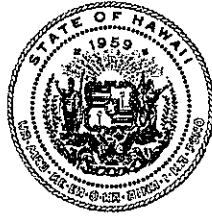


**TESTIMONY**  
**SB 1228**

LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
LAURA H. THIELEN  
Chairperson**

**Before the Senate Committee on  
WATER, LAND, AGRICULTURE, AND HAWAII AFFAIRS**

**Friday, February 13, 2009  
3:30 PM**

**State Capitol, Conference Room 229**

**In consideration of  
SENATE BILL 1228  
RELATING TO STATE SMALL BOAT HARBORS**

Senate Bill 1228 proposes to clarify that commercial fishing corporations can transfer ownership without losing necessary permits and without a transfer fee being imposed. The Department of Land and Natural Resources (Department) remains neutral on this measure but offers the following concerns and recommendations.

Section 200-10, Hawaii Revised Statutes, allows a corporation to transfer any or all stock or other interest to another person without terminating the right of the corporation or business entity to retain or renew its commercial use permit issued to it by the Department. The Department notes that fishing corporations are not issued commercial use permits and a recent Attorney General's opinion confirms that permits issued to these types of corporations are not transferable.

Section 13-231-13, Hawaii Administrative Rules (HAR), states in part, "the department may permit a one-time change in ownership of the permittee's vessel from personal ownership to corporate or other business ownership, provided that the permittee holds a valid commercial permit or is engaged in commercial fishing as a primary means of livelihood and notifies the department in writing of an intended change in ownership." This transfer is also limited to the permittee, any co-owners of the vessel, and the members of the immediate families of the permittee and co-owners.

What has been the practice on some of the neighbor islands is that permittees that have been issued a regular mooring permit who claim to be fishing as their primary means of livelihood and form a fishing corporation. Once the corporation is formed, they sell the corporation as a means of transferring the mooring permit. The Department believes that a law permitting corporate transfers of moorings without limits results in by-passing the waitlist of recreational boaters and/or commercial boaters and creates higher-priced entrance for any new mooring permit.

LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
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

Accordingly, should the Legislature decide to allow for use permits issued to fishing corporations to be transferred, the Department recommends the following minimum standards be met prior to authorizing the transfer of any fishing corporations:

- Define "Primary means of livelihood" to mean 51% or more of the yearly income of the stock holders is derived from the sale of fish as shown on corporate tax returns;
- Fishing corporations must meet the same requirements as commercial businesses and vessels as stated in Chapter 13, HAR;
- Fishing corporations shall pay the same transfer fee as defined for all other commercial vessels in Chapter 13, HAR;
- Commercial fishing corporation vessels moored in small boat harbors must be in compliance with the Federal Code of Regulations as they apply to commercial fishing vessels;
- Hold a commercial fishing license and submit monthly catch reports as required by the Department.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, February 12, 2009 12:16 PM  
**To:** WTLTestimony  
**Cc:** rdiamond@hawaii.rr.com  
**Subject:** Testimony for SB1228 on 2/13/2009 3:30:00 PM  
**Attachments:** DLNR FINAL.doc

Testimony for WTL 2/13/2009 3:30:00 PM SB1228

Conference room: 229  
Testifier position: support  
Testifier will be present: No  
Submitted by: Randal Truett Stovall  
Organization: Individual  
Address: 73-1293 La Iku Pl Kailua Kona, HI, 96745  
Phone: 480-209-9569  
E-mail: [rdiamond@hawaii.rr.com](mailto:rdiamond@hawaii.rr.com)  
Submitted on: 2/12/2009

**Comments:**

Please note that an earlier submission I sent may have shown, in error, that I am against this bill. Please know that I am FOR this bill and I need and pray for its passage ASAP. Without this bill I will go completely bankrupt and I will need to leave the islands that I love in search of work again. Because of not being able to sell this I have already been placed in a horrible position by the State of Hawaii. I had a severe surgery, cannot commercial fish anymore without assistance which I am unable to find. I am losing my home and my other small business now where, if I could sell this I could get the small business going again and maybe still save my home although it appears to be too late. It would also place the slip in the hands of someone that could earn a living and provide tax revenue for the State of Hawaii. Please, with all I am I beg you, please allow us to see this JUST AS YOU HAVE for the previous 20 plus years. One last thought, if these could not be sold then why was I not told that when I bought it because I never would have made the purchase, do not have that kind of disposable income.

