

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**

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

**In consideration of  
SENATE BILL 1403  
RELATING TO MARINE LIFE CONSERVATION DISTRICTS**

Senate Bill 1403 proposes to provide that no more than forty-one permits may be issued for the Maui Molokini Shoal Marine Life Conservation District and that no more than twenty permitted vessels may be granted entry to the crater at any one time. **The Department of Land and Natural Resources (Department) appreciates the intent of this bill and offers the following comments.**

There are currently forty Molokini Shoal Marine Life Conservation District (MLCD) use permits in operation, and this number will not increase. A 2010 social carrying capacity study found that over 2/3 of all visitors felt crowded and that too many boats were in the crater. A 2016 reef predator movement study found that fifty percent of omilu (a key nearshore reef predator) were displaced outside of the shallow crater into deeper water when the number of boats exceeded 12. Molokini commercial use data show that the average number of boats in the crater at the same time during peak use periods is ten and that 12 boats is exceeded about 1/3 of the days. The attached photo shows 12 boats moored in Molokini Crater.

The Department is currently working with permitted Molokini operators to explore how to best address this over-crowding concern while minimizing impacts to commercial tour operations. The Department prefers to pursue these management changes through the chapter 91 administrative rulemaking process to allow for broader stakeholder engagement and public input.

Thank you for the opportunity to comment on this measure.

**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





**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTIETH LEGISLATURE, 2019**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 1403, RELATING TO MARINE LIFE CONSERVATION DISTRICTS.

**BEFORE THE:**

SENATE COMMITTEE ON WATER AND LAND

**DATE:** Wednesday, February 13, 2019      **TIME:** 1:20 p.m.

**LOCATION:** State Capitol, Room 229

**TESTIFIER(S):** Clare E. Connors, Attorney General, or  
David D. Day, Deputy Attorney General

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Chair Kahele and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill and offers the following comments.

The bill amends section 190-4.5, Hawaii Revised Statutes (HRS), to state that, with respect to the Molokini Shoal marine life conservation district, there shall be a total of forty-one permits issued, and no more than twenty permitted vehicles granted entry into the crater, at any given time.

The bill may be subject to challenge as a special law concerning lands owned by the State, in violation of article XI, section 5 of the Hawai'i Constitution, which states: "The legislative power over the lands owned by or under the control of the State and its political subdivisions shall be exercised only by general laws, except in respect to transfers to or for the use of the State, or a political subdivision, or any department or agency thereof." A general law must apply uniformly. *Sierra Club v. Dep't of Transp.*, 120 Hawai'i 181, 214, 202 P.3d 1226, 1259 (2009). There is a potential that the bill could be subject to challenge as an exercise of legislative power over State lands by special law because it only applies to a specific area of state marine waters. *Cf. Umberger v. Dep't of Land & Nat'l Res.*, 140 Hawai'i 500, 521, 403 P.3d 277, 298 (2017) (state marine waters are "state lands" under chapter 343, HRS).

We recommend that this bill be deferred.

Testimony of The Nature Conservancy of Hawai'i  
Opposing SB 1403 Relating to Marine Life Conservation Districts  
Senate Committee on Water and Land  
Wednesday, February 13, 2019, 1:20 PM, Room 229

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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 opposes HB 1133. We don't wish to harm the businesses of tour operators who are responsible, caring and who want to see Molokini's resources thrive not just for the health of their businesses, but also their ecological values and other benefits they provide to all people.

However, this bill:

- Does not reduce current crowding and the effects on marine life at Molokini Shoal Marine Life Conservation District (Molokini);
- Eliminates the ability of the State to carry out its public trust responsibility to manage activities and resources at Molokini; and
- Authorizes levels of use shown to have negative impacts on marine life at Molokini.

**Please defer this measure to ensure that a comprehensive process informed by user, community, cultural, and scientific engagement is undertaken to address this important issue.**

With all respect to the Legislature's authority to establish overarching policy and law, detailed natural resource management strategies and related use requirements and restrictions should be addressed by the State's comprehensive Chapter 91 rulemaking and stakeholder engagement processes. That is clearly the intent of HRS §190-4.5, which this bills seeks to modify with an exemption for a single location.

DLNR Division of Aquatic Resources' studies have shown that both coral reef predators and the visitor experience is affected by over-crowding at Molokini. The State's 2010 social carrying capacity study finds that over 2/3 of all visitors report feeling crowded and report too many boats at Molokini. And, DAR's 2016 reef predator movement study found 50% of 'ōmilu (a key reef predator) are displaced outside of the shallow crater into deep water when the number of boats exceeds 12.

Coral reef predators occupy the highest level of that ecosystem's food chain and serve a critical ecological purpose. By eating other fish, they structure the reef community and increase the productivity of the system down food chain. If mobile predators are leaving because of activity levels, it is very reasonable to think that less mobile fish that can't leave are also altering their behavior in response to all of the disturbance, therefore, not filling their ecological role. All of this can make the ecosystem less stable and vulnerable to other threats like climate change.

