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## A BILL FOR AN ACT

RELATING TO KEAUKOU BAY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds it a matter of concern  
2 that the growing population of west Hawaii and the visitor  
3 industry are affecting the traditional uses of the area around  
4 Keauhou bay and are having cumulative economic, environmental,  
5 social, and cultural effects on the many communities along this  
6 coastline. The increased usage of beach parks and state boating  
7 facilities to accommodate commercial ocean recreation activities  
8 has also had a significant impact on traditional commercial  
9 fishing activities, as well as other non-commercial ocean  
10 recreational activities.

11           The legislature also finds that the ocean waters in this  
12 area should be designated by the department of land and natural  
13 resources as an ocean recreation management area to reduce user  
14 conflicts, maintain overall public safety, and to regulate  
15 commercial activities by placing limitations on the locations,  
16 times, and types of ocean recreation activities that are  
17 permitted. The completion of a baseline environmental study is  
18 a prerequisite to the establishment of the boundaries of an



1 ocean recreation management area and the adoption of the ocean  
2 recreation management area rules. While state funding for a  
3 baseline environmental study is not available at this time, the  
4 legislature intends to identify a funding source to permit this  
5 important baseline environmental study to be performed.

6 The purpose of this Act is to place a moratorium on the  
7 issuance of new commercial vessel permits in Keauhou bay small  
8 boat harbor and adjacent offshore moorings involving ocean-  
9 related activities for ocean waters in and around Keauhou bay  
10 until the boundaries of a Keauhou bay ocean recreation  
11 management area are designated and administrative rules on  
12 recreational boating activities and commercial vessel activities  
13 are adopted.

14 SECTION 2. The department of land and natural resources  
15 shall not issue any state small boat harbor facility commercial  
16 permits for vessels engaged in ocean use activities in and  
17 around Keauhou bay that would exceed the total number of permits  
18 already issued as of the effective date of this Act, until the  
19 boundaries of an ocean recreational management area for the  
20 Keauhou bay area are determined and ocean recreation management  
21 area rules are adopted pursuant to this section and chapter 91,  
22 Hawaii Revised Statutes.



1 SECTION 3. To the extent that funds are made available,  
2 the department of land and natural resources shall prepare a  
3 baseline environmental study as an informational document to be  
4 used for the preparation of draft ocean recreation management  
5 area rules in accordance with the following procedures. The  
6 baseline environmental study shall include:

7 (1) A summary sheet with a concise description of the  
8 following:

9 (A) Significant beneficial and adverse impacts of  
10 ocean use activities in the Keauhou bay area  
11 (including cumulative impacts and secondary  
12 impacts);

13 (B) Proposed mitigation measures;

14 (C) Alternatives considered;

15 (D) Unresolved issues; and

16 (E) Compatibility with land use plans and policies,  
17 and listing of permits or approvals;

18 (2) A separate and distinct section that includes a  
19 statement of purpose and need for the designation of  
20 an ocean recreation management area;



1 (3) The following information, to the extent necessary for  
2 evaluation and review of the cultural, environmental,  
3 social, and economic impacts:

4 (A) A detailed map of the Keauhou bay area;

5 (B) A statement of objectives;

6 (C) A general description of the area's technical,  
7 economic, social, and environmental  
8 characteristics;

9 (D) Public funds or lands to be used for the  
10 designation;

11 (E) Phasing and timing of the designation;

12 (F) A summary of technical data, diagrams, and other  
13 information necessary to permit an evaluation of  
14 potential environmental impact by government  
15 agencies and the public; and

16 (G) A historic perspective;

17 (4) The following restrictions or limitations on ocean use  
18 or private recreational activities, set forth in  
19 detail:

20 (A) Sub-areas within any proposed ocean recreation  
21 management area where certain types of ocean use  
22 activities may be restricted or permitted;



