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GOVERNOR OF HAWAII



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

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

**Before the House Committee on
OCEAN, MARINE RESOURCES AND HAWAIIAN AFFAIRS**

**Wednesday, February 6, 2013
9:00 A.M.
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 1382
RELATING TO OCEAN RECREATION**

House Bill 1382 proposes to prohibit the operation of jet skis at any speed above thirty miles per hour, except under certain conditions. **The Department of Land and Natural Resources (Department) does not support this measure.**

The Department believes that education regarding safe use and operation of all power driven vessels is superior to just banning the speed of jet skis. In November 2012, Section 13-244-15.5, Hawaii Administrative Rules, was amended to read that any person operating a power driven vessel on the waters of the state shall be required to possess a certificate of completion from a National Association of State Boating Law Administrators approved course on the safe use and operation of a power driven vessels. Further, a person under sixteen years of age shall not operate a power driven vessel unless accompanied on-board and directly supervised by a person twenty-one years of age or older who holds the required certificate of completion. The Department believes that education regarding safe use and operation of all power driven vessels is superior to just banning the speed of jet skis.

Thank you for the opportunity to comment.

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

ESTHER KIA'AINA
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
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**TESTIMONY OF PATRICK McTERNAN
IN SUPPORT OF H.B. NO. 1382**

**Date: Wednesday, Feb 6, 2013
Time: 9:00 am**

To: Chairperson Faye P. Hanohano and Members of the House Committee on Ocean,
Marine Resources & Hawaiian Affairs:

My name is Patrick McTernan and I am submitting testimony in order to express concerns regarding the current wording of H.B. No. 1382, relating to ocean recreation. I am an attorney who has represented plaintiffs in personal injury cases for over 25 years. My practice has focused extensively on personal injury and wrongful death cases in the maritime and ocean recreation fields for more than 20 years. I am also one of the attorneys representing the family of Kristen Fonseca, the 16 year old girl who was tragically killed in a jet ski collision at Ke'ehi Lagoon in August 2012.

As drafted, H.B. No. 1382 would prohibit the operation of jets skis and other designated personal watercraft, collectively referred to in the proposed legislation as "thrill craft," in excess of 30 miles per hour, "except: (1) In areas, along routes, and during time periods designated by the department; and (2) In accordance with a permit issued by the department." Although I believe a sensible speed limit would be an important first step in bringing safety standards to an industry that is otherwise largely self-regulated, I am concerned that the proposed exception in the legislation may potentially have the unintended consequence of increasing the risk to visitors who rent jet skis and other personal watercraft in Hawai'i.

Currently, the State of Hawai'i has designated a number of "ocean recreation management areas" or "ORMAs" throughout the Islands which are designated for use of jet skis and other personal watercraft (PWCs) by members of the general public for purely recreational purposes. These are known as Recreational Thrill Craft Zones. Other ORMAs are designated for use by customers of commercial operators renting jet skis and other personal watercraft to the public. These are known as Commercial Thrill Craft Zones. In order for commercial rental operators to use these Commercial Thrill Craft Zones, they must obtain a permit from the Department of Land and Natural Resources which designates the location of the ORMA they are authorized to use and the hours that they may use them. Consequently, as H.B. No. 1382 is now worded a commercial operator's permit for use of a Commercial Thrill Craft Zone could potentially be construed to fall within the exception to the speed limit created by H.B. No. 1382. This, in turn, could potentially be viewed as giving commercial jet ski rental operators free rein to allow their customers to routinely exceed the speed limit set by H.B. No. 1382. Whether or not this is the intent of the proposed exception, I am concerned that if it is applied in this manner it will increase the risk to those who rent jet skis or other personal watercraft from commercial operators in Hawai'i.

A 1998 safety study of personal watercraft by the National Transportation Safety Board found that people who rent personal watercraft tend to be less experienced in operating PWCs than people who use privately owned PWCs. The study also found that there are certain features of the jet ski propulsion system that may confuse inexperienced operators in an emergency and thereby increase the likelihood of a collision. In particular, it was found that the natural tendency to release the throttle and reduce power

to the engine in order to avert a collision, as one might do in the face of an impending motor vehicle collision, would have the opposite effect on a jet ski or other PWC.

Jet skis do not have a rudder for steering. The direction of travel is controlled by changing the angle of the water being discharged through the rear of the propulsion system. As a result, if power is cut to the engine the operator loses the ability to steer the craft. Thus, the natural tendency of an inexperienced user to release the throttle when an impending collision is perceived actually reduces the ability to avoid the collision because the ability to steer is lost.

Also, jet skis have no brakes and travel on water. Therefore, cutting power to the engine would not slow a jet ski appreciably in the few moments that an operator may have before a collision occurs.

In Hawai'i, each Commercial Thrill Craft Zone is a designated circle with a radius of 200 feet. This means that customers who rent jet skis must navigate safely together in a relatively confined area. In comparison, Recreational Thrill Craft Zones are vastly larger, affording recreational users a much greater opportunity to avoid collisions by simply keeping their distance from each other. Given the confined space within which jet ski renters must operate, and the statistical likelihood they will be less experienced than purely recreational jet ski users, I believe it would be unwise to exempt Commercial Thrill Craft Zones from the proposed speed limit.

If the Committee agrees, I believe the bill can easily be revised to make it clear that ORMA permits alone do not exempt Commercial Thrill Craft Zones from the proposed speed limit. One possible solution would be to word the exception in this manner: "except: (1) In areas, along routes, and during time periods designated by the

department; and (2) In accordance with a permit issued by the department that expressly permits speeds in excess of thirty miles per hour.”

Thank you very much for allowing me to testify in Support of a sensible speed limit for jet skis and other personal watercraft. Please feel free to contact me should you have any questions or desire additional information.