

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 House Committees on  
WATER & LAND  
and  
ENERGY & ENVIRONMENTAL PROTECTION**

**Tuesday, February 16, 2021  
11:00 AM**

**State Capitol, Via Videoconference, Conference Room 430 & 325**

**In consideration of  
HOUSE BILL 1027  
RELATING TO MARINE LIFE CONSERVATION DISTRICTS**

House Bill 1027 proposes to establish the Marine Life Conservation District (MLCD) Special Fund for the collection and use of moneys for the management, protection, restoration, and enhancement of the State's MLCDs and the resources contained within, and authorizes the Department of Land and Natural Resources (Department) to collect fees for the use of MLCDs and the resources contained within. **The Department strongly supports this Administration bill and offers the following comments.**

The Marine Life Conservation Program embodied in Chapter 190, Hawaii Revised Statutes, has provided the State with some of its most ecologically, economically, and culturally valuable environmental assets. Unfortunately, many of the State's MLCDs have become prime tourist attractions and are in danger of being loved to death. In addition to direct visitor pressure, the marine ecosystems within the State's MLCDs have recently been subject to a broad range of indirect anthropogenic impacts, including coral bleaching, damage from marine debris, and land-based and water-based pollutant discharges.

Despite the growing need for better management, resources for management are dwindling. The Department would benefit from a more consistent and reliable source of funding to manage, protect, and restore marine resources within its MLCDs. A sustainable funding source is especially critical during these current times of economic difficulty due to the impacts of the COVID-19 pandemic.

The Department is aware of concerns expressed by vessel-based ocean tour operators that this could adversely impact their businesses. The Department would be amenable to amending the

**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

proposed language in Section 190-4(b) (beginning on page 7, line 21) to replace it with language in Senate Bill 769 as follows:

(b) The department of land and natural resources may adopt rules pursuant to chapter 91 to establish fees or require permits for entry into the boundaries of any marine life conservation district established under this chapter to which public access is managed by a county and for which a fee is charged for public access. Fees collected under this section or any rule adopted thereunder, shall be deposited in the marine life conservation district special fund pursuant to section 190-\_\_.

Thank you for the opportunity to comment on this measure.



**HB1027**  
RELATING TO MARINE LIFE CONSERVATION DISTRICTS  
Ke Kōmike Hale o ka Wai a me ka ‘Āina  
Ke Kōmike Hale o ke Ikehu a me ka Ho‘omalua Ao Kūlohelohe

Pepeluali 16, 2021

11:00 a.m.

Lumi 430 a me Lumi 325

The Office of Hawaiian Affairs **SUPPORTS** HB1027, 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, ecologically, economically, and socially valued ocean areas, as well as research and other activities that may benefit our ocean environment as a whole. By authorizing user fees for the use and enjoyment of the state’s ocean resources, and dedicating such fees to the conservation, restoration, and enhancement of marine resources, this measure could result in millions of dollars of revenues to protect and perpetuate the ocean environment upon which our islands depend. OHA understands

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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/evhcric\\_samoa\\_2007.pdf](http://www.coralreef.gov/meeting18/evhcric_samoa_2007.pdf); RICHARD C. BISHOP ET. AL., TOTAL ECONOMIC VALUE FOR PROTECTING AND RESTORING HAWAIIAN CORAL REEF ECOSYSTEMS: EXECUTIVE SUMMARY (2011), available at [https://www.coris.noaa.gov/activities/hawaii\\_econeval/resources/execsumm.pdf](https://www.coris.noaa.gov/activities/hawaii_econeval/resources/execsumm.pdf).

that geographical limitations would likely limit the practical application of such fees to only a few marine life conservation districts; however, **with pre-pandemic numbers approximating 1 million annual visitors to Hanauma Bay, a modest 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.**<sup>2</sup>

OHA notes that although this measure provides DLNR with the authority to establish user fees for both residents and nonresidents alike, **nonresident user fees alone are likely enough to generate significant revenue without any increased burden on state taxpayers wishing to enjoy our marine life conservation districts, whose income tax contributions to the general fund already indirectly support marine resource management efforts by the DLNR.** In any case, OHA will work with DLNR to ensure that any marine life conservation district user fees do not unduly burden Native Hawaiians who seek to perpetuate constitutionally protected traditional and customary Native Hawaiian rights involving access to or through any affected marine life conservation district.

Therefore, OHA urges the Committees to **PASS** HB1027. Mahalo nui loa for the opportunity to testify on this measure.