Levels of use at Molokini by commercial operators should be set after careful consideration of impacts to resources and all interested parties. Please defer this bill to ensure that process is undertaken.

Thank you.

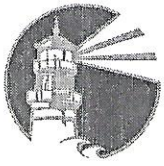
**SB-1403**

Submitted on: 2/12/2019 11:42:49 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:



COMMITTEE ON WATER AND LAND

Senator Kaiiali'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 STRONG SUPPORT OF  
SB1403 RELATING TO MARINE CONSERVATION DISTRICTS**

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

My name is James E. Coon, President of the Ocean Tourism Coalition (OTC),  
**speaking in Strong Support of SB 1403 Relating to Marine Life Conservation  
Districts.**

The OTC represents over 300 small ocean tourism businesses state wide. All of  
them operate from State Boating Facilities managed by DLNR/DOBOR/DAR.  
According to DAR there are currently not 41 but 40 Permitted Snorkel Dive  
businesses that are permitted access Molokini Shoals MLCD's on a daily basis--  
weather permitting--to enjoy the Crater before the Trades come in.

Molokini Shoals MLCD is a very unique place. It is located at the edge of the  
Alenuihaha Channel. It is the most popular snorkel dive destination in Maui  
County and possibly the State. The coral is healthy the ecosystem robust the  
visitor experience safe and excellent. However the trade winds blow into the  
Crater almost every day often starting between 10:00-11:00 am making all boats  
leave the area giving about a three hour window of Crater access. The time from  
8:00-10:00 is the most valued time in the Crater and the time almost everyone  
would prefer to be there to conduct snorkel/dive tours.

Because there are 40 Commercial Permits for the Crater and only 24 moorings,  
each company has had to modify their schedule so that they share time on a  
specific mooring. It takes a minimum of 1.5 hours to conduct a quality  
snorkel/dive tour at Molokini.

Typically each mooring accommodates up to two vessels per day. Currently  
there are, on occasion, unpermitted vessels that "drift" inside the crater with

their guests swimming in the Crater. If this persists it will lead to overcrowding in the Crater in the future. This legislation proactively assures that the cap of 40 Commercial Use Permits for Molokini Crater will not be increased as well as a workable limit of 20 Permitted Commercial Vessels that can be in the Crater at any one time. It will also prohibit non permitted commercial vessels from entering the Crater.

There are only 24 Commercial Moorings in Molokini Crater so it cannot be overcrowded if non permitted commercial vessels are prohibited from accessing the crater. The cap of 20 vessels at any given time leaves four unused moorings available when wind and sea conditions may render certain moorings in the Crater unsafe to use.

The Molokini Operators have managed to work together for over four decades. There is currently not a problem in Molokini but this legislation will ensure that Molokini Shoals MLCD remains pristine and accessible in the future. It also ensures that the 40 Molokini Permit holders will have adequate time in the Crater to conduct their tours and deliver the world class experience our guests deserve.

We humbly ask you to please pass SB 1403.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Coon". The signature is written in a cursive style and is enclosed within a hand-drawn oval shape.

James E. Coon, President

Ocean Tourism Coalition

# Seabird Cruises, Inc.

Davies Pacific Center

841 Bishop Street, Suite 1110

Honolulu, Hawaii 96813

808. 531.7001 ext 17

February 12, 2019

## RE: In Support of SB1403 Relating to Molokini

Established over 31 years ago, Seabird Cruises, Inc. is a third generation, kamaaina owned company. For three decades, we've worked with our fellow boat operators to respect and preserve the marine life and natural beauty of Molokini Crater.

We strongly support this SB1403 to limit entry to only 20 permit holders at one time, and to limit the number of commercial permits issued to 41. Commercial vessels that illegally enter without proper Molokini Use Permits need to be stopped.

### 6 Reasons why we support SB1403:

1. The Molokini ecosystem is robust and healthy.
2. The Reef Predator Report concluded that:
  - a. Coral Reefs at Molokini are considered to be relatively healthy, in part, due to the site's isolation and depth
  - b. Of the 5 species studied, 1 out of the 5, the Omilu, were temporally displaced during peak hours for a very short distance
  - c. "further research is needed"
  - d. "the exact mechanism of displacement (from A to B) is uncertain"
3. Permitted Commercial Operators do not feed the fish, do not catch the fish, educate visitors about respectfully and safely visiting Molokini. It is in the boat operators best interest to maintain the integrity of Molokini Crater.
4. The established mooring system in Molokini ensures that boats do not anchor and harm the coral reefs.
5. Natural attrition has already reduced passenger counts in Molokini by almost 300 passengers. Prince Kuhio (149), Mahana Nai (60 to 6 Pax) and Lahaina Princess (99 to 6 Pax). The cap introduced in this bill will support the intent to sustain Molokini for future generations.
6. Molokini is already naturally limiting.
  - a. Boaters are unable to operate 360 days a year due to strong wind and sea conditions.
  - b. Seabird only operates in the morning for just 1 – 1 ½ hour per day, and due to weather, approximately 300 days per year.
  - c. The wind is too strong to operate after 11 am or 12 noon, so there are ONLY morning cruises to Molokini.