The attached document is more information sent to the DLNR and the Governor's offices begging (on deaf ears) to help us in our plight.

One last thought, Mr. Ed Underwood, who seemingly has taken the position to stop all transfers for no real reason has hurt more people than I believe he knows. I feel he should not only be let go but possibly criminally prosecuted. I know that will not happen, I am not even sure how he sleeps nights knowing that because of his action people, like me, have lost much to all of what they have worked for. Please help us... give me a chance to stay here in my home, build my other business. Allow this bill to move quickly to acceptance and, if possible, allow transfer in the meantime (while the bill is finishing). A few months might be too late.

State of Hawaii  
Dept. of Land and Natural Resources  
333 Queen St. Suite 300  
Honolulu, HI 96813

11/5/08

To whom ever has the will to react:

I write this letter to plead with Gov. Lingle, Lt. Gov. Duke Aiona, the DLNR and State representatives to move on the moratorium to allow owners of Commercial Slips in the State harbors (specifically Honokohau). April 16, 2007 I requested a letter of good standing in order to sell my commercial fishing corporation only to find out about the moratorium against this.

I am deeply disturbed and, more importantly, financially ruined by the decision, of one man... Mr. Ed Underwood of the DLNR. For as many years as I can remember and others in this industry can recall, commercial slips have been bought and sold as a part of the small businesses here in commercial fishing. For yet an unknown reason, Mr. Underwood suspended this right nearly two years ago for a reason that has yet to be explained thus killing several, including my, small fishing business. I requested in writing a full legal explanation for this moratorium on August 27, 2007 and received a vague response, "waiting for an opinion from the Attorney General"! Well, HOW LONG does it take to get an "opinion"!

As for the remarks in Mr. Underwood's letter regarding some buying commercial fishing corporations for recreational use, I can provide tax returns proving my corporate business existence! What a way to "police" this problem! By holding ALL commercial fishing businesses hostage!

Due to illness on my part, I am no longer able to fish the open waters off the Kona Coast thus my boat sits idle. I cannot understand the decision to halt the sale and purchase of the slips in the harbor. Please understand that this was done for several years, without question and we, along with others, purchased our slip/corporation with the understanding that it was perfectly allowable since it had been done for many, many years.

Now, due to this decision I cannot provide a living for my family, there is NO sales revenue being produced for the State, I cannot sell the slip/corporation to allow me to keep the doors open on my other small business to continue and, to add further insult to injury, we will likely lose our home because of this act and leave Hawaii for a State where small business means something.

Needless to say it is beyond me as to "Why" this is happening and "How" one man can make such a sweeping decision that has such ill affects on many people and the complete uncaring attitude of our elected leaders! We have sought council on this matter from an attorney, Mr. Joe Fugandas, Kailua Kona. He openly states that this is a poor decision, one that could be overturn in the courts, that is, IF Mr. Underwood would make a decision rather than keeping things in limbo. However, the cost of such a venture is

substantial; in other words, unless I am rich I cannot fight this moratorium. The DLNR, State Government and officials have placed me and others in a battle pre-designed to cause us pain and make losing all the only option.

I have read the Hawaii Revised Statutes and understand that the definition of a "one time" transfer is VERY VAGUE and clearly does not limit corporations from their constitutional right to transfer ownership while maintaining rights and assets of the corporation. As a citizen I am entitled to operate my business under the statutes which are currently in place both federally and locally! It is unethical to continue to "tie up" my business rights for so long for an "opinion".

