

DAVID Y. IGE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of**  
**SUZANNE D. CASE**  
**Chairperson**

**Before the Senate Committee on**  
**WATER AND LAND**

**Monday, February 4, 2019**  
**1:15 PM**  
**State Capitol, Conference Room 229**

**In consideration of**  
**SENATE BILL 1250**  
**RELATING TO MARINE LIFE CONSERVATION**

Senate Bill 1250 proposes to establish the Marine Life Conservation Special Fund and would authorize the Department of Land and Natural Resources (Department) to collect nonresident user fees and require permits for entry into the boundaries of any marine life conservation district. **The Department strongly supports this Administrative bill.**

The marine life conservation program embodied in Chapter 190, Hawaii Revised Statutes (HRS), has provided the State with some of its most ecologically, economically, and scientifically valuable environmental assets. The comprehensive habitat protections authorized for marine life conservation districts (MLCDs) have resulted in the unparalleled preservation of several nearshore reef ecosystems, presenting visitors, residents, and researchers alike with unique opportunities to appreciate these relatively pristine marine areas. In addition, the abundant marine life found in MLCDs provides additional ecological and fishery services by the movement of fish and marine life to adjacent areas, the recruitment of marine life offspring throughout the State, and the ready availability of food stock for transitory predators and game fish.

The increasing popularity of these valuable sites requires greater measures to ensure the continued health of the ecosystems they contain and represent. At the same time, ever increasing threats and impacts to coral reef health, including coral bleaching, vessel groundings, anchoring and mooring, commercial and recreational overuse, poaching, land- and water-based pollutant discharges, and other direct and indirect uses of the state's coral reefs, necessitates a more consistent and reliable source of funding to maintain these unique areas and to conserve and protect coral reef resources throughout the State.

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

**ROBERT K. MASUDA**  
FIRST DEPUTY

**M. KALEO MANUEL**  
DEPUTY DIRECTOR - WATER

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BOATING AND OCEAN RECREATION  
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COMMISSION ON WATER RESOURCE MANAGEMENT  
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FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Nonresident user fees would generate revenues to support monitoring, research, enforcement, education, and other measures intended to conserve, supplement, and enhance resources within marine life conservation districts and other marine managed areas. A dedicated special fund would enable the Department to better plan and budget for longer term monitoring and management activities. MLCD user fees and entry permits, if applicable, would be implemented through the administrative rulemaking process under Chapter 91, HRS.

Thank you for the opportunity to comment on this measure.



**SB1250**  
**RELATING TO MARINE LIFE CONSERVATION**  
Senate Committee on Water and Land

February 4, 2019

1:15 p.m.

Room 229

The Office of Hawaiian Affairs (OHA) Committee on Beneficiary Advocacy and Empowerment will recommend that the OHA Board of Trustees **SUPPORT** on SB1250, which would provide a mechanism for generating substantial and dedicated revenues to support the management and stewardship of our natural and cultural marine resources.

**Hawai'i's ocean environment forms the bedrock of our islands.** Hawai'i's marine environment and natural resources serve as a cultural, economic, social, scientific and recreational foundation for these islands. OHA notes that economic studies in 2002 and 2003 found an overall contribution of \$800 million in revenue generated from our coral reefs and coastal resources, with an added recreational, amenity, fishery, biodiversity and educational value of \$364 million per year. A subsequent report released in 2011 utilizing "innovative economic survey techniques" found that across U.S. households, the economic value of protecting Hawai'i's nearshore environment could be estimated at \$34 billion a year. While our ocean waters clearly hold cultural, spiritual and biological significance beyond any monetary value, these economic analyses clearly reflect the critical nature of our marine environment to Hawai'i nei.<sup>1</sup>

This measure would accordingly support the management and stewardship of some of our most culturally, economically, and socially valued ocean areas, as well as research and other activities that may benefit our ocean environment as a whole. By authorizing