**Supporting SB1403 will put a cap on the existing permits and number of boats allowed at Molokini Crater, and will help to preserve and sustain Molokini for future generations.** Thank you for your time and consideration of this testimony.

Mahalo,



Kathy Loui-Yasui  
Vice President



**SB-1403**

Submitted on: 2/12/2019 1:05:20 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>
MARK DERENSIS	Testifying for Blue Water Rafting	Support	No

Comments:

[COMMITTEE ON WATER AND LAND](#)

Senator Kaiali'i Kahele, Chair

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

**NOTICE OF HEARING**

DATE: Monday, February 13, 2019

TIME: 1:20 P.M.  
Conference Room 229

PLACE: State Capitol

415 South Beretania Street

**TESTIMONY BY: MARK DE RENSIS IN STRONG SUPPORT TO SB1403 RELATING TO MOLOKINI:**

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

**BLUE WATER RAFTING**

P.O. BOX 1865

KIHEI, HI 96753

Blue Water Rafting has been operating out of Kihei Boat Ramp and taking visitors to the Molokini Marine Life Conservation District almost every day for 34 years. Although we

have seen some increase to the number of commercial and non-commercial vessels during this period, the MLCD has been, and continues to be, an extremely healthy marine ecosystem with a vast variety of marine life.

Over these years we have seen numerous improvements which have helped to protect the resource including but not limited to:

1. The installation of a mooring system so that there would no longer be vessels anchoring.
2. Rules prohibiting feeding and touching or harming of the marine life within the MLCD.
3. Education of people visiting the MLCD for the purpose of snorkeling and/or scuba diving.

Our three vessels visit Molokini for less than an hour a day each for snorkeling. On a number days we either do not enter zone "A" at all, and only visit zone "B" due to wind and sea conditions.

There are a significant number of days when none of the 40 current commercial operators, are able to stay for any length of time within the MLCD.

There is a study which indicates there could be a displacement of certain species of predator fish (Omilu) during times when a significant number of vessels are in the MLCD at one time.

The report also stated "Coral reefs at Molokini are considered to be "relatively healthy" in spite of substantial marine recreation use and impacts associated with these activities are mitigated by the site's isolation and depth."

Since the conditions at Molokini generally limit use to about 3 hours per day, and most of the vessels that enter the MLCD are there for only an hour and a half per day, it would not seem logical or necessary to greatly reduce the number of moorings or number of vessels in the MLCD for such a small portion of the day.

About 20 moorings are needed to service the existing 40 permitted vessels

As it stands, there are now 26 mooring within the MLCD. Under ideal circumstances any of the moorings would be available to a vessel any given day.

**SB1043 would limit the number of vessels to 20 at any given time within the crater.** This would preclude removing any of the moorings which may be needed in the event of damage to any of the moorings due to normal wear and tear.

Another Study has been presented which sampled people who had visited Molokini and were asked questions as to whether they perceived Molokini to be crowded.

I am not aware of any of **our** passengers having been included in this sampling, nor have we ever had a complaint by any of our clients indicating that they felt overcrowded at Molokini on any of our tours.

In our view, there is currently not a problem in Molokini but this legislation will help ensure that Molokini Crater MLCD remains pristine and usable in the future.

Sincerely

Mark De Rensis

DATE: Monday, February 13, 2019  
TIME: 1:20 P.M.  
PLACE: Conference Room 229  
State Capitol  
415 South Beretania Street

**TESTIMONY BY CALYPSO IN STRONG SUPPORT TO SB1403 RELATING TO MOLOKINI:**

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

Calypso Charters and its affiliates employ close to 100 people in Hawaii's tourism industry. We have been operating in Molokini crater for more than 30 years. We support SB1403.

Molokini is a perfect example of a successful Marine Life Conservation District ("MLCD"). The reef and biomass population is healthy, and the permitted operators play by the rules. In Molokini, there are 40 permit holders and only 26 moorings. Despite this gap, the Molokini operators have managed to work together for over three decades without significant user conflict, and minimal impact on the resource. In fact, reports cited by the Division of Aquatic Resources ("DAR") concluded the "coral reefs at Molokini are considered to be relatively healthy in spite of substantial marine recreation use and impacts associated with these activities are mitigated by the site's isolation and depth."

**Molokini Existing Limitations and Regulations**

Molokini's use is already extremely limited by mother-nature, and there are more than 20 different rules that operators must abide by.<sup>1</sup> Our operation visits Molokini about 1.5 hours a day for about 300 days a year or less. The natural wind limitations of Molokini force all operators out by 10:00, if not earlier. Molokini is often totally inaccessible due to weather conditions. In short, Molokini is already a heavily regulated resource with limited access and extensive rules and prohibitions. The resource is not experiencing any problems and mother-nature limits use.

