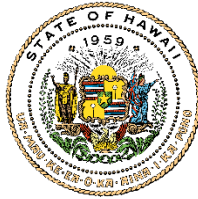


JOSH GREEN, M.D.  
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAI'I | KA MOKU'ĀINA 'O HAWAI'I  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
DAWN N. S. CHANG  
Chairperson**

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

**Wednesday, March 15, 2023  
1:00 P.M.**

**State Capitol, Conference Room 229**

**In consideration of  
HOUSE BILL 1134, HOUSE DRAFT 2  
RELATING TO KANEOHE BAY**

House Bill 1134, House Draft 2 proposes to prohibit commercial ocean activity in Kāneʻohe Bay waters without a permit from the Department of Land and Natural Resources (Department); and prohibit any person from advertising any commercial ocean use activity in Kāneʻohe Bay waters for which the person does not have a permit, lease, or license. **The Department offers the following comments.**

All persons and companies wishing to engage in commercial operations in any state ocean waters are already required to obtain a commercial use permit from the Department's Division of Boating and Ocean Recreation (DOBOR). Penalties already exist for persons and companies who violate DOBOR commercial operation restrictions. DOBOR has brought civil enforcement actions against violators and has been successful in some instances, resulting in the Board of Land and Natural Resources imposing thousands of dollars in administrative fines and prohibiting violators from obtaining any type of DOBOR permits for a particular period of time.

Unpermitted commercial activity is a pervasive problem statewide and is not only restricted to Kāneʻohe Bay. The most 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 DOBOR believes is the strongest definition for effective enforcement. However, both DOBOR and the Department's Division of Conservation and Resources Enforcement (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

DAWN N.S. CHANG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
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M. KALEO MANUEL  
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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

operator received compensation, an enforcement action would have a low likelihood of being successful.

To effectively monitor for illegal commercial activity statewide, DOBOR would need more staffing or the ability to re-allocate existing staff to ocean recreation activity monitoring. Due to staffing shortages and heavy workloads, DOBOR Harbor Agents 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, which would entail entering into public-private partnerships (PPPs) for management of harbors, it would allow DOBOR's Harbor Agents 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. The DOCARE Marine Enforcement Unit that was established in the 2022 State Budget will also help with enforcement by ensuring that DOCARE can have a more consistent presence on beaches and ocean waters.

If the legislature appropriates sufficient funding to implement DOBOR's Strategic Plan, together with the new trainees in the DOCARE Marine Enforcement Unit, the Department expects to have a part-time DOBOR harbor agent and part-time DOCARE officer presence at Kāneʻohe Bay on weekends and holidays. If the legislature wants a full-time law enforcement presence at Kāneʻohe Bay including on weekends and holidays, that would require additional annual funds for 3 dedicated DOCARE officer positions.

Additionally, the House Draft 2 proposes to require the Department to implement administrative rules regarding penalties and fines for Kāneʻohe Bay. However, without specific fine amounts or limits set in statute, the Department will be bound by the limits contained in Sections 200-14 and 200-14.5, Hawaii Revised Statutes.

For the reasons above, the Department believes this measure is not necessary because it is duplicative of existing administrative rule restrictions. The Department believes that the strongest deterrent to illegal operators in Kāneʻohe Bay and beyond is a combination of sufficient Department on-the-ground staff, public education, and community partnerships. To increase Department on-the-ground staff in Kāneʻohe Bay, the Department instead recommends implementation of DOBOR's strategic plan, which would bring the essential programmatic changes for better monitoring, education, and enforcement, and for immediate relief, adding dedicated DOCARE officers.

Finally, while the Department understands the concern over illegal commercial activity in Kāneʻohe Bay specifically, the Department notes that many sites throughout the state suffer from illegal commercial activity and encourages the legislature to sufficiently fund the Department overall so that we have enough DOCARE officers, DOBOR monitoring and education staff, and the Division of Forestry and Wildlife and State Parks stewardship and education staff to spot, address, and prevent illegal commercial activity.

Mahalo for the opportunity to comment on this measure.

**HB-1134-HD-2**

Submitted on: 3/14/2023 12:30:09 PM

Testimony for WTL on 3/15/2023 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Elena Bryant	Testifying for Kaneohe Bay Regional Council	Support	Remotely Via Zoom

Comments:

Aloha Chair Inouye and Members of the Water and Land Committee,

My name is Elena Bryant, and I serve as the Chair of the Legislative Committee for the Kāneʻohe Bay Regional Council ("Council"). The Council stands in **support** of HB1134. The proliferation of illegal commercial ocean use activities in Kāneʻohe Bay has been an ongoing issue of serious concern for the Council and members of our community. The over-commercialization of Kāneʻohe Bay through unpermitted commercial operators directly contradicts the principles and intentions of the 1992 Kāneʻohe Bay Master Plan, which the Council is tasked with implementing. State regulation of and enforcement against illegal commercial operators in Kāneʻohe Bay has been inefficient and severely lacking. Inasmuch as HB1134 would give the State an additional tool to deter illegal commercial activities in Kāneʻohe Bay, the Council stands in strong support and respectfully requests that this Committee vote in favor of HB1134.

