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## A BILL FOR AN ACT

RELATING TO COMMERCIAL ACTIVITY FOR OCEAN RECREATION AND COASTAL  
AREAS.

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

- 1           SECTION 1. Section 200-4, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:
- 3           "(a) The chairperson may adopt rules necessary:
- 4           (1) To regulate the manner in which all vessels may enter  
5           the ocean waters and navigable streams of the State  
6           and moor, anchor, or dock at small boat harbors,  
7           launching ramps, and other boating facilities owned or  
8           controlled by the State;
- 9           (2) To regulate the embarking and disembarking of  
10           passengers at small boat harbors, launching ramps,  
11           other boating facilities, and public beaches;
- 12           (3) For the safety of small boat harbors, launching ramps,  
13           and other boating facilities, and the vessels anchored  
14           or moored therein;
- 15           (4) For the conduct of the public using small boat  
16           harbors, launching ramps, and other boating facilities  
17           owned or controlled by the State;

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- 1           (5) To regulate and control recreational and commercial  
2           use of small boat harbors, launching ramps, and other  
3           boating facilities owned or controlled by the State  
4           and the ocean waters and navigable streams of the  
5           State;
- 6           (6) To prevent the discharge or throwing into small boat  
7           harbors, launching ramps, other boating facilities,  
8           ocean waters, and navigable streams, of rubbish,  
9           refuse, garbage, or other substances likely to affect  
10          the quality of the water or that contribute to making  
11          the small boat harbors, launching ramps, other boating  
12          facilities, ocean waters, and streams unsightly,  
13          unhealthful, or unclean, or that are liable to fill  
14          up, shoal, or shallow the waters in, near, or  
15          affecting small boat harbors, launching ramps, and  
16          other boating facilities and the ocean waters and  
17          navigable streams of the State, and likewise to  
18          prevent the escape of fuel or other oils or substances  
19          into the waters in, near, or affecting small boat  
20          harbors, launching ramps, or other boating facilities  
21          and the ocean waters and navigable streams of the  
22          State from any source point, including but not limited

1 to any vessel or from pipes or storage tanks upon  
2 land, including:

3 (A) Requirements for permits and fees for:

4 (i) The mooring, docking, or anchoring of  
5 recreational and commercial vessels or the  
6 launching of recreational or commercial  
7 vessels at small boat harbors, launching  
8 ramps, and other boating facilities; or

9 (ii) Other uses of these facilities;

10 (B) Requirements for permits and fees for use of a  
11 vessel as a principal place of habitation while  
12 moored at a state small boat harbor;

13 (C) Requirements governing:

14 (i) The transfer of any state commercial,  
15 mooring, launching, or any other type of use  
16 or other permit, directly or indirectly,  
17 including but not limited to the imposition  
18 or assessment of a business transfer fee  
19 upon transfer of ownership of vessels  
20 operating commercially from, within or in  
21 any way related to the state small boat  
22 harbors; and

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- 1                   (ii) The use of state small boat harbors,  
2                               launching ramps, or other boating facilities  
3                               belonging to or controlled by the State,  
4                               including but not limited to the  
5                               establishment of minimum amounts of annual  
6                               gross receipts required to renew a  
7                               commercial use permit, and conditions under  
8                               which a state commercial, mooring,  
9                               launching, or any other type of use or other  
10                              permit may be terminated, canceled, or  
11                              forfeited; and
- 12                   (D) Any other rule necessary to implement this  
13                               chapter pertaining to small boat harbors,  
14                               launching ramps, and other boating facilities  
15                               belonging to or controlled by the State;
- 16                   (7) To continue the ocean recreational and coastal areas  
17                               programs and govern the ocean waters and navigable  
18                               streams of the State, and beaches encumbered with  
19                               easements in favor of the public to protect and foster  
20                               public peace and tranquility and to promote public  
21                               safety, health, and welfare in or on the ocean waters  
22                               and navigable streams of the State, and on beaches

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1 encumbered with easements in favor of the public,  
2 including:

3 (A) Regulating the anchoring and mooring of vessels,  
4 houseboats, and other contrivances outside of any  
5 harbor or boating facility, including:

6 (i) The designation of offshore mooring areas;

7 (ii) The licensing and registration of vessels,  
8 houseboats, and other contrivances; and the  
9 issuance of permits for offshore anchoring  
10 and mooring of vessels, houseboats, and  
11 other contrivances; and

12 (iii) The living aboard on vessels, houseboats, or  
13 other contrivances while they are anchored  
14 or moored within ocean waters or navigable  
15 streams of the State.