**Benefits of Bill**

Unfortunately, based on poor rule drafting, *unpermitted* commercial vessels may access Molokini and "drift" dive, as long as they don't moor inside the crater. This bill would limit commercial use of Molokini to only *permitted* vessel. Additionally, permitted vessels are regulated by the permit and agree to certain rules and regulations. Those rules and regulations help preserve and protect Molokini. On the contrary, non-permitted vessels avoid the permit restrictions. This bill

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<sup>1</sup> Existing regulations, to name a few: No new permits are issued for Molokini (H.A.R. 13-31-5); DAR No Longer Authorizes Temporary Mooring Permits Pursuant to H.A.S. 13-257-52(c); Restrictions on Changing Vessel Size, Height, and/or Weight (Molo Permit, ¶120); Permits are Non-Transferable (H.A.R. 13-231-5); Pre-Trip Passenger Consent Forms Required from All Crew and Passengers (Molo Permit, ¶13); Cannot increase passenger requirement; Zone Area Restrictions; Existing zone restrictions aren't enforced; Captain experience requirement to pilot Molokini (Molo Permit, ¶17); GPS required for all vessels in Molokini (Molo Permit, ¶16); SCUBA and SNUBA limitations (Molo Permit, ¶10); Monthly Reporting Requirements (Molo Permit, ¶14); Cleaning Snorkel Gear Prohibited (Molo Permit, ¶11); BBQ Prohibited (Molo Permit, ¶11); Speed Restrictions (H.A.R. 13-357-55); Damage to reef prohibited (H.A.R. 13-231-3); 2.5 time limitation (H.A.R. 13-257-3); Vessel Repairs Prohibited (Molo Permit, ¶9); No Fishing or Spearfishing (H.A.R. 13-231-3); No Fish feeding (H.A.R. 13-231-4); No overnight mooring (H.A.R. 13-257-3(b)); and No anchoring (H.A.R. 13-357-55, H.A.R. 13-231-6).

will further reduce the number of vessels in the crater and make certain the vessels are subject to the permit restrictions.

Furthermore, based on the current rules, there is no limitation on the number of permit holders that may enter the crater at any one time. In theory, all 40 boats could enter the crater at any time. SB1403 would limit entry to 20 permit holders at any one time.

### **Department of Aquatics (DAR) Reports in Inconclusive**

Any further reduction of Molokini moorings *below* 20 is unnecessary and unreasonable. It takes a minimum of 20 moorings to service the 40 permitted tour boats, and boats need at least 90 minutes to conduct a quality tour. If not, companies will go out of business. DAR cites two reports for its justification to overhaul Molokini.

#### **Reef Predators**

DAR cites a reef predator report as justification for reducing moorings to 12, which will put companies out of business. Out of 5 species studies, only Omilu visited the crater during snorkeling hours.

During the 12 hours of daylight, the Omilu were temporally displaced during peak hours between 8:00am and 10:00am, but that “the exact mechanism of displacement [of Omilu] (from A to B) is uncertain.” The report concluded that “further research is needed”, partially because the report was unable to determine the cause of the displacement.

There are so many unknowns in the report, it seems unreasonable to put companies out of business with 12 moorings. Most importantly, “*the consequences of the displacement of bluefin trevally from the shallow waters of Molokini crater during peak hours in human use are unknown.*” That is directly from the report cited by DAR. Also, the report is based on acoustic sound heard by the Omilu. However, DAR isn’t certain of the frequency that Omilu hear sound, and that “the physiological effect of intense anthropogenic noise on fishes is poorly understood.” The method of collecting data also contained important assumptions. For instance, “fluctuations in detection ranges in response to environmental noise are real constraints...and likely introduce a source of error in making conclusions about animal movements” in the report. This is too much error and uncertainty to put long-standing companies out of business.

#### **Customer Satisfaction**

DAR also cites a customer satisfaction survey as evidence for reducing moorings below 20. In the survey, *95% of the visitors that were polled about Molokini stated they were highly satisfied.* Amazingly, nobody was dissatisfied with the Molokini experience. Also over 80% charter boat passengers in Molokini learn that feeding fish and touching marine life is harmful. These are very encouraging and positive numbers.

### **Conclusion**

Molokini trips offer education along with lifeguarded, supervised natural exploration. Tour boats take pictures and leave bubbles. Tour boats to not feed fish, do not catch fish, do not BBQ in the crater, are faithful stewards of this environment and are the most motivated to keep it pristine. There is currently not a problem in Molokini, but this legislation will ensure that Molokini Crater MLCDC remains pristine and usable in the future.

Zachary LaPrade, Calypso Charters

**SB-1403**

Submitted on: 2/12/2019 11:26:16 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Kristie Wrigglesworth	Testifying for PacWhale Eco-Adventures	Support	No

Comments:

I represent PacWhale Eco-Adventures, a marine eco-tour operation in Maui County involving 6 vessels and 80 vessel staff. I am submitting this testimony in support of SB1403.

