

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 Senate Committee on
WATER AND LAND

Monday, February 13, 2023
12:30 PM

State Capitol, Conference Room 229 & Videoconference

In consideration of
SENATE BILL 772
RELATING TO MARINE LIFE CONSERVATION DISTRICTS

Senate Bill 772 proposes to: 1) require the Department of Land and Natural Resources (Department) to establish and conduct the Marine Life Conservation District (MLCD) Carrying Capacity Program; 2) require the Department to submit reports to the Legislature; and 3) appropriate funds. **The Department supports this bill, provided that its passage does not replace or adversely impact priorities indicated in the Executive Budget request, and offers some suggested amendments.**

The Department's Division of Aquatic Resources is leading the Holomua Marine Initiative to improve marine management practices across the state to ensure healthy ecosystems and abundant resources that allow the people of Hawai'i to enjoy coastal waters, support local livelihoods, and feed our families. One of the four pillars of Holomua is monitoring to measure current conditions and track progress following implementation of new management approaches and to use data to identify areas where management actions need to be further adapted.

Recent events such as the extreme flooding in Hā'ena, Kaua'i and the COVID-19 pandemic have provided unique glimpses into how nearshore marine resources respond to reduced human use. It is becoming increasingly evident that activities long considered "non-extractive" can have significant impacts on nearshore ecosystems. It is critical that we better understand these impacts and use thresholds so we can prevent precious and unique areas like the State's MLCDs from being "loved to death."

There are currently ten designated MLCDs statewide:

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

LAURA H. E. KAAKUA
DEPUTY DIRECTOR - LAND

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

- Hanauma Bay MLCD, O‘ahu
- Pūpūkea MLCD, O‘ahu
- Waikīkī MLCD, O‘ahu
- Kealakekua Bay MLCD, Hawai‘i
- Lapakahi MLCD, Hawai‘i
- Old Kona Airport MLCD, Hawai‘i
- Waialea Bay MLCD, Hawai‘i
- Honolua – Mokolē‘ia MCLD, Maui
- Molokini Shoal MLCD, Maui
- Mānele – Hulopo‘e MLCD, Lāna‘i

A carrying capacity study has recently been conducted for Hanauma Bay, and a study is currently being developed for Pūpūkea. For the remaining eight MLCDs, the Department estimates that a well-designed carrying capacity study program would cost around \$300,000 per MLCD to conduct. The Department would not be able to effectively conduct carrying capacity studies at all seven MLCDs simultaneously due to limited staff and contractor capacity. Establishing such a program requires a long-term commitment of resources. The best course of action is to build a team, form a plan, set priorities, and conduct one carrying capacity study per year on a continuous cycle. These studies have a maximum shelf life of 10 years as conditions change, so updates need to be done regularly.

Another concern is that it may be difficult to monitor and document the effectiveness of mandatory kapu or fees or other restrictions at specific MLCDs without having the legal authority or practical means to implement those measures to test them. The Department currently lacks the legal authority to implement mandatory closures of high-traffic areas in MLCDs for the purpose of conducting a study. Also, most MLCDs have multiple access points by land and sea, making it infeasible to collect an entrance fee.

To address the concerns noted above, the Department suggests amending SECTIONs 2 and 3 of the bill as follows (proposed changes highlighted in gray):

SECTION 2. (a) The department of land and natural resources shall establish and conduct the marine life conservation district carrying capacity program to:

- (1) Assess the carrying capacity of state-designated marine life conservation districts;
- (2) Assess the impact of commercial use on state-designated marine life conservation districts, with a focus on how many commercial use permits should be issued;
- (3) Monitor, document, and assess the effectiveness of:
 - (A) Mandatory or voluntary kapu, or closures, of [high-traffic] ecologically or culturally sensitive areas in state-designated marine life conservation districts;

- (B) ~~[Voluntary kapu, or closures, of high-traffic areas]~~ Mandatory or voluntary restrictions on certain activities in state-designated marine life conservation districts; and
 - (C) Other restrictions on access to areas in state-designated marine life conservation districts, including the imposition of fees; and
- (4) Propose long-term management options to reduce the impact of humans on the health and abundance of marine life in the sensitive areas of state-designated marine life conservation districts.