- 1 (B) The number of permits, by permit type and vessel  
2 and passenger capacity, that may be issued for  
3 different types of ocean use activities;
- 4 (C) The months, days, and times that certain types of  
5 ocean use activities may be curtailed or  
6 prohibited; and
- 7 (D) Any other restrictions or limitations that the  
8 department deems appropriate;
- 9 (5) A procedure for the resolution of user conflicts  
10 between commercial ocean use activities and private  
11 recreational use of any ocean recreation management  
12 area;
- 13 (6) A rigorous exploration and objective evaluation of the  
14 environmental impacts of alternative actions.  
15 Particular attention shall be given to alternatives  
16 that might enhance environmental quality or avoid,  
17 reduce, or minimize some or all of the adverse  
18 environmental effects, costs, and risks and  
19 recreational and commercial use conflicts. Examples  
20 of alternatives include:
- 21 (A) No action;



1 (B) Requiring actions of a significantly different  
2 nature that would provide similar benefits with  
3 different environmental effects;

4 (C) Those related to different boundaries or details  
5 of the proposed area that present different  
6 environmental effects; and

7 (D) Postponing the designation of the area pending  
8 further study.

9 In each case, the analysis shall be sufficiently  
10 detailed to allow the comparative evaluation of the  
11 environmental benefits, costs, and risks of the  
12 proposed area designation and each reasonable  
13 alternative;

14 (7) A description of setting of any ocean recreation  
15 management area, including a description of the  
16 environment in the vicinity of the area, as it exists  
17 before the designation of the area, from both a local  
18 and regional perspective. Special emphasis shall be  
19 placed on environmental resources that are rare or  
20 unique to the region and the area (including natural  
21 or human-made resources of historic, archaeological,  
22 or aesthetic significance). Specific reference to



1 related land-based projects, public and private,  
2 existent or planned in the region shall also be  
3 included for purposes of examining the possible  
4 overall cumulative effects of the designation of the  
5 area. The department shall identify, where  
6 appropriate, population and growth characteristics of  
7 the affected region and any population and growth  
8 assumptions used to justify the action and determine  
9 secondary population and growth effects resulting from  
10 the proposed designation and its alternatives. In any  
11 event, it is essential that the sources of data used  
12 to identify, qualify, or evaluate any and all  
13 cultural, environmental, societal, and economic  
14 consequences be expressly noted;

- 15 (8) A statement of the relationship of the proposed  
16 designation of the area to land use plans, policies,  
17 and controls for the affected area. Discussion of how  
18 the proposed designation may conform or conflict with  
19 objectives and specific terms of approved or proposed  
20 land use plans, policies, and controls, if any, for  
21 the area affected shall be included. Where a conflict  
22 or inconsistency exists, the baseline environmental



1 study shall describe the extent to which the  
2 department has reconciled its proposed designation  
3 with the plan, policy, or control and the reasons why  
4 the department has decided to proceed, notwithstanding  
5 the absence of full reconciliation;

- 6 (9) In a separate and distinct section, a description of  
7 the relationship between local short-term uses of the  
8 marine environment and the maintenance and enhancement  
9 of long-term productivity of the marine environment.  
10 The extent to which the proposed action involves  
11 trade-offs among short-term and long-term gains and  
12 losses shall be discussed. The discussion shall  
13 include the extent to which the proposed designation  
14 forecloses future options, narrows the range of  
15 beneficial uses of the environment, or poses long-term  
16 risks to health or safety. In this context, short-  
17 term and long-term do not necessarily refer to any  
18 fixed time periods, but shall be viewed in terms of  
19 the environmentally significant consequences of the  
20 proposed action;





- 1 (10) A discussion of the resolution of conflicts between  
2 recreational use of the area by residents of the area  
3 and commercial ocean use activities;
- 4 (11) In a separate and distinct section, a description of  
5 all irreversible and irretrievable commitments of  
6 resources that would be involved in the proposed  
7 designation of the ocean recreation management area  
8 should it be implemented. Identification of  
9 unavoidable effects and the extent to which the action  
10 makes use of non-renewable resources as a result of  
11 the designation or irreversibly curtails the range of  
12 potential uses of the environment shall also be  
13 included. The possibility of environmental accidents  
14 resulting from any phase of the designation and  
15 maintenance of the ocean recreation management area  
16 shall also be considered;
- 17 (12) All probable adverse environmental effects that cannot  
18 be avoided and a statement addressing these problems.  
19 Any adverse effects, such as water or air pollution,  
20 urban congestion, user conflicts, threats to public  
21 health, or other consequences adverse to environmental  
22 goals and guidelines established by environmental