Why would you not want small business to flourish? Especially in a time of economic hurt such as now? How is it that this one man is able to hold such power? Why would the State continue to "Not" allow the sales of these corporations with slips to others that are able to fish and make a profit thus providing the State with revenue? How is it that our leaders are standing by with NO action while we loose our businesses, homes, livelihood and self respect?

This whole situation makes absolutely NO SENSE! I have tried in the past to get answers from the DLNR. Others I know have tried to get answers in this situation. I have very little faith in the Attorney General's administration at this point and I am a registered Republican! How long should we be expected to wait for an "opinion" in order to get on with our businesses and lives? As with others in my situation, our opinion is a clean sweep of all elected officials is certainly in order (council, state, Lt. Gov, Gov) to say the least.

So, if I do not expect assistance from the Lingle Administration and the area representatives why do I write this? In hope that someone may, on a hope and prayer, answer and correct this travesty that is happening. In the hope that someone at one of the fine news agencies this is going to will take it upon themselves to step up and help the small business owners and citizens of this Island. In the hope that, if nothing else, it will be a battle call to clean the house of our representatives that have offered no action in this matter. In the hope that Mr. Ed Underwood will be given his walking papers, to take a role where he cannot hurt the small business owners and citizens of Hawaii and someone may step into place that will help to empower us in this difficult economic time.

Am I upset, absolutely! I am in danger of losing my other business, my home and self respect that is gained from caring for my family. Why? Because one man has placed an "indefinite hold" on the sale of corporations and slips in the harbor, a practice that has been done for more years than most can remember. I beg you...allow us to sell to someone that will be able to be productive, allow the corporations to become an active entity that generate tax dollars for the State, not causing it a loss. Allow us to save our homes, other businesses and investments with dignity. In short...do the right thing!

In Hope,

T. Randal Stovall  
Kona Oni Oni, Inc.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 10, 2009 6:26 PM  
**To:** WTLTestimony  
**Cc:** wgallup@hawaiiantel.net  
**Subject:** Testimony for SB1228 on 2/13/2009 3:30:00 PM  
**Attachments:** Testimony.doc

Testimony for WTL 2/13/2009 3:30:00 PM SB1228

Conference room: 229  
Testifier position: support  
Testifier will be present: No  
Submitted by: Wallace ("Wally") Gallup  
Organization: Individual  
Address: 75-5591 Palani Rd, Suite 3007 Kailua-Kona HI  
Phone: 808-329-5014  
E-mail: [wgallup@hawaiiantel.net](mailto:wgallup@hawaiiantel.net)  
Submitted on: 2/10/2009

**Comments:**

Please see the attached Testimony (1page)

## Testimony

SB 1228 adds language to our existing statute to confirm that it was and is the intent of the referenced statute to not only allow commercial fishermen to "incorporate" their fishing business but to then in the future transfer ownership of their business without losing their DLNR-DOBOR mooring or berthing permits which is often the only way they can end up selling their businesses when they get to old to fish or become disabled, etc.

Over the last 10 years or more as an attorney in Kona I have processed the transfer of ownership of commercial fishing corporations that held mooring permits at Honokohau Harbor on the Big Island and had ALWAYS received the approval of the local harbor master, including the current harbor master, and have had clients purchase those commercial fishing corporations sometimes paying substantial money for the business in reliance that when the time came they would be able to likewise transfer ownership of their business on to a buyer. No problem, but then about a year ago or so the new DLNR-DOBOR administrator, unilaterally and out of the blue, with no prior notice to the boating community or hearings (due process) simply decided that he would no longer allow those transfers to be made, leaving all the people who had purchased commercial fishing businesses hanging out to dry. The new DLNR-DOBOR department head's new interpretation of the existing law, which had for 10+ years been interpreted as allowing such transfers by all of the new department head's predecessors and by local harbor masters who have had to deal with those transactions "in the field", is simply not supported by a common sense reading of the existing law nor by 10 years of administrative practice. But we are all stuck until the current DLNR-DOBOR department head is compelled to follow the law as it was previously interpreted and intended to be interpreted by the legislature that originally adopted the law.