(b) In establishing and conducting the marine life conservation district carrying capacity program, the department of land and natural resources shall consult with the counties; University of Hawaii, including the Hawaii institute of marine biology; commercial operators; and nonprofit community organizations in the State.

(c) The department of land and natural resources shall amend its administrative rules, as appropriate and in accordance with chapter 91, Hawaii Revised Statutes, to effectuate the results of the marine life conservation district carrying capacity program.

(d) The department of land and natural resources shall submit a report of its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular sessions of 2024 and 2025.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2023-2024 and the same sum or so much thereof as may be necessary for fiscal year 2024-2025 for the department of land and natural resources to establish and conduct the marine life conservation district carrying capacity program pursuant to this Act.

The sums appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

Mahalo for the opportunity to provide testimony in support of this measure, with amendments.



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 Senate Committee on Water and Land

Monday, February 13, 2023

12:30 PM

Conference Room 229 & Videoconference

IN SUPPORT of Senate Bill 772

Relating to Marine Conservation Districts

Senate Bill 772 requires the Department of Land and Natural Resources (DLNR) to establish and conduct the Marine Conservation District Carrying Capacity Program. It requires the Department of Land and Natural Resources to submit reports to the legislature and appropriate funds.

The Hawaii State Aha Moku (Aha Moku) supports this measure with comments.

Authorized by Chapter 190, Hawaii Revised Statutes, marine life conservation districts (MLCDs) are established by the DLNR to conserve and replenish the State's marine resources. There are currently ten existing MLCDs in the state with three on O'ahu and Maui and four on Hawaii Island. The key to a MLCD is in the word "conservation" meant to conserve.

The original conservationists in Hawaii are the indigenous host culture – the native Hawaiians who practiced strict conservation through the *konohiki* system because their survival depended on it. Through their *Kapu* systems, they were able to sustain and protect the marine resources in their own *ahupua'a*. This system of protecting their marine resources was passed down through the generations and is still practiced today.

However, the MLCD has an unfortunate effect to it that is detrimental to the native Hawaiian traditional practices because they mandate no take of any marine resource. That means that from 1967, when the first MLCD was established in Hanauma Bay on O'ahu, all native Hawaiians who traditionally fished and gathered in any MLCD lost those traditional rights.

Although this is an unintended result of an MLCD, it must be brought to the attention of the Legislature and to DLNR as outside of the native Hawaiian people, no attention has been paid to this loss of traditional cultural practices.

However, we support this measure and ask that DLNR, as it establishes the Carrying Capacity Program, that they consider the impact to Native Hawaiian *lawaiia*.

Respectfully,

Leimana DaMate, Luna Alaka'i/Executive Director

Hawaii State Aha Moku

808-640-1214, Leimana.k.damate@hawaii.gov

*Pae'Aina: Moku O Keawe, Moku O Piilani, Moku O Kanaloa, Nana'i Kaula, Moloka'i Pule O'o, Moku O Kakuhihewa,
Manokalanipo, Ka'Aina O Kawelonakala*



ROAR



**SB 772
MLCDs**

RESCUE OF ANIMAL RIGHTS

to
the Senate
Committees
WTL

Aloha Chair, Vice Chair & the WTL Committee,

The Hawaii State
Legislature

ROAR testifies to in strong support for SB 772.

“Hawaii hosts approximately seven million visitors each year who spend more than US \$11 billion in the state, and in the last 20 years tourism has increased over 65%. More than 80% of Hawaii’s visitors engage in recreation activities in the state’s coastal and marine areas with the majority of these individuals participating in snorkeling or diving. Other popular coastal recreation activities include ocean kayaking, swimming, sunbathing, beach walking, and surfing. Beaches and reefs are also important resources for local residents. For example, approximately 30% of households in Hawaii have at least one person who fishes for recreation.”[1]

from
Zhizi Xiong
(Angela
Melody
Young)
Creator

The goal of MLCDs is to create conservation strategies for the marine ecosystems. What kind of strategies of MLCDs improved marine ecosystems in Hawaii? These solutions include reservation system, differential parking fees, 25\$ entry fee for nonresidents older than 13 yrs old, mandatory education for visitors and other

restrictions. The purpose of this act is to require DLNR to conduct MLCD programs in the various marine life conservation districts. DLNR will report to the legislature about its observations.[1]