**1. DAR already has the ability to reduce the number of permits and visitors to Molokini over time.**

The state has already approved 41 Molokini use permits, plus 24 moorings in Molokini in order to protect the coral there. It has made adjustments to ensure that those permits and the number of visitors going to Molokini will be reduced over time. For example, if a vessel attached to a use permit is replaced with a smaller vessel with a lower carrying capacity, then the permit capacity reduces to the vessel carrying capacity. In addition, DAR has authority to reject use of larger commercial vessels in Molokini, and it is their responsibility to do so.

**2. Activity in Molokini should not be substantially reduced unless new day-use moorings are installed in more sensitive nearshore areas.**

Anchor damage is a key threat to coral reefs around the world according to the [International Coral Reef Initiative](#) and the [US Coral Reef Task Force](#). Day-use moorings have proven to be an effective tool to help prevent this coral damage by enabling boats to tie up to mooring buoys instead of dropping anchors onto the coral reefs.

In recent Molokini working group meetings, DAR has proposed to reduce moorings in Molokini to 12 commercial vessels and 2 recreational vessels (14 total at one time). Based on the current trip schedule prepared by all of the Molokini operators, this will result in displacement of 5 or more operators. Substantially reducing activity in Molokini without a plan for additional moorings elsewhere could create anchor damage in more sensitive nearshore areas that operators will be displaced to.

After reading through the surveys and scientific articles provided by DAR, we believe there is little evidence for detrimental impacts to the coral reef and its inhabitants. However, there is evidence of a negative relationship between vessel traffic and a species of fish called the bluefin trevally: "During peak hours of human use, there was a

negative relationship ( $R^2 = 0.77$ ,  $P < 0.001$ ) between the presence of bluefin trevally (*Caranx melampygus*) and vessels in subzone A. No other species showed strong evidence of this relationship.”

From an analytical perspective, the science could be improved to support the decision to reduce moorings by expanding analysis to multivariate approach. This will help determine if the vessel number is acting in conjunction with or as a proxy for temporal (time), environmental, spatial (habitat), and/or biological components. Further, additional analysis to justify 12 vessels could be strengthened using a change-point-model to determine when there is a statistical significant difference in the number of bluefin trevally as it relates to vessel counts.

Finally, a key component that is missing is a modeling exercise to determine the appropriate number of vessels (12 is based on insufficient evidence, 1 fish species) and the impact on nearby reefs of increased pressure as a result of increased tourism. Nearshore areas are subject to more pressures resulting from proximity to land and ease of access. Despite Molokini having a high use, it seems to be resilient to the impacts of tourism and that is likely a result of it being away from shore (boat access only) and subject to regular currents.

Thank you for your time and consideration of this testimony in support of SB1403.

**Testimony of Denver Saxton Coon on behalf of Trilogy Corporation, in Strong Support of SB1403,  
Relating to Marine Life Conservation Districts.**

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  
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 currently conducts permitted commercial tours at the Molokini Shoal Marine Life Conservation District ("Molokini MLCD") and is testifying **strong support** of SB1403.

There are currently 40 commercial vessels authorized by permit to moor at the Molokini MLCD. The permits are issued by the Department of Land and Natural Resources' Division of Aquatic Resources ("DLNR-DAR"). However, unpermitted vessels are currently conducting commercial operations in the Molokini MLCD due to a loophole in the wording of the rules. This loophole states that vessels must be permitted in order to moor but fails to address unpermitted commercial operators. This has resulted in unpermitted vessels conducting "drift dive" tours within the crater without the use of a mooring. This not only has led to the overcrowding of the resources but numerous safety concerns. Accordingly, one of the intents of the SB1403 is to close this loophole for the welfare of the resources and the commercial and recreational visitors to the Molokini MLCD.

In addition, the SB1403 would limit the number of vessels that may be inside the Molokini MLCD to twenty at any one time. As it currently stands, there are no limitations on the number of permitted and unpermitted vessels that may use the area at any one time. The intent of SB1403 is to limit commercial use but not restrict access by recreational users.

Please pass SB1403 with an allowance for 20 permitted vessels at any one time and a cap of 41 Molokini MLCD Permits.

*Mahalo,*

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





**Testimony by Jonna Chmeleck in strong support to SB1403 relating to Molokini:**

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

I work for Makena Boat Partners dba Kai Kanani Sailing in Makena, Hawaii. We are a 30 year old company in South Maui providing snorkel sail tours to Molokini crater. We gratefully acknowledge our place as caretakers and interpreters of this area we call home.

Molokini currently has 26 moorings and there are 40 permit holders who visit and rotate through these moorings. The current situation leads to a symbiotic coalition of operators taking turns to visit the crater. As ambassadors of this area we work together to follow the rules and take care of the coral reefs in the crater. In fact, those reefs and biomass remain healthy in spite of the many recreational visitors. Molokini is considered robust and healthy.

