



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
WATER, LAND, AND HAWAIIAN AFFAIRS

Friday, February 1, 2019
9:00 A.M
State Capitol, Conference Room 325

In consideration of
HOUSE BILL 1151
RELATING TO COMMERCIAL OCEAN RECREATION

House Bill 1151 proposes to require the Department of Land and Natural Resources (Department) to adopt rules regarding regulating the activity of certain commercial water sport activity operators to provide for customer safety measures. **The Department acknowledges the intent of this measure and offers the following comments and recommendations.**

The Department notes that SCUBA diving instructors and tour operators are already required to meet Professional Association of Diving Instructor/National Association of Underwater Instructor standards. Therefore, the Department recommends not implementing such certification requirements through Hawaii Revised Statutes.

The Department recommends that rather than passing the bill as currently drafted, the Committee amend HB1151 to instead implement and define the term "watersport excursions" and require that commercial operators who carry participants on a vessel to engage in watersport excursions and who place participants or guides, or both, in the water stay within 100 yards of all participants and guides while they are in the water.

The Department's recommended changes to the bill are below:

SECTION 1. The legislature finds that many tourists who visit the State participate in [~~watersports~~] watersport excursions in the [~~oceans surrounding~~] waters of the State [~~, such as snorkeling, scuba diving, kayaking, and surfing lessons~~] , often purchasing a commercial tour from one of the many

commercial operators in the State. [~~There are companies that conduct commercial operations that take customers on excursions in state waters for the purpose of engaging in recreation activities.~~] For the purposes of this measure, the term "watersport excursion" means situations where (1) a commercial operator carries passengers for hire for the purposes of traversing waters of the State or (2) commercial operators guide participants to a destination.

[~~These commercial operations~~] Commercial watersport excursion operators are required to obtain a commercial use permit from the department of land and natural resources division of boating and ocean recreation. However, the provisions for obtaining those permits do not include any safety requirements, which can lead to potential consumer safety issues.

The legislature further finds that House Concurrent Resolution No. 86, H.D. 1, S.D. 1, adopted in 2015, requested the department of land and natural resources to engage stakeholders to consider adopting permitting provisions requiring employees of companies who take customers on watersport excursions to be trained in basic water safety measures. However, the legislature finds that the department of land and natural resources has not taken action to carry out the provisions of H.C.R. No.86, H.D. 1, S.D. 1 (2015) since the concurrent resolution was adopted.

The purpose of this Act is to provide increased customer safety measures [~~by requiring the department of land and natural resources to adopt rules regulating commercial ocean operators that take customers into state waters to engage in activities such as snorkeling, scuba diving, kayaking, and surfing lessons~~] for watersport excursion activities.

SECTION 2. Section 200-1, Hawaii Revised Statutes, is amended to read as follows:

"§200-1 Definitions. As used in this chapter, unless the context otherwise requires:

"Beaches encumbered with easements in favor of the public" means any lands which lie along the shores of the State which are now, or may hereafter be, encumbered by easements granted in favor of the public for bathing, swimming, or other similar or related purposes and for foot passage.

"Board" means the board of land and natural resources.

"Chairperson" means the chairperson of the board of land and natural resources.

"Department" means the department of land and natural resources.

"Ocean waters" means all waters seaward of the shoreline within the jurisdiction of the State.

"Sailing school vessel" means a vessel:

- (1) Less than five hundred gross tons, carrying six or more individuals who are sailing school students or sailing school instructors principally equipped for propulsion by sail even if the vessel has an auxiliary means of propulsion;
- (2) Owned or leased by a corporation, association, organization, or other duly chartered entity determined under the Internal Revenue Code to be exempt from the federal income tax and operated for the purpose of providing sailing instruction and therapeutic, educational, recreational, vocational, or family counseling services to emotionally disturbed youth or to youth sentenced by the family court to a rehabilitative sailing program and their families; and
- (3) That is in compliance with title 46 Code of Federal Regulations part 169.

"Shoreline" means the upper reaches of the wash of the waves, usually evidenced by the edge of vegetation growth or by the upper limit of debris left by the wash of the waves.

"Watersport excursion" means an ocean recreation activity where (1) a commercial operator carries passengers for hire for the purposes of traversing waters of the State or (2) commercial operators guide participants to a destination."

SECTION 3. Section 200-4.5, Hawaii Revised Statutes, is amended to read as follows:

"§200-4.5 Safety of ocean users; rules. (a) The department shall adopt rules to promote greater safety of ocean users in the State's nearshore waters. The rules shall include but not be limited to the creation of safe zones for free divers and swimmers and stricter enforcement of boating regulations around swim zone buoys.

(b) The following shall apply to commercial watersport excursion operators:

(1) Commercial operators who carry participants on a vessel to engage in watersport excursions and who place participants or guides, or both, in the water must stay within 100 yards of all participants and guides while they are in the water;

(2) The department may adopt rules pursuant to chapter 91 to implement this subsection."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

Thank you for the opportunity to comment on this measure.

COMMITTEE ON WATER, LAND, & HAWAIIAN AFFAIRS

Rep. Ryan I. Yamane, Chair
Rep. Chris Todd, Vice Chair

Testimony in Opposition of HB 1151 for a hearing on

Friday 2-2-19 9:00 AM

Submitted by:

David Weiss
Executive Vice President
Kaanapali Surf Club, Inc.
Kauai Surf Partners, Inc.
Aqualani Watersports

Aloha Chair Yamane, Vice Chair and Committee members.

My name is David Weiss and I am Executive Vice President of Kaanapali Surf Club, Kauai Surf Partners and Aqualani Watersports. Together, we are one the largest watersports companies in Hawaii. We are located on Maui and Operate in Kaanapali and Wailea and in Poipu on Kauai.

We have surf schools, kayak tours, SUP lessons and tours, outrigger canoe rides and scuba lessons. I am here to provide testimony in opposition to HB 1151. Our watersports staff are all watermen and women and most have been born and raised on the island where they work.

First of all, all of our staff receive rigorous water safety training and are certified in CPR. The training is all performed by one our PADI trained Scuba Instructors. According to our PADI instructors, the training is essentially the Rescue Diver training. However, there is no training on the actual scuba equipment that would be included in an Open Water course.