Mahalo for your time and consideration,

Elena Bryant

Kāneʻohe Bay Regional Council



**Ka Moku'aina 'O Hawai'i Aha Moku O Pae'Aina**

**State of Hawai'i Aha Moku**

**P. O. Box 621**

**Honolulu, Hawaii 96809**

Testimony of the Hawaii State Aha Moku  
Before Senate Committee on Water and Land

3/15/2023

1:00 P.M.

Conference Room 229 & Videoconference

**IN SUPPORT of House Bill 1134 HD 2**

Relating to Kaneohe Bay

House Bill 1134 HD 1 prohibits ocean use activity in Kaneohe Bay waters without a permit. It prohibits any person from advertising any commercial ocean use activity in Kaneohe Bay waters for which the person does not have a permit. It establishes enforcement mechanisms for the prohibitions.

**The Hawaii State Aha Moku (Aha Moku) strongly supports this measure.**

For decades, the residents of Ko'olaupoko Moku have been trying to protect Kaneohe Bay, including Ahu O Laka from desecration and exploitation of its natural and cultural heritage. Ahu O Laka, more commonly known as the "sandbar" is a *wahi pana*, a cultural sacred place with deep ties between the lineal and cultural descendants of Ko'olaupoko.

Kaneohe Bay is held in such respectful esteem by the people that the Kaneohe Bay Master Plan was developed pursuant to Act 208, Session Laws of Hawaii, 1990 by the users of Kaneohe. An existing rule for Kaneohe Bay is that on Sundays and federal holidays, all commercial ocean use activities shall be prohibited. The DLNR Division of Conservation and Resources Enforcement (DOCARE) does its best to enforce these rules, but it is difficult when all payments and business is done on social media. Continuous illegal commercial activities do not recognize or practice resource sustainability.

The concerns of the Public Trust including the generational and lineal descendants of the kanaka maoli of Ko'olaupoko are carefully outlined in §200-24 Rules; and §200-39 HRS of HB 1134 HD 2 as well as the solutions that will finally protect our waters and our culture now and for future generations.

Respectfully,

Leialoha "Rocky" Kaluhiwa, Aha Moku Representative of Ko'olaupoko, Po'o O Kakuhihewa

Hawaii State Aha Moku

808-286-7955

Rockykaluhiwa1122@gmail.com

**HB-1134-HD-2**

Submitted on: 3/13/2023 5:20:44 PM

Testimony for WTL on 3/15/2023 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Mahealani Cypher	Testifying for Koolau Foundation	Support	Written Testimony Only

Comments:

The Ko`olau Foundation strongly supports passage of H.B. 1134, H.D.2, to regulate businesses on Kane`ohe Bay.

Please join us in this matter by passing this bill out of committee.

Mahalo for considering our mana`o.



## KO`OLAUPOKO HAWAIIAN CIVIC CLUB

March 13, 2023

To: Senator Lorraine Inouye, chair Senate Committee on Water and Land  
Senator Brandon Elefante, vice-chair, Senate Committee on Water and Land

Wednesday, March 15, 2003

From: Nancy Davlantes, Government Relations Committee

Subject: SUPPORT for HB1134 HD2 – Prohibiting commercial ocean use activity in Kaneohe Bay waters without a permit.

Aloha Chair Inouye, Vice Chair Elefante, and Committee Members,

Ko'olaupoko Hawaiian Civic Club writes in **STRONG SUPPORT** for the passage of HB1134 HD2, which would prohibit commercial ocean use activity in Kaneohe Bay without a permit. This year, our club voted on legislative priorities to mālama i ke kai, one of which was this issue, specifically concern regarding growing commercial activity on Kane`ohe Bay.

The Bay and Ahu o Laka are sacred wahi pana to native Hawaiians of Ko'olaupoko but have been sorely tested by unpermitted tour operators promoting and advertising on social media without regard for rules, regulations, and cultural awareness. This has been made worse because the state entities responsible for protecting these resources do not work on weekends or holidays—the times when Heeia Boat Harbor is busiest and when vehicles park illegally at the harbor and along both sides of Kamehameha Highway.