1 response laws, coastal zone management laws, pollution  
2 control and abatement laws, and environmental policy  
3 such as that found in chapters 128D, 205A, 342B, 342C,  
4 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, 342P,  
5 and 344, Hawaii Revised Statutes, shall be included,  
6 including those effects discussed in other actions of  
7 this paragraph that are adverse and unavoidable under  
8 the proposed designation and rules. Also, the  
9 rationale for proceeding with a proposed designation,  
10 notwithstanding unavoidable effects, shall be clearly  
11 set forth in this section;

12 (13) Other interests and considerations of governmental  
13 policies that are thought to offset the adverse  
14 effects of the proposed designation. The baseline  
15 environmental study shall also indicate the extent to  
16 which these stated countervailing benefits could be  
17 realized by following reasonable alternatives to the  
18 proposed designation that would avoid some or all of  
19 the adverse environmental effects;

20 (14) Mitigation measures proposed to avoid, minimize,  
21 rectify, or reduce impacts and user conflicts,  
22 including provision for compensation for losses of



1 cultural, community, historical, archaeological, and  
2 fish and wildlife resources, including the acquisition  
3 of land, waters, and interests therein. Description  
4 of any mitigation measures to reduce significant,  
5 unavoidable, or adverse effects to insignificant  
6 levels, and the basis for considering these levels  
7 acceptable shall be included. Where a particular  
8 mitigation measure has been chosen from among several  
9 alternatives, the measures shall be discussed and  
10 reasons given for the choice made. Included, where  
11 possible and appropriate, shall be specific reference  
12 to the timing of each step proposed to be taken in the  
13 mitigation process, what performance bonds, if any,  
14 may be posted, and what other provisions are proposed  
15 to ensure that the mitigation measures will, in fact,  
16 be taken;

- 17 (15) A separate and distinct section that summarizes  
18 unresolved issues and contains either a discussion of  
19 how the issues will be resolved prior to commencement  
20 of the designation or what overriding reasons there  
21 are for proceeding without resolving the problems;



1       (16) A separate and distinct section that contains a list  
2           identifying all governmental agencies, other  
3           organizations, and private individuals consulted in  
4           the preparation of the baseline environmental study  
5           and the identity of the persons, firms, or agency  
6           assisting in the preparation of the baseline  
7           environmental study, by contract or other  
8           authorization, shall be disclosed; and

9       (17) A separate and distinct section that contains  
10          reproductions of all substantive comments and  
11          responses made during the consultation process. A  
12          list of those persons or agencies who were consulted  
13          and had no comment shall be included in the baseline  
14          environmental study.

15       SECTION 4. The final designation of the ocean recreation  
16       management area and rules for this area shall be adopted by the  
17       department of land and natural resources pursuant to chapter 91,  
18       Hawaii Revised Statutes, and this Act and shall include any sub-  
19       areas or restricted areas. The department shall maintain  
20       rulemaking files that shall include but not be limited to the  
21       following:



- 1 (1) All letters received containing substantive questions,  
2 comments, or recommendations and, as applicable,  
3 summaries of any scoping meetings held;
- 4 (2) A list of persons, organizations, and public agencies  
5 commenting on the draft rules;
- 6 (3) The responses of the department to each substantive  
7 question, comment, or recommendation received during  
8 the rules adoption process; and
- 9 (4) The final rules written in a format that allows the  
10 reader to easily distinguish changes made to the text  
11 of the draft rules.

12 SECTION 5. For the purposes of this Act, "ocean use  
13 activities" means commercial operation of thrill craft, high-  
14 speed boating, para-sailing, water sledding, sailing and  
15 snorkeling tours, glassbottom boat tours, dolphin tours, or any  
16 other similar commercial ocean recreational activity for hire.

17 SECTION 6. The department of land and natural resources  
18 shall submit the baseline environmental study to the legislature  
19 not later than twenty days prior to the convening of the regular  
20 session of 2016.



# H.B. NO. 2226

1 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY:

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JAN 21 2014



# H.B. NO. 2226

**Report Title:**

Keauhou Bay; Ocean Recreation Management Area; Baseline Environmental Study

**Description:**

Authorizes a baseline environmental study of the Keauhou bay area and establishes a moratorium on the issuance of new commercial vessel permits in the area.

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