In additional to the Water Safety and CPR training, our watermen and women are already very skilled in what they do, most have surfed and / or paddled their whole lives and that life training itself is invaluable.

However, if HB 1151 was to pass and all of our staff would have to become Open Water certified by our PADI instructors it would be a huge financial and operational burden on our company, as well as the

other companies statewide that I have spoken to. Our company may survive, but many other smaller companies may not, and that is with only having to Open Water certify all our staff.

As the bill is written, operators would have a choice to either certify their staff in Open Water, or lifeguarding. My guess most would choose Open Water as lifeguard certification is both more expensive and time consuming.

There is a need for more water safety awareness in Hawaii, there is no arguing that. I worked on the beach for years in the early 80s and it was rare to hear of a visitor drowning. Nowadays, it seems like there is a drowning somewhere in the state every month, or more often. However, most drowning these days are from snorkels or ocean users departing from the land, and not from a boat or participating in a kayak tour or surf lesson. On Maui, many are also related to full face masks.

In conclusion, we are all in support of water safety, we just do not believe Open Water or Lifeguard certifications called for in SB 1151 is the answer.

Mahalo for your time and consideration,

Yours Truly

David Weiss



COMMITTEE ON WATER, LAND, & HAWAIIAN AFFAIRS

Rep. Ryan I. Yamane, Chair

Rep. Chris Todd, Vice Chair

Rep. Sharon E. Har

Rep. Tina Wildberger

Rep. Nicole E. Lowen

Rep. Cynthia Thielen

Rep. David A. Tarnas

NOTICE OF HEARING

DATE: Friday, February 1, 2019

TIME: 9:00am

TESTIMONY OF THE OCEAN TOURISM COALITION IN OPPOSITION TO HB1151 RELATING TO COMMERCIAL OCEAN RECREATION AS PROPOSED

Chair Yamane, Vice Chair Todd and Members of WLH Committee:

My name is James E. Coon, President of the Ocean Tourism Coalition (OTC),
speaking in Strong Opposition to HB 1151 AS PROPOSED.

**OTC supports the intent of House Concurrent Resolution No. 86, H.D.1, S.D. 1,
adopted in 2015 and would like to see HB1151 mirror HCR No. 86, HD1,SD1.**

The OTC represents the interests of over 300 small ocean tourism businesses state wide. All of them operate USCG Inspected and Certified Vessels from State Boating Facilities managed by DLNR/DOBOR. Most of these are family businesses which are locally owned and operated. They have been in business for several decades and operate at the highest level of safety and competence. These companies work closely with the USCG. Each company has a training program in conjunction with the USCG requirements that fits their operations. They do not need additional DLNR oversight. DLNR will not issue their Commercial Operating Permit without USCG Approval.

To further illustrate the point above, the following are some of the many requirements for vessels inspected by the USCG:

- (1) Crew manning requirements based on the activities of the vessel;
- (2) Quarterly safety drills;
- (3) CPR certification for certain % of crew members;
- (4) Bi-monthly inspections;
- (5) Life raft inspections;

- (6) Life vest inspections;
- (7) Drug testing; and
- (8) USCG currently requests vessels to conduct snorkeler in distress drills and snorkeler incident questionnaires. Anytime there is a medical emergency the Captain must notify the USCG and file a comprehensive report with the USCG outlining every aspect of the Medical Emergency and the steps taken to mitigate and resolve the emergency. Every serious Medical Emergency is investigated by the USCG.

Also there are many different levels of risk in the Ocean Recreation business. These various risks are addressed with USCG Inspected and Certified Vessels. However there many smaller Commercial Ocean Recreational businesses some that have neither DLNR nor USCG Federal oversight on their operations.

OTC believes that Section 2 should be modified as follows:

“(1) Each tour guide and instructor to have a rescue diver or lifeguard certified by a nationally recognized certification organization, provided such **requirements shall not apply to employees working on vessels Inspected and Certified by the United States Coast Guard;** and

(2) Vessels, used by commercial operators to transport customers for the purpose of engaging in an activity in ocean waters, to include a backboard, emergency oxygen, **and Automated External Defibrillator (AED) as part of its onboard safety equipment.**” There shall also be at least one individual aboard the vessel that is Lifeguard certified in CPR, AED, and Basic First Aid.

We humbly ask you to modify HB 1151 to reflect the intent of House Concurrent Resolution No. 86, H.D.1, S.D. 1, adopted in 2015 and exempt USCG Inspected and Certified Commercial Vessels.

Sincerely,



James E. Coon, President OTC

HCR NO. 86 HD1, SD1 ATTACHED

HOUSE CONCURRENT RESOLUTION

REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO
CONSIDER DEVELOPING PERMITTING PROVISIONS TO REQUIRE THAT
EMPLOYEES OF WATERSPORT EXCURSION COMPANIES WHO TAKE
CUSTOMERS ON WATERSPORT EXCURSIONS ARE TRAINED IN BASIC
SAFETY MEASURES.

1 WHEREAS, watersport excursion companies are commercial
2 operations that take customers on excursions for the purpose of
3 engaging in watersports, such as kayaking, snorkeling, surfing
4 and stand-up paddle lessons, and scuba diving; and
5

6 WHEREAS, watersport excursion companies, as well as other
7 commercial recreational operations, are required to obtain a
8 permit from the Division of Boating and Ocean Recreation of the
9 Department of Land and Natural Resources; and
10

11 WHEREAS, the administrative rules of the Department of Land
12 and Natural Resources do not currently require the employees of
13 watersport excursion companies to be trained to render aid in
14 the event of an emergency; and
15

16 WHEREAS, taking consumers on watersport excursions without
17 personnel present who are able to render aid if an emergency
18 occurs raises potential safety issues; now, therefore,
19

20 BE IT RESOLVED by the House of Representatives of the
21 Twenty-eighth Legislature of the State of Hawaii, Regular
22 Session of 2015, the Senate concurring, that the Department of
23 Land and Natural Resources is requested to engage stakeholders
24 to consider adopting permitting provisions requiring employees
25 of watersport excursion companies who take customers on
26 watersport excursions to be trained in basic water safety
27 measures; and
28



1 BE IT FURTHER RESOLVED that such requirements shall include
2 training in first aid and cardio pulmonary resuscitation, but
3 may not exceed licensure standards adopted by industry
4 associations, such as those adopted by the scuba industry; and
5

6 BE IT FURTHER RESOLVED that such requirements need not
7 apply to employees who do not take customers out on excursions,
8 such as employees who work solely in retail or reservations at a
9 watersports excursion company or to vessels already regulated by
10 the United States Coast Guard; and
11

12 BE IT FURTHER RESOLVED that these requirements need not
13 apply to every employee who takes customers on watersports
14 excursions and the Department may determine whether requiring
15 training for a defined percentage of employees present on an
16 excursion is sufficient to protect customer and employee health
17 and safety; and
18

19 BE IT FURTHER RESOLVED that a certified copy of this
20 Concurrent Resolution be transmitted to the Chairperson of the
21 Board of Land and Natural Resources.
22



HB-1151

Submitted on: 1/30/2019 10:11:11 AM

Testimony for WLH on 2/1/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Bill Zabolski	Captain Zodiac	Oppose	No

Comments:

STRONGLY OPPOSE. This bill puts **undue** hardships on small companies. There is no Lifeguard certification program that is easily accessible on Hawaii. Rescue diver certification can cost a lot of money and take a long time to complete. Both these are unnecessary as our crew is trained to handle emergencies, recover people from water in distress and get them to the EMT's who can better help them.

Small boats do not have room for additional equipment like a back boards and oxygen set up needs training to provide for safe use.

This issue is not for small businesses, it may be ok for large boats so perhaps clarifying it for vessels with 50 passenger or more capacity.

Bill Zabolski

Captain Zodiac

HB-1151

Submitted on: 1/30/2019 12:24:20 PM

Testimony for WLH on 2/1/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Brennan Henders	Maui Classic Charters	Oppose	No

Comments:



(808) 667-0990 office
(808) 667-6707 Fax

COMMITTEE ON WATER, LAND, & HAWAIIAN AFFAIRS

Rep. Ryan I. Yamane, Chair
Rep. Chris Todd, Vice Chair

NOTICE OF HEARING

MEASURE AND TITLE: HB1151

DATE: Friday, February 1, 2019
TIME: 9:00am
PLACE: Conference Room 325

TESTIMONY IN OPPOSITION WITH AMENDMENTS

Chair Yamane, Vice Chair Todd, and Representatives of the WLH Committee:

Calypso Charters and its affiliates (the “Company”) employ close to 100 people in Hawaii’s tourism industry. We support this bill and its intent, however, our industry is already regulated by the USCG and should be exempt.

Resolution

House Concurrent Resolution 86 was passed in 2015 covering this same topic. Based on the input from the industry, the Resolution was passed excluding vessels regulated by the United States Coast Guard. *See House Concurrent Resolution 86 attached as Exhibit “A” with relevant areas highlighted.*

United States Coast Guard

Commercial vessels that are certified by the USCG already have USCG oversight and requirements which are continually being updated. Below are just some of the safety matters *currently* regulated by the USCG:

- (1) Crew manning requirements based on the activities of the vessel;
- (2) Quarterly safety drills;
- (3) CPR certification for certain % of crew members;
- (4) Bi-monthly inspections;
- (5) Life raft inspections;
- (6) Life vest inspections; and
- (7) Drug testing.

Also, the USCG currently requests vessels to conduct snorkeler in distress drills and snorkeler incident questionnaires. Anytime there is a medical emergency the Captain must notify the USCG and file a comprehensive report with the USCG outlining every aspect of the Medical Emergency and the steps taken to mitigate and resolve the emergency. Every serious Medical Emergency is investigated by the USCG.

Here is a list of safety measures most charter boat operators employ in addition to USCG regulations:

- (1) Flotation devices for each passenger;
- (2) Snorkel 101 courses for new snorkelers;
- (3) In-water lifeguards;
- (4) Dive-step lifeguards;
- (5) On-Board AED device;
- (6) On-Board Oxygen;
- (7) Crew on-deck and in-water safety training; and
- (8) A general duty as crew members for the safety of passengers.

We ask that legislature does not alter our current safety procedures that successfully brings millions of passengers safely home to Hawaii harbors.

Suggested Language

In furtherance of this request, we ask that subsection 3 be added to the proposed rules:

- (1) Each tour guide and instructor to have a rescue diver or lifeguard certified by a nationally recognized certification organization;
- (2) Vessels, used by commercial operators to transport customers for the purpose of engaging in an activity in ocean waters, to include a backboard and emergency oxygen as part of its onboard safety equipment; and
- (3) That the requirements above shall not apply to vessels inspected by the United States Coast Guard.**

Mahalo,

Zachary LaPrade

Exhibit "A"

HOUSE OF REPRESENTATIVES
TWENTY-EIGHTH LEGISLATURE, 2015
STATE OF HAWAII

H.C.R. NO. 86
H.D. 1
S.D. 1

HOUSE CONCURRENT RESOLUTION

REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO
CONSIDER DEVELOPING PERMITTING PROVISIONS TO REQUIRE THAT
EMPLOYEES OF WATERSPORT EXCURSION COMPANIES WHO TAKE
CUSTOMERS ON WATERSPORT EXCURSIONS ARE TRAINED IN BASIC
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2 operations that take customers on excursions for the purpose of
3 engaging in watersports, such as kayaking, snorkeling, surfing
4 and stand-up paddle lessons, and scuba diving; and
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6 WHEREAS, watersport excursion companies, as well as other
7 commercial recreational operations, are required to obtain a
8 permit from the Division of Boating and Ocean Recreation of the
9 Department of Land and Natural Resources; and
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11 WHEREAS, the administrative rules of the Department of Land
12 and Natural Resources do not currently require the employees of
13 watersport excursion companies to be trained to render aid in
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16 WHEREAS, taking consumers on watersport excursions without
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18 occurs raises potential safety issues; now, therefore,
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20 BE IT RESOLVED by the House of Representatives of the
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22 Session of 2015, the Senate concurring, that the Department of
23 Land and Natural Resources is requested to engage stakeholders
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25 of watersport excursion companies who take customers on
26 watersport excursions to be trained in basic water safety
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1 BE IT FURTHER RESOLVED that such requirements shall include
2 training in first aid and cardio pulmonary resuscitation, but
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9 watersports excursion company or to vessels already regulated by
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12 BE IT FURTHER RESOLVED that these requirements need not
13 apply to every employee who takes customers on watersports
14 excursions and the Department may determine whether requiring
15 training for a defined percentage of employees present on an
16 excursion is sufficient to protect customer and employee health
17 and safety; and
18