So, in order to rectify matters it appears that we need to add language to the existing statute which makes it crystal clear that the last 10 + years of administrative practice and interpretation is what the legislature had originally intended and still intends to be the law and thereby come to the aid of the taxpayers of this state who have been left high and dry by this new interpretation of existing law.

If SB 1228 is not passed the only recourse that taxpayers who have been allowed in the past to purchase a fishing corporation and allowed to keep their mooring permits will be to file lawsuits against the State of Hawaii if they want to recoup their investments, which is not something the average fisherman can afford to do or that maybe anyone can really afford to do in the current economic climate much less should they even have to consider doing.

Long standing administrative practice relative to a department's interpretation of a statute is something people begin with the lapse of time, such as 10 years, to rely upon as being the law, they make investment decisions based on such interpretations of law as being correct especially when those interpretations remain the same over the course of a decade and the law has not been changed. The people of this state deserve to be able to rely on a decade long interpretation of law and not have the rug pulled out from under them without due process of law. So, please adopt this bill and thereby set matters straight for those people.

Respectfully submitted-Wally Gallup



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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 10, 2009 6:56 PM  
**To:** WTLTestimony  
**Cc:** geoffkona@hawaii.rr.com  
**Subject:** Testimony for SB1228 on 2/13/2009 3:30:00 PM

Testimony for WTL 2/13/2009 3:30:00 PM SB1228

Conference room: 229  
Testifier position: support  
Testifier will be present: No  
Submitted by: Geoffrey Walker  
Organization: Individual  
Address: 75-5870 Walua Rd. #100 Kailua Kona  
Phone: 8089609116  
E-mail: [geoffkona@hawaii.rr.com](mailto:geoffkona@hawaii.rr.com)  
Submitted on: 2/10/2009

**Comments:**

I was a commercial fishman with a corporation, and was allowed to transfer. If you allow the charter fleet to transfer, you are catering to big money interests and ignoring the small guy. Commercial fishing gives the public access to a public resource, support commercial fishermen. geoffrey walker

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 11, 2009 11:50 AM  
**To:** WTLTestimony  
**Cc:** pby@pacificboatsales.com  
**Subject:** Testimony for SB1228 on 2/13/2009 3:30:00 PM

Testimony for WTL 2/13/2009 3:30:00 PM SB1228

Conference room: 229  
Testifier position: support  
Testifier will be present: No  
Submitted by: Bob Morgan  
Organization: Individual  
Address: 73-4939 Manumele St. Kailua-Kona Hawaii  
Phone: 808-325-5817  
E-mail: [pby@pacificboatsales.com](mailto:pby@pacificboatsales.com)  
Submitted on: 2/11/2009

**Comments:**

I am the owner of a commercial fishing corporation in Honokohau Harbor in Kona that I currently have a Buyer for, however I am currently prevented from transferring ownership. I fully support this bill to continue the decades old practice of transferring valid commercial fishing corporations. The preventing of these type of transfers has created a financial and physical hardship, as I am needing to re-locate to the mainland for family medical reasons. I purchased this corporation many years ago with the full understanding that it would be a transferrable business in the future. Please support this bill as it will provide a much needed boost to the current economic outlook in Hawaii.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 11, 2009 12:36 PM  
**To:** WTLTestimony  
**Cc:** jerry@kona.net  
**Subject:** Testimony for SB1228 on 2/13/2009 3:30:00 PM

Testimony for WTL 2/13/2009 3:30:00 PM SB1228

Conference room: 229  
Testifier position: support  
Testifier will be present: No  
Submitted by: Jerry Allen  
Organization: Individual  
Address:  
Phone: 808-936-4689  
E-mail: [jerry@kona.net](mailto:jerry@kona.net)  
Submitted on: 2/11/2009