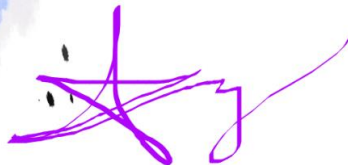
ROAR

In a study called "Recreation carrying capacity and management at Pupukea Marine Life Conservation District on Oahu, Hawaii." The Hawaii Division of Aquatic Resources & Department of Land and Natural Resources, worked with Oregon State University to assess 3 sites: Waimea Bay, Three Tables and Sharks Cove. Demographics & activities differed amongst the sites. The results found that the strategy to "improve education and awareness of users" was most acceptable if the amount of damage to reefs was substantial. "Restricting the number of people allowed in the area" was also a good management strategy. [1]

There were other observations such as a lack of available parking, presence of lifeguards and availability & condition of bathrooms & showers that could be improved with management attention. At each site, people were most satisfied with the cleanliness of the ocean water.

To make sure that our marine ecosystems are well maintained and not exploited by commercial activities, it is vital to implement management strategies after conducting the marine life conservation district carrying capacity programs at various sites.
Thank you.

Blessings,

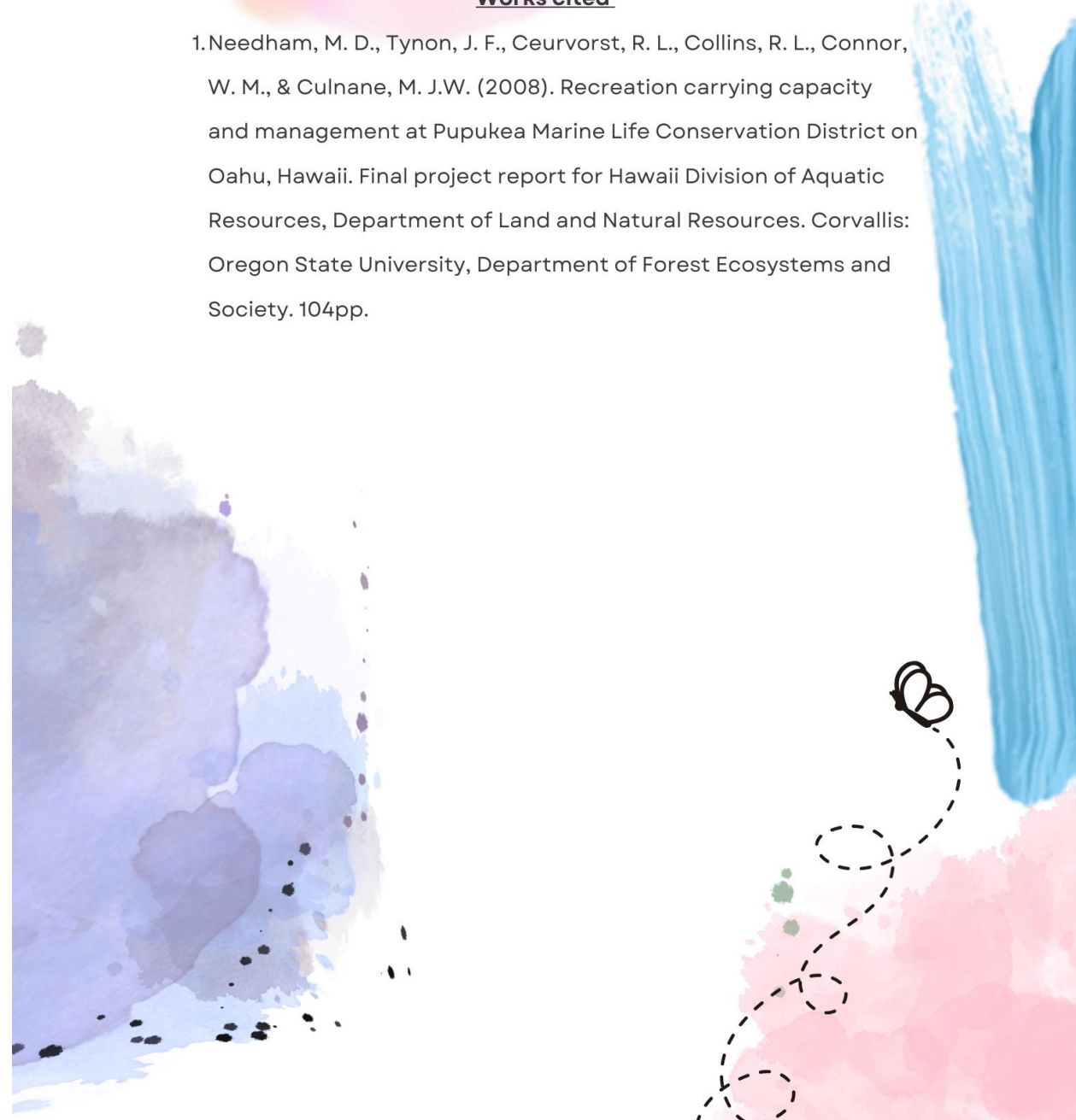


Angela Melody Young
Founder of ROAR



ROAR

Works cited

1. Needham, M. D., Tynon, J. F., Ceurvorst, R. L., Collins, R. L., Connor, W. M., & Culnane, M. J.W. (2008). Recreation carrying capacity and management at Pupukea Marine Life Conservation District on Oahu, Hawaii. Final project report for Hawaii Division of Aquatic Resources, Department of Land and Natural Resources. Corvallis: Oregon State University, Department of Forest Ecosystems and Society. 104pp.
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COMMITTEE ON WATER AND LAND

Senator Lorraine R. Inouye, Chair

Senator Brandon J.C. Elefante, Vice Chair

NOTICE OF HEARING

DATE: Monday, February 13, 2023
TIME: 12:30 PM
PLACE: Conference Room 229 & Videoconference
State Capitol
415 South Beretania Street

TESTIMONY OF OCEAN TOURISM COALITION IN OPPOSITION TO SB772

The Ocean Tourism Coalition (OTC) represents over 300 ocean tour operators statewide. OTC is writing in opposition to SB772 as it is written. OTC humbly requests that ocean tour operators be consulted by DLNR when conducting the carrying capacity program.