19 BE IT FURTHER RESOLVED that a certified copy of this
20 Concurrent Resolution be transmitted to the Chairperson of the
21 Board of Land and Natural Resources.
22



HB-1151

Submitted on: 1/30/2019 12:33:37 PM

Testimony for WLH on 2/1/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Chris Kasper	Malolo Charters	Oppose	No

Comments:

Nearly all visitor water-related deaths occur off the beach not off charter boats as we all know. Why turn the screws on us? How about doing what really needs to be done and put lifeguard tower at Black Rock in Kaanapali.

With the transient nature of our staff and the number of crew members we have, it will be impossible to meet these requirements for all crew members. Here in Maui Its extremely difficult just to meet the first aid and CPR requirement due to the limited number of classes available. How can we possibly meet a lifeguard certification requirement? How often are lifeguard classes held? Rescue Diver? It would be impossible to have all staff be certified divers let alone rescue divers. We can see where a small dive company would be able to meet the rescue diver requirement being their people are probably already dive masters if not instructors.

Resolution

House Concurrent Resolution 86 was passed in 2015 covering this same topic. Based on the input from the industry, the Resolution was passed excluding vessels regulated by the United States Coast Guard. *See House Concurrent Resolution 86*

United States Coast Guard

Commercial vessels that are certified by the USCG already have USCG oversight and requirements which are continually being updated. Below are just some of the safety matters **currently** regulated by the USCG:

1. Crew manning requirements based on the activities of the vessel;
2. Quarterly safety drills;
3. CPR certification for certain % of crew members;
4. Bi-monthly inspections;
5. Life raft inspections;
6. Life vest inspections; and
7. Drug testing.

Also, the USCG currently requests vessels to conduct snorkeler in distress drills and snorkeler incident questionnaires. Anytime there is a medical emergency the Captain

must notify the USCG and file a comprehensive report with the USCG outlining every aspect of the Medical Emergency and the steps taken to mitigate and resolve the emergency. Every serious Medical Emergency is investigated by the USCG.

Here is a list of safety measures most charter boat operators employ in addition to USCG regulations:

1. Flotation devices for each passenger;
2. Snorkel 101 courses for new snorkelers;
3. In-water lifeguards;
4. Dive-step lifeguards;
5. On-Board AED device;
6. On-Board Oxygen;
7. Crew on-deck and in-water safety training; and
8. A general duty as crew members for the safety of passengers.

We ask that legislature does not alter our current safety procedures that successfully brings millions of passengers safely home to Hawaii harbors.

Suggested Language

In furtherance of this request, we ask that subsection 3 be added to the proposed rules:

(1) Each tour guide and instructor to have a rescue diver or lifeguard certified by a nationally recognized certification organization;

(2) Vessels, used by commercial operators to transport customers for the purpose of engaging in an activity in ocean waters, to include a backboard and emergency oxygen as part of its onboard safety equipment; and

(3) That the requirements above shall not apply to vessels inspected by the United States Coast Guard.

HB-1151

Submitted on: 1/30/2019 1:51:42 PM

Testimony for WLH on 2/1/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jeff Strahn	Alii Nui Charters	Oppose	No

Comments:

**Testimony of Denver Saxton Coon on behalf of Trilogy Corporation, with Conditional Support of HB 1151,
Relating to Ocean Safety.**

COMMITTEE ON WATER, LAND, & HAWAIIAN AFFAIRS

Rep. Ryan I. Yamane, Chair

Rep. Chris Todd, Vice Chair

Rep. Sharon E. Har Rep. Tina Wildberger

Rep. Nicole E. Lowen Rep. Cynthia Thielen

Rep. David A. Tarnas

NOTICE OF HEARING

DATE: Friday, February 1, 2019

TIME: 9:00am

PLACE: Conference Room 325
 State Capitol
 415 South Beretania Street

Chair Yamane, Vice Chair Todd, and members of the WLH Committee:

Aloha. My name is Denver Saxton Coon. I am general counsel for Trilogy Corporation dba Trilogy Excursions on the island of Maui. Trilogy Excursions has been operating for over 45 years and employs close to one hundred employees. Trilogy is committed to safety and the education of our islands' visitors. Accordingly, Trilogy is opposed to **HB 1151** unless certain changes are made to the language of the bill.

It is important to note that HB 1151 was preceded by HCR 86, HD1, SD1 passed during the 2015 legislative session. This concurrent resolution looked to require employees of watersports excursions companies to be trained in basic water safety measures, including first aid and cardio pulmonary resuscitation. However, these requirements did not apply to vessels already regulated by the U.S. Coast Guard (USCG). This exemption was created because USCG regulations already require crew to be first aid certified and trained in basic lifesaving skills. As a result, it was unnecessary to have the Department of Land and Natural Resources policing an area already extensively regulated by the USCG. Accordingly, Trilogy Excursions supports the intent of this bill when applied to the many commercial operators NOT currently regulated by the USCG, but believes that vessels already regulated by the USCG should be exempt. This will avoid having both the federal and state agencies overseeing the same area, and will avoid putting unnecessary requirements on the operators who lead the industry in safety and training.

To further illustrate the point above, the following are some of the many requirements for vessels inspected by the USCG:

- (1) Crew manning requirements based on the activities of the vessel;
- (2) Quarterly safety drills;
- (3) CPR certification for certain % of crew members;
- (4) Bi-monthly inspections;
- (5) Life raft inspections;
- (6) Life vest inspections;
- (7) Drug testing; and
- (8) USCG currently requests vessels to conduct snorkeler in distress drills and snorkeler incident questionnaires. Anytime there is a medical emergency the Captain must notify the USCG and file

a comprehensive report with the USCG outlining every aspect of the Medical Emergency and the steps taken to mitigate and resolve the emergency. Every serious Medical Emergency is investigated by the USCG.