During peak season more than 20 permit holders enter Molokini crater at any one time. HB1133 would limit entry to 20 permit holders at any one time.

This bill will further protect the permit holders by making sure that unpermitted commercial vessels cannot access Molokini by 'drift' diving into the area. HB1133 would limit the crater to commercial use by only permitted vessels and close the loophole in the law.

Our tours offer a safe and supervised exploration of nature.

Thank you,

Jonna Chmeleck



February 11, 2019

**Testimony by David Glenn Taylor in strong support to SB1403 relating to the management of Molokini Crater:**

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

I am an employee of Makena Boat Partners dba Kai Kanani Sailing in Wailea-Makena on Maui. We have been operating safely in Makena for 30 years, bringing guests to Molokini, enjoying South Maui waters and working with the local community to ensure a sustainable Makena for future generations.

Molokini has 26 moorings and just under 50 usage permits. This arrangement works well, with companies working well together to manage their use and ensure that guests on the various vessels are safe. There are many factors supporting SB1403 and the value it would add to Molokini's management but here are three that I feel are important:

- Molokini is only accessible for around 3 hours a day, leaving it to rest the vast majority of the time.
- Kai Kanani is normally the first snorkel boat in the crater in the morning. We witness to its health by regularly seeing reef sharks, Omilu and other predator species in abundance. The report that was submitted exaggerates claims that Omilu are being displaced by tour operators when the crater is empty 21 hours a day.
- It is my opinion that it is good and proper for the State of Hawaii to enact legislation to protect Molokini as it is a precious resource for tourism, by far and away the most important industry to Hawaii's economy.

Sincerely yours,

David Glenn Taylor, Marketing Director, Kai Kanani Sailing



COMMITTEE ON WATER AND LAND

Senator Kaiali'i Kahele, Chair

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

NOTICE OF HEARING

DATE: Monday, February 13, 2019

TIME: 1:20 P.M.

PLACE: Conference Room 229  
State Capitol  
415 South Beretania Street

**Testimony by Maria Taylor in strong support of SB1403 relating to Molokini:**  
Chair Kahele, Vice Chair Keith-Agaran, and Members of WTL Committee:

Thank you for this opportunity to provide testimony regarding SB1403. I am the General Manager of Kai Kanani Sailing, a Native Hawaiian and family-owned company that has been operating snorkeling tours to Molokini for over 30 years. We train all of our crew as Marine Naturalists through the Hawaii Wildlife Fund and educate our guests about the fragile marine ecosystems and the harm that can be caused by toxic sunscreen, touching sea life, and feeding fish, among many other things. Guest education is critical to the health of our oceans and Molokini crater provides us with a venue to connect the guests to why they need to care about it.

I strongly support this bill for the following reasons:

-Molokini is a healthy eco system and we want to preserve it. Limiting the commercial operators to 20 boats is a fantastic balance that will ensure the continued health of the eco system while allowing tour operators to continue to operate and educate guests.



-SB1403 would limit commercial use of Molokini to only permitted vessels who are vested in it's sustainability and conservation.

-This legislation will ensure that Molokini Crater MLCD remains pristine and usable in the future.

Thank you for your time and consideration.

Sincerely,

Maria Taylor, General Manager  
Kai Kanani Sailing Charters

**SB-1403**

Submitted on: 2/11/2019 4:45:55 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>
Scott Turner	Testifying for Maui-Molokai Sea Cruises	Support	No

Comments:

Aloha,

There are 41 commercial permits issued for Molokini Crater and 24 commercial day use moorings. DAR seeks to drastically reduce the number of moorings to 12. This bill SB1403 proposes to retain all of the moorings and manage the preserve, by limiting the number of commercial vessels permitted in the crater to not more than 20 at any given time. The commercial operators would stagger our arrival and departure times to reduce the number of boats and swimmers in the water at a time. This bill prevents other unpermitted vessels from operating commercially in the crater. This bill allows for commercial operators to be present just three hours per day. The Omilu which some say wander out of the crater when there are more than 12 boats present, do not move far, and return for the remaining 21 hours of the day. We take photos and nothing else. No spear fishing, no fishing at all. We do not feed the fish or barbecue in the crater. We provide "reef safe" sunscreen to our passengers for free. We are the stewards of the environment. Molokini's ecosystem is robust and healthy, in part because we commercial operators are passionate about the protecting the environment we serve. At least 90 percent of the visitors which visit Molokini report that their experience was outstanding. Not having enough moorings at the crater to facilitate the number of permit holders will affect local businesses and cause loss of jobs. This bill prevents that from occurring.

Mahalo,

Scott Turner

**SB-1403**

Submitted on: 2/12/2019 9:56:54 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>
scott blish	Testifying for maui-molokai sea cruises	Support	No

Comments:

Aloha, I am writing on behalf of Maui-Molokai Sea Cruises, we employ 50 people. We operate out of Maalea and run two boats to Molokini. We agree that 20 boats is a reasonable limit at any given time and that 41 permites should continue to be permitted and will work together to operate inside Molokini at no more than 20 at a time.