Ocean tour operators play a vital role in preserving the health and beauty of our reefs and should be consulted when creating conducting the carrying capacity program. These operators have a deep understanding of the delicate ecosystem and the impact that human activity can have on it.

By consulting with ocean tour operators, decision makers can ensure that any restrictions put in place are practical and feasible for the industry to implement. The operators can provide valuable insight into the potential economic and operational impacts of any potential restrictions and offer alternative solutions that may better achieve the desired conservation outcomes while minimizing the burden on the industry.

Furthermore, ocean tour operators often have established relationships with local communities and can help to educate their customers about the importance of responsible ocean use and the impact of human activity on the marine environment. This can help to create a culture of conservation and support for the restrictions, ensuring their long-term success.

In conclusion, involving ocean tour operators will provide the expertise of industry professionals with the goals of conservation. This will lead to practical and effective solutions that benefit both the MLCs and the ocean tour industry.

OTC requests the following language change to Section 4(b) of SB772:

(b) In establishing and conducting the marine life conservation district carrying capacity program, the department of land and natural resources shall consult with the counties; University of Hawaii, including the Hawaii institute of marine biology; **commercial boat tour operators**; and nonprofit community organizations in the State.

Sincerely,

Denver S. Coon

Director

OTC

SB-772

Submitted on: 2/13/2023 7:23:36 AM

Testimony for WTL on 2/13/2023 12:30:00 PM



Submitted By	Organization	Testifier Position	Testify
Zachary LaPrade	Testifying for Calypso Charters	Oppose	Written Testimony Only

Comments:

n Maui County, there are three Marine Life Conservation Districts (MLCDs) each with its own unique characteristics and accessibility. Molokini Shoals is situated several miles out to sea and can only be reached by boat. 41 boats are permitted to access the area, but only 24 moorings are available, which can result in limited access. Trade winds can often make it impossible for boats to access Molokini, especially in the mornings. Despite this, the area boasts one of the healthiest reefs in the state.