In addition, there are numerous reasons why it is not practical to require every employee working aboard a USCG inspected vessel to be lifeguard certified. First, it is unclear how frequent and how available lifeguard certification courses will be. At the moment, a google search of certification classes on Maui does not produce any results. While this may change in the future, it currently presents a serious problem. In particular, this will be especially hard on new hires, as the inability to get certified right away will prevent them from working and may prevent them from being hired, despite having certifications in first aid and CPR. Second, it is not clear how much a lifeguard certification course will cost. While it is cheaper to do group courses, this also requires a certain amount of time to pass to build up enough participants. Accordingly, employees who are not hired during the right window of time may either have to pay for a one on one certification at a higher price in order to start working immediately, or not work until the group class is conducted. Such a situation would be unnecessarily punitive considering the incredible safety record of USCG inspected vessels in Hawaii.

Accordingly, Trilogy believes that **Section 2 should be modified as follows:**

“(1) Each tour guide and instructor to have a rescue diver or lifeguard certified by a nationally recognized certification organization, provided such **requirements shall not apply to employees working on vessels inspected by the United States Coast Guard;** and

(2) Vessels, used by commercial operators to transport customers for the purpose of engaging in an activity in ocean waters, to include a backboard, emergency oxygen, **and Automated External Defibrillator (AED) as part of its onboard safety equipment.**”¹

Mahalo,

Denver Saxton Coon
Trilogy Corporation
General Counsel
denver.coon@sailtrilogy.com

¹ An AED is an invaluable tool equipped aboard USCG inspected vessels and such a requirement for uninspected operators would further the effectiveness of HB 1151.

HB-1151

Submitted on: 1/31/2019 1:40:52 PM

Testimony for WLH on 2/1/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Chandra Bertsch	Holo Holo Charters	Oppose	No

Comments:

This bill is unreasonable and unnecessary for commercial vessel operations that are already regulated by the United States Coast Guard (USCG). As a tour boat operator on Kauai, we are held to strict guidelines imposed by the USCG that have proven to be effective and ensure safety compliance.

Commercial vessel operators who are overseen by USCG are required to have on-board the vessel all life-saving equipment that USCG has determined to be necessary and effective. Captains must be licensed which requires schooling, exams, physicals, background checks, verified sea time, and drug/alcohol testing requirements. USCG requires written and documented safety protocols as well, including an Emergency Action Plan instructing how to safely get passengers back on board for various emergency situations while participating in in-water activities. USCG requires staff to be CPR and First Aid certified and during annual inspections requires visual tests of emergency and life-saving procedures be demonstrated.

The USCG has the tools and procedures in place to ensure compliance with all the vessels under its jurisdiction. Shifting this burden of inspection and compliance for all commercial vessel safety operations to the Department of Land and Natural Resources (DLNR) is a burden that the DLNR cannot prove they would be able to enforce. The DLNR previously eliminated Ocean Recreation Management Area (ORMA) requirements for ocean operators which required safety and training protocols for any ocean users including boats and kayaks. This insured that those responsible for the safety of the passengers had adequate sea time along the specific coastlines and ocean areas, and for kayaks who are not regulated by USCG, it required a doctor physical and completion of an aquatic safety course.

We suggest that legislators work with local USCG to require aquatic safety management classes be a requirement for all commercial tour operators. Therefore, the burden of compliance would fall on USCG who already oversee the safety regulations of vessels. We conduct annual aquatic safety management classes to all our employees which is much more effective than a general lifeguard certification. An aquatic safety management class can be customized to each specific company, vessel and operation. Each vessel is unique in the equipment, exit/entry points, and operations it conducts, so it is critical that training is conducted on-board with discussions regarding specific risks and unique needs of the company.

Lifeguarding skills are limited and not directly relatable to the skills and needs of captain and crew overseeing safety on vessels. Lifeguards are not trained in the knowledge of vessels, including anchoring, safety equipment and systems, engines, sail and line handling, recognizing signs of seasickness and other medical issues. A lifeguard certification does not qualify you to work on a commercial vessel. In fact, our experience shows that many watermen and women join a tour operator first, gaining valuable safety and life-saving skills, then go on to be lifeguards later in life. Many current senior lifeguards and fire department personnel have gone through the ranks as crew and captains at our company and many other operators on the island, before joining the lifeguard or fire department.

It is unrealistic to require staff to be lifeguard certified by a nationally recognized certification organization without programs in place to support this on each island. It is expensive and a hindrance to operations to send all staff to additional certification programs when we provide classes and training of our own on a schedule that is conducive to our operations. Safety is the most important aspect of our operations and is in our best interest to keep our staff well trained.

The USCG investigates any incidents involving commercial tour operators and compiles data regarding injuries or deaths that have occurred. The documented drownings occurring during commercial vessel operations are regularly attributed to pre-existing conditions, not from operator failures or lack of training and safety procedures. Most injuries and deaths related to drowning in the State of Hawaii occur from on-shore activities, we would encourage more legislation be directed to educate accommodations and snorkel rental locations of the hazards and risks associated with the activity.

This bill may be effective to provide standards for surf schools or shore-based excursions; but should not include companies operating vessels who are already upheld to strict federal guidelines through the USCG. Therefore, we suggest **Section 2 should be modified as follows:**

“(1) Each tour guide and instructor to have a rescue diver or lifeguard certified by a nationally recognized certification organization, provided such **requirements shall not apply to all employees working on vessels inspected by the United States Coast Guard;**

(2) All Vessels, used by commercial operators to transport customers for the purpose of engaging in an activity in ocean waters, **to include life-saving equipment as determined and required by the USCG. There shall also be at least one individual aboard the vessel that is certified in Aquatic Safety Management, CPR, and Basic First Aid.**

HB-1151

Submitted on: 1/31/2019 8:38:56 AM

Testimony for WLH on 2/1/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kristie Wrigglesworth	PacWhale Eco-Adventures	Oppose	No

Comments:

I am submitting this written testimony in opposition to HB1151 for the reasons below. I represent 80 vessel employees and 6 vessels that run commercial operations in Maui.

