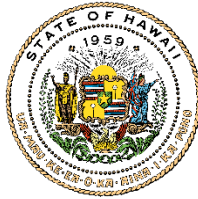


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

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

P.O. BOX 621
HONOLULU, HAWAII 96809

**Testimony of
DAWN N. S. CHANG
Chairperson**

**Before the Senate Committees on
JUDICIARY
and
WAYS AND MEANS**

**Tuesday, April 4, 2023
10:00 A.M.
State Capitol, Conference Room 211**

**In consideration of
HOUSE BILL 1090, HOUSE DRAFT 1, SENATE DRAFT 1
RELATING TO OCEAN RECREATION COMMERCIAL PERMITS**

House Bill 1090, House Draft 1, Senate Draft 1 proposes to specify the methods by which the Department of Land and Natural Resources (Department) can issue new ocean recreation commercial permits and renew existing ocean recreation commercial permits; and specify that for renewal of existing permits in ocean recreation management areas and facilities where a permit limit is implemented, the ability to renew a commercial permit will be based on seniority until the limit is reached. **The Department strongly supports this measure.**

The Department is currently in the process of addressing the rampant commercial marine activity taking place in the State near-shore waters. This will require limiting the number of commercial use permits for high use areas. In cases where commercial operating area use permits are being limited for a particular area, the Department, informed by community stakeholders, believes the fairest way to issue those permits is to businesses that have been operating with a valid permit the longest. Once the permits are issued, the Department would like to issue any new operating permits by public auction.

When the Department proposes to implement a permit limit through administrative rules for an area that previously did not have any type of permit limit, the Department must issue permits to all those who apply and qualify for permits until the limit is finalized. Due to the rulemaking process taking months and even years, this means many people can obtain permits while the Department works to implement the limit. This "run on permits" is the reason that many areas have permit counts that exceed limits, and this measure will help the Department to bring the permit counts down to the appropriate limits established in rule.

Mahalo for the opportunity to provide testimony in strong support of this measure.

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



COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

COMMITTEE ON WAYS AND MEANS

Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

NOTICE OF DECISION MAKING

DATE: Tuesday, April 4, 2023
TIME: 10:00 AM
PLACE: Conference Room 211 & Videoconference
State Capitol
415 South Beretania Street
TIMESLOT: WAM

**TESTIMONY OF THE OCEAN TOURISM COALITION IN SUPPORT OF
HB1090,HD1,SD1**

Chairs Rhoads and Dela Cruz, Vice Chairs Gabbard and Keith-Agaran and Members of the JDC/WAM Committee:

The Ocean Tourism Coalition (OTC) represents over 300 ocean tour operators throughout the state. HB1090 (the "Bill") aims to address an issue in various Ocean Recreation Management Areas in the state, where DLNR-DOBOR has issued more commercial permits than allowed by the administrative rules.

OTC worked with DLNR-DOBOR to resolve this issue through a seniority-based system, which will issue permits to operators who have been operating the longest and have likely invested the most in the area. DLNR-DOBOR has stated that the only alternative to this solution would be to randomly select names. Therefore, a seniority-based solution seems more equitable.

We thank DLNR-DOBOR for reaching out to us to find a solution to this difficult problem and humbly ask that the Bill be passed in its current form.

Sincerely,

James E. Coon, President OTC

HB-1090-SD-1

Submitted on: 4/3/2023 9:25:06 AM

Testimony for JDC on 4/4/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Holly Crane	Testifying for Anelakai Adventures	Oppose	Written Testimony Only

Comments:

HB-1090, HD1, SD 1 Relating to Ocean Recreation Commercial Permits

Testimony for the Senate Committees on Judiciary (JUD) and Ways and Means (WAM)

Notice of Hearing: Tuesday, April 4, 2023, 10am

Anelakai Adventures of Keauhou offers the following testimony in **OPPOSITION** to the proposed HB-1090, HD1, SD1 Relating to Ocean Recreation Commercial Permits.