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<sup>1</sup> See Carlie S. Weiner, Mark D. Needham, & Paul Wilkinson, *Hawaii's real marine life park: interpretation and impacts of commercial marine tourism in the Hawaiian Islands*, 12 CURRENT ISSUES IN TOURISM 489, 489-90 (2009) citing P.J. van Beukering & H.S. Cesar, *Ecological economic modeling of coral reefs: Evaluating tourist overuse at Hanauma Bay and algae blooms at the Kihei Coast, Hawai'i* 58 PAC. SCIENCE 243 (2007); A.M. Friedlander et. al., *The state of coral reef ecosystems of the main Hawaiian Islands in THE STATE OF CORAL REEF ECOSYSTEMS IN THE UNITED STATES AND PACIFIC FREELY ASSOCIATED STATES* 222-269 (2005), K. DAVIDSON, M. HAMNET, & C. MINATO, *ECONOMIC VALUE OF HAWAII'S NEARSHORE REEFS* (2003), available at [http://nature.forestry.oregonstate.edu/sites/default/files/2009-2%20CIT%20-%20Wiener%20Needham%20Wilkinson%20\(2009\).pdf](http://nature.forestry.oregonstate.edu/sites/default/files/2009-2%20CIT%20-%20Wiener%20Needham%20Wilkinson%20(2009).pdf); HERMAN CESAR ET. AL, *ECONOMIC VALUATION OF THE CORAL REEFS OF HAWAII FINAL REPORT* 74 (2002), available at [http://www.coralreef.gov/meeting18/evhcri\\_samoa\\_2007.pdf](http://www.coralreef.gov/meeting18/evhcri_samoa_2007.pdf); RICHARD C. BISHOP ET. AL., *TOTAL ECONOMIC VALUE FOR PROTECTING AND RESTORING HAWAIIAN CORAL REEF ECOSYSTEMS: EXECUTIVE SUMMARY* (2011), available at [http://coralreef.noaa.gov/aboutcrp/news/featuredstories/oct11/hi\\_value/resources/protecting\\_restoring\\_hawaiian\\_cre.pdf](http://coralreef.noaa.gov/aboutcrp/news/featuredstories/oct11/hi_value/resources/protecting_restoring_hawaiian_cre.pdf).

nonresident marine life conservation district user fees, and dedicating such fees to the management of community based subsistence fishing areas, marine life conservation districts, and other marine managed areas, as well as research and other related activities, this measure could result in millions of dollars of revenues to protect and perpetuate the ocean environment upon which our islands depend – without any increased burden on state taxpayers. OHA understands that geographical limitations would likely limit the practical application of such fees to only a very few marine life conservation districts, such as Hanauma Bay and Molokini Crater; however, **with 800,000 annual visitors to Hanauma Bay alone, a modest nonresident user fee for this one location alone could generate millions of dollars a year in support of the management, stewardship, restoration, and perpetuation of our ocean resources and sites.**

OHA further appreciates this measure's recognition of the state's obligation to Native Hawaiians under the Public Land Trust. With the exception of a very small number of areas, submerged lands of the state are considered both "ceded" lands, as well as Public Land Trust lands; accordingly, proceeds and income generated from the use of these lands should be considered subject to Native Hawaiians' pro rata share of the public land trust.

Therefore, OHA urges the Committee to **PASS** SB1250. Mahalo nui loa for the opportunity to testify on this measure.



## O`ahu County Committee on Legislative Priorities

COMMITTEE ON WATER AND LAND

Senator Kaiali`I Kahele, Chair

Senator Gilbert S.C. Keith-Agaran, Vice Chair

DATE: Monday, February 4, 2019

TIME: 1:15 p.m.

PLACE: Conference Room 229, State Capitol

RE: SB 1250 Relating to the Marine Life Conservation

Aloha mai kakou Chair Kahele, Vice Chair Keith-Agaran, and Members of the Committee on Water and Land:

The O`ahu County Committee on Legislative Priorities (OCCLP) of the Democratic Party of Hawai`i (DPH) hereby submits its testimony in **SUPPORT of SB 1250 relating to the Marine Life Conservation.**

SB 1250 provides: The following shall be deposited into the marine life conservation mecia1 fund: Moneys collected as nonresident user fees or fees for permits issued under section 190-4; . . .

The marine life conservation special fund shall be used for expenditures to: Fulfill the purposes of chapter 190, including but not limited to marine life conservation district monitoring, research, regulatory measures, enforcement actions, educational activities, or any other measure intended to conserve, supplement, and enhance the resources within any marine life conservation district established under chapter 190 or rules adopted thereunder:

Provide management, monitoring, and support for public fishing areas, community-based subsistence fishing areas, fisheries management areas, and other areas of localized management; Develop and carry out any compensatory mitigation measures for impacts to the marine environment, including impacts to the marine environment from federal or state permitted actions, or violations of chapter 190 or any rule adopted thereunder; or Develop and carry out research projects, educational programs, management initiatives, and any other activity intended to conserve, supplement, and enhance the marine environment throughout the State.