Comments:

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**From:** Cindy [Cindy@PacificRimFishing.com]  
**Sent:** Wednesday, February 11, 2009 1:43 PM  
**To:** WTLTestimony  
**Subject:** SB1228 - Testimony

Testimony for WTL 2/13/2009 3:30:00 PM SB1228

Conference room: 229  
Testifier position: **support**  
Testifier will be present: No  
Submitted by: Cindy Barnett  
Organization: Individual  
Address: 75-304 Malulani Dr., Kailua Kona, HI 96740  
Phone: 808-345-4606  
E-mail: [cindy@pacifricrimfishing.com](mailto:cindy@pacifricrimfishing.com)  
Submitted on: 2/11/2009

Comments:

**SB 1228 is important to Hawaii's commercial fishermen**, especially in these tough economic times. This bill simply seeks to reaffirm the original intent of the Legislature. My husband and I purchased the commercial fishing Corporation Noa Leke Inc. with the slip lease (5) five years ago and have attempted to make a go at commercial fishing. The hard economic times, competition from foreign commercial fishing companies, DOAR management and low fish stocks makes it difficult to supply Hawaii with the humanly fresh caught fish the local population and tourists require.

After 10+ years of DOBOR administrative practice allowing transfers of commercial fishing corporations in our Small Boat Harbors, based on Hawaii Revised Statutes (HRS 200), the new DOBOR Administrator stopped allowing the practice. Many of us believe he is wrong, and we are looking for the Legislature to confirm that, and reaffirm that all the previous administrators had correctly interpreted HRS 200, allowing the transfers. How can one new administrator interpret the rules completely opposite of other administrators have for the last 10+ years? It is our feeling that the statute clearly does not prohibit transfers of commercial fishing corporations.

We believe that the language included in the statute about allowing transfers of ownership of corporations that have commercial operators (charter) permits was inserted because such corporations were considered to be of a higher order of privilege, and thus the new language was needed so that there could be a specific mechanism of imposing a transfer fee. **Additionally, with the state's current budget problems, GET from sale and transfer of commercial corporations would help reduce the state's budget deficit and support our local harbors.**

Since the legislature did not see a need to impose a transfer fee on commercial fishing corporations, there was no specific language included about them not being able to transfer ownership unless they pay a fee. The fact that earlier in the statute commercial fishermen are specifically allowed to incorporate, supports the conclusion that the original legislative intent in allowing them to incorporate was to give them a way of transferring ownership of their commercial fishing business and mooring permits, otherwise why would the legislature have even allowed them to incorporate in the first place?

**SB1228 is intended to reaffirm legislative intent**, so it is very important that it be heard and passed.

Cindy S Barnett  
Kona Pacific Blue  
[www.PacificRimFishing.com](http://www.PacificRimFishing.com)

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 11, 2009 1:52 PM  
**To:** WTLTestimony  
**Cc:** bill@lanescarpet.com  
**Subject:** Testimony for SB1228 on 2/13/2009 3:30:00 PM

Testimony for WTL 2/13/2009 3:30:00 PM SB1228

Conference room: 229  
Testifier position: support  
Testifier will be present: No  
Submitted by: elliott lane  
Organization:  
Address: 244 papa pl kahului,hi  
Phone: 8083573122  
E-mail: [bill@lanescarpet.com](mailto:bill@lanescarpet.com)  
Submitted on: 2/11/2009

Comments:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 11, 2009 2:35 PM  
**To:** WTLTestimony  
**Cc:** takahashp002@hawaii.rr.com  
**Subject:** Testimony for SB1228 on 2/13/2009 3:30:00 PM

Testimony for WTL 2/13/2009 3:30:00 PM SB1228

Conference room: 229  
Testifier position: support  
Testifier will be present: No  
Submitted by: Sandra Takahashi  
Organization: Individual  
Address: 1680 Kokomo Rd. Haiku, HI  
Phone: 808.573.2424  
E-mail: [takahashp002@hawaii.rr.com](mailto:takahashp002@hawaii.rr.com)  
Submitted on: 2/11/2009

Comments:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 11, 2009 8:33 PM  
**To:** WTLTestimony  
**Cc:** topstitch@lava.net  
**Subject:** Testimony for SB1228 on 2/13/2009 3:30:00 PM

Testimony for WTL 2/13/2009 3:30:00 PM SB1228

Conference room: 229  
Testifier position: support  
Testifier will be present: No  
Submitted by: Robert Erickson  
Organization: Individual  
Address:  
Phone:  
E-mail: [topstitch@lava.net](mailto:topstitch@lava.net)  
Submitted on: 2/11/2009

Comments:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 11, 2009 9:20 PM  
**To:** WTLTestimony  
**Cc:** joe@konalaw.com  
**Subject:** Testimony for SB1228 on 2/13/2009 3:30:00 PM

Testimony for WTL 2/13/2009 3:30:00 PM SB1228

Conference room: 229  
Testifier position: support  
Testifier will be present: No  
Submitted by: Joseph Fagundes  
Organization: Individual  
Address: 75-170 Hualalai Rd., D-214 Kailua-Kona, HI  
Phone: 808-326-4852  
E-mail: [joe@konalaw.com](mailto:joe@konalaw.com)  
Submitted on: 2/11/2009

**Comments:**

I believe SB1228 is needed both to clarify the intent of the legislature and to ratify the practice of DLNR (and DOT before it) to allow transfers of the shares of business entities possessing a mooring permit and commercial fishing license without losing the mooring for the vessel. Only recently has the director of DLNR changed the ground rules and disallowed such transfers based upon a very strict reading of a very ambiguous statute.

SB1228 will allow owners of the affected business entities to transfer their company (containing their hard earned assets) for a fair price without losing the mooring privileges which are key to any such maritime business.

I urge this honorable body to pass this measure and allow persons to recoup their investments in Hawaii's marine activities upon sale.



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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, February 12, 2009 10:47 AM  
**To:** WTLTestimony  
**Cc:** celeste@lanescarpets.com  
**Subject:** Testimony for SB1228 on 2/13/2009 3:30:00 PM

Testimony for WTL 2/13/2009 3:30:00 PM SB1228

Conference room: 229  
Testifier position: support  
Testifier will be present: No  
Submitted by: Celeste Fernandez  
Organization: Individual  
Address:  
Phone:  
E-mail: [celeste@lanescarpets.com](mailto:celeste@lanescarpets.com)  
Submitted on: 2/12/2009

**Comments:**

Purchased a slip back in 2005, but in 2009 not being allowed to sell slip is unfair.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, February 12, 2009 1:07 PM  
**To:** WTLTestimony  
**Cc:** boat@aloha.net  
**Subject:** Testimony for SB1228 on 2/13/2009 3:30:00 PM

Testimony for WTL 2/13/2009 3:30:00 PM SB1228

Conference room: 229  
Testifier position: support  
Testifier will be present: No  
Submitted by: Gary Lambert  
Organization: Individual  
Address: 78-6954 Walua rd. Kailua Kona, Hawaii  
Phone: 808-430-3574  
E-mail: [boat@aloha.net](mailto:boat@aloha.net)  
Submitted on: 2/12/2009

**Comments:**

Aloha it is very important that a commercial fisherman or commercial fishing business be allowed to sale ,transfer the slip and mooring permit along with the sale of there vessel. With out this the boat and business can not be sold.Why would anyone buy a boat or fishing business if there were no place to moore or operate from? It is important the we encourage investment in our fisheries and marine industry. We,Hawaii,already have a reputation of anti business practices we do not need more.

**TESTIMONY**  
**SB 1228**  
**(END)**