

# HB 931

RELATING TO SMALL BOAT HARBORS.

Defines the term "regularly navigated" regarding vessels moored in small boat harbors.

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
WILLIAM J. AILA, JR.  
Chairperson**

**Before the Senate Committee on  
WATER, LAND, AND HOUSING**

**Thursday, March 17, 2011  
1:15 PM  
State Capitol, Conference Room 225**

**In consideration of  
HOUSE BILL 931  
RELATING TO SMALL BOAT HARBORS**

House Bill 931 defines the term “regularly navigated” regarding vessels moored in small boat harbors. The Department of Land and Natural Resources (Department) **strongly supports this measure.**

Section 200-9, Hawaii Revised Statutes (HRS), clearly states that the purposes of the small boat harbors are for recreational boating activities, landing of fish, and commercial vessel activities. To implement these purposes, only vessels in good material and operating condition that are regularly navigated beyond the confines of the small boat harbor shall be permitted to berth or use any of the facilities.

The Department has determined that there are numerous vessels moored within the small boat harbor facilities that rarely leave the confines of the small boat harbors and offshore mooring areas. The Department recently initiated rule making proceeding to clarify that all vessels moored within the facilities are required to navigate beyond the confines of the harbor at least once a quarter. The Department was met with substantial resistance to this requirement because boat owners felt it would create an undo hardship. Also, the Department received comments that the term “regularly” means what is “usual; customary” according to Webster’s dictionary and since the vessel owners operate their vessels only once a year then that constitutes as “regularly”.

The Department feels that it was the Legislatures intent to ensure that vessels moored within the small boat harbor facilities were being actively used by their owners because of the limited nature of the resource. The Department would like to request that the term “regularly navigated”, as used in Section 200-9, HRS, be defined so it is clear what the Legislature intended when implementing this section of the statute.

**WILLIAM J. AILA, JR.**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**GUY H. KAULUKUKUI**  
FIRST DEPUTY

**WILLIAM M. TAM**  
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

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WLH Testimony](#)  
**Cc:** [lisalynnharrington@hotmail.com](mailto:lisalynnharrington@hotmail.com)  
**Subject:** Testimony for HB931 on 3/17/2011 1:15:00 PM  
**Date:** Tuesday, March 15, 2011 2:50:57 PM

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Testimony for WLH 3/17/2011 1:15:00 PM **HB931**

Conference room: 225  
Testifier position: **oppose**  
Testifier will be present: No  
Submitted by: Lisa Harrington  
Organization: Individual  
Address:  
Phone:  
E-mail: [lisalynnharrington@hotmail.com](mailto:lisalynnharrington@hotmail.com)  
Submitted on: 3/15/2011

Comments:

I do not understand the point of this...boaters should have the freedom to use their vessel when they please.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WLH Testimony](#)  
**Cc:** [kris22l@hotmail.com](mailto:kris22l@hotmail.com)  
**Subject:** Testimony for HB931 on 3/17/2011 1:15:00 PM  
**Date:** Tuesday, March 15, 2011 2:52:49 PM

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Testimony for WLH 3/17/2011 1:15:00 PM **HB931**

Conference room: 225  
Testifier position: **oppose**  
Testifier will be present: No  
Submitted by: krista leblanc  
Organization: Individual  
Address:  
Phone:  
E-mail: [kris22l@hotmail.com](mailto:kris22l@hotmail.com)  
Submitted on: 3/15/2011

Comments:

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WLH Testimony](#)  
**Cc:** [hawaiiansurfadventure@hotmail.com](mailto:hawaiiansurfadventure@hotmail.com)  
**Subject:** Testimony for HB931 on 3/17/2011 1:15:00 PM  
**Date:** Tuesday, March 15, 2011 2:52:17 PM

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Testimony for WLH 3/17/2011 1:15:00 PM **HB931**

Conference room: 225  
Testifier position: **oppose**  
Testifier will be present: No  
Submitted by: trace Harrington  
Organization: Individual  
Address:  
Phone:  
E-mail: [hawaiiansurfadventure@hotmail.com](mailto:hawaiiansurfadventure@hotmail.com)  
Submitted on: 3/15/2011

Comments:

Some boaters with boats here do not live on Oahu and would make this law nearly impossible to obey

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WLH Testimony](#)  
**Cc:** [cowgirlinhawaii@yahoo.com](mailto:cowgirlinhawaii@yahoo.com)  
**Subject:** Testimony for HB931 on 3/17/2011 1:15:00 PM  
**Date:** Tuesday, March 15, 2011 9:51:15 AM

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Testimony for WLH 3/17/2011 1:15:00 PM HB931