DPH supports democratic participation of citizens and residents to protect (i) valuable coastal ecosystems and reefs from misuse and (ii) beaches for public use and recreation. The Hawai'i Coastal Zone Management (CZM) law, HRS Chapter 205A, currently provides for public participation in management of coastal resources.

DPH believes in the vigorous enforcement of our environmental laws and increased public-private stewardships and citizen involvement in protecting our resources.

DPH knows that climate change is a real threat to our islands and the world. We strongly urge our candidates and elected officials to take immediate action to mitigate and adapt to the consequences of climate change. This includes funding adaptation measures including coastal retreat, effective participation of indigenous peoples in climate change governance, and recognition that indigenous, local, and traditional ecological knowledge is key in climate change adaptation solutions.

Cesspools throughout the State of Hawai'i threaten drinking water supplies, coral reefs and the health of people who swim and surf in our island waters. They create a serious public safety issue, environmental problem and economic danger that is exacerbated by the effects of climate change. DPH supports septic tank upgrades and wastewater sewage systems where feasible by 2025. *Democratic Party of Hawai'i Platform (2018), p. 17, ln. 23-40.*

For the foregoing reasons, i.e., to support participation of citizens and residents to protect (i) valuable coastal ecosystems and reefs from misuse and (ii) beaches for public use and recreation, OCCLP supports SB 1250 and its creation of the Marine Life Conservation Special Fund and urges its passage out of the Committee on Water and Land.

Mahalo nui loa  
Me ka `oia`i`o

/s/ Melodie Aduja

Melodie Aduja  
Chair, O`ahu County Committee on Legislative Priorities  
of the Democratic Party of Hawai`i  
Ph. (808) 258-8889  
Email: legislativepriorities@gmail.com



The Nature Conservancy  
Hawai'i Program  
923 Nu'uauu Avenue  
Honolulu, HI 96817

Tel(808) 537-4508  
Fax(808) 545-2019  
nature.org/hawaii

Testimony of The Nature Conservancy of Hawai'i  
Supporting SB 1250 Relating to Marine Life Conservation  
Committee on Water and Land  
Monday, February 4, 2019, 1:15 PM, Room 229

**LATE**

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*The Nature Conservancy of Hawai'i is a non-profit conservation organization dedicated to the preservation of the lands and waters upon which all life depends. The Conservancy has helped protect more than 200,000 acres of natural lands in Hawai'i and Palmyra Atoll. We manage 40,000 acres in 13 preserves and work in over 30 coastal communities to help protect the near-shore reefs, waters and fisheries of the main Hawaiian Islands. We forge partnership with government, private parties and communities to protect forests and coral reefs for their ecological values and the many benefits they provide to people.*

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The Nature Conservancy supports SB 1250 that would Marine Life Conservation Special Fund. Such a fund would improve DLNR's ability to generate and reinvest revenue from non-resident and commercial access to appropriate Marine Life Conservation Districts. This activity is similar to non-resident parking fees currently charged at some locations by the Division of State Parks with revenue reinvested in park management and maintenance. Thank you.

BOARD OF TRUSTEES

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COMMITTEE ON WATER AND LAND

Senator Kaiali'i Kahele, Chair

Senator Gilbert S.C. Keith-Agaran, Vice Chair

NOTICE OF HEARING

DATE: Monday, February 4, 2019

TIME: 1:15 P.M.

**TESTIMONY OF THE OCEAN TOURISM COALITION IN STRONG OPPOSITION  
SB1250 RELATING TO MARINE LIFE CONSERVATION DISTRICTS**

Chair Kahele, Vice Chair Keith-Agaran and Members of WTL Committee:

My name is James E. Coon, President of the Ocean Tourism Coalition (OTC),  
**speaking in Strong Opposition to SB 1250 Relating to MLCD's.**

The OTC represents over 300 small ocean tourism businesses state wide. All of them operate from State Boating Facilities managed by DLNR/DOBOR. 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. These businesses are capital and labor intensive with small profit margins.

**DAR MLCD Special Fund:** There have been studies over the years indicating that there are already too many special funds in our State Government. It also gives a false picture of how much revenue is actually being collected and spent by the State. Do we have a Special Fund for every location and issue? It is very difficult to have proper oversight of these funds. This is just one more place to sequester funds to be spent with little oversight. It is our opinion that most funds should go into the General Fund where it can be utilized for the greatest needs of the State. DAR can submit a budget like other agencies must do and get funded for appropriate reasons.