16 The rules shall provide for consideration of  
17 environmental impacts on the State's aquatic  
18 resources in the issuance of any permits for  
19 offshore mooring;

20 (B) Safety measures, requirements, and practices in  
21 or on the ocean waters and navigable streams of  
22 the State;

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- 1           (C) The licensing and registration of persons or
- 2                           organizations engaged in commercial activities in
- 3                           or on the ocean waters and navigable streams of
- 4                           the State;
- 5           (D) The licensing and registration of equipment
- 6                           utilized for commercial activities in or on the
- 7                           ocean waters and navigable streams of the State;
- 8           (E) For beaches encumbered with easements in favor of
- 9                           the public, the prohibition or denial of the
- 10                          following uses and activities:
- 11                          (i) Commercial activities;
- 12                          (ii) The storage, parking, and display of any
- 13                                 personal property;
- 14                          (iii) The placement of structures or obstructions;
- 15                          (iv) The beaching, landing, mooring, or anchoring
- 16                                 of any vessels; and
- 17                          (v) Other uses or activities that may interfere
- 18                                 with the public use and enjoyment of these
- 19                                 beaches; and
- 20           (F) Any other matter relating to the safety, health,
- 21                           and welfare of the general public;

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1 (8) To regulate the examination, guidance, and control of  
2 harbor agents and their assistants; and

3 (9) To regulate commercial activities in state waters  
4 including operations originating from private marinas;  
5 provided that no new or additional permits shall be  
6 required for those commercial activities regulated by  
7 any other chapter.

8 For the purposes of this paragraph:

9 "Commercial activity" means [~~to engage in any~~  
10 ~~action or attempt to engage in any action for~~  
11 ~~compensation in any form. The action or actions may~~  
12 ~~include providing or attempting to provide guide~~  
13 ~~services, charters, tours, and transportation to and~~  
14 ~~from the location or locations for which such services~~  
15 ~~are provided.] to engage in any action or attempt to  
16 engage in any action designed for profit, which  
17 includes but is not limited to the exchange or buying  
18 and selling of commodities; the providing of services  
19 relating to or connected with trade, traffic, or  
20 commerce in general; any activity performed by the  
21 commercial operator or its employees or agents in  
22 connection with the delivery of such commodities or~~

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1            services; and the soliciting of business, including  
2            the display or distribution of notices, business  
3            cards, or advertisements for commercial promotional  
4            purposes.

5            [~~"Compensation" means money, barter, trade,~~  
6            ~~credit, and other instruments of value, goods, and~~  
7            ~~other forms of payment.] "~~

8            SECTION 2. This Act does not affect rights and duties that  
9            matured, penalties that were incurred, and proceedings that were  
10           begun before its effective date.

11           SECTION 3. Statutory material to be repealed is bracketed  
12           and stricken. New statutory material is underscored.

13           SECTION 4. This Act shall take effect upon its approval.

14  
15           INTRODUCED BY:   
16

BY REQUEST

JAN 25 2016



**Report Title:**

Commercial Activity for Ocean Recreation and Coastal Area Programs; Definition

**Description:**

Amends the definition of "commercial activity" within section 200-4(a), Hawaii Revised Statutes.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO COMMERCIAL ACTIVITY FOR OCEAN RECREATION AND COASTAL AREAS.

PURPOSE: To amend the definition of "commercial activity" within section 200-4(a), Hawaii Revised Statutes (HRS).

MEANS: Amend section 200-4(a), HRS.

JUSTIFICATION: The current definition for "commercial activity" within section 200-4(a), HRS, has been found to be too broad and vague by enforcement officials for the purposes of identifying such activity and regulating it. The new proposed definition would be more comprehensive and aligned with the City and County of Honolulu's definition of "commercial activity".

Impact on the public: The proposed amendment would provide a more detailed definition of commercial activity which will give the public increased clarity regarding which activities are considered commercial.

Impact on the department and other agencies: The proposed amendment will provide a more rigorous definition of commercial activity which will improve the ability of the Department to identify commercial activity and cite violations of commercial activity prohibition where applicable.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: LNR 801.

**HB2372**

OTHER AFFECTED  
AGENCIES:                   None.

EFFECTIVE DATE:           Upon approval.

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA  
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.  
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

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of  
SUZANNE D. CASE  
Chairperson

Before the House Committee on  
ECONOMIC DEVELOPMENT & BUSINESS

Tuesday, February 2, 2016  
9:00 AM  
State Capitol, Conference Room 312

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

House Bill 2372 proposes to amend the definition of “commercial activity” within Section 200-4(a), Hawaii Revised Statutes (HRS). **The Department of Land and Natural Resources (Department) strongly supports this Administration measure.**

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. 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 HRS and Hawaii Administrative Rule provisions.

Thank you for the opportunity to provide testimony on this measure.



COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS

Rep. Derek S.K. Kawakami, Chair  
Rep. Sam Satoru Kong, Vice Chair

**LATE**

DATE: Tuesday, February 02, 2016  
TIME: 9:00am  
PLACE: Conference Room 312

**TESTIMONY OF THE OCEAN TOURISM COALITION IN SUPPORT HB2372**

Chair Kawakami, Vice Chair Kong and Members of EDB:

My name is James E. Coon, President of the Ocean Tourism Coalition (OTC), **Speaking in Support of HB2372.**

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. Most of these businesses operate from State Boating Facilities. Our members are already regulated by DLNR/DOBOR. We pay our taxes and DLNR/DOBOR permit fees on time and can see no additional burden to our members by this proposed legislation.

If this new wording helps DOBOR better manage commercial activity within its mandate and helps them generate additional revenue from commercial activities that currently pay nothing, then so much the better.

We humbly ask you to pass HB 2372.

Sincerely,

James E. Coon, President OTC  
808-870-9115  
Captcoon@gmail.com