We currently require all of our staff to be lifeguard certified and have had conversations in the past year to remove this requirement from our job descriptions and replace it with more formal ocean training. The reason for this is that becoming a "certified lifeguard" is done in a pool setting, far from realistic conditions that the ocean poses. The other reason is that a fair percentage of our staff never work a charter that requires guests to enter the water. For all organizations to incur this cost to provide dining staff at sea, whale watch crew or other non-essential life saving functions is unreasonable and poses an undue hardship. The liability and responsibility should remain with the individual companies to determine the best practices for their area(s) of operation and take necessary steps to ensure the safety of their guests.

To legislate that all operators have this certification is a clear indication that this bill does not consider the practical operations of ocean tourism. The USCG regulates and requires frequent and on-going trainings, including distressed swimmer training, for all staff, and each vessel is regularly drilled, all of this is documented on vessels.

Thank you for your time and consideration of this testimony in opposition to HB1151.

HB-1151

Submitted on: 1/31/2019 5:49:18 AM

Testimony for WLH on 2/1/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kevin Ford	Maui Classic Charters	Oppose	No

Comments:

I strongly oppose HB 1151 and disagree that the Department of Land and Natural Resources should not be involved in a passenger vessels safety program as we are well regulated by the United States Coast Guard under the Department of Transportation.

All of our staff are well trained and certified in life saving skills, first aid and CPR, safety is our number one priority but to mandate a life guard on every trip would be an ongoing burdensome process.



Activities & Attractions Association of Hawaii
PO Box 598, Makawao, Hawaii 96768
(808)871-7947 Main (808)877-3104 Fax

Testimony to the
COMMITTEE ON WATER, LAND, & HAWAIIAN AFFAIRS

Representative Ryan I. Yamane, Chair
Representative Chris Todd, Vice Chair

Friday, February 1, 2019, 9:00 am
Conference Room 325

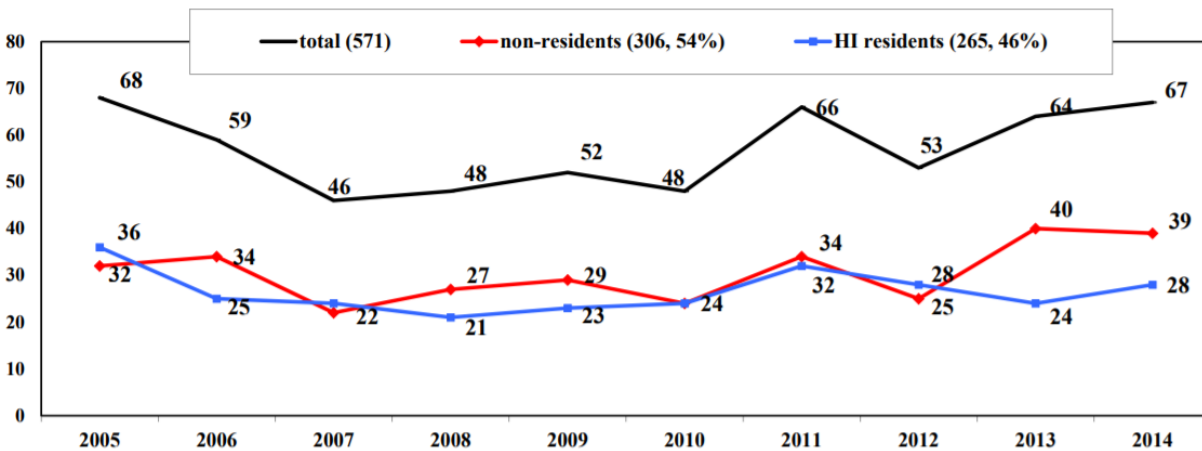
RE: Support **H1151** RELATING TO COMMERCIAL OCEAN RECREATION

Aloha Chair Representative Yamane and Vice Chair Representative Todd and members the committee,

Mahalo for this opportunity to testify, my name is Toni Marie Davis. For the last 20 years it has been my honor to serve the Activity & Attraction industry of Hawaii through my position as the Executive Director of A3H (Activities & Attractions Association of Hawaii). A3H represents nearly 200 businesses statewide. Our members range in size from very large (over 300 employees) to very small (1-2 employees). A large portion of our membership provides ocean related commercial activities.

We support the intent to standardize the required safety equipment & guide certification related to ocean safety. Hawaii's incidents of ocean accidents were studied at length by Department of Health (2014),

<https://health.hawaii.gov/injuryprevention/files/2015/08/wsocon15a.pdf>





Activities & Attractions Association of Hawaii
PO Box 598, Makawao, Hawaii 96768
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The relevant study revealed that visitors are the more likely to be involved in an ocean-related incident. The top issues related to fatalities were heart disease, alcohol/drug use and other factors, or traumatic injuries/seizure disorder. The factor differentiating an incident from a fatality was clearly the presence of immediate medical care.

Many of the businesses (larger boat operators) in our association already adhere to the requirements proposed in the HB1151. Smaller operators find the requirements impractical and, in some instances, impossible.

Please consider qualifying the vessel size for safety equipment and including a CPR/First Aid certified individual. It may be more appropriate for this to be administered as part of the permitting/rule process as opposed to legislating.

Thank you again for the opportunity to testify.

Sincerely,

Toni Marie Davis
Executive Director

HB-1151

Submitted on: 1/31/2019 3:19:54 PM

Testimony for WLH on 2/1/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
scott blish	maui-molokai sea cruises	Oppose	No

Comments:

Aloha,

Scott Blish from maui-molokai Sea Cruises. We run two charter boats on Maui, we employ just under 50 people.

We like the intent of the bill but are opposed to it. We are opposed because we are already regulated federally by the United States Coast Guard. We are required to complete drills related to boat safety. These drills are required: Fire, abandon ship, man overboard, collision and rescue of distressed swimmers. We provide floatation, instruction and constant supervision of our guests from in the water and from at the waters' edge. Our staff are trained in water safety. recognizing swimmers in distress, safely swimming long distances, free diving, rescuing distressed swimmers, understanding currents, weather, and at risk guests. In other words we already provide a very safe environment for our ocean going guests. I like the idea of putting our main in water life guards through a rigorous training class and support it. But having each employee certified prior to working on a vessel is too much of a challenge, financial burden and a time constraint.

Each class typically takes a mininum of two days. Each class costs in the \$500 ball park cost. Each class only occurs every quarter or so. So should we lose an employee to illness, holiday, disability, firing, planned departure; we would be unable to replace that employee for months possibly. That would bring our business to its knees or force us to put the same crew on day in and day out creating unsafe work conditions.

Tahnks for your time,

Scott Blish

HB-1151

Submitted on: 1/30/2019 11:46:13 AM

Testimony for WLH on 2/1/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Greg Howeth	Individual	Oppose	No

Comments:

I strongly oppose HB 1151 because it fails to take into account that activities like SCUBA require the Divemasters to already have cpr and first aid training as well as training specific to diving related emergencies that exceed the training this bill would require them to get.

HB-1151

Submitted on: 1/30/2019 2:29:19 PM

Testimony for WLH on 2/1/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Blake Moore	Business	Oppose	No

Comments:

We currently require all of our staff to be certified and have had conversations in the past year to remove this requirement from our JDs and replace it with more formal ocean training. The reason for this is that becoming a "certified lifeguard" is done in a pool setting, far from realistic conditions that the ocean poses. The other reason is that about 40% of our staff never work a charter that requires guests to enter the water. For all organizations to incur this cost to provide dining staff at sea, whale watch crew or other non-essential life saving functions is unreasonable. The liability and responsibility should remain with the individual companies to determine the best practices for their area(s) of operation and take necessary steps to ensure the safety of their guests. If the state wanted to get involved in this, they could create a list of companies that meet a defined criteria for safe practices on the ocean and be "recommended" by the state LG association. To legislate that all operators have this certification is a clear indication that someone at the decision making level doesn't understand the business of ocean tourism. The USCG regulates and requires training for all staff and is it regularly drilled and documented on vessels.

HB-1151

Submitted on: 1/30/2019 11:43:48 AM

Testimony for WLH on 2/1/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Greg Shepherd	Individual	Support	No

Comments:

HB-1151

Submitted on: 1/30/2019 1:09:34 PM

Testimony for WLH on 2/1/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Marcella Mondejar	Individual	Oppose	No

Comments:

LATE

COMMITTEE ON WATER, LAND, & HAWAIIAN AFFAIRS

Rep. Ryan I. Yamane, Chair
Rep. Chris Todd, Vice Chair

Rep. Sharon E. Har Rep. Tina Wildberger
Rep. Nicole E. Lowen Rep. Cynthia Thielen
Rep. David A. Tarnas

NOTICE OF HEARING

DATE: Friday, February 1, 2019
TIME: 9:00am

**Corrected
Version**

**TESTIMONY OF THE OCEAN TOURISM COALITION IN OPPOSITION TO
HB1151 RELATING TO COMMERCIAL OCEAN RECREATION AS PROPOSED**

Chair Yamane, Vice Chair Todd and Members of WLH Committee:

My name is James E. Coon, President of the Ocean Tourism Coalition (OTC),
speaking in Strong Opposition to HB 1151 AS PROPOSED.

**OTC supports the intent of House Concurrent Resolution No. 86, H.D.1, S.D. 1,
adopted in 2015 and would like to see HB1151 mirror HCR No. 86, HD1, SD1.**

The OTC represents the interests of over 300 small ocean tourism businesses state wide. All of them operate USCG Inspected and Certified Vessels from State Boating Facilities managed by DLNR/DOBOR. Most of these are family businesses which are locally owned and operated. They have been in business for several decades and operate at the highest level of safety and competence. These companies work closely with the USCG. Each company has a training program in conjunction with the USCG requirements that fits their operations. They do not need additional DLNR oversight. DLNR will not issue their Commercial Operating Permit without USCG Approval.

To further illustrate the point above, the following are some of the many requirements for vessels inspected by the USCG:

- (1) Crew manning requirements based on the activities of the vessel;
- (2) Quarterly safety drills;
- (3) CPR certification for certain % of crew members;
- (4) Bi-monthly inspections;
- (5) Life raft inspections;

- (6) Life vest inspections;
- (7) Drug testing; and
- (8) USCG currently requests vessels to conduct snorkeler in distress drills and snorkeler incident questionnaires. Anytime there is a medical emergency the Captain must notify the USCG and file a comprehensive report with the USCG outlining every aspect of the Medical Emergency and the steps taken to mitigate and resolve the emergency. Every serious Medical Emergency is investigated by the USCG.

Also there are many different levels of risk in the Ocean Recreation business. These various risks are addressed with USCG Inspected and Certified Vessels. However there many smaller Commercial Ocean Recreational businesses some that have neither DLNR nor USCG Federal oversight on their operations.

OTC believes that **Section 2 should be modified as follows:**

“(1) Each tour shall have a rescue diver or lifeguard certified by a nationally recognized certification organization, provided that such **requirements shall not apply to employees working on vessels inspected by the United States Coast Guard;** however **at least one individual aboard the vessel will be lifeguard certified in CPR, AED, and basic first aid.**

(2) Vessels, used by commercial operators to transport customers for the purpose of engaging in an activity in ocean waters, shall include a backboard, emergency oxygen, **and an automated external defibrillator (AED) as part of its onboard safety equipment.**”

LATE

HB-1151

Submitted on: 1/31/2019 7:49:17 PM

Testimony for WLH on 2/1/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Thomas Brown	AUAU KAI INC	Oppose	No

Comments:

Boat Crews and Captains are already required to meet a very high standard. They are also required to be First Aid and CPR certified. Additional required training, means additional costs passed on to employees and employers who are already working hard to earn a living in a very expensive state. Most marine casualties on commercial vessel do not occur because the crew and captains lack training or didn't respond correctly.

Snorkeling and diving are risk inherent activities. Captains and crew do everything that is reasonably possible to prevent unnecessary injury and accidents. When you have people of all levels of fitness and skill engaged in an activity that is risk inherent, there is always going to be some issues beyond control.

Furthermore, there are already limited programs available on most of the islands. Additional training requires a lot in setup cost and time for both the programs and the people required to attend them. Money and time that could be better spent elsewhere.

LATE

HB-1151

Submitted on: 1/31/2019 8:13:09 PM

Testimony for WLH on 2/1/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Allison G Gordon	Individual	Support	No

Comments:

To Whom It May Concern:

Please note my support of HB1151. As a PADI Open Water SCUBA Instructor and Coast Guard Licensed Captain, I have been working in Hawaiian waters for eleven years. I believe that it is essential to the safety and health of all guests that every boat has crew that are trained in water rescue (Lifeguard or Rescue Diver) and appropriate emergency equipment available (oxygen). Undertrained crew are unable to react in emergency situations putting guests and those around them in unsafe situations. Please pass HB1151 requiring operators to provide this level and training and equipment.

Allison G Gordon, USCG Licensed Captain, PADI Open Water SCUBA Instructor

LATE

HB-1151

Submitted on: 2/1/2019 12:05:17 AM

Testimony for WLH on 2/1/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Philip Matthew Bogdanovitch	Individual	Support	No

Comments:

Aloha,

My name is Philip Matthew Bopdanovitch. I have been a professional scuba instructor since 2008 and have lived and taught scuba in Kona since 2008. As of January 31, 2019, I have logged over 3,000 scuba dives, the vast majority from commercial charter boats in Kona.

I am strongly in favor of HB1151 because I believe in will increase safety for participants on commercial water sport tours permitted by DLNR/DOBOR.

Passengers that I have talked to, during my 10 years experience working charter boats in Kona, erroneously believe that the crew on board commercial snorkel boat trips are trained as life guards. Most guest even suppose it would be a professional requirement. This is not true.

Most passengers are shocked to learn that permitted commercial snorkel charter boats, are not required by the State Of Hawaii, to have any crew members trained in aquatic supervision or rescue.

This is especially disturbing considering that many passengers have little or no experience snorkeling or swimming in the ocean and may have pre-existing medical conditions that put them at greater risk.

Additionally a recent trend in the commercial snorkel charter industry, that I have seen in Kona, is for trips to be run with no crew at all. Only a captain. This is exceeding dangerous because a captain is not not allowed (by USCG) to jump into the water to rescue a person in distress. Further compounding danger is that if a passenger were on board the boat and required CPR or first aid the captain would need to drive the boat to reach EMS and not perform CPR.

I advocate requiring at least one crew member on every DLNR/DOBOR permitted charter boat, that conducts or allows snorkeling or scuba diving, posses a nationally recognized life guard or rescue diver rating as well as current CPR and first aid training.

This is training not hard to obtain. American Red Cross Life Guard training take 18-24 hours and includes land and in water training as well as First Aid and CPR. Costs vary but are often about \$400. It's a small price to make one of Hawaii's premier visitor industries safer and more sustainable.

Please support HB1151 and require that at least one crew member on every DLNR/DOBOR permitted charter boat, that conducts or allows snorkeling or scuba diving, posses a nationally recognized life guard or rescue diver rating as well as current CPR and first aid training.

Thanks you.

Sincerely Yours.

Philip Matthew Bogdanovitch

todd1 - Harrison

From: Kristin Moala on behalf of Rep. David A. Tarnas
Sent: Friday, February 1, 2019 8:30 AM
To: todd1 - Harrison
Subject: FW: Testimony in Support for HB1151

Thank you for including this in the testimony for HB1151. Please let me know if you need any other information!

Mahalo piha,
Kristin

Kristin Moala
Office Manager | State Representative David Tarnas
District 7: North Kohala, South Kohala, North Kona
Hawaii State Capitol, Room 328
Phone: 808-586-8510
k.moala@capitol.hawaii.gov



From: Keller Laros <kellerlaros@gmail.com>
Sent: Thursday, January 31, 2019 11:02 PM
To: Rep. Nicole Lowen <replowen@capitol.hawaii.gov>; Rep. David A. Tarnas <reptarnas@capitol.hawaii.gov>; Rep. Tina Wildberger <repwildberger@capitol.hawaii.gov>
Cc: kahele1 - Grace <kahele1@capitol.hawaii.gov>; Sen. Dru Mamo Kanuha <senkanuha@capitol.hawaii.gov>
Subject: Testimony in Support for HB1151

Aloha,

My name is Russell Keller Laros III. I am usually called Keller. I have been a professional scuba instructor since 1985 and have lived and taught scuba in Kona since 1991. As of January 31, 2019, I have logged 12,778 scuba dives, the vast majority from commercial charter boats in Kona.

I am strongly in favor of HB1151 because I believe it will increase safety for participants on commercial water sport tours permitted by DLNR.

Passengers that I have talked to, during my 28 years experience working charter boats in Kona, erroneously believe that the crew on board commercial snorkel boat trips are trained as life guards. Most guests even suppose it would be a professional requirement. This is not true.

Most passengers are shocked to learn that permitted commercial snorkel charter boats, are not required by the State Of Hawaii, to have any crew members trained in aquatic supervision or rescue.

This is especially disturbing considering that many passengers have little or no experience snorkeling or swimming in the ocean and may have pre-existing medical conditions that put them at greater risk.

Additionally a recent trend in the commercial snorkel charter industry, that I have seen in Kona, is for trips to be run with no crew at all. Only a captain. This is exceedingly dangerous because a captain is not allowed (by USCG) to

jump into the water to rescue a person in distress. Further compounding danger is that if a passenger were on board the boat and required CPR or first aid the captain would need to drive the boat to reach EMS and not perform CPR.

I advocate requiring at least one crew member on every DLNR permitted charter boat, that conducts or allows snorkeling or scuba diving, posses a nationally recognized life guard or rescue diver rating as well as current CPR and first aid training.

This is training not hard to obtain. American Red Cross Life Guard training take 18-24 hours and includes land and in water training as well as First Aid and CPR. Costs vary but are often about \$400. It's a small price to make one of Hawaii's premier visitor industries safer and more sustainable.

Please support HB1151 and require that at least one crew member on every DLNR permitted charter boat, that conducts or allows snorkeling or scuba diving, posses a nationally recognized life guard or rescue diver rating as well as current CPR and first aid training.

Thanks you.

Sincerely Yours.

Russell "Keller" Laros III

73-4337 Napala Place

Kailua-Kona, HI 96740

kellerlaros@gmail.com

808.895.1791