On the island of Lanai, Manele Hulopoe MLCD has two distinct zones, with the Manele side accessible by boat and the Hulopoe side accessible by land. A few vessels are permitted to offer snorkeling tours to the Manele Zone, while commercial access to the Hulopoe Zone is limited and only allowed from Monday to Friday. There is already a fee in place for all commercial access to Hulopoe, and it is overseen by the Hulopoe Beach Park Council.

Ocean tour operators are significant stakeholders in the conservation of these MLCDs. In addition to the 3% of their gross income that they already pay to the Department of Land and Natural Resources (DLNR-DOBOR), they have agreed to contribute millions of dollars to the DLNR DAR through a new Ocean Stewardship Fund starting January 1, 2024. If a carrying capacity study is conducted, it is important for these operators to have a voice. To ensure this, the following language should be added to Section 4(b) of SB722: “(b) In establishing and conducting the marine life conservation district carrying capacity program, the department of land and natural resources shall consult with the counties; University of Hawaii, including the Hawaii Institute of Marine Biology; commercial boat tour operators; and nonprofit community organizations in the State.”

COMMITTEE ON WATER AND LAND

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Senator Brandon J.C. Elefante, Vice Chair

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TESTIMONY OF JAMES COON IN OPPOSITION TO SB772 AS WRITTEN

Aloha Chair Inouye, Vice Chair Elefante my name is Jim Coon speaking against SB772 as written and requesting Stakeholder representation if passed.

There are three MLCDs in Maui County. Each one has very different characteristics and access.

Molokini Shoals is several miles offshore in the open ocean and accessible only by boat. There are 41 vessels that have permits to access this MLCD. There are only 24 moorings. Trade winds blow into Molokini before noon almost daily making vessel access impossible. Vessels stay shorter times and working together are able to share a limited mooring space. Molokini is not accessible during strong Northerly Trade wind days. Therefore Molokini access is actually for a few hours several days of the week with sometimes several days a month allowing no access because of Northerly Tradewinds. It has one of the healthiest reefs in the State.

Honolua Bay MLCD is accessible by both boat and land. Honolua access by vessel is already very limited with only three moorings in the Bay. These vessels conduct guided snorkel tours which is the safest and least impactful way to experience this MLCD. Land access, however, is completely unregulated and there are several bills in this legislature addressing this issue.

Manele Hulopoe MLCD on the Island of Lanai has two zones in its MLCD. Manele side is accessible by boat and not land whereas the Hulopoe side is accessible by land and not boat. Several vessels have snorkel access to the Manele Zone. The Hulopoe Zone is land access only through land managed by Pulama Lanai. This is

overseen by the Hulopoe Beach Park Council with only limited and permitted commercial access. There is already a fee established for all commercial land access to Hulopoe. Commercial access is only allowed Monday – Friday. No weekend or Holiday commercial access allowed.

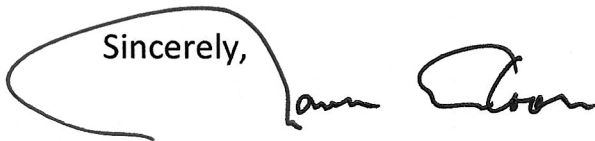
Each of these MLCs are unique and already have various modifications and aspects in place that limit and control access.

Ocean tour operators play an important role in the stewardship of these MLCs. In addition to the 3% of gross income that Ocean Tour Operators pay to DLNR-DOBOR the new Ocean Stewardship Fund agreed to and supported by the Operators will provide millions of dollars to DLNR DAR starting January 1, 2024.

As important stakeholders, Ocean Tour Operators should have a voice if a carrying capacity study is done. If you pass this bill please include this language to Section 4(b) of SB722:

“(b) In establishing and conducting the marine life conservation district carrying capacity program, the department of land and natural resources shall consult with the counties; University of Hawaii, including the Hawaii institute of marine biology; **commercial boat tour operators**; and nonprofit community organizations in the State.”

Sincerely,

A handwritten signature in black ink, appearing to read 'James E. Coon', is written over the word 'Sincerely,'. The signature is fluid and cursive.

James E. Coon