**MLCD User Fee:**

The DOBOR Commercial Permit holders already pay 4-4.5% Gross Excise tax and 3% of Gross Revenue commercial user fees. So they are paying over 7% of Gross revenue to the State. It is almost impossible for the operators to collect a visitor a head tax from each nonresident to access a MLCD. Most of the visitors are either booked by a third party or booked through an on line booking engine. Would they collect the MLCD Fee? How would it be transmitted to DAR?

Most commercial operators would incorporate any MLCD access fee into their gross ticket price. The visitor would not know how much or little was being sent to DAR. There are also issues if a fee was collected how would it be refunded if the MLCD were not accessible? On many occasions the MLCD may be inaccessible due to wind and sea conditions. It would be a nightmare to try to refund each guest his head tax if the vessel were not able to access the MLCD. Also there are significant numbers of residents that are guests on these vessels and it would be very difficult to charge different prices based on residency.

There is a direct proportion to the cost of a tour and the number of people that will book so as the cost of the trip increases, the operator will have less customers, gross less income, and have the additional hassle of tracking and paying for each person's DARs MLCD Tax. This is an accounting night mare.

There are MLCD's that are not readily accessible by boats. Or are accessible by both land and sea. Does DAR set up a special collection point and staff the collection of this "nonresident" fee? Sounds like a dollar chasing a dime.

We humbly ask you please do not pass SB1250

Sincerely



James E. Coon, President OTC

**SB-1250**

Submitted on: 2/1/2019 1:08:54 PM

Testimony for WTL on 2/4/2019 1:15:00 PM

| <b>Submitted By</b> | <b>Organization</b>                    | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|----------------------------------------|---------------------------|---------------------------|
| Richard Kersten     | Testifying for Sea Paradise Scuba Inc. | Oppose                    | No                        |

## Comments:

We oppose this bill. The provided outlined information does not disclose what the non resident user fees will be, it seems to leave the fee open for any rate. The accounting for resident and non resident charges would be difficult to arrange.

**SB-1250**

Submitted on: 2/3/2019 9:56:41 AM

Testimony for WTL on 2/4/2019 1:15:00 PM

| <b>Submitted By</b>   | <b>Organization</b>                   | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|-----------------------|---------------------------------------|---------------------------|---------------------------|
| Kristie Wrigglesworth | Testifying for PaWhale Eco-Adventures | Oppose                    | No                        |

Comments:

Thank you for your time and consideration of this testimony. I represent a marine eco-tour operation in Maui County involving 6 vessels and currently employ 80 vessel staff. We support the intent of SB1250 but oppose nonresident user fees or increased fees for permits.

This bill appears to give DLNR wide discretion to make decisions that could have severe and long-lasting negative impacts on marine activity operators and the tourist industry, and oversteps the intent of the legislative process. State agencies should work together with operators and the community to develop a comprehensive, long-term plan for protection of these conservation areas and all of our marine resources.

Commercial permits are already issued and controlled by DLNR-DOBOR and Molokini Shoal permits are already issued and controlled by DAR, additional permits and fees will be duplicative and will create an unnecessary burden on operators and state agencies.

The permitting process is already very time-consuming for state agencies, creating a new requirement for permits and/or fees to enter conservation areas will compound this issue. Again, there are already permits in place for any marine commercial activity and for entry into Molokini Shoal. Additional permits are unnecessary.

Regarding user fees, there are many administrative issues with charging user fees and it would be a nightmare for operators to manage that situation. User fees would simply end up being paid by operators.

In addition, special funds are hard to control and have less oversight, so these funds could be mishandled.

The current mooring maintenance and repair program in Maui County is working well at no cost to the state. Malama Kai Foundation has been replacing and maintaining current moorings, but there has not been progress with DLNR-DOBOR and operators for developing a long-term mooring plan that is desperately needed to protect the resources that are described in this bill. More moorings are needed in some

conservation areas and in other areas in Maui County. No new mooring requests have been approved in several years.

A comprehensive, long-term mooring plan is needed, including a contract with Malama Kai Foundation to maintain and install much needed new moorings. The cost of moorings is already being shared between operators. Mooring replacement and maintenance is happening now at no cost to the state. If DLNR-DOBOR is willing to approve new moorings, then the cost to install can also be covered by operators.

Enforcement is needed in all areas, and the hope is that any funds collected would actually resort in enforcement since DOCARE is spread as thin as it is.