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<sup>2</sup> Hanauma Bay State Park, Hanauma Bay History, <https://hanaumabaystatepark.com/hanauma-bay-history/> (last accessed Feb. 8, 2021).

**HB-1027**

Submitted on: 2/12/2021 5:18:30 PM

Testimony for WAL on 2/16/2021 11:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lisa Bishop	Friends of Hanauma Bay	Support	No

Comments:

To: Committees on Water and Land (WAL) and Energy and Environmental Protection (EEP)

Re: HB1027 RELATING TO MARINE LIFE CONSERVATION DISTRICTS

Position: **STRONG SUPPORT ONLY IF AMENDED.**

Hearing Date: Tuesday, February 16, 2021 11 a.m. House Conference Rooms 430 & 325

Aloha Chair Chair Tarnas, Vice Chair Branco, and Water and Land Committee members, and

Chair Lowen, Vice Chair Marten, and Energy and Environmental Protection Committee:

Friends of Hanauma Bay recognizes that the Department of Land and Natural Resources (DLNR) needs money to support management, conservation, educational outreach, and restoration of Hawaii’s Marine Life Conservation Districts (MLCDs) that provide havens for endemic marine species and native reef habitats.

Designated as the State of Hawaii’s first MLCD in 1967, Hanauma Bay is an iconic symbol of Hawai’i around the world. It is the number one aquatic tourist attraction in Hawaii after Waikā`ā, hosting approximately one million visitors per year pre-COVID.

Approximately 90% of visitors to the Hanauma Bay MLCD are tourists, so it is fitting and proper that restoring the natural resource they impact should be paid for by revenues they generate.

Per permit issued by the DLNR, access control of the Hanauma Bay MLCD is managed by the City and County of Honolulu’s Department of Parks and Recreation. Admission fees to Hanauma Bay are only charged to non-residents, not Kama`aina. All admission fees and revenues from the concessions are deposited into the City’s Hanauma Bay Nature Preserve Special Fund (Hanauma Bay Fund) created by ROH 96-19.

In 2002, two California residents filed a suit in U.S. Federal District Court to stop the City from only charging admission to non-residents. The court ruled that it was constitutional for the City to do so as long as all proceeds from admission fees (and since 2000, all concession fees deposited into the Hanauma Bay Fund) are spent only at Hanauma Bay. This ruling was subsequently upheld in 2004 by the U.S. Court of Appeals for the Ninth Circuit.

With this as background, we are concerned that the language in HB1027 proposing to create an MLCD Special Fund may not take these two Federal Court rulings specific to Hanauma Bay into account. We therefore recommend that HB1027 be amended as follows to ensure compliance with the two Federal Court rulings governing the use of the Hanauma Bay Fund:

Our new Recommended Language is Bolded

Change 1. Page 3, line 7

Recommend change to:

**(1) Except as set forth in subsection (7) relating to the Hanauma Bay marine life conservation district**, moneys collected as user fees or fees for permits pursuant issued under section 190-4;

This is to ensure that all moneys collected from or in connection with the Hanauma Bay MLCD are spent in accordance with the two Federal Court Rulings since only non-residents are charged admission.

Change 2. Page 4, line 20

Recommend add new subparagraph:

**(C) Monetary contributions to the Hanauma Bay marine life conservation district; and**

This is to ensure that grants or awards awarded for management, conservation or restoration of the Hanauma Bay MLCD are spent at or for Hanauma Bay.

Change 3. Page 4 line 22

Recommend add line 22 and new section:

**(7) Fees and any other moneys collected from or in connection with the Hanauma Bay marine life conservation district may only be used at or for the Hanauma Bay marine life conservation district.**

This is to ensure that all moneys collected from or in connection with the Hanauma Bay MLCD are spent in accordance with the two Federal Court Rulings

Change 4. Page 6, line 6

Recommend change to:

from the federal government, through federal program, **from counties**, or from

Change 5. Page 6, line 8

Recommend change to:

accordance with conditions established by the agency, **county**, or private

Changes 4 and 5 are to ensure that if the City and County of Honolulu approves a project or program to restore or maintain the Hanauma Bay MLCD using funds from the City's Hanauma Bay Fund, such funds can only be used at Hanauma Bay. For example, if the City and County of Honolulu adopts currently pending Resolution 20-233 urging that the City's Hanauma Bay Fund pay for coral restoration of Hanauma Bay by the DAR Hawai'i Coral Restoration Nursery, Fund expenditures can be tracked and managed to ensure they are only spent on specific Hanauma Bay projects in accordance with the two Federal Court Rulings. We anticipate that other similarly funded restoration or maintenance programs will be proposed by the City and County to continue restoration and maintenance at Hanauma Bay.

