

LINDA LINGLE
GOVERNOR OF HAWAII



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

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**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the House Committee on
ECONOMIC REVITALIZATION, BUSINESS & MILITARY AFFAIRS**

**Tuesday, March 9, 2010
8:00 AM
State Capitol, Conference Room 312**

**In consideration of
SENATE BILL 2409
RELATING TO MARINE LIFE CONSERVATION DISTRICTS**

Senate Bill 2409 would require any permit conditions for exempting the take of marine life, and for ocean recreational boating and coastal activities in Marine Life Conservation Districts (MLCDs) be subject to rule making under Chapter 91, Hawaii Revised Statutes (HRS). The Department of Land and Natural Resources (Department) opposes this measure as it would inhibit adaptive management, increase bureaucratic mandates, and add additional complexity and expense to the process of natural resource management.

An MLCD permit allows exemptions to rules (and statutes) for activities that would otherwise be unlawful. Because of the responsibility to control otherwise unlawful activities, permit conditions are limited in scope by the provisions of the implementing administrative rules as authorized by statutes. Therefore, activities that are permitted need to be conducted to meet the intentions of the laws protecting these fragile areas. Additionally, permit conditions may include provisions to meet administrative needs, eg. data/monitoring needs, coordination with enforcement, etc.. These types of conditions do not require implementation through rule. All administrative rules governing MLCDs provide that the department may issue permits under such terms and conditions it deems necessary to carry out the purpose of Chapter 190, HRS.

MLCD designation has been reserved for areas of extremely high ecological significance, with notable examples including the Hanauma Bay MLCD and the Molokini Shoal MLCD. MLCD designation allows the Department to promulgate the broadest range of rules, regulating any activity which may disturb or otherwise degrade the MLCD environment. Because of the high degree of protections afforded these areas, and because of the ecological abundance they have been able to support, MLCDs have now become an extremely important resource for scientific,

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recreational, and even commercial purposes. For this reason, the Department has developed a permitting system for the highly controlled conduct of such activities.

Flexibility in imposing permit terms and conditions has proven essential for the proper management of MLCDs. In order to maintain the ecological balance that make our MLCDs so unique, permit terms and conditions must respond quickly to the unpredictable impacts of permitted activities, as well as the broad range of scientific research necessary to understand and protect not only the MLCDs, but our marine environment as a whole.



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Testimony of The Nature Conservancy of Hawai'i
Commenting on S.B. 2409 Relating to Marine Life Conservation Districts
House Committee on Economic Revitalization, Business, & Military Affairs
Tuesday, March 9, 2010, 8:00am, Rm. 312

The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawai'i's native plants, animals, and ecosystems. The Conservancy has helped to protect nearly 200,000 acres of natural lands for native species in Hawai'i. Today, we actively manage more than 32,000 acres in 11 nature preserves on O'ahu, Maui, Hawai'i, Moloka'i, Lāna'i, and Kaua'i. We also work closely with government agencies, private parties and communities on cooperative land and marine management projects.

The Nature Conservancy has some concerns about S.B. 2409 Relating to Marine Life Conservation Districts.

In particular, under this bill DLNR would have to anticipate any and all possible future permit conditions and conduct rulemaking for those conditions in advance of issuing permits for research, educational or community activities in a Marine Life Conservation District. If DLNR failed to anticipate a necessary or appropriate condition for a permit, a full Chapter 91 rulemaking process would have to be undertaken before any permit could be issued. This seems unmanageable.

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Ocean Tourism Coalition

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March 9, 2010

Testimony To: House Committee on Economic Revitalization, Business, & Military Affairs
Representative Angus L. K. McKelvey, Chair

Presented By: Tim Lyons, CAE
Executive Director

Subject: S.B. 2409 - RELATING TO MARINE LIFE CONSERVATION DISTRICTS.

Chair McKelvey and Members of the Committee:

I am Tim Lyons, Executive Director of the Ocean Tourism Coalition and we support the passage of this bill.

This bill relates to the fact that commercial boat operators who operate at Molikini were recently given the "short end of the stick" when it comes to renewal of their conditional use permits for Molokini Shoals. The new permits contained a variety of new conditions that many operators felt had not been ever discussed or had not been properly vetted.

Additionally, because the new permit conditions were set to expire on December 16, 2009 and were extended for a month but then operators were urged to return their signed permits

agreeing to the conditions by January 4, 2010, there was not sufficient time, particularly over the holidays in order to discuss them, let alone react to and incorporate them.

As a result operators feel that the conditions of these use permits should be subject to public hearing so that there is sufficient advanced notice and discussion of new permit conditions.

Based on the above, we concur and recommend your support.

Thank you.



March 9, 2010 at 8:00 AM Room # 312

To: House Committee on Economic Revitalization, Business, & Military Affairs,
Representative Angus McKelvey, Chair

Subject: Senate Bill 2409-Relating to Marine Life Conservation Districts.

STRONG OPPOSITION : SB2409

Representative Angus McKelvey, Chair and Members of the Committee:

This is not a good bill for ocean tourism. The DLNR needs to go through the rule making process to abide by the citizens rights. It will only allow the DLNR to railroad more unnecessary controls to our small businesses in the ocean tourism industry.

I have a small family, third-generation business, which has 40 fulltime employees, and we want to be able to continue running our tax paying, law abiding business. This bill would change our business reality to "who knows what" conditions opposed on our business by administrative staff that come and go very frequently. When the process does not offer us the usual democratic rights and privileges that we deserve as Americans then that's when the government has gone to far. We only ask for fair and just means to run our businesses, nothing more, nothing less. Reasonable expectations.

The ocean tourism industry brings in over 800 million dollars annually to the state. This is the number one most common activity our states' visitors are participating in while here in Hawaii. Do not empower the state employees to put unreasonable rules and conditions without due process.

Please do NOT pass this bad business bill.

Sincerely,
Melynda Dant
Vice President
Fair Wind Cruises



Kahikohe Ltd. dba
Frogman Charters

March 9, 2010

TESTIMONY TO: House Committee on Economic Revitalization, Business, & Military Affairs
Representative Angus L.K. McKelvey, Chair

PRESENTED BY: Phil Kasper, President
Frogman Charters

RE: S2409 – Relating to Marine Life Conservation Districts

Chair McKelvey and Members of the Committee:

I am Phillip Kasper, President of Frogman Charters and I am speaking in favor of S.B 2409.

It is imperative that we are given sufficient notice if there are going to be changes in the operational requirements for commercial vessels. When changes are made we need to:

1. print new brochures
2. change our staff accordingly
3. we may need to change our catering menu
4. we may need to have other printed matter created

It is important that careful consideration be given to requiring operational changes because of the expenses incurred and because of the impact on employees and associated vendors.

For example, for my company to meet the recent newly imposed requirements for operating at the Molokini Marine Reserve we printed up thousands of dollars worth of documents that we were told that our patrons would need to sign. We were later told that this wasn't necessary.

Haste makes waste, so a requirement for public hearings on important issues is always a good idea.