While we understand, respect and support the need to limit commercial uses in our shared oceans for the safety of our natural and cultural resources as well as of our community members and guests, determining the issuance of those permits solely based on seniority does not adequately address either of the above concerns. Also, by removing the previously proposed Ocean Recreation Commercial Permits Working Group from the bill, the voices of community, small businesses, nonprofits and cultural entities are effectively silenced in seeming deference to big businesses who can pay to be heard.

In reviewing the last set of testimony received by the Senate Committee on Water and Land (WAL), the Department of Land and Natural Resources was in support of the HB 1090, HD1 if the Working Group was deleted. DLNR said it already had conferred with stakeholders, and based on the testimony of the Ocean Tourism Coalition (of which our business and other, smaller entities are not members), they were consulted and also supported removing the portion of the bill that included a working group. Tellingly, including Anelakai Adventures, two other entities who also are stakeholders in the use of Hawai'i's constitutionally protected natural resources, only supported the Working Group, which -- in the words of Hui Maka'ainana O Makana of Ha'ena, Kaua'i would allow for "consultation of a community and users of ORMA having a voice in the permitting process." That opportunity for consultation and voice has been removed from HB 1090, HD 1, SD 1. Please reinstate the Working Group and defer the implementation of any amendments to HRS 200-10 until after more stakeholders than large-scale ocean businesses have been part of the process and conversation.

Please note that we have had a good working relationship with the Division of Boating and Ocean Recreation in consultation on the draft Manta Ray Viewing rules, and we appreciate their

consistent willingness to meet with us and consider our unique position. We want to be sure that is the case for other small, local entities as well, and we want to be part of the process of assuring that sustainable, culturally respectful resource users have a voice in the management of our shared resources.

For example, while the proposed legislation provides a list of means of record-keeping, it is not clear whether a company that may have been granted permits in the past, but was very recently purchased and is now run by new owners will be granted seniority despite the new owners potentially having no or little experience in our oceans or communities. Dates on booking records do not preclude other, perhaps more relevant and recent changes in vessels, management and ownership.

For example, in the case of the Manta Ray Viewing rules that are currently under consideration for West Hawai'i, there is no clarity about additional, relevant concerns. Because this legislation would apply to those draft rules, this bill should be further amended.

Our small, Keauhou business with non-motorized paddling canoes has a long enough history of clear records that may allow for us to have our permits renewed under this proposed system. Nonetheless, we also have concerns about the intent of this legislation being more supportive for large-scale commercial tourism than for community and Native Hawaiian users, nonprofits and small, sustainable, non-invasive and culturally respectful businesses that do not add to the issues ostensibly being addressed by this legislation. We urge this committee to consider prioritizing small, local entities like ours:

- We will never motorize our double-hulled paddling canoes.
- We limit the number of our guests to 6 at a time, versus the 60 per vessel allowed by some applicable draft rules.
- Our staff all are licensed lifeguards, and we provide opportunities for certification for other vessel operators in Keauhou.
- We do not anchor and do not want to have to moor our wa'a but prefer to stay alert to ocean and weather conditions, as well as to the conditions of our guests and the guests of other commercial entities that may need assistance.
- We keep our guests safely seated in the canoe hulls or floating securely between our hulls, with all their appendages within the same, shallow water column as our smooth hulls to assure no touching of the fragile skin of the Manta Rays.
- We welcome people of all abilities, whether they can or want to swim and inclusive of all physical and mental challenges.

Our non-intrusive wa'a business model does not cause the same threats, bring the same number of people to a viewing site or limit the accessibility of viewers to our shared environment. We and other similar entities that also provide Hawaiian ocean cultural experiences should not be

excluded to the benefit of large-scale, motorized vessels that may have new owners and or new management.

While we appreciate that the Ocean Tourism Coalition got to work with DLNR-DOBOR on this legislation, we note that we and many other small ocean businesses, community users and Native Hawaiian practitioners are not represented by OTC. We would therefore prefer that the Working Group proposed in HD-1 be tasked to include those two agencies, businesses like ours and community groups like Hui Maka‘ainana O Makana from Ha‘ena, Kaua‘i before any legislation like this is passed. Please defer the portions of this bill that would amend Section 200-10, HRS until after such a Working Group is created, allowed to confer and report out.

Mahalo for the opportunity to provide testimony.