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GOVERNOR OF
HAWAII



SUZANNE D. CASE
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COMMISSION ON WATER RESOURCE MANAGEMENT

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DEPUTY DIRECTOR - WATER

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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

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
SUZANNE D. CASE
Chairperson

Before the House Committee on
OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS

Wednesday, February 17, 2016
9:00 AM
State Capitol, Conference Room 325

In consideration of
HOUSE BILL 2372, HOUSE DRAFT 1
RELATING TO COMMERCIAL ACTIVITY FOR OCEAN RECREATION AND
COASTAL AREAS

House Bill 2372, House Draft 1 proposes to clarify the definition of “commercial activity” for the purposes of the Department of Land and Natural Resources (Department) regulation of ocean and coastal recreation activities to include the exchange, buying, and selling of goods; provision of services; activities of commercial operators; and advertising or solicitation of business. **The Department strongly supports this Administration measure.**

The Department has experienced difficulty with enforcing unpermitted commercial activities occurring within State navigable waters and shoreline areas because the courts require that there be an exchange of money in order to deem the activity commercial. Often times, the alleged perpetrator claims that the exchange of money occurred off site so the activity cannot be deemed commercial. This amendment to the commercial definition makes it clear that regardless of the exchange of money, if the activities support the commercial operation in any way, then the activity is considered commercial and must comply with all statutory and Hawaii Administrative Rule provisions. In response to previously submitted testimony from the public, the Department would like to clarify that individuals engaged in fishing as their primary means of livelihood are not considered commercial under this definition of commercial activity.

Thank you for your consideration of this testimony.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 16, 2016 6:49 AM
To: omhtestimony
Cc: rnvfishing@gmail.com
Subject: Submitted testimony for HB2372 on Feb 17, 2016 09:00AM

HB2372

Submitted on: 2/16/2016

Testimony for OMH on Feb 17, 2016 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Roy N Morioka	Individual	Comments Only	No

Comments: Comments: Aloha Honorable Chair Ing, vice Chair Lowen and Members of the House OMH Committee: My peers and I have been advised that Commercial Marine License holders are exempted from this measure but not specifically addressed in this measure. We request that such exemption be stated in the proposed statute. Mahalo for your consideration. Respectfully, Roy Morioka CML Holder

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 15, 2016 11:11 PM
To: omhtestimony
Cc: hawaiifishingfanatic@gmail.com
Subject: *Submitted testimony for HB2372 on Feb 17, 2016 09:00AM*

HB2372

Submitted on: 2/15/2016

Testimony for OMH on Feb 17, 2016 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Don Aweau	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 15, 2016 8:17 PM
To: omhtestimony
Cc: hfacte@gmail.com
Subject: Submitted testimony for HB2372 on Feb 17, 2016 09:00AM

HB2372

Submitted on: 2/15/2016

Testimony for OMH on Feb 17, 2016 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Edwin Watamura	Individual	Comments Only	No

Comments: Would like there to be clear language exempting commercial fishing.

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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 14, 2016 8:52 PM
To: omhtestimony
Cc: yamaguchd009@hawaii.rr.com
Subject: *Submitted testimony for HB2372 on Feb 17, 2016 09:00AM*

HB2372

Submitted on: 2/14/2016

Testimony for OMH on Feb 17, 2016 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Dennis Yamaguchi	Individual	Oppose	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 14, 2016 12:58 PM
To: omhtestimony
Cc: captsmurf2@hotmail.com
Subject: Submitted testimony for HB2372 on Feb 17, 2016 09:00AM

HB2372

Submitted on: 2/14/2016

Testimony for OMH on Feb 17, 2016 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Gary P. Beals	Individual	Oppose	No

Comments: I oppose this Bill on the basis that it could put an unnecessary burden on 'commercial fishermen'.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 16, 2016 2:20 PM
To: omhtestimony
Cc: matt.htfa@gmail.com
Subject: Submitted testimony for HB2372 on Feb 17, 2016 09:00AM

HB2372

Submitted on: 2/16/2016

Testimony for OMH on Feb 17, 2016 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Matthew Ross	Individual	Comments Only	Yes

Comments: While management and regulation of commercial ocean activity is needed, as a commercial fisherman I am concerned that our activities could be affected by HB 2372 and HB 2379. We are already licensed and permitted under HRS 189-2, which is more appropriate for our activities. Fishing is very from tourism and ocean recreation, and regulating both in the same manner is unlikely to work. Also, this bill may potentially be in conflict with Article XI, section 6 of the Hawaii State Constitution.

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Hawaiian Style Beach Activities

150 Lahainaluna Rd
Lahaina, HI 96761
(808) 667-0990 Office
(808) 667-6707 Fax

COMMITTEE ON OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS

Rep. Kaniela Ing, Chair

Rep. Nicole E. Lowen, Vice Chair

Date/Time of Hearing: February 17, 2016, 9:00AM

Measure No. and Title: HB2372

OPPOSITION TESTIMONY

Chair Ing, Vice Chair Lowen and Senators of the OMH Committee:

Hawaiian Style Beach Activities and its affiliates (the “Company”) employ close to 100 people in Hawaii’s boating and tourism industries. Part of our business is renting snorkel gear, paddleboards and surfboard rentals from land based locations. We believe the revised definition of commercial activity could be construed to include our business.

Suzanne Case states, “The Department has experienced difficulty with enforcing unpermitted commercial activities occurring on the state navigable waters and shoreline areas because the courts require that there be an exchange of money in order to deem the activity commercial. Often times, the alleged perpetrator claims that the exchange of money occurred off site so the activity cannot be deemed commercial.”