Conference room: 225  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Beth Malvestiti  
Organization: Individual  
Address:  
Phone:  
E-mail: [cowgirlinhawaii@yahoo.com](mailto:cowgirlinhawaii@yahoo.com)  
Submitted on: 3/15/2011

Comments:

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WLH Testimony](#)  
**Cc:** [Brattain@bakerbrattain.com](mailto:Brattain@bakerbrattain.com)  
**Subject:** Testimony for HB931 on 3/17/2011 1:15:00 PM  
**Date:** Tuesday, March 15, 2011 5:22:30 AM

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Testimony for WLH 3/17/2011 1:15:00 PM HB931

Conference room: 225  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: William Brattain  
Organization: Individual  
Address:  
Phone:  
E-mail: [Brattain@bakerbrattain.com](mailto:Brattain@bakerbrattain.com)  
Submitted on: 3/15/2011

Comments:

I oppose this measure. It does nothing but burden the slip permittee with yet another requirement with no corresponding benefit. What goal does this measure seek to accomplish that is not already being implemented with current legislation? The staff at Ala Wai already is backlogged with annual buoy runs.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WLH Testimony](#)  
**Cc:** [nurseducator@gmail.com](mailto:nurseducator@gmail.com)  
**Subject:** Testimony for HB931 on 3/17/2011 1:15:00 PM  
**Date:** Tuesday, March 15, 2011 5:21:35 AM

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Testimony for WLH 3/17/2011 1:15:00 PM HB931

Conference room: 225  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: William Marshall RN PHN  
Organization: Individual  
Address:  
Phone:  
E-mail: [nurseducator@gmail.com](mailto:nurseducator@gmail.com)  
Submitted on: 3/15/2011

Comments:

This bill is costly to the state of hawaii and to local boaters and ocean recreation users. Please kill this bill. Boats are inspected fully and do sea tests every 12 months. This ensures that all boats are in working and safe condition. THANK YOU William Marshall ocean user, swimmer, wave rider, boater, and registered nurse



Hawaii State Senate  
Water, Land and Housing Committee

March 14, 2011

Subject: Testimony on HB 931 – Relating to Small Boat Harbors  
Public Hearing March 17, 2011 1:15 PM Conference Room 225

To the esteemed committee members,

I am writing today to **oppose HB 931**. I have been a boat owner for the past six years. I am an active sailor, and spend the vast majority of my free time organizing and participating in sailboat regattas. I am also a member of the Hawaii Yacht Club and am currently serving as the Rear Commodore for Sail.

I understand that the intention of the bill is to ensure that State Harbors are utilized by boaters who actively utilize their boats. I agree that many of the boats moored in the State Harbors are under-utilized, derelict, and are simply taking up space in the State Harbor system. I know that waiting lists for a slip in, for example the Ala Wai Boat Harbor, are rather long (I waited 5 years for a slip in the Ala Wai). I am disappointed to see boats that sit in their slips for years on end with little to no usage.

Nonetheless, the proposed definition of “Regularly Navigated” is inflexible and unreasonable.

- What happens if your boat has a mechanical failure that prevents you from using it for 3 months? Many boats have engines that were discontinued decades ago, making it difficult to find replacement parts. Skilled mechanics who understand marine power systems are also in short supply, exacerbating the challenges associated with repair of older marine engines.
- What happens if a boat owner has a medical condition that prevents him/her from using the boat for 3 months or more? Relatively common afflictions, ranging from broken bones to cancer, could prevent an owner from utilizing his/her boat for 3 months or more.
- Harbor personnel are already plenty busy handling the paperwork and administrative rules that they are beholden to. Quadrupling the burden associated with verifying vessel activity would add undue burden to State workers, and decrease their overall effectiveness and productivity.
- What happens to non-resident boat owners who spend limited time in Hawaii, but are avid boaters during the months out of the year that they are here? This bill would require non-resident boat owners to fly to Hawaii on at

least a quarterly basis in order to demonstrate that the boat is "regularly navigated."

With these potential problems in mind, I see the 90-day vessel activity requirement as unreasonable as it is currently written. There need to be provisions that allow for some flexibility in the system.

I appreciate your time in considering this testimony.