Monitoring is needed in conservation areas, but also in other areas of Maui County. Changes to these conservation areas will impact other areas. The cost of monitoring, research and enforcement should be shared fairly between all contributors and the state, since any damage to these areas is likely being caused by several factors. The majority of these costs should not be paid solely by nonresident user fees or increased permit fees, which in practice will simply be additional fees that a small group of users (operators) will end up paying.

Thank you again for your time and consideration of this testimony.

**SB-1250**

Submitted on: 2/3/2019 10:56:03 AM

Testimony for WTL on 2/4/2019 1:15:00 PM

| Submitted By | Organization                   | Testifier Position | Present at Hearing |
|--------------|--------------------------------|--------------------|--------------------|
| Chris Kasper | Testifying for Malolo Charters | Oppose             | No                 |

Comments:

Chair Kahele, Vice Chair Keith-Agaran and Members of WTL Committee:

We oppose this bill and are in strong support of the Ocean Tourism Coalition.

We visit Molokini about 1.5 hours a day, about 300 days a year or less. There are 41 permit holders and only 26 moorings, not to mention the natural time limits on Molokini, which force everybody to leave by 11:00. The reef is healthy.

DLNR/DOBOR and the State is currently receiving millions of dollars (3,000,000 for Molokini alone) in direct taxes on this just the Molokini re from the industry, not to mention the caterers, third parties, etc. that are involved with the business. We pay State 4.1666% GET, combined with the DLNR 3%, a user fee would increase our state taxes to 12%. Here are a few other of our expenses:

- We pay Liquor Commission % of Gross Sales for Alcohol and for bar cards for our crew;
- We pay the DOH for food permits and required handler's license;
- We pay the USCG costs for documentation, licensing, drug testing, CPR training, inspection and the like;
- We pay for Health Insurance;
- We pay for Workers Comp/P&I insurance;
- We pay Property taxes;
- Not to mention landlords, payroll, tort exposure, and the list goes on and on. It's exhausting at times.

This bill, another "special fund" just for us, is a very hard pill to swallow.

Also, a non-resident user fee is also not feasible and we would just have to incorporate it into the cost. How do we assess the fee if we don't know we are going to the MLCD? We don't. Weather dictates that decision. It would be a nightmare to try to refund each guest his/her head tax if the vessel were not able to access a MLCD. Also there are days when the visit to the MLCD is cut short because of wind and sea conditions. Would we refund all clients? It's an accounting nightmare. Again, we would just add the fee to the cost.

Therefore, let's call a spade a spade: it's just another tax. Our industry is taxed by the state at 12% if this is passed.

DAR can submit a budget like other agencies must do and get funded for appropriate reasons. Special funds have a recent history of misuse and poor oversight. The submittal of a budget through the General Fund will ensure greater accountability and appropriate use of the substantial funds the department is seeking.

## COMMITTEE ON WATER AND LAND

Senator Kaiali'i Kahele, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair

### NOTICE OF HEARING

DATE: Monday, February 4, 2019  
TIME: 1:15 P.M.  
PLACE: Conference Room 229  
State Capitol  
415 South Beretania Street

### **TESTIMONY BY CALYPSO CHARTERS IN STRONG OPPOSITION TO SB1250 RELATING TO MLCD SPECIAL FUND**

Chair Kahele, Vice Chair Keith-Agaran and Members of WTL Committee:

We oppose this bill and are in strong support of the Ocean Tourism Coalition.

We visit Molokini about 1.5 hours a day, about 300 days a year or less. There are 41 permit holders and only 26 moorings, not to mention the natural time limits on Molokini, which force everybody to leave by 11:00. The reef is healthy.

DLNR/DOBOR and the State is currently receiving millions of dollars (3,000,000 for Molokini alone) in direct taxes on this just the Molokini re from the industry, not to mention the caterers, third parties, etc. that are involved with the business. We pay State 4.1666% GET, combined with the DLNR 3%, a user fee would increase our state taxes to 12%. Here are a few other of our expenses:

- We pay Liquor Commission % of Gross Sales for Alcohol and for bar cards for our crew;
- We pay the DOH for food permits and required handler's license;
- We pay the USCG costs for documentation, licensing, drug testing, CPR training, inspection and the like;
- We pay for Health Insurance;

- We pay for Workers Comp/P&I insurance;
- We pay Property taxes;
- Not to mention landlords, payroll, tort exposure, and the list goes on and on. It's exhausting at times.

This bill, another "special fund" just for us, is a very hard pill to swallow.

Also, a non-resident user fee is also not feasible and we would just have to incorporate it into the cost. How do we assess the fee if we don't know we are going to the MLCD? We don't. Weather dictates that decision. It would be a nightmare to try to refund each guest his/her head tax if the vessel were not able to access a MLCD. Also there are days when the visit to the MLCD is cut short because of wind and sea conditions. Would we refund all clients? It's an accounting nightmare. Again, we would just add the fee to the cost.

Therefore, let's call a spade a spade: it's just another tax. Our industry is taxed by the state at 12% if this is passed.

DAR can submit a budget like other agencies must do and get funded for appropriate reasons. Special funds have a recent history of misuse and poor oversight. The submittal of a budget through the General Fund will ensure greater accountability and appropriate use of the substantial funds the department is seeking.

Sincerely,

Zachary LaPrade



**SB-1250**

Submitted on: 2/3/2019 8:12:04 AM

Testimony for WTL on 2/4/2019 1:15:00 PM

| <b>Submitted By</b> | <b>Organization</b>                  | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|--------------------------------------|---------------------------|---------------------------|
| Kevin Ford          | Testifying for Maui Classic Charters | Oppose                    | No                        |

Comments:

Maui Classic Charters strongly opposes SB 1250. As a small business we cannot support a bill that does not have limitations on proposed amounts that the DLNR may decide to charge our passengers for entering a marine preserve.

We also believe special funds are not effective and loosely managed.

Please do not pass this bill.

**SB-1250**

Submitted on: 2/1/2019 8:48:41 AM

Testimony for WTL on 2/4/2019 1:15:00 PM

| <b>Submitted By</b> | <b>Organization</b>              | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|----------------------------------|---------------------------|---------------------------|
| Jeff Strahn         | Testifying for Alii Nui Charters | Oppose                    | No                        |

Comments:

**Testimony of LiAnne Driessen on behalf of Trilogy Corporation, *in Strong Opposition* of SB 1250, Relating to Marine Life Conservation.**

COMMITTEE ON WATER AND LAND

Senator Kaiali'i Kahele, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair

NOTICE OF HEARING

DATE: Monday, February 4, 2019  
TIME: 1:15 P.M.  
PLACE: Conference Room 229  
State Capitol  
415 South Beretania Street

*Chair Kahele and Vice Chair Keith-Agaran:*

Aloha. My name is LiAnne Driessen. I am Director of Sales and Marketing for Trilogy Excursions. Trilogy is our family's business has been operating in the county of Maui for over 45 years and employs close to one hundred employees year-round. Trilogy *is strongly opposed to SB 1250* and the establishment of a Marine Life Conservation District (MLCD) user fee or the following reasons:

**1. Special Funds Do Not Provide Adequate Oversight and Transparency**

Special funds have a recent history of misuse and poor oversight.<sup>1</sup> The submittal of a budget through the General Fund will ensure greater accountability and appropriate use of the substantial funds the department is seeking.

**2. The User Fee is Unduly Burdensome**

Commercial operators already contribute millions of dollars per year to the state in taxes and DLNR commercial fees. This is a substantial sum that should not be overlooked. An MLCD user fee will result in the commercial operators paying far beyond what many other businesses contribute to the state of Hawaii. For example, let's suppose the user fee was set at \$5. While this does not seem like much, consider that many tours to MLCDs are at least \$100. In other words, \$5 would represent 5% of the ticket price. Now consider that the commercial operators currently pay 3% of their gross revenues and 4.17% in general excise tax. As a result, the commercial operators would be paying over 12% of their revenues in fees and taxes. It is hard to find examples of other small businesses in the state that are taxed at this amount.

In addition, any user fee will need to be included as part of the ticket price and cannot be charged as a separate item in the ticket price. This is because there are numerous days during the

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year where an MLCD may not be accessible (e.g., north winds at Molokini) and operators are forced to conduct their tours elsewhere. Accordingly, if the user fee was a separate item in the ticket price, operators would be forced to refund the user fee on every ticket when customers are unable to visit an MLCD. This would be both difficult and impractical. However, if the user fee is not a separate item in the ticket price, then DLNR will not only be collecting more from the new user fee, but will also be collecting more from the current user fee because commercial operators pay 3% of their gross receipts. In other words, commercial operators will be paying more to DLNR than just the increased MLCD user fee.