All this activity is contrary to what was envisioned when the Kaneohe Bay master plan was established in 1990 and sought to create a framework for managing the Bay's natural resources while accommodating approved uses. It is now past time to update the law regarding restricted activities in and on the Bay and to provide enforcement mechanisms for various entities to issue subpoenas and take custody of any personal property related to any violation of the rules.

For too long certain members of the public have been pushing the envelope to see what would be tolerated, and for too long those in charge of protecting this sacred place have been without the resources they need to do their job.

For these reasons, we **STRONGLY URGE** you to pass this bill out of committee.

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

**HB-1134-HD-2**

Submitted on: 3/11/2023 10:12:55 AM

Testimony for WTL on 3/15/2023 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Ward Graessle	Individual	Support	Written Testimony Only

Comments:

Kaneohe Bay and the sandbar have been overrun with illegal pirate charters and kayak rentals, saturating the bay and surrounding neighborhoods with tourists and their rental vehicles (much like Kailua and Lanikai). These operators have no respect for the community and do not contribute their fair share. Please enact HB1134 to fortify the original Kaneohe Bay Master Plan, which you passed years ago to preserve the bay for recreation not commercial activity.

Mahalo.

**HB-1134-HD-2**

Submitted on: 3/13/2023 1:53:52 PM

Testimony for WTL on 3/15/2023 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Joe Pickard	Individual	Support	Written Testimony Only

Comments:

Aloha members of the Committee. My name is Joe Pickard, and I am writing to support HB1134. I'm a regular user of Kaneohe Bay and was involved in the drafting of the Kaneohe Bay Master Plan. For over two years members of the Windward Community, Neighborhood Boards, Hawaii Institute of Marine Biology, Fishing, Commercial and Recreational community met and created a Plan to best manage the Bay for Hawaii's future generations. A consensus was reached and the limits to commercial recreation was enacted into Law by Act 208 of the 1990 Legislative Session.

However, since the reopening of tourism after the COVID epidemic there have been a number of unpermitted boat operators conducting tours on the Bay which exceeds the limits outlined in the Kaneohe Bay Master Plan. Some operate from Heeia Pier while others operate from private residences, on State property along the Highways, or the Kaneohe Bay Yacht Club. These unpermitted operators do not pay State fees, General Excise Tax, nor have insurance to cover the State of Hawaii against accidents.

The current law makes it difficult to enforce the commercial use limits in the Master Plan because DOCARE officers say they are unable to observe the exchange of money between the unpermitted operator and their paying passengers. This amendment will make it easier to enforce the law by prohibiting the advertisement of unpermitted tours online, like with the recently adopted City & County ordinance, and require the boat operator to show they are not operating commercially.

I strongly support HB 1134, in the hope it will help stop these unpermitted tours.

Mahalo,

Joe Pickard



**HB-1134-HD-2**

Submitted on: 3/13/2023 6:53:50 PM

Testimony for WTL on 3/15/2023 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Cynthia Texeira	Individual	Support	Written Testimony Only

Comments:

I am writing this letter to express my full support for HB1134 HD2, which seeks to prohibit commercial ocean use activity in Kaneohe Bay waters without a permit. This bill is crucial for the protection and preservation of the Kaneohe Bay ecosystem, which is one of Hawaii's most important natural resources.

I have lived on Kaneohe Bay for 25 years and it is a beautiful and ecologically diverse area, home to a variety of marine species and habitats. It is a vital part of the local community, providing a source of food, recreation, and tourism. However, with the increase in commercial ocean use activities, the bay has faced numerous threats such as pollution, habitat destruction, and overfishing. I witness these events on a weekly basis for years and have seen the deterioration of the reefs right outside my window.

HB1134 HD2 aims to address these concerns by requiring a permit for commercial ocean use activities in Kaneohe Bay. This permit process will ensure that commercial activities are conducted in a manner that is sustainable, environmentally sound, and in line with the interests of the local community.

By enacting this bill, we can protect the natural beauty of Kaneohe Bay and ensure that it remains a healthy and thriving ecosystem for future generations to enjoy. I urge you to support this important legislation and work towards protecting Hawaii's valuable natural resources.

Sincerely,

Cynthia Texeira

**HB-1134-HD-2**

Submitted on: 3/13/2023 7:52:38 PM

Testimony for WTL on 3/15/2023 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Flora Obayashi	Individual	Support	Written Testimony Only

Comments:

Please pass HB1134. Our windward communities have been concerned about the declining biodiversity and dying coral reefs in Kaneohe Bay due to the impacts of illegal unpermitted commercial activity. We have sought to protect these waters against commercial exploitation through the 1992 Kaneohe Bay Master Plan and the Hawaii Administrative Rules. HB1134 is much needed to provide additional protections against unpermitted illegal commercial activity and its harmful environmental impacts.

**Senate Committee on Water & Land**

**Wednesday, March 15, 2003**

**1:00 p.m.**

**Conference Room 229**

**HB 1134 HD2**

Aloha Chair Inouye, Vice Chair Elefante, and Members of the Senate Committee on Water and Land, mahalo for the opportunity to testify in support of HB 1134 HD2. This is an important bill for many of us so mahalo piha for scheduling it for a public hearing.

I am testifying as an individual with deep ancestral ties to Kaneohe Bay. I come from a family of fishermen who have lived in Ko'olaupoko, specifically in Kahalu'u, for generations. I grew up fishing and diving in Kaneohe Bay with my dad, uncles and cousins. My dad is in his late 70's now and not in the best health so I often find myself reminiscing about those simpler times, when we would spend hours fishing in Kaneohe Bay, and always stopping at Ahu a Laka to visit our Kupuna on the way back to the shore. The bay and Ahu a Laka are special to me and my Ohana. Unfortunately, all these years later, the bay has been totally transformed into an amusement park filled with boats, kayaks, and stand-up paddleboards. Ahu a Laka, a Wahi Pana, is marketed as a "tourist destination." Non-permitted commercial activity in the bay is plentiful.

It is extremely frustrating to see all the non-permitted commercial activity in the bay continuing without any recourse for us or sufficient enforcement by DLNR. One needs only to drive past the He'eia Kea Boat Harbor on weekends during favorable weather to see how the tourism industry has transformed this part of our Island for the worse. Tourist cars can often be found parked on the unimproved shoulder adjacent to Kamehameha Highway from He'eia State Park to the old Hawaiian Electric property, taking parking away from fishermen and their boat trailers and creating a safety hazard for drivers coming out of He'eia Kea Boat Harbor. The boat harbor is very busy when the weather is good, and Kaneohe Bay is often filled with boat and kayak traffic heading out to Ahu a Laka. As if that isn't bad enough, pop up kayak rental businesses can be found along the shoreline near Pokole Beach, where first-time kayakers are sent out into the bay with little instruction. DLNR's lack of sufficient enforcement has allowed these non-permitted businesses to thrive as they continue to market Ahu a Laka as a tourist destination. Paid trips for parties on Ahu a Laka can often be found on social media. DLNR's status quo approach to addressing concerns in Kaneohe Bay is making matters worse and it will continue if DLNR is allowed to make excuses for its lack of enforcement.

The Legislature has tried to address the problems in Kaneohe Bay and at Ahu a Laka many times in the past. In 2006, The Legislature passed [SB 2004 CD1](#), which would have established the Ahu a Laka State Monument and require DLNR to adopt rules to protect and maintain this Wahi Pana, but the bill was vetoed by Governor Lingle. In subsequent years, other bills and resolutions were introduced seeking to protect Ahu a Laka and further regulate commercial activity in Kaneohe Bay. The most recent attempt being [SB 3328](#), which Senator Riviere introduced last session. That bill would have prohibited commercial ocean use activity at Kaneohe Bay or within one thousand feet of the bay without a permit from DLNR. DLNR was successful in their attempt to keep the bill from moving forward. With the bill dead, Senator Riviere offered [SCR 205](#), which the Senate and House adopted last year. That resolution requested DOBOR, in consultation with the Kaneohe Bay Regional Council, to study commercial activity in Kaneohe Bay and to develop a plan to reduce the non-permitted commercial activity, and to report to the Legislature prior to the convening of the 2023 legislative session. This is DOBOR's [Report](#).

I'm not sure if DLNR offered a plan with that report. I understand the challenges that DLNR faces but if DOBOR, DOFAW, or DOCARE need more staff for enforcement, DLNR should request funding for additional staff in their budget. The status quo is not working and I fear inaction by the Legislature and/or DLNR will continue to make matters worse, like it has in Honolua Bay.

In closing, I'd like to leave links to two articles. The first link to an article written by Aunty Mahealani Cypher that was published in Ka Wai Ola earlier this month: <https://kawaiola.news/cover/culture-and-commerce-collide-at-ahu-o-laka>

And the second link to a HPR news story about protecting Ahu a Laka published in July of last year (includes quotes from Kumu Kawaikapuokalani Hewett and Senator Keohokalole): <https://www.hawaiipublicradio.org/local-news/2022-07-01/native-hawaiians-lawmakers-and-residents-call-for-protection-kaneohe-sandbar>

Please help us protect Kaneohe Bay and Ahu a Laka.

Mahalo for the opportunity to testify.

Lloyd Young III