I believe this because we operators take good care of Molokini and care deeply about its health. We bring guests to Molokini, we never allow them to touch anything, to fish, or feed the fish, we never anchor, we have banned non reef safe sunscreen. We teach our guests about the fragility of the reef and crater, about some its history all with eh intent to instil the need to respect and conserve Molokini.

And know that Molokini is used about 300 days per year yes but only for about 4 hours per day. So about 15% of each day and not more.

We believe it is a privilege to take our guests out there. We want visitrs to visit this wonderous place. And we feel strongly that the reef is healthy, well taken care of, well managed and well conserved; all under the operators oversight. Lets keep things stable and healthy and continue this healthy relationship between nature and humans.

Mahalo,

Scott Blish

**SB-1403**

Submitted on: 2/9/2019 7:39:10 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>
Kevin Ford	Testifying for Maui Classic Charters	Support	No

Comments:

We strongly support this bill as it will provide a limit on the number of permits issued to commercial boat operators as well as limit the number of boats that are allowed to enter Molokini Crater at any given time.

We are a small business that has been taking passengers to Molokini for over 35 years and we instill the importance in preserving the crater in each and every passenger.

Molokini has a thriving marine life and this bill will ensure it stays that way for years to come without taking away jobs of local crew members due to unnecessary DLNR proposals.

Please pass SB1403

**SB-1403**

Submitted on: 2/11/2019 12:33:05 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>
Nicole Andricci	Testifying for Maui Classic Charters, Inc.	Support	No

Comments:

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

In Molokin, 40 permit holders exist and there are only 26 moorings. Even though this is the case, all the operators have managed to work together for over three decades without any issues.

Molokini is visited about 1.5 hours a day for approximately 300 days a year (or even less). The use is already limited, due to the wind limitations.

I believe that this legislation is what is whats best for Molokini crater.

Sincerely,

Nicole Andricci



**SB-1403**

Submitted on: 2/11/2019 1:52:28 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>
Brennan Henders	Testifying for Maui Classic Charters	Support	No

Comments:

**SB-1403**

Submitted on: 2/11/2019 1:41:05 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>
Marcella Mondejar	Individual	Support	No

Comments:

**SB-1403**

Submitted on: 2/10/2019 1:56:32 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>
Donna Henders	Individual	Support	No

Comments:

Possibly look at not issuing further permits but please do not restrict the current practices

of the boats that depend on this excursion for their livelihoods. These companies should

be grandfathered in to whatever further restrictive measures might be implemented. I am in

total support of SB1403 ..... Respectfully and hopefully .....

**SB-1403**

Submitted on: 2/11/2019 8:24:26 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>
Jeff Strahn	Individual	Support	No

Comments:

We are very much in support of this bill.

Thanks,

Jeff Strahn

General Manager

**SB-1403**

Submitted on: 2/9/2019 7:11:25 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>
Kristy Ford	Individual	Support	No

Comments:

I am in favor of this bill as it protects small business boat operators from being displaced by current DLNR proposed mooring removal efforts in the crater based on a study that is not only inadequate but inconclusive. It also puts a limit on the number of vessels that can enter Molokini at any given time providing additional protection to our marine preserve for years to come.

Please pass SB1403

Therefore I would be in favor of this bill.

**SB-1403**

Submitted on: 2/12/2019 11:19:13 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>
Andrew mcomb	Individual	Support	No

Comments:

**SB-1403**

Submitted on: 2/12/2019 1:02:00 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>
Anthony DelleFave	Individual	Support	No

## Comments:

I support the proposal as a Molokini user. It limits the amount of commercial operators at a given time but affords the flexibility to deal with "Mother Nature". It also keeps the burden of being a good steward on the permitted companies, and keeps out the unpermitted operator that can be hard to enforce or fine.

**SB-1403**

Submitted on: 2/12/2019 4:31:15 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 SB1403. Coral reefs are already dying, and many of those left are under stress from warming oceans, making them more susceptible to disease. Adding snorkelers with chemicals from sunscreen and toiletries on their bodies just adds to that stress.

Thank you for the opportunity to present my testimony.

Andrea Quinn

Kihei



Testimony of

**Scott Fretz  
201 Pico Tract  
Haiku, Hawaii 96708**

Before the Senate Committees on Water and Land

DATE: Wednesday, February 13, 2019

TIME: 1:20 P.M.

**In OPPOSITION TO**

HOUSE BILL 1403  
RELATING TO MARINE LIFE CONSERVATION DISTRICTS

Thank you for the opportunity to provide testimony on SB 1403 relating to Marine Life Conservation Districts (MLCDs) and Molokini Shoal.