### **3. A User Fee Will Not Apply Fairly**

Trilogy Excursions has been conducting snorkeling tours in the Hulopoe MLCD on the island of Lanai and for over 45 years. Part of Trilogy's commitment to the community is the payment of a per passenger fee to maintain the Hulopoe Beach Park. This beach park fee not only pays for the upkeep of the Hulopoe Beach Park facilities, but also allows Trilogy to have employees trained in first aid/CPR and water rescue at the beach to help all users of the MLCD during an emergency. No other commercial operator pays this fee nor provides trained crew to supervise customers and ensure that rules meant to protect the area are followed and emergency care is provided when needed.

As a result, the passage of SB 1250 and the establishment of a user fee for the Hulopoe MLCD will result in Trilogy paying far more than any other commercial operator, all while paying to maintain the area and provide the ocean safety. Accordingly, the following language should be added to Section 3, subsection (b) of SB 1250 to ensure that commercial operators from Maui who send their customers to the Hulopoe MLCD are supervised by their own employees:

“As a condition of any permit issued pursuant to this chapter, any permittee who, in the course of providing an excursion involving use of State boating facilities within the state of Hawaii, disembarks fare-paying passengers with the expectation that the passengers will visit and participate in ocean recreational activity in a designated marine life conservation district before the conclusion of the excursion, shall ensure that all such passengers while ashore are accompanied by and remain at all times under the active supervision and direction of a member of the crew qualified to render aid in an emergency. This condition does not relieve permittee of the responsibility to obtain any other federal, state, or local authorizations required by law.”

Alternatively, SB 1250 could be modified to provide that if a company pays fees to maintain a quasi-public beach park directly adjacent to a MLCD, that such payments when equal to or greater than the MLCD user fee will be in lieu of such fee established pursuant to HRS § 190-4.

Sincerely,

LiAnne Driessen, Director: Trilogy Sales and Marketing

**Testimony of Denver Saxton Coon on behalf of Trilogy Corporation, *in Strong Opposition* of SB 1250,  
Relating to Marine Life Conservation.**

COMMITTEE ON WATER AND LAND

Senator Kaiali'i Kahele, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair

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PLACE: Conference Room 229  
State Capitol  
415 South Beretania Street

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*Chair Kahele and Vice Chair Keith-Agaran:*

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 on Maui and Lanai for over 45 years, employing close to one hundred employees year-round. Trilogy *is strongly opposed to SB 1250* and the establishment of a Marine Life Conservation District (MLCD) user fee for the following reasons:

**1. Special Funds Do Not Provide Adequate Oversight and Transparency**

Special funds have a recent history of misuse and poor oversight.<sup>1</sup> The submittal of a budget through the General Fund will ensure greater accountability and appropriate use of the substantial funds the department is seeking.

**2. The User Fee is Unduly Burdensome**

Commercial operators already contribute millions of dollars per year to the state in taxes and DLNR commercial fees. This is a substantial sum that should not be overlooked. An MLCD user fee will result in the commercial operators paying far beyond what many other businesses contribute to the state of Hawaii. For example, let's suppose the user fee was set at \$5. While this does not seem like much, consider that many tours to MLCDs are at least \$100. In other words, \$5 would represent 5% of the ticket price. Now consider that the commercial operators currently pay 3% of their gross revenues and 4.17% in general excise tax. As a result, the commercial operators would be paying over 12% of their revenues in fees and taxes. It is hard to find examples of other small businesses in the state that are taxed at this amount.

In addition, any user fee will need to be included as part of the ticket price and cannot be charged as a separate item in the ticket price. This is because there are numerous days during the year where an

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<sup>1</sup> See "Hawaii Department of Land and Natural Resources funds mishandled, audit finds" available at, <https://www.staradvertiser.com/2019/01/08/hawaii-news/dlnr-funds-mishandled-audit-finds/>

MLCD may not be accessible (e.g., north winds at Molokini) and operators are forced to conduct their tours elsewhere. Accordingly, if the user fee was a separate item in the ticket price, operators would be forced to refund the user fee on every ticket when customers are unable to visit an MLCD. This would be both difficult and impractical. However, if the user fee is not a separate item in the ticket price, then DLNR will not only be collecting more from the new user fee, but will also be collecting more from the current user fee because commercial operators pay 3% of their gross receipts. In other words, commercial operators will be paying more to DLNR than just the increased MLCD user fee.