Mahalo for the opportunity to testify on this important bill. We urge you to adopt the recommended amendments to ensure any fees assessed by DLNR on the City and County of Honolulu specific to the Hanauma Bay MLCD are managed and expended in accordance with the two Federal Court rulings governing the use of the Hanauma Bay Fund.

Without these amendments, Friends of Hanauma Bay OPPOSES HB1027.

Respectfully,

Lisa Bishop

President

Friends of Hanauma Bay





**HB-1027**

Submitted on: 2/14/2021 12:36:35 PM

Testimony for WAL on 2/16/2021 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Hawaii Reef and Ocean Coalition	Hawaii Reef and Ocean Coalition	Comments	No

Comments:

To: Honorable Representative David A. Tarnas, Chair

Honorable Representative Patrick Pihana Branco, Vice Chair, and Members of the

House Committee on Water and Land, and

The Honorable Nicole Lowen, Chair,

The Honorable Lisa Marten, Vice Chair, and Members of the

House Committee on Energy and Environmental Protection

From: HAWAI'I REEF AND OCEAN COALITION – HIROC (by Ted Bohlen)

Re: Hearing HB1027 RELATING TO MARINE LIFE CONSERVATION DISTRICTS

**Hearing Date:** [Tuesday, February 16, 2021, 11:00 am](#), videoconference

**Position: COMMENT: SUPPORT FOR HD1027 IF AMENDED TO PROTECT FUNDING FOR HANAUMA BAY!**

Aloha Chair Tarnas, Vice Chair Branco, and Water and Land Committee members and Chair Lowen, Vice Chair Marten, and Energy and Environmental Protection Committee members:

The HAWAI'I REEF AND OCEAN COALITION – HIROC – was formed in 2017 by coral reef scientists, educators, local Hawaii environmental organizations, elected officials, and others to address the crisis facing Hawaii's coral reefs and other marine life.

Marine Life Conservation Districts ecosystems are threatened by anthropogenic impacts that are causing coral bleaching and death and harms to other marine life. Land-based water pollution runoff and ocean discharges, taking of marine species, certain petrochemical sunscreens, poaching, vessel groundings, anchoring and mooring, diving activities, and other direct and indirect uses all are harming our marine resources.

Marine ecosystem services are worth billions of dollars in Hawaii. Further, our coral reefs and marine resources underpin tourism, Hawaii's primary economic engine. It is therefore critical to provide sufficient stable funding to conserve, protect, manage, restore and enhance marine ecosystems and especially Marine Life Conservation Districts, to ensure our reefs can both survive and thrive for future generations.

The special fund proposed in this bill would help provide such stable funding. Therefore, **HIROC STRONGLY SUPPORTS HB1027 PROVIDED IT IS AMENDED TO ISOLATE AND PROTECT FUNDING FOR HANAUMA BAY.** These amendments are needed and would be consistent with decisions of the United States District Court for Hawaii in *Daly v. Harris*, 215 F.Supp2d 1098 (2002), upheld by the Ninth Circuit, 117 Fed Appx. 498 (2004), that \$3.50 non-resident fees collected at Hanauma Bay are constitutional and reasonable fees when used for a regulatory program to conserve and protect Hanauma Bay. The proposed amendments are as follows:

Change 1. Page 3, line 7, recommend change to:

**(1) Except as set forth in subsection (7) relating to the Hanauma Bay marine life conservation district, moneys collected as user fees or fees for permits pursuant issued under section 190-4;**

This is to ensure that all moneys collected from or in connection with the Hanauma Bay MLCD are spent in accordance with the two Federal Court Rulings since only non-residents are charged admission.

Change 2. Page 4, line 20, recommend add new subparagraph:

**(C) Monetary contributions to the Hanauma Bay marine life conservation district; and**

This is to ensure that grants or awards awarded for management, conservation or restoration of the Hanauma Bay MLCD are spent at or for Hanauma Bay.

Change 3. Page 4 line 22, recommend add line 22 and new section:

**(7) Fees and any other moneys collected from or in connection with the Hanauma Bay marine life conservation district may only be used at or for the Hanauma Bay marine life conservation district.**

This is to ensure that all moneys collected from or in connection with the Hanauma Bay MLCD are spent in accordance with the two Federal Court Rulings

Change 4. Page 6, line 6, recommend change to:

**from the federal government, through federal program, from counties, or from**

Change 5. Page 6, line 8, recommend change to:

**accordance with conditions established by the agency, county, or private**

Changes 4 and 5 are to ensure that if the City and County of Honolulu approves a project or program to restore or maintain the Hanauma Bay MLCD using funds from the City's Hanauma Bay Fund, such funds can only be used at Hanauma Bay. For example, if the City and County of Honolulu adopts currently pending Resolution 20-233 urging that the City's Hanauma Bay Fund pay for coral restoration of Hanauma Bay by the DAR Hawai'i Coral Restoration Nursery, Fund expenditures can be tracked and managed to ensure they are only spent on specific Hanauma Bay projects in accordance with the two Federal Court Rulings. We anticipate that other similarly funded restoration or maintenance programs will be proposed by the City and County to continue restoration and maintenance at Hanauma Bay.

**With the above amendments, HIROC would strongly support HB1027!**

Mahalo for the opportunity to testify on behalf of Hawaii's marine life conservation districts!

HAWAI'I REEF AND OCEAN COALITION – HIROC (by Ted Bohlen)



HOUSE OF REPRESENTATIVES  
THE THIRTY-FIRST LEGISLATURE  
REGULAR SESSION OF 2021

COMMITTEE ON WATER & LAND

Rep. David A. Tarnas, Chair

Rep. Patrick Pihana Branco, Vice Chair

Rep. Sonny Ganaden            Rep. Dee Morikawa

Rep. Bertrand Kobayashi    Rep. Takashi Ohno

Rep. Sam Satoru Kong        Rep. Bob McDermott

NOTICE OF HEARING

DATE:    Tuesday, February 16, 2021

TIME:    11:00 a.m.

PLACE:   VIA VIDEO CONFERENCE

Conference Room 430

State Capitol

415 South Beretania Street

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**TESTIMONY OF THE OCEAN TOURISM COALITION PROVIDING  
COMMENTS ON HB1027.**

Dear Chair Tarnas, Vice Chair Branco, and Members of the Committee on Water and Land:

The Ocean Tourism Coalition (“OTC”) understands the intent of the HB1027 but is concerned with the bill’s broad language. The following amendment to subsection 190-4(b) (beginning on page 7, line 21) will limit the reach of the bill to the department’s stated goal (OTC suggested language in bold):

(b) The department of land and natural resources may adopt rules pursuant to chapter 91 to establish fees or require permits for entry into the boundaries of any marine

life conservation district established under this chapter  
**to which public access is managed by a county with a  
population of 500,000 or more.** Fees collected under this  
section or any rule adopted thereunder, shall be deposited  
in the marine life conservation district special fund  
pursuant to section  
190-\_\_.

Thank you for your time and the opportunity to comment.

Sincerely,

Denver S. Coon, Director, OTC

**HB-1027**

Submitted on: 2/13/2021 6:14:17 PM

Testimony for WAL on 2/16/2021 11:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Deborah Wallace	Individual	Oppose	No

Comments:

I strongly oppose bill HB1027 unless it includes the changes recommended by the friends of Hanauma.

The increased fees that Hanauma is now receiving do not make up for the drastic reduction in visitors which was enacted in order to preserve and improve the nature of the Marine sanctuary.

The city has for years been taking funds from Hanauma Bay. These funds were and are much needed by Hanauma Bay in order to make improvements and repairs.

Hanauma Bay is an extremely important resource both to tourists and locals alike. It is used to provide enjoyment as well as education as to how to respect a marine environment. It's value should not be underestimated nor its need to have its funds available solely for Hanauma Bay.

**HB-1027**

Submitted on: 2/14/2021 11:19:09 AM

Testimony for WAL on 2/16/2021 11:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Cynthia Punihaole Kennedy	Individual	Oppose	No

Comments:

I STRONGLY OPPOSE HB1027 Relating to Marine Life Conservation Districts because it violates two Federal Court rulings governing the use of the Hanauma Bay Fund.

**HB-1027**

Submitted on: 2/14/2021 6:55:53 PM

Testimony for WAL on 2/16/2021 11:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
David Sakoda	DLNR	Support	No

Comments:

I would ilke to testify on HB1027. Please allow me Zoom access. Thank you.



**HB-1027**

Submitted on: 2/16/2021 10:55:59 AM

Testimony for WAL on 2/16/2021 11:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Janet Pappas	Individual	Support	No

Comments: