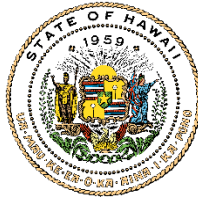


JOSH GREEN, M.D.  
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | 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 Senate Committees on  
WATER AND LAND  
and  
AGRICULTURE AND ENVIRONMENT

Monday, January 29, 2023  
1:00 PM  
State Capitol, Conference Room 229

In consideration of  
SENATE BILL 2205  
RELATING TO COMMERCIAL USE PERMITS

Senate Bill 2205 proposes to prohibit the Department of Land and Natural Resources (Department) from renewing a commercial use permit (CUP) if renewal would cause certain environmental impacts. **The Department offers comments on this measure and recommends supporting the administration's bill package regarding ocean commercial use permits and ocean recreation.**

The Department recognizes that overcrowding at nearshore ocean waters can lead to increased user conflict and safety risks. However, without conducting a capacity study or other objective type of review, the Department's decision to deny renewal of a CUP for the reason proposed on page 2, lines 4-6, of this bill without supporting evidence risks challenge by the permittee as subjective and arbitrary. Because each of the State's nearshore water areas is unique, it would not be feasible for the Department to conduct or commission capacity studies for every area. The Department has also encountered difficulty in some areas in even finding a party willing and able to conduct a capacity study.

Moreover, before any permittee would be denied a CUP renewal for harassing wildlife or causing harm to the environment, as proposed on page 2, lines 7-10, of this bill, the Department would need to ensure that the permittee is convicted of a criminal offense by a court or otherwise found to be in violation of administrative rules by the Board of Land and Natural Resources. Again, without the objective support from a report or study, a permittee may challenge a finding that their activity is disrupting the natural ecology of an area.

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

RYAN K.P. KANAKA'OLE  
FIRST DEPUTY

DEAN D. UYENO  
ACTING 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

The Department also believes that renewal of CUPs is better regulated by administrative rules because the rulemaking process in Section 91-3, Hawaii Revised Statutes, ensures a *Ka Pa'akai* analysis for any impacts on Native Hawaiian traditional and customary practices, as well as ensuring that the community as a whole provides comment, rather than select special interest groups.

The Department has prepared a comprehensive bill package to address environmental impacts, user conflicts, and user safety in our state's ocean waters and recommends that the Legislature support this package. These bills are Senate Bills 3163, 3164, 3165, and 3166.

Mahalo for the opportunity to testify on this measure.

Council Chair  
Alice L. Lee

Vice-Chair  
Yuki Lei K. Sugimura

Presiding Officer Pro Tempore  
Tasha Kama

Councilmembers  
Tom Cook  
Gabe Johnson  
Tamara Paltin  
Keani N.W. Rawlins-Fernandez  
Shane M. Sinenci  
Nohelani U'u-Hodgins



Director of Council Services  
David M. Raatz, Jr., Esq.

Deputy Director of Council Services  
Richelle K. Kawasaki, Esq.

**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.MauiCounty.us](http://www.MauiCounty.us)

January 26, 2024

TO: The Honorable Lorraine R. Inouye, Chair, and  
Members of the Senate Committee on Water and Land  
The Honorable Mike Gabbard, Chair, and  
Members of the Senate Committee on Agriculture and Environment

FROM: Alice L. Lee  
Council Chair 

SUBJECT: **HEARING OF JANUARY 29, 2024; TESTIMONY IN SUPPORT OF SB2205,  
RELATING TO COMMERCIAL USE PERMITS**

Thank you for the opportunity to testify in **support** of this important measure. Its purpose is to prohibit the Department of Land and Natural Resources from issuing commercial ocean use permit renewals that would cause nearshore water overcrowding or potential threats to the environment.

This measure is in the Maui County Legislative Package; therefore, I offer this testimony on the Council's behalf.

The Maui County Council **supports** this measure for the following reasons:

1. All operators of commercial vessels or water sports equipment must obtain a commercial use permit from the DLNR's Division of Ocean and Boating Recreation. The issuance and renewal of permits have led to a proliferation of commercial activity in harbors and nearshore waters, creating environmental risks.
2. Allowing the DLNR to deny permit renewals to protect the constitutional right to a clean and healthful environment, as proposed by this measure, will help to lessen the activity's impacts.

For the foregoing reasons, the Maui County Council **supports** this measure.

**SB-2205**

Submitted on: 1/28/2024 4:37:17 PM

Testimony for WTL on 1/29/2024 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Nick Croft	Testifying for Explore Kauai Scuba, LLC	Oppose	In Person

Comments:

Aloha

I stand before you today to voice my strong opposition to SB2205. While the intention of this amendment may seem great at first, I firmly believe that it fails to find a real solution and poses a huge risk to communities and their jobs.

SB2205 would create a situation where many jobs would be lost statewide. The whole purpose of SB2205 is to help protect the environment. However, by possibly removing these businesses and their employees, it will do the opposite. I am a huge advocate for the environment and protecting it. We spend our lives in and around the ocean, cleaning, and protecting it. If issues in our environment start to rise, we are usually the first to catch it.

I run a small scuba shop that takes out small groups of no more than 6 people per day. The entire 4-5 hour trip is dedicated to teaching about our Hawaiian reefs, how to help protect them, and how they can carry this concept back home to their communities, close and afar. We conduct voluntary reef clean-ups regularly and have removed tons of ghost nets and other debris from the ocean.

However, this proposed amendment takes a misguided approach by solely focusing on restricting commercial use permits without addressing a real solution when/if a problem were to occur. The proposed amendment could have detrimental economic consequences for businesses and communities dependent on marine activities for their livelihoods throughout the entire state.

I urge all of you to join in opposing SB2205. While I share the goal of promoting a clean and healthful environment for all, I cannot support this proposed amendment to the state boating law policy.

Thank You.

**SB-2205**

Submitted on: 1/28/2024 6:43:46 PM

Testimony for WTL on 1/29/2024 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jessie croft	Testifying for Explore Kauai scuba	Oppose	In Person

Comments:

Thank you chair and members of the committee for giving me the opportunity to testify before you today. I oppose bill sb2205. My name is Jessie Croft. My husband and I have a commercial ramp permit out of Kikiaola small boat harbor on the west side of Kaua'i. We run a scuba diving tour operation that takes up to 6 people per charter.

Similar to last years house bill 1090, this bill on paper seems well intentioned and good for the environment.

What doesn't pop out to you when you read this proposed bill is how many human lives and businesses this bill will potentially destroy.

I want to quickly summarize the intent of this bill. The department of dlnc shall not renew a commercial use permit if there is near shore water overcrowding, the activity has caused harm to the environment, the activity has harassed wildlife, the activity has disrupted the natural ecology, or the activity poses a threat to the environment.

It sounds great! We all hate crowded beaches and of course no one wants wildlife to be harassed or the environment to be threatened.

The phrase "shall not renew a commercial permit"

Sounds like not a big deal. The reality of not renewing a commercial permit is you will end an entire business. A business that the dlnc allowed us to start when we were issued a commercial permit.

Personally, my husband and I started this business from the ground up. We don't come from money so we had to take out many business loans (100s of thousands of dollars worth of business loans)that we are still working hard to pay off. The idea of our commercial permit not being renewed causes me great distress. Last year while we were trying to get house bill 1090 vetoed the stress felt unbearable. It felt like we were under attack. And it feels like that all over again.

I know for a fact that many other businesses who are at risk of loosing their permits also built their businesses from the ground up. Some of these businesses are extremely successful and provide careers for many people. Provide an income for many families.

Shutting down boating businesses will have a butterfly effect too. Boating businesses hire catering services to feed tourists on tours, mechanics to fix motors, fiber glass workers to fix dinged hulls, accountants to do their book keeping, cpas to file their taxes, social media marketers to get their businesses name out there, t shirt printing services, that's just to name a few.

There are other ways to go about environmental impacts than just shutting down businesses. This is why I oppose bill 2205. Thank you again for taking the time to listen to my testimony. I also want to thank governor josh green for vetoing bill hb1090 last year. This bill and other bills proposed this year aim to do the same thing that hb1090 aimed to do. Please stop these absurd bills before they destroy any lives. Thank you



THE SENATE  
KA 'AHA KENEKOA

THE THIRTY-SECOND LEGISLATURE  
REGULAR SESSION OF 2024

COMMITTEE ON AGRICULTURE AND ENVIRONMENT

Senator Mike Gabbard, Chair  
Senator Herbert M. "Tim" Richards, III, Vice Chair

COMMITTEE ON WATER AND LAND

Senator Lorraine R. Inouye, Chair  
Senator Brandon J.C. Elefante, Vice Chair

NOTICE OF HEARING

DATE: Monday, January 29, 2024  
TIME: 1:00 PM  
PLACE: Conference Room 229 & Videoconference  
State Capitol  
415 South Beretania Street  
TIMESLOT: WTL

**TESTIMONY OF THE OCEAN TOURISM COALITION IN STRONG OPPOSITION TO SB2205.**

Ocean Tourism Coalition (OTC) represents hundreds of tour operators and charter boat businesses statewide. I am writing to express our concerns and strong opposition to SB2205 (the "Bill"). While we acknowledge the importance of protecting our environment and wildlife, the proposed rule raises serious concerns.

First, the criteria in the Bill that would allow DLNR to terminate a commercial permit, such as "harm to the environment," "disrupted the natural ecology," and "poses a threat to the environment" are highly subjective and lack clear definitions. Terminating a commercial permit, and thus taking away the livelihoods of the permittee and their employees, should not be done without clear criteria and understanding. Almost everything poses a threat to the environment when viewed in the most skeptical light. Sharks pose a threat to every surfer in the water, but would we be justified in culling all the sharks in Hawai'i?

Second, denying permit renewals without a thorough and fair evaluation of each case will have severe economic consequences on businesses that rely on commercial use permits. It is crucial to strike a balance between environmental protection and supporting responsible economic activities. Administrative rules can be created to deal with specific problems in specific areas. However, giving DLNR blanket authority to terminate any commercial permit based on vague criteria will undoubtedly lead to economic ruin for many local businesses.



Thirdly, the Bill raises concerns about due process rights of permit holders. It is imperative to provide permit holders with an opportunity to present their case, address concerns, and participate in a fair and transparent decision-making process. Courts have already ruled that commercial permits cannot be taken away without due process, and this Bill raises serious concerns that such rights will be respected.

I urge the committee to not pass the Bill and engage in a collaborative dialogue with stakeholders to develop a more balanced and effective approach that upholds environmental conservation while taking into account the diverse needs of businesses and permit holders.

Thank you for time and consideration on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Denver S. Coon", with a long horizontal flourish extending to the right.

Denver S. Coon  
President  
OTC

Aloha, My name is Nathaniel Fisher, born and raised on the island of Kaua'i and owner of Na Pali Experience.

I have concerns about bill HB1874 and companion bill SB2205 because of the overly harsh tactics presented as the only solution.

If you seek to be fair, you need to consider how things got to where they are.

Government legally issued the permits, permit holders then invested their lives and livelihoods into these operations, and now the same government wants to take their permits (businesses) away for in many cases, no fault of their own?

When you think about it that way, how is this even up for discussion? To me it sounds criminal and the very threat of it in my opinion is borderline harassment.

If an area is overcrowded due to a change in circumstance, or due to mismanagement and overissuance of permits via Government, then the only solution is for the Government to own their mistake and buy the operations at fair market value just as they would in the case of land via eminent domain. No other solution would be fair, period; I've thought about this long and hard.

I support safety, I support and share the same environmental concerns, and I support not overcrowding precious natural areas, but I do not support stripping people of their livelihoods against their will and without compensation, to no fault of their own. No one should support that, regardless of their personal involvement in the industry or not. I would hope that we all aim to treat people as humanely and fairly as possible.

In the event of overcrowding, safety, and or environmental concerns, please instead seek reasonable and mindful solutions; believe me there are many. There could be allotted time slots to overcrowded areas, more marine life enforcement with stricter penalties to solve marine life concerns, cleaner engine technology requirements for environmental concerns, etc. Point is there are many solutions to the various potential problems without decimated livelihoods.

Consider using a scalpel instead of an axe as these permit holders are not criminals and should not be treated as such. In most cases they are hard working, honest, caring members of the community that have created many jobs and generated a great deal of tax revenue. Please don't forget that small businesses are the backbone of a healthy functioning economy and they should be treated fairly and respectfully.

To be clear, if a permittee is in violation of a law or rule, that is an entirely different story and not reissuing their permit should be strongly considered.

This bill may have good intentions, but not reissuing existing permits to law-abiding responsible permit holders without first attempting simpler solutions is not pono.

Mahalo for your time,  
Nathaniel Fisher

**SB-2205**

Submitted on: 1/27/2024 11:48:12 AM

Testimony for WTL on 1/29/2024 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Sunny Savage	Individual	Support	Written Testimony Only

Comments:

In support

**SB-2205**

Submitted on: 1/27/2024 1:48:54 PM

Testimony for WTL on 1/29/2024 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
LIBRADO COBIAN	Individual	Comments	In Person

Comments:

I just wanted to ask on behalf of constituents and friends who are Surf Instructors, if this would affect them and on what basis are applicants selected for CUP . It seems that the application selective process for Surf Instructors to obtain CUP is not very clear. The requirements are known but how and who they pick isn't something that applicants can look up or read for information on the selection process by the Department. Li Cobian

Council Chair  
Alice L. Lee

Vice-Chair  
Yuki Lei K. Sugimura

Presiding Officer Pro Tempore  
Tasha Kama

Councilmembers  
Tom Cook  
Gabe Johnson  
Tamara Paltin  
Keani N.W. Rawlins-Fernandez  
Shane M. Sinenci  
Nohelani U'u-Hodgins



Director of Council Services  
David M. Raatz, Jr., Esq.

Deputy Director of Council Services  
Richelle K. Kawasaki, Esq.

## COUNTY COUNCIL

COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.MauiCounty.us](http://www.MauiCounty.us)

January 26, 2024

TO: Honorable Chair Mike Gabbard, Vice-Chair Herbert M. "Tim" Richards,  
and members of the Committee on Agriculture and Environment

Honorable Chair Lorraine R. Inouye, Vice-Chair Brandon J.C. Elefante,  
and members of the Committee on Water and Land

FROM: Tamara Paltin  
Maui County Councilmember

DATE: January 26, 2024

SUBJECT: **SUPPORT OF SB 2205, RELATING TO COMMERCIAL USE PERMITS**

Thank you for the opportunity to testify on this important measure. The purpose of this measure is to encourage the Department of Land and Natural Resources to exercise its discretion in issuing and renewing commercial ocean use permits to lessen the impacts of commercial-use ocean vessels and activities.

I **SUPPORT** this measure for the following reasons:

1. There is an over-commercialization of our harbors and nearshore waters. DLNR has cited that it does not have the authority to deny the renewal or issuance of a new permit if the operator meets the minimum qualifications, regardless of overcrowding or harm to the natural environment.
2. Unless DLNR is empowered to exercise its discretionary authority, even an operator that has met minimum requirements but proven itself to be irresponsible or disrespectful, such as Noelani Yacht Charters that grounded their vessel at Honolua Bay last year, would likely be issued a permit renewal, despite community opposition. We have seen this happen before in West Maui.

Respectfully Submitted,

A handwritten signature in black ink that reads "Tamara A. M. Paltin".

TAMARA PALTIN  
Maui County Councilmember

**SB-2205**

Submitted on: 1/28/2024 12:17:04 PM

Testimony for WTL on 1/29/2024 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Klayton Kubo	Individual	Oppose	Remotely Via Zoom

Comments:

Oppose SB2205 I'll put this forward as for Kikiaola Small Boat Harbor. There a CIP Funds allocated for an additional boat ramp. As for environmental impacts. Where is the Water Quality Studies. If someone is claiming there is impacts? Next will they be coming after Hunters, Fishers, Hikers, & Backpackers about environmental impacts? Can't we just be respectful to the environment and each other and just Co-exist

**SB-2205**

Submitted on: 1/28/2024 7:09:11 PM

Testimony for WTL on 1/29/2024 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Tadashi Muratake	Individual	Oppose	In Person

Comments:

Aloha, my name is Tadashi Muratake and I am writing in opposition to SB2205. I believe that this bill does not take into account the severity of the ramifications if the state were to randomly revoke or refuse to re issue permits. If there are actual concerns about overcrowding, potential danger to the environment, and people as this bill suggests, then I believe working together with the boat companies, DLNR, and DOBAR is the best plan of action.

Thank you for your time

Tadashi Muratake

**SB-2205**

Submitted on: 1/28/2024 8:25:29 PM

Testimony for WTL on 1/29/2024 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Carly Powell	Individual	Oppose	In Person

Comments:

Hello, My name is Carly Powell.

I want to thank the chair and members of this committee for allowing me the time to testify before you today. I oppose bill sb2205.

I am and Captain and crew with the company Blue Ocean Adventures Tours, operating out of Kikialoa Harbor on the west side of Kauai.

We run small zodiac tours with 14 passengers along the Napali Coast.

Last years house bill 1090 surprised us all. I had just acquired my captains license after working on the coast for five years.

Im going to be honest, I didn't grow up on the water. I grew up on a small farm in the mainland. My goal in life was not to become a boat captain. Growing up I did not know it was even an option. With my time on Kauai I worked hard through the years as crew- falling more and more in love with the ocean and this industry. I've learned more than I ever thought possible about wildlife, the ocean and history of Kauai. As I accumulated my sea time as crew it soon came time to invest in my future as a captain. Like every other caption I saved my money and studied so hard to pass my test. It is so good to succeed at something you care so deeply for. Having this job allows me to not only learn about marine life for myself but educate the guest we have on every day. It allows me to share the knowledge I've learned to help people understand better about respecting and taking care of the island and the wildlife it has on and around the island.

However if this bill passes I, and so many others, will no longer will be able to grow, educate and prosper in this industry. This is the story for so many of the people I work with and families that have built their lives around this.

Its frightening to think that this bill could potentially not allow our permits to renew. Taking everything that we as individuals and as a company have worked so hard to maintain.



There is a lot that goes into this industry - mechanics, caterers, product suppliers, and office workers that will also be effected if this bill is passed.

This bill sb 2205 focuses on the issues of overcrowding, harm to the environment, and threat to the natural wildlife. Those are very all important topics but I believe there are a lot of other steps we can work together on as a strong community that doesn't require shutting down countless businesses.

This is why I oppose bill SB 2205. Thank you again for taking the time to listen to my testimony.