

DAVID Y. IGE  
GOVERNOR OF HAWAII



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

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**Testimony of  
SUZANNE D. CASE  
Chairperson**

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

**Wednesday, February 13, 2019  
1:20 PM  
State Capitol, Conference Room 229**

**In consideration of  
SENATE BILL 102  
RELATING TO AQUATIC RESOURCES**

Senate Bill 102 proposes to grant the Department of Land and Natural Resources (Department) authority to establish and operate in-lieu fee mitigation, the purpose of which is to restore, create, enhance, or preserve aquatic habitats or resources as compensatory mitigation where a person is required to provide compensatory mitigation prospectively and the use of in-lieu fee mitigation is approved by the agency requiring mitigation, or for past damages to aquatic habitats or resources. **The Department supports this measure, subject to one amendment, and offers the following comments.**

Compensatory mitigation refers to the restoration, creation, enhancement, or preservation of aquatic habitats or resources for the purposes of offsetting unavoidable adverse impacts. Generally, when prospective permittees anticipate damages to natural resources, natural resource agencies require that all reasonable measures are taken to avoid and minimize the impact on the natural resources at the site of the project. When unavoidable damage does occur, resource agencies will require compensatory mitigation to offset the resource losses. Permittees must then either conduct the new compensatory mitigation projects themselves or transfer their obligations to mitigate damage to a third party by paying into a mitigation bank or in-lieu fee. These two third party compensatory mitigation mechanisms can also be used in the context of unauthorized resource damage, such as coral damage from ship groundings, where responsible parties are required to pay to remediate damages. Natural resource agencies prefer mitigation banks and in-lieu fee mitigation to permittee-responsible mitigation because these third party mitigation bank or in-lieu fee sponsors are often public or private entities with more experience, scientific expertise, and vested long-term interest in natural resource conservation.

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

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

This measure would provide the Department with another innovative mechanism to improve state stewardship of aquatic public trust resources and habitats, increase accountability for aquatic resource damage, and provide higher quality remediation to make damaged resources whole again. In the 2016 Legislative Session, the Department obtained authority to establish and operate mitigation banks for the same purposes. Mitigation banking is a mechanism in which a mitigation bank sponsor selects degraded aquatic habitats, restores aquatic functions, and quantifies these “banked” improvements as “credits” which can then be sold to responsible parties required by state and federal resource agencies to mitigate prospective or actual damage to aquatic resources. In-lieu fee is essentially mitigation banking in reverse: a third party in-lieu fee mitigation sponsor accepts funds from permit applicants or responsible parties required to provide compensation in order to mitigate actual natural resource damage and then develops restoration projects. In-lieu fee mitigation sponsors typically combine the fees collected from many permitted projects or damage settlements with smaller scale impacts and create larger and more ecologically-valuable mitigation projects.

In the future, the Department expects to accept fees in-lieu of mitigation from two sources: 1) unauthorized resource damage settlements, fines, and penalties; and 2) permittees required to mitigate damage by state or federal law. Although in-lieu fee mitigation has been predominantly used to restore wetland and stream habitats in other parts of the United States, there has been an increasing national interest in using in-lieu fee mitigation to improve coral reef, sea grass, and estuarine habitats. The Department intends to be the first state in the nation to establish in-lieu fee mitigation for coral reefs.

The authority to conduct in-lieu fee mitigation is the next step in the process of creating innovative tools mechanisms for aquatic resource conservation to protect the state’s fragile and valuable public trust resources. In conclusion, as mentioned previously, the Department supports this measure, subject to one amendment:

On page 2, line 13, the Department recommends inserting “or aquatic in-lieu fee mitigation” (Highlighted in gray below) after the word “mitigation” to ensure that in-lieu fee mitigation (in addition to banked mitigation) is available as a tool for prospectively mitigating planned impacts. This language would be consistent with the language of Senate Bill 2866, Senate Draft 1, from the 2018 Legislative Session.

SECTION 3. Section 187A-41, Hawaii Revised Statutes, is amended to read as follows:

"~~[+]§187A-41.[+]~~ **Aquatic mitigation banking**~~[+]~~ **and aquatic in-lieu fee mitigation.** The department ~~[is authorized to]~~ may establish and operate aquatic mitigation banks~~[+]~~ **and aquatic in-lieu fee mitigation programs for** the purpose of ~~[which shall be to restore, create, enhance, or preserve]~~ **restoring, creating, enhancing, or preserving** aquatic habitats or resources

as compensatory mitigation where a person is required to provide compensatory mitigation either: prospectively, and the use of banked mitigation *or aquatic in-lieu fee mitigation* is approved by the agency requiring mitigation[7]; or for past damages to aquatic habitats or resources."

Thank you for the opportunity to comment on this measure.



**SB102**  
RELATING TO AQUATIC RESOURCES  
Senate Committee on Water and Land

February 13, 2019

1:20 p.m.

Room 229

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The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB102. This measure would authorize the Department of Land & Natural Resources (DLNR) to accept in-lieu fees to more effectively mitigate or compensate for the loss of aquatic resources impacted by both planned and unplanned human activities.

**In-lieu fee mitigation and similar programs may help to streamline state and federal permitting processes, while generating revenue to support efficient and coordinated resource conservation and protection programs.** Well-established on the continental United States, in-lieu fee mitigation seeks to address possible gaps and inefficiencies with traditional “permittee-responsible” mitigation, in which federal or state permittees are tasked with directly mitigating the environmental impacts of projects for which their permits are sought. In-lieu fees instead allow permittees to purchase “credits” or otherwise financially support a broad and flexible range of mitigation activities, utilizing the more specific expertise and/or planning processes of the institution the fees are paid to. In this way, in-lieu fee mitigation may provide for a more efficient, coordinated, and flexible means to mitigate the impacts of development and other activities, while streamlining the permitting process for such development. Similarly, in-lieu fees can also ensure that violations and other unplanned activities that damage certain resources, are more appropriately assessed and dedicated to the restoration of similar resources.

**OHA believes that the in-lieu fee mitigation authorized by this bill may allow the DLNR’s Division of Aquatic Resources to engage in new, innovative, and much-needed aquatic habitat rehabilitation programs and initiatives, and ensure the more efficient and effective use of fees and fines resulting from activities that impact our aquatic resources.**

Therefore, OHA urges the Committee to **PASS** SB102. Thank you for the opportunity to testify on this measure.

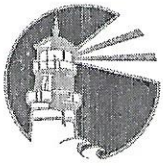
**SB-102**

Submitted on: 2/12/2019 11:19:41 AM

Testimony for WTL on 2/13/2019 1:20:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	Testifying for O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:



# Ocean Tourism Coalition

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## COMMITTEE ON WATER AND LAND

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

### AMENDED NOTICE OF HEARING

DATE: Wednesday, February 13, 2019  
TIME: **1:20 P.M.**  
PLACE: Conference Room 229

## **TESTIMONY OF THE OCEAN TOURISM COALITION IN SUPPORT SB 102 RELATING TO AQUATIC RESOURCES**

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

My name is Jim Coon, President of the Ocean Tourism Coalition (OTC) Speaking in Support of SB 102.

The Ocean Tourism Coalition represents about 300 charter boat enterprises across the State. We are very motivated to be good stewards of our precious environment. Giving DLNR/DAR the tools of In-Lieu Fee Mitigation will help DAR in the management of our near shore waters and reefs. We support this initiative.

~~Please pass SB 102~~

Sincerely

James E. Coon, President

Ocean Tourism Coalition

**SB-102**

Submitted on: 2/12/2019 6:37:49 PM

Testimony for WTL on 2/13/2019 1:20:00 PM



<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Andrea Quinn	Individual	Support	No

Comments:

Dear Honorable Committee Members:

Please support SB102. Aquatic resources are our most valuable natural resource in terms of tourism and the economy.

Thank you for the opportunity to present my testimony.

Andrea Quinn

Kihei