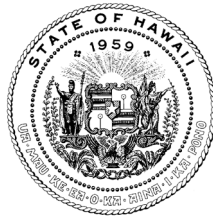


DAVID Y. IGE
GOVERNOR OF HAWAII



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, March 30, 2022
1:00 P.M.

State Capitol, Conference Room 229, Via Videoconference

In consideration of
SENATE CONCURRENT RESOLUTION 205/SENATE RESOLUTION 198
REQUESTING THE LEGISLATIVE REFERENCE BUREAU, IN CONSULTATION
WITH THE DEPARTMENT OF LAND AND NATURAL RESOURCES DIVISION OF
BOATING AND OCEAN RECREATION AND KANEEOHE BAY REGIONAL
COUNCIL, TO CONDUCT A STUDY OF COMMERCIAL ACTIVITY ON KANEEOHE
BAY TO QUANTIFY THE AMOUNT OF NON-PERMITTED COMMERCIAL
ACTIVITY THAT IS OPERATING IN VIOLATION OF THE KANEEOHE BAY
MASTER PLAN.

Senate Concurrent Resolution 205/Senate Resolution 198 requests the Legislative Reference Bureau, in consultation with the Department of Land and Natural Resources (Department), Division of Boating and Ocean Recreation (DOBOR) and Kāneʻohe Bay Regional Council, to conduct a study of commercial activity in Kāneʻohe Bay to quantify the amount of non-permitted commercial activity taking place in the Bay. **The Department appreciates the intent of these measures and offers the following comments.**

DOBOR will assist the Legislative Reference Bureau as much as it is able regarding this measure. DOBOR, in coordination with the Department's Division of Conservation and Resources Enforcement (DOCARE), has brought administrative enforcement actions against a number of persons and companies operating illegal commercial tours in Kāneʻohe Bay ocean waters. DOCARE also cites violators criminally wherever possible.

The Department does not believe that quantifying unpermitted commercial activity is the best use of resources towards the effort to reduce the amount of illegal commercial activity in Kāneʻohe Bay ocean waters. To effectively monitor for illegal commercial activity statewide, DOBOR would need more staffing or the ability to re-allocate existing staff to ocean recreation

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

activity monitoring. Due to staffing shortages and heavy workloads, DOBOR Harbor Agents, whose duties include monitoring ocean recreation activities, are mostly stuck in the office handling clerical tasks, such as reviewing paperwork, accepting payments, and preparing letters. If DOBOR is able to execute its 2019 Strategic Plan, these Harbor Agents would be able to allocate more of their time to monitoring ocean recreation activities, responding more quickly to reports of illegal activity, and educating the public regarding ocean regulations.

Additionally, a common enforcement difficulty is proving that an operator was compensated for their services. DOBOR has mirrored its definition of "commercial activity" after the definition implemented by the City and County of Honolulu, which the Department believes is the strongest definition for effective enforcement. However, both DOBOR and DOCARE encounter difficulties when customers of illegal commercial operators refuse to admit that they paid for the operator's services. The illegal commercial operators can then claim that the individuals are friends and/or family who did not pay for any services. Without being able to prove that the illegal commercial operator received compensation, an enforcement action would have a low likelihood of being successful.

Thank you for the opportunity to testify on these measures.

SCR-205

Submitted on: 3/29/2022 8:41:02 AM

Testimony for WTL on 3/30/2022 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Todd Tashima	Testifying for DLNR	Comments	Remotely Via Zoom

Comments:

I am available for questions to DLNR. Please allow me Zoom access.

Charlotte A. Carter-Yamauchi
Director

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LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol, Room 446
415 S. Beretania Street
Honolulu, Hawaii 96813

Written Comments

SCR205/SR198

REQUESTING THE LEGISLATIVE REFERENCE BUREAU, IN CONSULTATION WITH THE DEPARTMENT OF LAND AND NATURAL RESOURCES DIVISION OF BOATING AND OCEAN RECREATION AND KANEOHE BAY REGIONAL COUNCIL, TO CONDUCT A STUDY OF COMMERCIAL ACTIVITY ON KANEOHE BAY TO QUANTIFY THE AMOUNT OF NON-PERMITTED COMMERCIAL ACTIVITY THAT IS OPERATING IN VIOLATION OF THE KANEOHE BAY MASTER PLAN

Testimony by the Legislative Reference Bureau
Charlotte A. Carter-Yamauchi, Director

Presented to the Senate Committee on Water and Land

Wednesday, March 30, 2022, 1:00 p.m.
Conference Room 229 & Videoconference

Chair Inouye and Members of the Committee:

Good afternoon Chair Inouye and members of the Committee, my name is Charlotte Carter-Yamauchi and I am the Director of the Legislative Reference Bureau. Thank you for providing the opportunity to submit written comments on S.C.R. No. 205/S.R. No. 198, Requesting the Legislative Reference Bureau, in Consultation with the Department of Land and Natural Resources Division of Boating and Ocean Recreation and the Kaneohe Bay Regional Council, to Conduct a Study of Commercial Activity on Kaneohe Bay to Quantify the Amount of Non-Permitted Commercial Activity that is Operating in Violation of the Kaneohe Bay Master Plan.

The purpose of these measures is to request that the Legislative Reference Bureau, in consultation with the Department of Land and Natural Resources Division of Boating and Ocean Recreation and the Kaneohe Bay Regional Council, conduct a study of commercial activity on Kaneohe Bay to quantify the amount of non-permitted commercial activity that is operating in violation of the Kaneohe Bay Master Plan. As part of the study, the measures request that the Bureau include an investigation on the challenges to enforcement against

illegal commercial activity at Kaneohe Bay and offer recommendations to improve compliance with the Kaneohe Bay Master Plan.

The measures also request that the Legislative Reference Bureau submit a report of its findings and recommendations, including any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2023.

The Bureau takes no position on these measures but submits the following comments for your consideration.

As a general matter, the Bureau notes that it does not possess any specific expertise in the fields of ocean recreation, natural resources, commercial recreational activity licensing and regulation, or any familiarity or expertise in the management of such fields. Consequently, it is unclear why the Bureau is being included as the lead party of this study, especially since the Department of Land and Natural Resources Division of Boating and Ocean Recreation, pursuant to Chapter 200, Hawaii Revised Statutes, has broad jurisdiction and expertise over such activities, and the Kaneohe Bay Regional Council, pursuant to section 200D-3, Hawaii Revised Statutes, has specific jurisdiction and expertise over activities conducted within Kaneohe Bay. Any attempt by the Bureau to investigate and study the topics contained in these measures would require the Bureau to first devote a significant amount of resources and time to familiarize its staff with the various subject matters noted above prior to engaging in any meaningful investigation and study. As such, the Bureau may not be able to meet the timetable established in the measures.

If the Committee is interested in obtaining the information that is being sought in these measures in a more expeditious timeframe than the Bureau may be able to provide, it may consider amending the measures to simply request that the Department of Land and Natural Resources Division of Boating and Ocean Recreation and the Kaneohe Bay Regional Council work together to provide the information being requested, and submit the information to the Legislature for its consideration. If the Committee would still like the Bureau to be involved, we suggest that our role be limited to drafting any proposed legislation that may be recommended as a product of the study's findings.

The Bureau believes that if the measures are amended to limit the Bureau's role to drafting proposed legislation, then the Bureau would be able to provide the services requested.

Thank you again for the opportunity to submit written comments.



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To: Senate Water and Land Committee
Lorraine Inouye, Chair; Gilbert Keith-Agaran, Vice-Chair
Members of Committee

For: Hearing, Wednesday, March 30, 2022
1:00 p.m., Conference Room 229

Related to Kaneohe Bay

Testimony in support of SCR205/SR198, which would request the Legislative Reference Bureau, in consultation with the DLNR Division of Boating and Ocean Recreation and Kaneohe Bay Regional Council to conduct a study of commercial activity on Kaneohe Bay to quantify the amount of non-permitted commercial activity that is operating in violation of the Kaneohe Bay Master Plan.

Many members of our club have lived on the bay for generations and have been concerned with the health and sustainability of the bay since the creation of the Kaneohe Bay Master Plan in 1990. However there has been a proliferation of commercial activities far exceeding the cap on such activities that would be permitted under the plan, and some of these activities have been operating without a valid permit to do so and flying under the radar.

This resolution is a first step in attempting to remedy that problem by quantifying the commercial activities covered by the plan, investigating challenges to enforcement against illegal commercial activity at Kaneohe Bay, and offering recommendations to improve compliance with the Kaneohe Bay Master Plan.

Mahalo for considering this testimony.

Submitted by Nancy Davlantes, Government Relations Chair,
Ko'olaupoko Hawaiian Civic Club

The Ko'olaupoko Hawaiian Civic Club was established in 1937 and is a not-for-profit community organization dedicated to preserving and perpetuating the history, heritage and culture of Native Hawaiians. One of the largest of the Hawaiian Civic Clubs, its membership is open to people of Hawaiian ancestry and those who are "Hawaiian at heart."