I am a recreational boater and a resident of Maui. I have a boat in Maalaea harbor and I sail around Maui and the neighbor islands regularly. I have been sailing in Hawaii for more than 50 years and I remember when we could go to Molokini and enjoy a nice day of diving and snorkeling. Unfortunately, those days are long gone because Molokini is severely overcrowded with commercial boats that drop more than a 1,000 people per day in the water. The overcrowding affects the ecosystem and ruins the recreational experience.

I am opposed to SB 1403 for the following reasons:

1. The numbers of commercial boats and users allowed by this bill are FAR too high. The numbers are too high now, and will be too high under this bill.
2. This bill would allow a highly impactful commercial use of an MLCD without an environmental impact statement (EIS), required under Chapter 343, Hawaii Revised Statutes (HRS). An EIS should be done before ANY commercial tour permits are issued for this and other MLCDs and coastal areas.
3. DLNR should establish the number of commercial use permits for this and other MLCDs and coastal areas through a public process, to include engagement with recreational users, assessment of environmental impacts, and rule making pursuant to Chapter 91, HRS.
4. This bill will benefit only commercial users seeking to profit at the expense of recreational users and Maui residents.
5. This bill does not take into consideration the impacts to residents, for example by allowing commercial use on weekdays only so that residents are afforded a reasonable time to enjoy Molokini on the weekends.
6. The Attorney General has noted that this bill is potentially in violation of Article XI, Section 5 of the state constitution, reinforcing support for a process of community engagement to develop appropriate rules and policies for the commercial use of Molokini Shoal.

**SB-1403**

Submitted on: 2/11/2019 10:20:40 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>
Anne Rillero	Individual	Oppose	No

Comments:

I oppose this bill because it essentially maintains current limits on boats in Molokini. I believe we need to cut back the number of boats and particularly the number of snorkelers/divers at Molokini at any given time, to better protect the fish and corals there. Additionally, I strongly urge stronger enforcement and more funding for enforcement agents to check for illegal moorings along Maui's coasts.

I am writing this testimony in opposition of SB 1403, because as the bill is currently written, it is unlikely to meet its stated objectives of preserving the Molokini MLCD. For full disclosure, I am an author of a scientific per-reviewed study into the movements of the MCLD's marine life and I present this testimony only to clarify that the proposed limit of twenty permitted vessels at a given time, exceeds the capacity of the MLCD that was determined by several independent scientific studies.

The Molokini MLCD is one of Hawaii's most important marine reserves and the results of per-reviewed studies into visitor experiences at the MLCD indicate that over 2/3 of all visitors to the MLCD felt crowded and 50% of respondents felt it was unacceptable to have more than 14-15 (small to large boats) in the crater at the same time (Bell et al. 2011; Needham et al. 2011). Additionally, the movements of the MLCDs predatory reef fish showed that 50% of MLCD's Omilu were displaced from within the crater when there were more than 12 boats at a given time (Filous et al. 2017).

The bill states "The purpose of this Act is to preserve Molokini shoal by limiting entry into the Molokini marine life conservation district to forty-one permits and twenty permitted vessels at any given time." Given that there is substantial anthropogenic and biological evidence to suggest the MLCD is impacted by overcrowding at boat numbers that are well below the intensity of twenty vessels, the proposed bill would not address this resource management issue.

The Department of Land and Natural Resources is currently in the process of addressing the issue of overcrowding in the Molokini MLCD with the administrative rule making procedure, where local stakeholders and the general public are able to participate in the development of management regulations, and the number of vessels permitted to operate in the MLCD at a given time, will be determined by a compromise between what is biologically and economically sustainable. The proposed bill undermines the Sate and the DLNRs management efforts, by circumventing these procedures and authorizing a number of vessels at a given time which exceeds the capacity of the Molokini MLCD.

Thank you,

Alex Filous

#### References

Bell, C.M., Needham, M.D. and Szuster, B.W., 2011. Congruence among encounters, norms, crowding, and management in a marine protected area. *Environmental Management*, 48(3), pp.499-513.

Filous, A., Friedlander, A.M., Koike, H., Lammers, M., Wong, A., Stone, K. and Sparks, R.T., 2017. Displacement effects of heavy human use on coral reef predators within the Molokini Marine Life Conservation District. *Marine pollution bulletin*, 121(1-2), pp.274-281.

Needham, M.D., Szuster, B.W. and Bell, C.M., 2011. Encounter norms, social carrying capacity indicators, and standards of quality at a marine protected area. *Ocean & coastal management*, 54(8), pp.633-641.

**LATE**

**SB-1403**

Submitted on: 2/13/2019 9:06:10 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>
Adam K. Wong	Individual	Oppose	No

Comments:

Aloha mai kakou,

I am writing to OPPOSE SB1403 relating to Molokini MLCD. The number of vessels that visit Molokini daily already are displacing animals from their natural habitat. Having a daily limit of 20 vessels visiting the MLCD at any given time is just absurd and does nothing to protect our fragile coral reef ecosystems. Please listen to your na'au, and put our resources first before money. Thank you for your time.

Adam K. Wong