and subsistence fishermen who use the Bay.

I strongly support HB 1134, in the hope it will help stop these unpermitted tours.

Mahalo,

Joe Pickard

House Committee on Judiciary & Hawaiian Affairs
Tuesday, February 28, 2003
2:00 p.m.
Conference Room 325
HB 1134 HD1

Aloha Chair Tarnas, Vice Chair Takayama, and Members of the House Committee on Judiciary & Hawaiian Affairs, Mahalo for the opportunity to testify in support of HB 1134 HD1.

I am testifying as an individual with deep ancestral ties to Kaneohe Bay. I come from a family of fishermen who have lived in Ko'olaupoko, specifically in Kahalu'u, for generations. I grew up fishing in Kaneohe Bay with my dad, learning the ways of my Kupuna. The bay and Ahu a Laka are special to me and my Ohana. That is why it's so frustrating to see all the non-permitted commercial activity in the bay continuing without any recourse or enforcement by DLNR. One needs only to drive past the He'eia Kea Boat Harbor on weekends to see how the tourism industry has transformed this part of our Island for the worse. Tourist cars can often be found parked on the unimproved shoulder adjacent to Kamehameha Highway from He'eia State Park to the old Hawaiian Electric property, taking parking away from fishermen and their boat trailers and creating a safety hazard for drivers. The bay is often filled with boat and kayak traffic heading out to Ahu a Laka, which is being marketed as a "tourist destination." Honu-seeking tourists and their hired hosts are plentiful in the bay. DLNR's lack of sufficient enforcement has allowed non-permitted businesses to thrive as they continue to market Ahu a Laka as a tourist destination. Paid trips for parties on Ahu a Laka can often be found on social media. DLNR's status quo approach to addressing concerns in Kaneohe Bay is not working.

In 2006, The Legislature passed SB 2004 CD1, which would have established the Ahu a Laka State Monument and require DLNR to adopt rules to protect and maintain this Wahi Pana, but the bill was vetoed by Governor Lingle. In subsequent years, other bills and resolutions were introduced seeking to protect Ahu a Laka. The most recent being SCR 205 HD1, which the Senate and House adopted last year. That resolution requested DOBOR, in consultation with the Kaneohe Bay Regional Council, to study commercial activity in Kaneohe Bay and to develop a plan to reduce the non-permitted commercial activity, and to report to the Legislature prior to the convening of the 2023 legislative session. This is DOBOR's [Report](#). And it's very similar to DLNR's testimony on this bill. I understand the challenges that DLNR faces but they should seek assistance from the Legislature. If DOBOR and DOCARE need more staff for enforcement, DLNR should request it in their budget. The status quo is not working and I fear inaction by the Legislature and/or DLNR will continue to make matters worse.

The Senate companion to this bill, SB 1265 SD1, is probably not going to be heard in the Senate (CPN has already issued their hearing notice for joint CPN/WAM bills and SB 1265 SD 1 was not on the hearing notice). This bill may be the only vehicle to move the discussion on protecting Kaneohe Bay and Ahu a Laka forward. It is my Kuleana to speak up for my Kupuna and my Ohana on this issue, so I am compelled to present this testimony.

Mahalo for the opportunity to testify.

L K Young III