### **3. A User Fee Will Not Apply Fairly**

Trilogy Excursions has been conducting snorkeling tours in the Hulopoe MLCD on the island of Lanai and for over 45 years. Trilogy employs many Lanai residents to provide local jobs and local hospitality to its tours. In addition, Trilogy pays a per passenger fee to maintain the Hulopoe Beach Park. This beach park fee not only pays for the upkeep of the Hulopoe Beach Park facilities, but is required by the Beach Park rules to allow Trilogy to have employees trained in first aid/CPR and water rescue at the beach to help all users of the MLCD during an emergency. No other commercial operator pays this fee nor provides trained crew to supervise customers and ensure that rules meant to protect the area are followed and emergency care is provided when needed.

As a result, the passage of SB 1250 and the establishment of a user fee for the Hulopoe MLCD will result in Trilogy paying far more than any other commercial operator, all while paying to maintain the area and provide the ocean safety for other companies' customers. Accordingly, if SB 1250 is passed, the following language should be added to Section 3, subsection (b) to ensure that visitors to a MLCD remain supervised by the commercial operators:

“As a condition of any permit issued pursuant to this chapter, any permittee who, in the course of providing an excursion involving use of State boating facilities within the state of Hawaii, disembarks fare-paying passengers with the expectation that the passengers will visit and participate in ocean recreational activity in a designated marine life conservation district before the conclusion of the excursion, shall ensure that all such passengers while ashore are accompanied by and remain at all times under the active supervision and direction of a member of the crew qualified to render aid in an emergency. This condition does not relieve permittee of the responsibility to obtain any other federal, state, or local authorizations required by law.”

Alternatively, SB 1250 could be modified to provide that when fees paid toward the maintenance of a beach park immediately adjacent to a MLCD are equal to or greater than the MLCD user fees, such fees will be in lieu of the MLCD user fee.

*Mahalo,*

Denver Saxton Coon  
Trilogy Corporation  
General Counsel  
[denver.coon@sailtrilogy.com](mailto:denver.coon@sailtrilogy.com)

**SB-1250**

Submitted on: 2/3/2019 8:20:12 PM

Testimony for WTL on 2/4/2019 1:15:00 PM

**LATE**

| <b>Submitted By</b> | <b>Organization</b>           | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|-------------------------------|---------------------------|---------------------------|
| KATHY LOUI-YASUI    | Testifying for PACIFIC MARINE | Oppose                    | No                        |

Comments:

**SB-1250**

Submitted on: 1/31/2019 5:56:06 PM

Testimony for WTL on 2/4/2019 1:15:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| cheryl              | Individual          | Comments                  | No                        |

Comments:

Does this restrict Native Hawaiian gathering and cultural rights?



**SB-1250**

Submitted on: 1/31/2019 8:03:37 PM

Testimony for WTL on 2/4/2019 1:15:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Erica Scott         | Individual          | Support                   | No                        |

Comments:

**SB-1250**

Submitted on: 2/1/2019 8:18:00 AM

Testimony for WTL on 2/4/2019 1:15:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Iwa Shaw            | Individual          | Oppose                    | No                        |

Comments:

I oppose this bill until more specific detail is provided on how this rule will be managed and enforced. How will fees be charged to non-residents? Who will collect the fees? How will residents apply for the permit and how long will the process take? How will permitting and fees be paid for those arriving to the conservation areas in commercial boats? Will a whole new conservation management team be created just to process the permits and enforce the rule in the area? Will all managed areas be fenced from the public to prevent those who have not paid the fine or recieved the permit from entering? Our current DLNR/DOBAR team is not fully staffed and cannot handle more responsibilities of permitting and enforcement, more thought needs to be put into this.

**SB-1250**

Submitted on: 2/1/2019 10:55:38 AM

Testimony for WTL on 2/4/2019 1:15:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Shyla Moon          | Individual          | Oppose                    | No                        |

Comments:

There's no good reason to charge for entry into a Conservation designated area. How far are you willing to go to keep Hawaiians and residents out of certain areas? Looks like our State Constitution means nothing to us with these new rules being proposed.

**SB-1250**

Submitted on: 2/2/2019 8:03:07 PM

Testimony for WTL on 2/4/2019 1:15:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Brennan Henders     | Individual          | Oppose                    | No                        |

Comments:

**SB-1250**

Submitted on: 2/2/2019 8:09:27 PM

Testimony for WTL on 2/4/2019 1:15:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Marcella Mondejar   | Individual          | Oppose                    | No                        |

Comments: