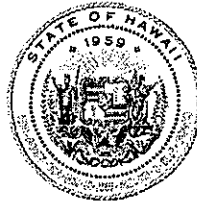
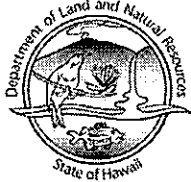


TESTIMONY
SB2409

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 HAWAIIAN AFFAIRS**

**Friday, January 29, 2010
2:45 PM
State Capitol, Conference Room 229**

**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,

LAURA H. THIELEN
CHAIRPERSON
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

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 MLCs. In order to maintain the ecological balance that make our MLCs 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 MLCs, but our marine environment as a whole.



Ocean Tourism Coalition

The Voice for Hawaii's Ocean Tourism Industry
Century Square-1188 Bishop St., Ste. 1003
Honolulu, HI 96813-3304
(808) 537-4308 Phone (808) 533-2739 Fax
timlyons@hawaiiantel.net

January 29, 2010

Testimony To: Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs
Senator Clayton Hee, Chair

Presented By: Tim Lyons, CAE
Executive Director

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

Chair Hee and Members of the Committee:

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

We would like you to know at the outset that the description attached to the bill is an error and that the bill has nothing to do with the "taking of marine life" in marine life conservation districts. It does however; have to do with the conditions which are attached to permits issued for marine life conservation districts and their detail.

This bill has been necessitated based on the poor manner in which recently issued permits were handled by DLNR as it relates to permits for Molokini.

Those use permits were two (2) year permits that expired on December 15, 2009 and although the Department began conversations with permittees well in advance, there was unfortunately a total break down of communications and most of our members had something less than nine (9) days in order to accept or reject proposed permits which contain some provisions which had never been discussed nor was any notification provided. The problem with this is that companies who had advertised that customers would receive certain things stand to risk a lawsuit for false advertising as now the company cannot deliver those kinds of features. There were also conditions attached in the permits which were nonsensical and purely autocratic.

Let me emphasize here that our members want Molokini to be a pristine area. We want to protect it. That is after all, what sells it. We have no particular complaint with the fact that permits need to have rules and regulations. Our problem is and we were told that the permit conditions were a one way street. There was no room for negotiation. That is no way to run what should be a partnership. Not only one that produces income to the state via the general excise tax but as well as one that generates fees for the special boating fund but also a partnership to protect the environment.

Our members were faced with the proposition of signing off on these permits in the midst of their busiest season when they could ill afford to further debate or haggle over a permit that was going to expire in nine (9) days. Our members don't mind playing by the rules but they need to know what those rules are and they need to be informed of changing rules in an

adequate amount of time to be able to adjust to them. It is based on this then, that we find ourselves in a position of asking government to assist us in providing conditions that will require the permit conditions to go to public hearing and be subject to Chapter 91 where everyone can have sufficient input and debate regarding the conditions that should be in the permit.

Based on the above then Mr. Chairman, we request your favorable consideration of this bill.

Thank you.

From: Mark Fox



The Nature Conservancy of Hawai'i
923 Nu'uuanu Avenue
Honolulu, Hawai'i 96817

Tel (808) 537-4508 nature.org/hawaii
Fax (808) 545-2019

Testimony of The Nature Conservancy of Hawai'i
Commenting on S.B. 2409 Relating to Marine Life Conservation Districts
Senate Committee on Water, Land, Agriculture, & Hawaiian Affairs
Friday, January 29, 2010, 2:45pm, Rm. 229

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.

We are not certain what particular occurrence or condition this bill is seeking to address. Our concern is that 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.

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