If that is the intent, the amendment should address the specific problem. On the contrary, the proposed amendment greatly expands the definition of commercial activity and has required me to appear before this committee.

I have read the amendment on multiple occasions and each time I read it I think of a new area of business that is included in the new definition. For example, doesn’t the new definition include “ANY ACTION RELATED TO COMMERCE”? That definition could be construed to include anything.

We recognize the importance of clarifying the definition of “Commercial Activity”. However we don’t want the definition to be so broad that it will capture non-boating revenue. Therefore, we suggest the following language be added as the last sentence for Section 200-4(a)(9):

Notwithstanding the foregoing, commercial activity does not include (1) any land based sports rental or retail providers that rent or sell beach and ocean equipment for recreational use in state ocean waters, including, but not limited to, snorkel equipment, surfboards, paddleboards, wetsuits and fins; and (2) any land based activity provider

**that advertises or sells vouchers and tickets for activities
conducted in state ocean waters.**

We respectfully request that the above language be included in the revised definition of “commercial activity” to prevent an overexpansion of the definition.

Sincerely,

Zachary LaPrade



LATE

COMMITTEE ON OCEAN, MARINE RESOURCES, & HAWAIIAN
AFFAIRS

Rep. Kaniela Ing, Chair
Rep. Nicole E. Lowen, Vice Chair

DATE: Wednesday, February 17, 2016
TIME: 9:00AM
PLACE: Conference Room 325

**TESTIMONY OF THE OCEAN TOURISM COALITION
STANDING IN OPPOSITION ON HB 2372 RELATING TO COMMERCIAL
ACTIVITY FOR OCEAN RECREATION AND COASTAL AREAS**

Aloha Chair Ing, Vice Chair Lowen and Representatives on the Committee on Ocean, Marine Resources, & Hawaiian Affairs:

My name is James E. Coon, President of the Ocean Tourism Coalition.
OTC understands and supports the intent of this bill but cannot support HB 2372 as written.

The OTC represents over 300 small ocean tourism businesses state wide. Most of these are family businesses which are locally owned and operated. Many of them have been in business for several decades and are an important and valued part of their respective communities. Almost all of these companies operate out of State Small Boat Harbors and Ramps and Offshore Moorings. Several of these companies also operate dive shops, retail establishments, activity desks, and snorkel and dive gear rentals. Those members fear that this bill would enable DOBOR to start collecting revenue from their land based operations.

OTC has met with DOBOR and has been assured that the intent of this bill has nothing to do with the expanding DOBOR's reach to the shore side portion of these DOBOR permitted Ocean Tourism companies. OTC is asking for clarification to be sure that **nothing else** other than the **"gross revenue of income derived from the use of the vessel"** is included in determining the 3% fees.

OTC supports DOBOR's intent to be able to charge fees to other commercial water users similar to what it charges commercial boat operators, but believes that the language is not clear enough in regards to commercial boat operators. The language in this bill--as it relates to commercial boat operators--should reflect that only **"Gross Income directly derived from the use of the vessel"** would continue to be applicable to the commercial boat operator upon which DOBOR use fees would be paid.

DLNR/DOBOR states:

"The Department has experienced difficulty with enforcing unpermitted commercial activities occurring on the state navigable waters and shoreline areas because the courts require that there be an exchange of money in order to deem the activity commercial. Often times, the alleged perpetrator claims that the exchange of money occurred off site so the activity cannot be deemed commercial."

It is hard to imagine that this is an accurate statement of the problem. If courts require there be an exchange of money, and an alleged perpetrator admits that there was an exchange of money, then how does the money being exchanged offsite result in the court ruling that there was no commercial activity. For example, almost all exchanges of money for permitted commercial operators occur offsite as well, but that does not mean that they are not engaging in a commercial activity? If that were the case, then permitted commercial operators would not be paying the 3% gross revenue fee to DLNR, since they are not engaging in a commercial activity unless they receive compensation within DLNR's jurisdiction. However, permitted commercial operators do not argue this because it seems clear that if you engage in activities on the navigable waters and

shoreline areas and receive compensation (wherever you might receive it), you will fall under the current definition of “commercial activity” earned by the vessel. So how is the current definition failing and how will the new definition help?

The only thing the new bill would do is make the definition of “commercial activity” so broad that DLNR/DOBOR will be allowed regulate every aspect of permitted commercial operators’ businesses. Yet, as stated by DOBOR the problem does not lie with permitted operators. Therefore, the rule should not be amended in a way that will only affect those who are currently abiding by it. A more prudent solution would be to address the problem with language that is narrowly tailored to the problem. OTC is asking for clarification to be sure that **nothing else** other than the **"gross revenue of income derived from the use of the vessel"** is included in determining the 3% fees for commercial vessels.

If the problem is--as DLNR states--and a person need only receive money offsite to skirt the definition of “commercial activity”, then just amend the current rule to state **“Commercial activity means to engage in any action or attempt to engage in any action for compensation in any form, regardless of where such compensation is received.”**

As the bill currently stands, we fear that all that will be accomplished is greater confusion among permitted operators on where they stand in relation to the department and the potential for litigation if the department uses the new rule as a vehicle to regulate areas of permitted operators’ businesses that DLNR should not be regulating.

Sincerely,

James E. Coon, President OTC



LATE

COMMITTEE ON OCEAN, MARINE RESOURCES, & HAWAIIAN
AFFAIRS

Rep. Kaniela Ing, Chair

Rep. Nicole E. Lowen, Vice Chair

DATE: Wednesday, February 17, 2016

TIME: 9:00AM

PLACE: Conference Room 325

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