Aloha,  
Joseph Shacat

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WLH Testimony](#)  
**Cc:** [papaalhawaii@hotmail.com](mailto:papaalhawaii@hotmail.com)  
**Subject:** Testimony for HB931 on 3/17/2011 1:15:00 PM  
**Date:** Monday, March 14, 2011 9:49:43 PM

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Testimony for WLH 3/17/2011 1:15:00 PM HB931

Conference room: 225  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Alvin Koo  
Organization: Individual  
Address:  
Phone:  
E-mail: [papaalhawaii@hotmail.com](mailto:papaalhawaii@hotmail.com)  
Submitted on: 3/14/2011

Comments:

I cannot understand what practical purpose would be served by requiring all boats to exit the harbor every 90 days, except to discourage boaters from owning pleasure boats in Hawaii. The current requirement to make a buoy run once a year is certainly sufficient to ascertain that all boats are in running order and are not derelicts.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WLH Testimony](#)  
**Cc:** [captbud@lava.net](mailto:captbud@lava.net)  
**Subject:** Testimony for HB931 on 3/17/2011 1:15:00 PM  
**Date:** Monday, March 14, 2011 8:59:57 PM

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Testimony for WLH 3/17/2011 1:15:00 PM **HB931**

Conference room: 225  
Testifier position: **oppose**  
Testifier will be present: No  
Submitted by: Donald Scelsa  
Organization: Individual  
Address:  
Phone:  
E-mail: [captbud@lava.net](mailto:captbud@lava.net)  
Submitted on: 3/14/2011

Comments:

It is not practical to require boats to exit every 90 days. Presently it is difficult to get an appointment to do so at the Ala Wai right now. The worst thing is that the Keehi buoy run is very dangerous as required. The route should be in the South sea plane lane so that boats aren't required to go into the ocean during large surf and strong winds. Someone will be killed eventually as now required. Its also unfair since all other harbors routes are alot shorter and safer.I was told Haleiwa and Waianae don't even do a run according to a State Harbors manager.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WLH Testimony](#)  
**Cc:** [captdave@boats4u.com](mailto:captdave@boats4u.com)  
**Subject:** Testimony for HB931 on 3/17/2011 1:15:00 PM  
**Date:** Monday, March 14, 2011 8:41:45 PM

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Testimony for WLH 3/17/2011 1:15:00 PM HB931

Conference room: 225  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Dave Cooper  
Organization: Individual  
Address:  
Phone:  
E-mail: [captdave@boats4u.com](mailto:captdave@boats4u.com)  
Submitted on: 3/14/2011

Comments:



**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WLH Testimony](#)  
**Cc:** [concernedboater@hawaii.rr.com](mailto:concernedboater@hawaii.rr.com)  
**Subject:** Testimony for HB931 on 3/17/2011 1:15:00 PM  
**Date:** Monday, March 14, 2011 5:19:30 PM

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Testimony for WLH 3/17/2011 1:15:00 PM HB931

Conference room: 225  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Robert Winter  
Organization: Individual  
Address:  
Phone:  
E-mail: [concernedboater@hawaii.rr.com](mailto:concernedboater@hawaii.rr.com)  
Submitted on: 3/14/2011

Comments:  
OPPOSE HAVING TO LEAVE HARBOR EVERY 90 DAYS

Whenever the government proposes a rule, it should carefully consider four factors.

1. What problem does the proposed rule solve?
2. Is the proposed rule the most effective way to solve the problem?
3. What other problems will the proposed rule cause?
4. Does the rule create a burden or cost that is greater than the expected benefit?

I believe this bill fails to consider these factors.

Harbor slip holders are already required to demonstrate the ability to navigate outside the harbor on an annual basis, an exercise referred to by boaters and harbor personnel as a "buoy run".

This rule creates a highly arbitrary and unfair definition of a dormant vessel that fails to consider the actual condition of the vessel or the owner's right to use their vessel in a manner that is consistent with their personal interests and schedule.

Is a boat owner who uses their boat 4 times during the summer really different than one who uses their boat once each quarter? What problem is being solved?

Requiring harbor tenants to make buoy runs every 90 days will not reduce the number of dormant vessels; at best, it might identify a few of them sooner.

To fairly implement this rule in a non-discriminatory manner will require that these buoy runs will have to be observed by a member of the harbor staff. That will require harbor personnel to devote approximately 30 minutes per buoy run watching the boat leave the slip, exit the harbor, and return to the slip under its own power. Using approximately 800 boats in the Ala Wai Harbor as an example, this would represent a cost of over 1600 man hours per year.

Since the harbor offices are closed Sundays, Mondays, holidays, and furlough days, many boaters will have to compete for a limited number of Saturday appointments. When Saturday appointments are not available many boaters may have to take time off from work to satisfy this requirement.

Additionally this rule may force boat owners to make unsafe buoy runs in bad weather or when boat is not safe to operate, and thus create an unintended liability for the State.

Considering the significant cost and inconvenience this rule change creates, and the dubious benefit it may provide, I urge you to oppose this bill.

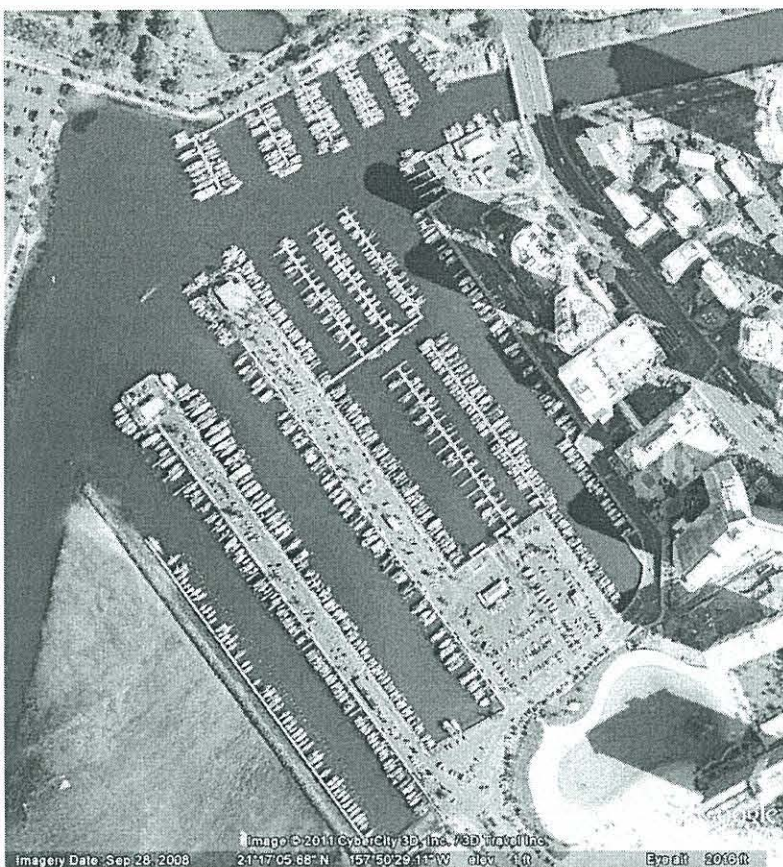


HB 931 requires all boats in any state harbor to exit their harbor every 90 days hearing Thursday, Mar 17<sup>th</sup>. Testimony deadline: 4:00pm Wed

I want to testify at this hearing.

Dear Hawaii Legislature, Governor Abercrombie and Bill Aila

As some of you know, this legislation was written by DLNR Deputy Ed Underwood, who asked Representative Har to introduced this bill to punish a live aboard boat owner who dared to tell Ed and the state what “regular basis” is. I simply consulted some case law.



My name is Sam Monet. I am a native Hawaiian, surfer and sailor. I am that legal, live aboard boat owner at Ala Wai who Ed and Har refer to. Over the years, I have testified against DLNR’s financial wish lists and filed written complaints to DLNR and other federal and state governmental agencies about gross mismanagement, violations of state and federal law, conspiracy, abuse and retaliation; all complaints protected by constitution, federal and state statutes and whistleblower laws. I have caused grief at DLNR and with Lingle, thank god she is gone.

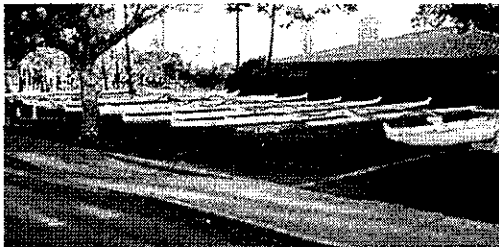
This HB is a conspiratory act by HAR and others designed to bludgeon me and others at Ala Wai harbor who have opposed DLNR’s abusive interpretation

of law and rules. Har and Underwood are idiots who simply cannot help themselves.

I gave the state written notice of intent to file lawsuit just prior to the last election. That notice is still in effect. A sample of just one complaint is attached. A former state employee has informed me that there is a conspiracy to punish me by her bosses at DLNR. I have informed other state employees of my intent to subpoena them and asked them to consult with their shop steward’s about telling the truth under oath. I guess you all can guess where this is going since there is probably a few lawyers among you. Sovereign immunity will not apply in this case; not a protected act. Filing now might be premature.

That being said I will make objections again about this "definition of regular basis". The high court has already determined what "regular basis" is and you cannot change that. What you are doing has been done before by other bodies and the courts have in most cases where similar circumstances have existed, ruled against municipalities. Like they say, we will let the court decide, that is the civilized and American thing to do.

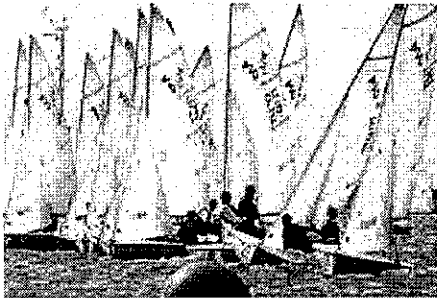
**NO MONEY, NO STAFF AT ALA WAI:** a simple study of economics will show that DLNR does not have enough staff or money, with furloughs and payroll cut backs, to process and examine 850 boats at Ala Wai Harbor every 90 days. They do not have the staff or funding to buy enough toilet paper to keep the bathrooms at Ala Wai sanitary at this time. 850 boats going in and out of the harbor on inspections will take approximately 45 minutes each. That is 38,250 minutes or 637.5 hours or 79.7 days. If you do not clean the toilets, keep the grounds clean, or spend time making money for the state by leasing slips, then I will sue again. We will let a court decide what you need to do. It might decide that you need to hire more people. How much will that cost the state? Millions? Some days it is just too dangerous (hurricanes, storms, high waves) to get in and out of the harbor.



**DANGER TO OUR KIDS IN THE HIGH SCHOOL CANOE PADDLING:** more than 27 canoes use Ala Wai harbor for RECREATION on an almost daily basis. Every afternoon, several hundred kids are using Ala Wai for canoe paddling, sailing lessons at the two yacht clubs or paddling across the harbor entrance to a surf meet that sometimes is held on week days. Who is

going to protect the kids from 850 boats going in and out of the harbor along with the other 30 or so that transit the harbor daily, weather conditions permitting.

When they get injured, their families are going to sue the state. You know that. The courts will be on our side. The People you work for.



This bill is simply a punitive act by abusive people. When all the facts come out, that will be established.

Sam Monet,  
1741 Ala Wai #98  
Hon, HI 96815  
Ph: 2581611  
Ala Wai live aboard, native Hawaiian surfer and sailor



Sam Monet  
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→ Governor Linda Lingle ←  
→ States Attorney General State Capitol  
Honolulu, Hawaii, 96813  
Phone: 586-0034  
Fax: 586-0006  
gov@hawaii.gov

Hand Delivered August 18, 2010 OK CL  
Hand Delivered August 18, 2010 OK SL

State of Hawaii  
Land Board DLNR ←  
P. O. Box 621 Honolulu,  
Hawai'i 96809  
Phone 808-587-0404  
adaline.f.cummings@hawaii.gov

Hand Delivered August 18, 2010 OK SL

DLNR 333 Queen St. SL  
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dlnr@hawaii.gov  
laura.h.thielen@hawaii.gov

Hand Delivered August 18, 2010 OK SL

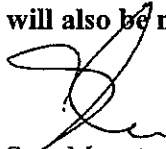
**CERTIFIED MAIL hard copy and email**

Re: DLNR agent/employee Ed Underwood, Complaint, abuse of power, violation HRS 91 and soooo many state laws, too numerous to mention at this time

On August 17, 2010 I went to the DLNR office at 333 Queen St. Honolulu to request the documents including but not limited to minutes of DLNR or land board harbor meeting, small boat harbor financials and archival records listed on my "Notice of Intent to File Law Suit" served with this letter to the above named "Defendants". I was not alone. I met with DLNR agent/administrator Ed Underwood. Underwood and I argued over the meaning of HRS 200-9. Underwood became visibly upset and stated that the law gave DLNR unfettered authority to force recreational boats out of the harbor on bouy runs "anytime, even every 4 days, every day, or in the proposed case every 90 days under "regular basis". I told Underwood that the US supreme court defines "regular" as "customary and traditional practices" not some arbitrary, capricious or punitive manner he describes. Underwood disagreed. Underwood then told me that I would need a subpoena to get the records. Underwood was very angry. I have a witness to the argument with Underwood.

**RETALIATION** by Underwood: Monet is a tenant living at slip 741 at Ala Wai Harbor. I paid for a parking sticker with the parking company under State contract. My sticker expires on September 30, 2010. **On August 18, 2010, Ed Underwood retaliated by instructing the Harbor Master at Ala Wai to cancel all parking permits and order that ALL cars will be towed from the parking area after 10:30 pm; even those with current stickers.**

**Needless to say, someone in authority, Laura Thielen must rescind this ridiculous and outrageous order and take control of Mr. Underwood's emotions; and I mean right now or Mr. Underwood will also be named in our lawsuit. This is absolutely outrageous, abusive and intolerable.**



Sam Monet

Cc: Honolulu newspapers, Harbor people, Legislature