

DAVID Y. IGE  
GOVERNOR OF HAWAII



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

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HONOLULU, HAWAII 96809

**Testimony of  
SUZANNE D. CASE  
Chairperson**

**Before the Senate Committees on  
WATER AND LAND  
and  
JUDICIARY AND LABOR**

**Monday, February 6, 2017  
2:45 PM  
State Capitol, Conference Room 224**

**In consideration of  
SENATE BILL 992  
RELATING TO VESSELS AGROUND**

Senate Bill 992 proposes to clarify that the Department of Land and Natural Resources (Department) may assume immediate control of a vessel grounded on a sand beach, sand bar, or mudflat not in imminent danger of breaking up after the owner has been given seventy-two hours' notice to remove the vessel and has not done so. **The Department strongly supports this Administration measure.**

Currently, Section 200-47.5, Hawaii Revised Statutes, authorizes the Department to assume control of any vessel that is grounded on a coral reef once the owner of the vessel has been given notice and an opportunity to safely remove the vessel in accordance with Department guidelines. However, the statute is silent with regard to the Department's authority to assume control of any vessel grounded on state submerged lands or a shoreline, or on a sand beach, sandbar, or mudflat that is *not* in imminent danger of breaking up. This statutory omission creates difficulties for the Department in circumstances where removal of a grounded vessel *not* in imminent danger of breaking up is necessary for public safety or environmental purposes.

The proposed amendments in this measure would clarify the Department's areas of control for vessels aground on state property and the manners in which to do so.

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

KEKOA KALUHIWA  
FIRST DEPUTY

JEFFREY T. PEARSON  
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



**SB992**  
**RELATING TO VESSELS AGROUND**  
Senate Committee on Water and Land  
Senate Committee on Judiciary and Labor

February 6, 2017

2:45 p.m.

Conference Room 224

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The Office of Hawaiian Affairs (OHA) Beneficiary Advocacy and Empowerment Committee will recommend that the Board of Trustees **SUPPORT** SB992, which will allow the state to more expeditiously address and mitigate environmental impacts from grounded vessels.

Vessels that run aground on our reefs and coastal areas have the potential to cause significant environmental damage to their surrounding areas. After a vessel grounding, boating fuel and oil, debris, and the vessel structure itself may continuously impact marine life, including coral, until the grounded vessel is removed. Such impacts may be particularly harmful to the interests of Native Hawaiian rural community members, who rely heavily on the health and accessibility of their nearshore resources, to meet their daily subsistence needs. Unfortunately, OHA is aware of numerous instances where the State has been unable to timely address the ongoing impacts of a grounded vessel, including by compelling responsible parties to take action to minimize damage to our reefs and waters.

By clarifying when, where, and how the State may take action to assume control of and remove a grounded vessel, this measure may help to significantly reduce avoidable impacts to our nearshore and coastal environment.

Therefore, OHA urges the Committees to **PASS** SB992. Mahalo for the opportunity to testify on this measure.



Ke Kōmike no ka Wai a me ka 'Āina  
COMMITTEE ON WATER AND LAND  
Kenekoa/Senator Karl Rhoads, Luna Ho'omalu/Chair  
Kenekoa/Senator Mike Gabbard, Hope Luna Ho'omalu/Vice Chair

Ke Kōmike no ka Ho'okolokolo a me nā Limahana  
COMMITTEE ON JUDICIARY AND LABOR  
Kenekoa/Senator Gilbert S.C. Keith-Agaran, Luna Ho'omalu/Chair  
Kenekoa/Senator Karl Rhoads, Hope Luna Ho'omalu/Vice Chair

Lā / DATE: Pō'akahī, Pepeluali 6, 2017/ Monday, February 6, 2017  
Hōla / TIME: 2:45 p.m.

TESTIMONY OF THE OCEAN TOURISM COALITION  
SPEAKING WITH CONDITIONAL SUPPORT OF SB992

Aloha Chairs Senator Rhoads and Senator Keith-Agaran; Vice Chairs Senators Gabbard and Rhoads:

My name is James E. Coon, President of the Ocean Tourism Coalition (OTC) Hawaii's State-wide organization. We represent the 300 Small Commercial Passenger Vessels operating out of State Harbor facilities. We speak in **Conditional Support of SB 992 with proposed amendments:**

We agree with the intent of this bill and protecting the reef from abandoned or derelict vessels. Commercial operators are highly motivated to save their vessels and do as little damage to the reef or environment as possible. We want to see language that would protect the rights of the vessel owner to have the first right to coordinate the salvage of his own vessel. This is especially important for the commercial operators whose vessels may be worth well over a Million dollars.

We agree that competent salvage operations need to be well underway within 24 hours. In certain circumstances it may take longer than twenty four hours to complete a salvage operation. These instances are often governed by tide, winds, and swell action and availability of an appropriate tug to complete the salvage in the best way possible for the environment and the vessel. We believe it could be counterproductive to have DLNR automatically assume management of the

operations mid-way through the salvage and could make the final outcome worse not better.

We would support DLNR intervention in the salvage process after 24 hours if no effective salvage operation had been initiated.

Here are some conditions that are in the present law currently imposed on the vessel owner that wished to continue to be the primary agent in salvaging his vessel after the first 24 hours. We have saved much of this language in our proposed amendment:

- Proof of a Marine Insurance policy listing the State of Hawaii as additional insured for at least \$1,000,000.
- Evidence that salvage efforts were already underway with reasonable evidence that the vessel could be saved within the next 48 hours (or longer if it could be determined that additional environmental damage was highly unlikely).

**PROPOSED AMENDMENT:**

**(b) Solely for the purposes of removal and with no liability to the department, the department may assume control of any vessel that is grounded on state submerged land, a shoreline, or a coral reef or in imminent danger of breaking up and the owner has not commenced effective salvage operations within 24 hours from the time the vessel is grounded.**

**The owner of the vessel may continue as the primary agent in salvaging the vessel after twenty four hours upon providing proof of a marine insurance policy listing the State as an additional insured in the amount of at least \$1,000,000. And proof that the owner is actively and effectively initiating a salvage effort with reasonable evidence, as determined by the department, that the vessel may be saved within seventy two hours of grounding or longer if it could be determined that additional environmental damage was highly unlikely.**

Our industry council advises us that there is a due process issue with what is being proposed as well as very possibly conflicting with Maritime Salvage Law.

Our insurance advisors commented: "The State has no interest in the vessel, we should not be obligated to defend them for their own resulting actions as we cannot control how or who they

contract with to perform the salvage operations. The issue is vessel owners being allowed to operate in HI without insurance or not purchased adequate insurance and in a sense penalize Insurers by causing us to defend/hold harmless the State at our own increase expense. If they destroy a vessel that would have otherwise had a remaining salvage value, botch a salvage operation all together or caused a total loss that could have been avoided (bill only seems to address "least amount of expense" for salvage), insurers should reserve the right to pursue them for the resulting damages they have caused in assuming their own salvage operations on our behalf.

Triggers for Salvage Take Over – The proposed bill as written has the potential of creating serious financial loss to insurer who are otherwise obligated and want to salvage vessels as soon as possible. The real issue is owners who do not purchase insurance and state should be more worried about making sure all Commercial Operators have insurance with adequate limits. In state of CA for example, any commercial operator must provide evidence of insurance acceptable to the Department of Transportation and if they do not they cannot operate their vessel for commercial purposes. Then the DOT is assured that adequate insurance is available for every commercial vessel operating in our waters and just as important know who to contact should a wreck be seen to cause further harm to public waterways/lands. Triggers under this bill are all based on time and assumptions that the State can find owners/insurers without any liability whatsoever for their actions or failure to properly notice Assureds/Broker/Underwriters before they take over nor has any essence of wanting to collaborate with the Insurers efforts to salvage. Instead, seem like if time is exceeded or if they do not like the salvage methods for any reason they can take over without regard to Insurers financial loss. Insures also want to protect natural resources or the public from resulting harm and we already have the potential of reef damage penalty costs from the state for reef damage. "

If you pass this bill SB 992, please amend it to reflect the rights of the vessel owner to be the primary agent in the salving of his vessel as long as the owner is actively and effectively completing the salvage. The needs of the insurer also need to be addressed or we may not be able to obtain any adequate insurance.

At the end of the day, it should be the objective of all parties is to save the vessel if possible with as little damage to the environment as possible.

Thank you for the opportunity to submit testimony. If you have any questions, please contact me at 808-870-9115.

Sincerely,



James E. Coon, President  
Ocean Tourism Coalition  
808-870-9115  
[captcoon@gmail.com](mailto:captcoon@gmail.com)

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 6, 2017 11:23 AM  
**To:** WTL Testimony  
**Cc:** jeff@mauidiveshop.com  
**Subject:** Submitted testimony for SB992 on Feb 6, 2017 14:45PM

**SB992**

Submitted on: 2/6/2017

Testimony for WTL/JDL on Feb 6, 2017 14:45PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jeff Strahn	Maui Dive Shop	Oppose	No

Comments: Please let the vessel owners have the first opportunity to salvage their vessels from a reef or the shoreline. They have the greatest interest in correcting this situation quickly.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)